

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

[REDACTED])
)
 Student)
 vs.) Case No. 2008-0136
)
 [REDACTED])
)
 Local School District)

Kristine L. Anderson, Impartial Due Process Hearing Officer

HEARING DECISION AND ORDER

This matter comes before me pursuant to the Due Process Hearing Request of the Student's parents, [REDACTED] on behalf of their daughter, [REDACTED]. The family is represented by [REDACTED] of the Law Offices of [REDACTED]. [REDACTED] is represented by [REDACTED]. I have jurisdiction to hear and decide this matter pursuant to 105 ILCS 5/14-8.02(a) et. seq., and 23 Illinois Administrative Code 226.600 et. seq.

PROCEDURAL HISTORY

The Parents requested a due process hearing through their attorney, [REDACTED], on October 15, 2007. The District, through its attorney, [REDACTED] forwarded the Parents' request to the Illinois State Board of Education on October 17, 2007. I.S.B.E. initially appointed Alfred Spitzzeri as the Impartial Hearing Officer in this matter on October 18, 2007. After one of the parties chose to strike Mr. Spitzzeri, I was appointed as Hearing Officer on October 22, 2007. The parties held a mediation session on October 30, 2007. The mediation being unsuccessful, the parties agreed to schedule the pre-hearing conference on December 5, 2007, and also agreed that the hearing would proceed on January 28 and 29, 2008. The hearing was held as scheduled on those days.

ISSUES PRESENTED

The Parents assert that [REDACTED] has a diagnosis of post-traumatic stress disorder with comorbid depression and anxiety. They Parents also contend:

1. The District failed to timely identify [REDACTED] as a child with a disability in violation of its child Find obligations pursuant to the Ill. Adm. Code § 226.100, and [REDACTED] 20 U.S.C. § 1412 (a)(3)
2. The District has denied [REDACTED] a free appropriate public education (FAPE) by failing to provide her with an IEP appropriate to meet her needs, and by failing to ensure that her IEP was implemented.

3. The District has committed several procedural violations resulting in a denial of FAPE to [REDACTED] including: failure to provide a timely written response to the parents' request for an evaluation; failure to provide the Parents with timely notice of procedural safeguards.
4. The District failed to consider the least restrictive environment appropriate for [REDACTED]

REMEDIES SOUGHT

The Parents request the following relief:

- A. Make provisions for the district to provide for, or reimburse private school tuition.
- B. Implement a general education curriculum with special education services with an emphasis on therapeutic services.
- C. Provide [REDACTED] with compensatory services for at least six months of education and provide [REDACTED] with Extended School Year Services.
- D. Provide [REDACTED] with private home tutoring.
- E. Provide [REDACTED] with such other and further relief as the Impartial Hearing Officer deems just and proper.¹

FINDINGS OF FACT

1. Evidence Concerning the Student's Injury, Diagnosis and Symptoms

- *Testimony of [REDACTED]*

[REDACTED] is an eleven year old girl in the 6th grade. She has been diagnosed as suffering from post traumatic stress disorder (PTSD) and comorbid depression. According to her mother, [REDACTED]² the triggering event that caused these conditions apparently occurred on October 16, 2006, when [REDACTED] was in an altercation with a student on the bus. (Tr. 139) [REDACTED] testified that [REDACTED] got off the bus holding her head and crying hysterically. She told her mother that another student had repeatedly hit and kicked her.³ (*Id.*) [REDACTED] testified that she called the school principal, [REDACTED] on that same day to report the incident. (*Id.* at 139-40) The next day, she took her

¹ The Parents' initial request for relief included a request that the District make provisions for [REDACTED] to attend school in a neighboring public school district. At the outset of the hearing, the Parents chose to strike that request.

² During her testimony it was clear that [REDACTED] is extremely distressed over her daughter's condition and I found her to be credible in describing her daughter's symptoms. With respect to her testimony concerning her contacts with the District, her testimony was less credible. She failed to acknowledge, for example, that she stopped communicating with District employees in the weeks after [REDACTED] injury.

³ According to [REDACTED] there were previous instances when this student had bullied her daughter, and she had reported those incidents to the District and asked that the bullying be stopped. (Tr. 140)

daughter to the doctor, who diagnosed a concussion. (*Id.* at 142-43) (*See also*, [REDACTED] Diagnosis Note, JX 10)⁴

When [REDACTED] returned to school a few days later, and encountered the student who hit her, she experienced a panic attack with uncontrollable crying. She called her mother to come get her. After a couple of days of this, [REDACTED] refused to return to school. [REDACTED] once again consulted her doctor, who referred her to [REDACTED], a social worker for a local agency. (Tr. 144-46) [REDACTED] advised [REDACTED] not to force [REDACTED] to return to school. She also began regularly meeting with [REDACTED] to help her address her anxiety about school. (*Id.* at 146) When [REDACTED] anxiety did not abate, [REDACTED] referred the family to [REDACTED], a psychiatrist. (*Id.* at 72-73) [REDACTED] diagnosed [REDACTED] condition and, along with [REDACTED] continues to provide [REDACTED] with therapy.

[REDACTED] testified [REDACTED] life has changed dramatically since the incident on the bus. Still unable to attend school, [REDACTED] receives her schooling through homebound instructional services from the District. [REDACTED] is able to participate in the tutoring sessions, but her mother testified that [REDACTED] is very anxious about them. Upon occasion, the sessions have been cut short because [REDACTED] has suffered panic attacks. (Tr. 120-25)

[REDACTED] condition doesn't just manifest itself at school. She has been unable to participate in extracurricular activities, too. (*See, e.g.*, Tr. 170-71) [REDACTED] testified, for example, that last summer, she and her husband encouraged [REDACTED] to play on a softball team. They had hoped that the experience would help her move past the bus incident and reintroduce her to positive social experiences. According to [REDACTED] [REDACTED] was unable to participate, however, because she became too nervous. She had anxiety attacks about seeing the other kids. She worried so much that she had headaches and stomach aches. She would pick at her skin until she left marks. (*Id.* at 173-74) The [REDACTED] also tried to send [REDACTED] to camp, but her anxiety was too debilitating, and [REDACTED] had to bring her daughter home before the session ended. (*Id.*)

Even though [REDACTED] has so far been unable to successfully participate in organized activities outside of the home, [REDACTED] believes [REDACTED] "needs to take a step forward" and socialize with other kids. She, therefore does not want the homebound tutoring to continue. (Tr. 125-26) She does not want [REDACTED] to return to [REDACTED] though, because she believes that [REDACTED] remains terrified at that prospect. Instead, the [REDACTED] have made arrangements for [REDACTED] to begin attending [REDACTED] [REDACTED] testified that she hopes that [REDACTED] will be able to succeed at [REDACTED] because it is a smaller school. She and her husband believe that [REDACTED] will get more one-on-one attention there, and hope that the school will be more sensitive to her diagnosis. (Tr. 175-76)

⁴ Though the parties did not submit their exhibits jointly, neither had objections to the other's exhibits, and both sides relied on many of the same documents throughout the hearing. I have chosen, therefore, to refer to exhibits introduced in the hearing as joint exhibits.

• Testimony of [REDACTED]

[REDACTED] also testified that his daughter's life has changed significantly since her illness. According to her father, [REDACTED] "cries all the time," and asks, "Dad, what did I do wrong?" (Tr. 221-22) While she used to play sports, her father stated that she is unable to do so anymore. (*Id.*) She's afraid to socialize with other children because she thinks they will make fun of her. [REDACTED] stated that if the family goes out in public and [REDACTED] sees someone from [REDACTED] she becomes fearful and wants to go home. (*Id.*)

Though [REDACTED] is generally at work when [REDACTED] receives her tutoring, he testified that he has met the tutor [REDACTED] and has found him to be "a real nice guy." (*Id.* at 220) Nevertheless, [REDACTED] stated that [REDACTED] can become very frustrated with the situation. Specifically, he testified, "They give her a whole stack of papers to do and it's hard." (*Id.*) [REDACTED] tries to help his daughter with her homework, but there is a point where he can't help her. When that happens, [REDACTED] becomes frustrated, starts crying and is sometimes unable to continue. (*Id.* at 220-21) [REDACTED] believes the five hours of tutoring that the District provides to [REDACTED] each week isn't adequate help for her. As [REDACTED] put it, "Basically, she's teaching herself." (*Id.*) He also stressed that [REDACTED] has yet to receive a report card for her work this year, even though two quarters of the school year have gone by. (*Id.*) For these reasons, [REDACTED] believes [REDACTED] homebound instruction isn't working.

Like his wife, [REDACTED] does not want [REDACTED] to return to [REDACTED]. He testified that he wants [REDACTED] to have the opportunity to attend [REDACTED] and that he and his wife have already made a commitment to send her there. He testified that [REDACTED] is excited about the prospect of attending [REDACTED]. [REDACTED] conceded, however, that while he hopes attending [REDACTED] will allow her to become "a normal kid again," he isn't sure she is ready to move from the home environment to a school. (*Id.* at 224-25)

• Testimony of [REDACTED]

[REDACTED] is a psychiatrist who sees patients in several mental health facilities in southern Illinois.⁵ (Tr. 25-27) He has been in practice since 1991. Dr. [REDACTED] first began treating [REDACTED] in January 2007 when [REDACTED] referred her to him. Upon learning the details of [REDACTED]'s injury as reported by mother and daughter, and by assessing her symptoms, Dr. [REDACTED] diagnosed [REDACTED] with post traumatic stress disorder with comorbid depression and anxiety. (*Id.* at 28-29) Dr. [REDACTED] stated the he currently provides [REDACTED] with individual psychotherapy and has prescribed medication to help manage her anxiety. (*Id.* at 31) He meets with her every thirty to ninety days. (*Id.* at 32) He estimated that altogether, he has met with [REDACTED] approximately seven times in the last year. (*Id.* at 60)

According to Dr. [REDACTED] to be diagnosed with PTSD, an individual must have been exposed to a traumatic, threatening event, causing that person to experience intense fear and feelings of helplessness. The person also must have persistent re-experiencing of the event response, as well as a persistent avoidance of stimuli that would cause recurring thoughts. Finally, there must be

⁵ Dr. [REDACTED] testified by telephone. I found his testimony to be very credible and objective.

persistent symptoms such as difficulty falling asleep, staying asleep, irritability, outbursts of anger, difficulty concentrating and/or exaggerated startling responses. (*Id.* at 29-30)

According to Dr. [REDACTED] fits the profile of a person experiencing PTSD. Specifically, [REDACTED] perceives the incident on the bus as a very traumatic event. (*Id.* at 34) [REDACTED] symptoms also are consistent with the symptoms of PTSD. She suffers nightmares and anxiety associated with her school experience such as being around peers or teachers. She experiences fear and avoidance of school buses, and panic attacks. (*Id.* at 31-32) She also has feelings of hopelessness. As Dr. [REDACTED] put it, [REDACTED] feels that things are getting worse, not better. She doesn't feel like she's going to be a successful person. She also feels abandoned by the school system. (*Id.* at 35)

To help reduce her level of anxiety, Dr. [REDACTED] recommended that [REDACTED] receive homebound schooling. Indeed, [REDACTED] believes that [REDACTED] should not return to [REDACTED] for the remainder of her school career because she "experiences high levels of anxiety when presented with any situation she relates to the [REDACTED] School System." (*Id.* at 36-38) (*See also*, 8/28/07 [REDACTED] letter, JX 3) Dr. [REDACTED] believes if [REDACTED] returned to school at [REDACTED], she would likely develop extreme panic disorders that could manifest themselves for the rest of her life. (*Id.* at 38) When pressed, Dr. [REDACTED] conceded that [REDACTED] might be able to succeed at a different building than the one she previously attended within the [REDACTED] district. He worried, however, that such an attempt would conjure up bad feelings and anxiety in [REDACTED] (*Id.* at 49-51) [REDACTED] also was asked whether a behavior intervention plan might help to mitigate [REDACTED] negative perceptions of [REDACTED] He responded: "I have no idea...It may work. And the only way to find out is by trying it." If it didn't work, Dr. [REDACTED] stressed [REDACTED] would likely perceive it as punishment. (*Id.* at 57-58)

Dr. [REDACTED] also was asked to give his opinion concerning the optimal educational environment for [REDACTED] He responded that a good educational environment for [REDACTED] would be one where there is little, if any aggressive behavior. (Tr. at 38) Classes would have more structure and would be small -- between 8-10 students. (*Id.* at 46) It would include a peer group that is sensitive to [REDACTED] needs and is supportive. It also would allow her to express herself without fear or embarrassment or intimidation. (*Id.* at 40) [REDACTED] recognized, however, that this would be the "ideal" experience, and that he can't point to any middle school or junior high where such an environment exists. (*Id.* at 52) He did state that, in his opinion, a cross categorical special education classroom would not be an appropriate placement for [REDACTED] because such classes often serve students with behavior disorders who are disruptive and aggressive. Nor would a transitional program be appropriate for [REDACTED] because it would make her feel like she is being punished and is different. (*Id.* at 39-41)

Significantly, Dr. [REDACTED] testified that continued homebound schooling is likely the best option for [REDACTED] at this time. (Tr. 60-61) Dr. [REDACTED] believes that homebound schooling is beneficial for many children even if it continues long-term. While socialization with one's peer group is important, [REDACTED] doesn't believe that homebound instruction necessarily hinders a student's social development. (*Id.* at 44) For homebound to be appropriate for [REDACTED] Dr. [REDACTED] stressed that the district must provide an instructor who helps her to stay academically on par with her classmates. Also, [REDACTED] must get credit for her work. (*Id.* at 44, 60-61) Dr. [REDACTED] also was asked his opinion about [REDACTED] attending [REDACTED] School. While he believes parochial schools in general can be good schools, he conceded that he "had no idea" what [REDACTED] would be like for [REDACTED] (*Id.* at 45)

• Testimony of [REDACTED]

[REDACTED] is a mental health counselor employed by [REDACTED]. She has a bachelors degree in social work and has been providing therapy to children with mental health needs since 1995. (Tr. 62-64) [REDACTED] is a client of hers.

[REDACTED] first met [REDACTED] and her mother in October 2006, shortly after [REDACTED] refused to return to school. To address [REDACTED] fear, [REDACTED] worked with [REDACTED] to create a list of strategies to enable her to feel safe at school. (Id. at 68-70; Undated list, JX 11) The handwritten list is brief. It is primarily intended to ensure that [REDACTED] and the other student were kept apart during bathroom breaks and lunch. The list also provides for [REDACTED] to seek help from the lunchroom monitor or school nurse, if necessary. (Id.) Once the two completed the plan, [REDACTED] encouraged [REDACTED] to share the list with the District so the strategies could be implemented. (Id. at 71) [REDACTED] testified that she subsequently learned from [REDACTED] that the District had rejected the plan. When the plan fell through, [REDACTED] testified that [REDACTED] felt there was no one at school to keep her safe, and her symptoms got progressively worse. (Id. at 68) By December, [REDACTED] believed [REDACTED] was developing the symptoms of PTSD – withdrawal, sleeping disturbance, irritability and nightmares. (Id. at 68-69) [REDACTED] referred [REDACTED] to Dr. [REDACTED] who, as noted above, diagnosed [REDACTED] with PTSD. (Id. at 72-73)

In addition to referring [REDACTED] to Dr. [REDACTED] [REDACTED] wrote a letter informing the District that [REDACTED] was fearful of returning to school. (12/11/06 [REDACTED] letter to District, JX 6) [REDACTED] did not recommend that the District take any specific actions, but she did conclude that attending school might “negatively affect [REDACTED] mental and physical health.” (Id.)

Besides the December 11 letter, [REDACTED] has communicated with the District on other occasions as well. She attended two meetings in which the Parent and the District discussed educational options for [REDACTED]. The first meeting was held on January 17, 2007. ([REDACTED] Tr. 97-98) In that meeting, [REDACTED] recalled that the team decided to implement a 504 plan because it would provide [REDACTED] with services more quickly than pursuing a special education evaluation and IEP. (Id.)

[REDACTED] also attended a meeting on May 22, 2007 in which the team formulated an IEP for [REDACTED] (Id. at 98-99) [REDACTED] told the group she didn’t think [REDACTED] was ready to return to [REDACTED] (Id. at 79) The team also discussed the possibility of placing [REDACTED] at [REDACTED] or [REDACTED]. [REDACTED] let it be known that she didn’t believe that either school would be appropriate for [REDACTED]. She recalled that other team members agreed with her. (Id. at 98-99) Instead, [REDACTED]

⁶ I found Ms. [REDACTED] testimony about [REDACTED] symptoms to be informative and consistent with Dr. [REDACTED] testimony. Unlike Dr. [REDACTED], however, she assumed the role of an advocate when offering opinions about placement options for [REDACTED]. This was evidenced by the fact that she tried to opine about aspects of [REDACTED] homebound instruction and [REDACTED] even though she had no first hand knowledge of either topic.

⁷ These are schools therapeutic day schools within the [REDACTED] that are specifically for students with emotional needs. (Sweeney Testimony, Tr. 368-69, 373)

believed that homebound instruction was the most appropriate option for [REDACTED] (*Id.*) The team agreed, and created an IEP for [REDACTED] that would provide her with homebound instruction.

[REDACTED] was asked whether, in addition to attending the meetings, she provided the District with regular reports of [REDACTED] progress. Her answer was vague at best. She responded that the Parent had signed a release for her to share information with the [REDACTED] staff to help them develop the 504 plan. (Tr. 104-05) When asked whether the Parent ever revoked consent, [REDACTED] said, "No, not in writing." (*Id.*)

When asked to share her current opinion on what type of educational placement is appropriate for [REDACTED] [REDACTED] stressed that [REDACTED] must be educated in an environment in which she feels secure. This will allow her to transition into being a student again. The environment also should allow [REDACTED] to begin to develop important social relationships with children her age. (*Id.* at 80-82) [REDACTED] continues to believe that [REDACTED] is not an appropriate placement for [REDACTED]. She has worked with [REDACTED] students, and is aware that many are disruptive and physically aggressive. Sometimes they must be physically restrained by school staff. Because A has a fear of physical violence, [REDACTED] believes that [REDACTED] symptoms would only worsen if she attended [REDACTED] (*Id.* at 82-83) [REDACTED] also believes that it is too late for [REDACTED] to return to [REDACTED] because the symptoms have become too severe for her to return. (*Id.* at 80-81) With respect to [REDACTED] homebound instruction, [REDACTED] testified that [REDACTED] has expressed worry and distress that she has not received grades and that she is given duplicate homework assignments. [REDACTED] sought to offer other opinions about the effectiveness of the homebound instruction and about the appropriateness of [REDACTED] as a placement for [REDACTED] (*Id.* at 89-90) As previously noted, these opinions were speculative with little, if any, evidentiary value.

• *Testimony of [REDACTED]*

[REDACTED] is the Educational Administrator at [REDACTED] in [REDACTED] Illinois. [REDACTED] offered testimony about the school, and responded to questions about whether [REDACTED] might offer an appropriate placement option for [REDACTED]. According to [REDACTED] [REDACTED] is a [REDACTED] day school that serves 131 children in grades kindergarten through 8. (It also has a pre-school program.) (Tr. 184-87) According to [REDACTED] a unique feature of the school is that it teaches religion classes in addition to its academic instruction. As [REDACTED] put it: "We teach religion every day to every child." (*Id.* at 187)

[REDACTED] emphasized the [REDACTED] does not provide services to students with special needs. Indeed, the school handbook makes clear that the school is not equipped for special education students. (Tr. 188) That being said, [REDACTED] noted that there are [REDACTED] students who receive special services. Only one has an IEP, though. That student travels to [REDACTED] to receive services. Other students receive speech therapy or social work services at [REDACTED] or at [REDACTED]. In each instance, [REDACTED] cooperates with the service provider, but it does not provide the service. (*Id.* at 188-89)

[REDACTED] testified that he has not met [REDACTED]. He has spoken with [REDACTED] and is aware that [REDACTED] parents have enrolled her at [REDACTED]. [REDACTED] is uncertain whether [REDACTED] is an appropriate placement for [REDACTED]. He is aware that [REDACTED] has an IEP, though he had not seen it at the time of his testimony. It is unclear whether [REDACTED] is familiar with [REDACTED]'s diagnosis or her symptoms.

Neither had he seen her transcript. (Tr. 187-88, 194) Indeed, when asked whether he would make sure [REDACTED] is an appropriate placement for [REDACTED] [REDACTED] could only respond that the school would "attempt" to. (*Id.* at 193)

With respect to [REDACTED] unique needs as indicated by her therapists -- in particular, small class size and a supportive, nurturing environment -- [REDACTED] testified that [REDACTED] would attend a class with 19 students. It is the largest class in the school. (*Id.* at 191) [REDACTED] does believe that the school offers a warm and supportive environment. (*Id.* at 190) He conceded, however, that there are cliques at the school, and that students argue and get into fights like students elsewhere. (*Id.* at 192-95) [REDACTED] stated that he believes teachers at [REDACTED] would notice if a student was being picked on since the school is smaller and because the students trust teachers enough to report their problems. (*Id.* at 196-97)

2. Chronology of Events Culminating in Services for [REDACTED]

To a significant degree the Parents' claims against the District turn on whether the District responded to [REDACTED]'s needs in timely way. To assess those claims, placing the witnesses' testimony within a timeframe is helpful.

As described above, [REDACTED] was injured in an altercation with another student on October 16, 2006. On that same day, [REDACTED] called [REDACTED] principal, [REDACTED] to notify him of the incident. (Tr. 139-40) The next day, she took her daughter to the doctor, who diagnosed [REDACTED] with a concussion and instructed [REDACTED] to keep [REDACTED] at home for the rest of the week. (Tr. 142-43, JX 10) [REDACTED] gave [REDACTED] a copy of the doctor's note specifying his diagnosis on October 17. (*Id.*)

During the first few days after the incident, [REDACTED] Superintendent [REDACTED] and police officer [REDACTED] viewed a videotape of the encounter. (Tr. 235-37) (*See also*, [REDACTED] Timeline, ⁸JX 19; Police Incident report, JX 20) Though there is no dispute that [REDACTED] received a concussion, [REDACTED] report suggests that the altercation did not appear to be as serious as its result. [REDACTED] noted that [REDACTED] initiated the encounter by swatting at a first grader. His sister intervened and the girls "exchanged blows." (JX 20) Afterwards, [REDACTED] returned to her seat and did not appear to be injured. She did not report the incident to the bus driver at that time. (*Id.*)

Over the next several weeks, contacts between the Parents and the District were infrequent, and it is unclear what information the Parents shared with the District concerning [REDACTED] condition. Indeed, a timeline prepared by [REDACTED] using contemporaneous journal entries reveals that [REDACTED] stopped speaking to him on October 26, 2006. (*See* JX 19) [REDACTED] began receiving services from [REDACTED] on October 25, but the Parents did not formally notify the District of that fact. (Tr. 146) Instead, [REDACTED] testified that on October 30, she presented [REDACTED] with the handwritten list of strategies that [REDACTED] and [REDACTED] had devised, and explained to [REDACTED] that it was a plan that [REDACTED] had created with her "counselor" so she could feel safe at school. (Tr. 150-51) Around the same time, [REDACTED] also began picking up school work for [REDACTED] to

⁸ [REDACTED] and two other district witnesses, [REDACTED] and [REDACTED] prepared timelines drawn from their contemporaneous records of relevant events. The timelines enhanced the reliability of the witnesses' testimony.

do at home. She apparently did not discuss [redacted]'s condition with school staff during her visits, however. (Tr. 146-47) Nor did the [redacted] provide the school with any written correspondence containing information about [redacted] during this time period. (Ohlau Test. 238)

The next substantive interaction between the [redacted] and the District occurred at a school board meeting on November 20, 2006. [redacted]'s purpose in addressing the board members was to get them to recognize that [redacted] had been subjected to repeated bullying, and to convince the District to put a stop to it. (*Id.* at 147, 152) According to [redacted] the Board rejected the notion that [redacted] could have been bullied by a smaller child. They instructed her to return [redacted] to school or her daughter would be truant. (*Id.*) Superintendent [redacted] attended the meeting and testified the [redacted] discussed disciplinary matters. She did not, according to [redacted] suggest that [redacted] needed special services or home bound instruction. (Tr. 380-81)

[redacted] did not comply with the Board's directive to return [redacted] to school. Instead, she continued to pick up her daughter's school work. The school allowed this to continue until December 14, 2006. On that day, [redacted] teacher called [redacted] and told her that the District had instructed her not to send any more work home for [redacted] (Tr. 155-56) It was also around this time that the District began pursuing a truancy claim against the [redacted] According to [redacted], the Board had informed [redacted] that [redacted] would be considered truant if she didn't return to school. By December 14, [redacted] still wasn't back in school, and the District hadn't received a diagnosis that [redacted] couldn't return to school. (Tr. 253-54)

On December 21, [redacted] hand delivered two letters to the school.(Tr. 153-55) The first letter, dated December 11, 2006 was from [redacted] (JX 6) The second letter, dated December 20, 2006, was from Dr. [redacted] physician. (12/20/06 [redacted] Letter, JX 12) Both letters state that [redacted] is suffering severe anxiety about returning to school after being bullied. Dr. [redacted] letter also makes clear that [redacted] is being referred to a child psychologist, and requests that the school assist [redacted] and her family in finding other options for schooling besides returning to [redacted] (*Id.*) [redacted] letter states her belief that attending [redacted] could negatively affect [redacted] mental and physical health.⁹

In addition to the [redacted] and [redacted] letters, [redacted] delivered a written request for a special education evaluation. (12/21/06 letter to District, JX 30) In support, [redacted] refers to the altercation on the bus and states that [redacted] may have post-traumatic stress disorder. She also informs the District that [redacted] is under the care of a counselor, and that she is scheduled to see a psychiatrist. [redacted] then requests that her daughter be evaluated as soon as possible to determine if she should begin receiving homebound services or be placed in a private school. She also mentions the possibility that [redacted] may be eligible for a 504 plan if she is ineligible for an IEP. (*Id.*)

Principal [redacted] testified that he received [redacted] on the afternoon of December 21 -- the last day before [redacted] schools closed for a two week winter holiday. (Tr. 239-40) According to Mr. [redacted] he responded to [redacted]'s request for an evaluation as soon as school reconvened on

⁹Though these letters specifically described [redacted] symptoms, they do not include a diagnosis of [redacted] condition, and the District chose to continue pursuing its truancy claim against the L.'s (Denosky Test., Tr. 390-91)

January 4, 2007. This is confirmed by a January 4 letter in which Mr. [REDACTED] invites [REDACTED] to attend a meeting on January 17 to discuss an evaluation for [REDACTED] (1/4/07 [REDACTED] letter to [REDACTED] JX 23) [REDACTED] also invited various District staff members, and [REDACTED]'s physician, Dr. [REDACTED] (*Id.*) The letter also makes clear that the Parent has the right to bring other individuals to the meeting. (*Id.*)

The meeting went forward as planned on January 17, 2007. [REDACTED] led the meeting.¹⁰ [REDACTED] is not a District employee but is a technical assistant supervisor for the [REDACTED], which provides special education services to the District. (Tr. 257-58) [REDACTED] testified that the atmosphere in the meeting was very tense because [REDACTED] refused to speak to any of the [REDACTED] staff. In fact, according to [REDACTED] [REDACTED] physically faced away from the staff, ignored most of their questions, and would only respond if Ms. [REDACTED] restated the questions. (Tr. 264 -66)

Despite the difficulty of this approach, the team proceeded with the meeting. [REDACTED] stated she had understood that the purpose of the meeting was to plan an evaluation for [REDACTED] (Tr. 261) As the meeting progressed, however, it became clear the [REDACTED] goal was to obtain homebound services for her daughter as quickly as possible. [REDACTED] explained that a 504 plan would allow [REDACTED] to get the services she desired more quickly than conducting a special education evaluation and drafting an IEP. (*Id.* 261-63) [REDACTED] therefore, agreed to pursue the 504 plan. (*Id.* at 262) The team couldn't complete the plan that day, however, because it required proof of [REDACTED]'s diagnosis, which [REDACTED] did not have. The meeting came to an end with the understanding that they would reconvene after [REDACTED] provided a doctor's diagnosis. (Tr. 263-64)

There was disagreement in the hearing over whether [REDACTED] withdrew her request for a special education evaluation during the meeting in favor of pursuing the 504 plan. [REDACTED] asserted that she never withdrew her request. (Tr. 204) [REDACTED] however, testified that [REDACTED] expressly stated she didn't want to pursue a special education evaluation at the January 17 meeting. (*Id.* at 263-64) Principal [REDACTED] recollection is consistent with [REDACTED] (Tr. 243) In any event, [REDACTED] renewed her request for an evaluation a week later in a letter to [REDACTED] and Superintendent [REDACTED] (1/24/07 L. Letter, JX 14)

About the same time [REDACTED] sent her written request for an evaluation, the District received a letter from Dr. [REDACTED] informing that District that he had diagnosed [REDACTED] with post-traumatic stress disorder, comorbid depression and anxiety. He recommended that [REDACTED] receive homebound instruction for at least three months. (1/23/07 [REDACTED] Letter, JX 35) The District, however, delayed scheduling a meeting to complete the 504 plan for about two weeks. During this time, Mr. [REDACTED] tried to get [REDACTED] to withdraw her request for a special education evaluation before taking the next step in completing the 504 plan. (1/29/07 [REDACTED] letter to [REDACTED] JX 18) [REDACTED] refused and, over the next several days, wrote a number of letters to [REDACTED] and [REDACTED] reiterating her request to pursue both paths. (*See, e.g.*, Letters to [REDACTED] and School Board, JX 24, JX 26)

¹⁰ Ms. [REDACTED] was a credible and helpful witness. I gave her testimony particular weight since she is a disinterested party who, according to the evidence, is trusted by both the Family and the District.

On February 7, ██████ called Ms. ██████ to express her frustration with the District's lack of progress. (Tr. 265-66.) ██████ testified that ██████ asked her to stay involved in the process even though it meant the meeting would have to be delayed until February 23 to accommodate ██████ schedule.¹¹ ██████ agreed, and also offered to call the District to see if she could move the process along. (*Id.* 265-67) The next day, ██████ sent a letter setting February 23 as the date for the meeting. (2/8/07 ██████ letter to Parent, JX 25)

The meeting took place on February 23, 2007 as planned. (2/23/07 Referral Routing Form, JX 16, p. B-5) According to ██████ the team conducted an individual needs assessment to determine what would be included in ██████ evaluation. ██████ signed the consent form allowing the District to proceed with the testing. (Tr. 268-69; ██████ Tr. 166) The team also completed the 504 plan in that meeting. (Tr. 269-70) ██████ once again refused to communicate with District personnel, despite ██████ encouragement that she begin talking with staff. (*Id.*) At this point the District and Parents pursued dual paths -- initiating homebound instruction for ██████ through the 504 plan, and conducting a special education evaluation to determine whether ██████ was eligible for an IEP.

With respect to the 504 plan and homebound services, ██████ testified that ██████ began receiving tutoring on or about March 15, 2007 from ██████, a teacher in the ██████ District. (Tr. 123-24.) ██████ met with ██████ approximately five hours a week from March until the end of the school year. ██████ testified that ██████ was at times very anxious about receiving tutoring from Mrs. ██████. She attributed ██████ anxiety to the fact that the teacher worked for the District. On one occasion, for example, the session was interrupted when ██████ became very distraught. (*Id.* 124-25) The record indicates, however, that this was not the norm and for the most part, the tutoring sessions took place as scheduled each week. (*Id.*)

█████'s end of the year report card shows she received incompletes for the second quarter but received A's and B's for the third and fourth quarters, and her end of the year grades. (5/22/07 Grade Report, JX 17) An earlier report card, however, shows that ██████ initially received D's and F's for the second and third quarters. (2/5/07 Grade Report, JX 19) The District apparently revised the grades when A made up work she had missed. (Tr. 208-09)

In the meantime, the District completed its special education evaluation of the Student in two sessions that took place on March 7 and April 13, 2007. (Tr. 166-68)(*See also*, Psychological Report, JX 31) The evaluation completed, the team met on April 23 to consider As eligibility for services. Once again, the Parent refused to participate in a meaningful way and spoke only to ██████ (Tr. 270-71) The meeting, nevertheless, proceeded and the team determined that ██████ met the criteria to receive services for an emotional disorder and other health impairment. (4/23/07 Notification of Conference Recommendations, JX 9; Tr. 270) ██████ testified that the team offered two potential placements for ██████ returning to ██████ or attending ██████ (Tr. 168-69) ██████ requested the opportunity to tour ██████ school before making a decision. (*Id.*) The team agreed to meet again on May 22 to further discuss placement options for ██████ (Tr. 272)

¹¹ ██████ asserted that it was the District that didn't want to proceed without ██████ because of poor communication between ██████ and the District. (Tr. 206-07) Even if ██████'s recollection is correct, the District's request to wait until ██████ could attend would have been reasonable given ██████'s refusal to speak to anyone else.

When the team met on May 22, it considered several placement options for [REDACTED] including [REDACTED] School, [REDACTED] School, placement at [REDACTED] and continued homebound placement. (5/22/07 IEP, JX 9A; Tr. 272-74) With respect to the discussion about [REDACTED], [REDACTED] noted that the team envisioned that [REDACTED] would transition back to school as she was ready, and could receive resource room support. (Tr. 300) The Parent, according to [REDACTED] refused to discuss any of those options, and made it clear that she preferred that [REDACTED] be placed in a special education setting in another school district. (*Id.*) [REDACTED] explained that the team could not place [REDACTED] in another district without representatives of that district agreeing to the placement.¹² (*Id.* at 274-75) The team then focused on the viable options they had presented to [REDACTED] They ruled out placement at [REDACTED] and [REDACTED] because they determined those schools to be inappropriate based on [REDACTED] diagnosis. (*Id.* 275-76) (*See also*, JX 9A, p. B-33)

[REDACTED]'s counselor, was present at the meeting and the team sought her opinion as to the best placement option for [REDACTED] [REDACTED] recommended that [REDACTED] continue to receive homebound instruction. She recalled that several team members concurred with her recommendation, and the team-- without [REDACTED]'s participation -- agreed that [REDACTED] should continue with homebound instruction. (Tr. 98-99, 276) They then proceeded to write an IEP for [REDACTED] that included 300 minutes per week of homebound instruction. (JX 9A)

With respect to goals that addressed [REDACTED] emotional disorder, [REDACTED] testified that the team recognized that the most important step for [REDACTED] was to make the transition from home back to school. (Tr. 299-300) To that end, they wrote two goals that are essentially the same: That [REDACTED] would successfully participate in the regular public school setting. (JX 9A at B-26, 27) Curiously, while the team also wrote several short-term benchmarks and objectives, they do not take effect until *after* [REDACTED] has returned to school. (*Id.*) As such, the benchmarks and objectives fail to support the IEP goals, and they fail to address [REDACTED]'s needs within her homebound placement. (*Id.*)

Though it isn't expressly stated in the IEP, [REDACTED] testified that [REDACTED] was to be responsible for implementing and measuring [REDACTED] IEP goals while she remained at home. (Tr. 298) The IEP states that the [REDACTED]'s counselor ([REDACTED]) will provide the team with monthly reports on [REDACTED] progress and her goals. (JX 9A, p. B-33) It is unclear whether [REDACTED] provided these reports -- there is nothing in the record to confirm that she did. In any event, the record is clear that the District did not monitor [REDACTED] progress on her IEP goals. Indeed, [REDACTED] the junior high school principal, conceded that the school had not made any effort while [REDACTED] was receiving homebound instruction to determine if [REDACTED] was making progress on her IEP goal of returning to school. (Tr. 363)

[REDACTED], assistant director for [REDACTED] provided helpful testimony concerning how homebound students' IEP's are generally administered. (Tr. 367-68) [REDACTED] noted that in most cases, the goal for a homebound child is to reintegrate her into a school setting. (*Id.* at 376-77) In [REDACTED] experience, the student's homebound teacher is generally the case manager of the student's IEP team. (*Id.* at 376) The homebound teacher documents the

¹² Mr. [REDACTED] testified that he later contacted several districts to inquire if placement for [REDACTED] might be possible, including [REDACTED] [REDACTED] and [REDACTED] None agreed to accept [REDACTED] (Tr. 383-84)

level of intervention and the student's progress in meeting the IEP goals and objectives. The teacher then meets regularly with the IEP team to assess the level of success on the student's IEP goals. (*Id.* at 376) In a case such as [REDACTED], where the teacher is unqualified to assess her progress on goals relating to her emotional status, [REDACTED] testified that one of the [REDACTED] coordinators generally take the lead in assessing those goals, and would work closely with the parent to determine whether the student was meeting IEP goals and objectives. (*Id.*)

Though the team completed [REDACTED]'s IEP on May 22, [REDACTED] refused to give her consent for the services specified in [REDACTED]'s IEP. Ms. [REDACTED] cautioned [REDACTED] that delaying consent could result in a delay in services for [REDACTED] because the District would need time to post the position and find a qualified candidate. ([REDACTED] timeline, PX 28) (*See also*, Tr. 170, 276-77) The Parent, nevertheless, waited until August 1, 2007 to provide the District with her consent for the District to implement [REDACTED] IEP. (Tr. 129) School started on August 17. *Id.*

Principal [REDACTED] testified that he had been out of town in the first days of August and did not learn that [REDACTED] was to receive homebound services until the first day of school. (Tr. 355, 361) At that point, he began trying to find someone qualified to provide homebound tutoring to [REDACTED] (*Id.* at 356) [REDACTED] first contacted Ms. [REDACTED], a substitute teacher in the District at the time, and Ms. [REDACTED] agreed to take the position. *Id.*

According to [REDACTED] Mr. [REDACTED] contacted her on August 30, 2007 to inform her that he had hired Ms. [REDACTED] (Tr. 134) When [REDACTED] and Ms. [REDACTED] spoke a few days later it was clear that their schedules did not correspond. [REDACTED] needed one of the tutoring sessions to be on Saturday, and Saturdays did not work for the [REDACTED] (*Id.* at 135, 357) On September 10, Ms. [REDACTED] told Mr. [REDACTED] that she wouldn't be able to take the position because of the schedule conflict. [REDACTED] Timeline, JX 33, p. E-5) Mr. [REDACTED] resumed his search for a tutor. He also asked Ms. [REDACTED] to provide [REDACTED] with at least some tutoring until he could find someone else. *Id.* Ms. [REDACTED] agreed and tried several times to contact [REDACTED] but was never able to reach her. *Id.* For the next several weeks, the District made numerous attempts to call [REDACTED] to discuss the tutoring situation, but got no response. On October 1, 2007, [REDACTED] went to the school to pick up [REDACTED] books and assignments. She did not speak with Mr. [REDACTED] about [REDACTED] tutoring even though she saw him and he asked her if she was there to speak with him. (JX 33, p. E-6)

On October 4, 2007, the District hired [REDACTED] to be [REDACTED] tutor. (JX 33) Mr. [REDACTED] was a credible and informative witness. He testified that he has a background in political science and political science history education. (Tr. 324) He received his teaching certificate in December of 2006. Mr. [REDACTED] currently is employed by the District as a substitute teacher and as [REDACTED] tutor. (*Id.* at 324-25, 330-31) He has never provided homebound services before. (*Id.* at 331)

When Mr. [REDACTED] agreed to act as [REDACTED] tutor, he testified that he made a number of calls to the family, and left several messages. He first spoke with [REDACTED] on October 11, and the two agreed to hold the first tutoring session on October 15, 2007. [REDACTED] log of calls and contacts, JX 36) According to Mr. [REDACTED] records and testimony (which are not disputed by [REDACTED] he has met regularly with [REDACTED] since that first session -- approximately twenty times between October 15 through January 7, 2008. The two generally meet on Mondays and Wednesdays from 4:00 to

6:30 p.m.¹³ (Tr. 328-29) [REDACTED] believes he and [REDACTED] have a good relationship. He describes [REDACTED] as a motivated student who enjoys succeeding. [REDACTED] likewise, enjoys seeing her succeed. (Id. at 347)

Mr. [REDACTED] tutors [REDACTED] in language arts, math, science and social studies. (Tr. 329) He describes himself as the "liaison" with the classroom instructor and the student. He picks up lessons and materials from [REDACTED] teachers at the junior high and takes them to [REDACTED] for completion. He teaches the lessons to [REDACTED] and answers her questions about new material. When [REDACTED] completes assignments, [REDACTED] collects them and brings them back to her teachers for grading. (Id. at 329-30) [REDACTED] has no responsibility with respect to [REDACTED] IEP -- he doesn't monitor her progress on IEP goals, or report to the staff concerning the implementation of the IEP. Indeed, [REDACTED] reported that he has not even seen [REDACTED] IEP. (Id. at 332)

According to Mr. [REDACTED], acting as an instructional liaison between home and school is "difficult" because here is no direct communication between the Parent and [REDACTED] teachers. (Tr.331, 344) [REDACTED] must relay the family's questions to [REDACTED] teachers, who in turn send their responses to the family through [REDACTED]. This can cause delays or misunderstandings in answering [REDACTED] or the Parent's questions. [REDACTED] testified that he has encouraged the Parent to communicate directly with [REDACTED]'s teachers through email or telephone calls. The teachers, according to [REDACTED] have an open door policy. [REDACTED] has refused, stating only that she "cannot contact the school." (Id. at 344-45)

Another difficulty [REDACTED] has encountered as [REDACTED] tutor, is that on a number of occasions teachers have sent duplicate assignments and [REDACTED] has had to complete the same assignment more than once. (Tr. 333-339; 1/15/08 List of Missing Work, JX 32) While he couldn't say precisely how many times this has happened, he is sure it has occurred more than five times. (Id. at 339-40) He also knows that it has happened more frequently in science and social studies than it has in math and language arts. [REDACTED] is not sure exactly why this is so. One reason could be that the science and social studies projects -- like creating an ecosystem mural or landfill -- are more subjective, and [REDACTED] may not have completed an assignment in the way the teacher required. (Id. at 341) [REDACTED] also conceded that he generally communicates with the teachers by note, not in person, so he may not have a precise understanding of how the teacher expects such a project to be completed. (Id. at 343-44) [REDACTED] testified that it's also possible that teachers may simply misplace [REDACTED] completed work. (Id. at 342-43) Whatever the reason, [REDACTED] stated that he believes [REDACTED] is frustrated when she receives a duplicate assignment, particularly because her time with him is limited. (Id. at 345-46) Significantly, [REDACTED] believes that his instruction time with [REDACTED] is not enough to meet her needs. Though he can't say for sure how many hours the District should provide to [REDACTED] he knows that five hours a week isn't enough. (Tr. 345-46)

Mr. [REDACTED] testimony concerning his tutoring sessions with [REDACTED] is consistent with [REDACTED]'s testimony about the sessions. [REDACTED] added, however, that [REDACTED] is very nervous about the tutoring sessions. (Tr. 120) [REDACTED] anxiety doesn't appear to be attributable to Mr. [REDACTED] however, but to

¹³ [REDACTED] testified that Mr. [REDACTED] has left early on three occasions during that period. (Tr. 199)

her concern over the duplicate assignments, and her stress over having to complete so much of the work on her own. (█████ testified that █████ does school work on her own for at least five hours a day.) (*Id.* at 120-27) During these times she becomes anxious and frustrated when she encounters something she doesn't understand. (*Id.*)

CONCLUSIONS OF LAW

1. Whether the District Failed to Satisfy its "Child Find" Obligations as Established by Idea and State Law

As a threshold matter, the Parents are the party seeking relief in this case and, as such, bear the burden of proof. *Schaeffer V. Weast*, 546 U.S. 49, 62 (2005) Put another way, it is the Parents' burden to present sufficient evidence to support their allegations that the District failed in its obligations to provide █████ with a free and appropriate education.

The first contention that the Parents make is that the District failed in its responsibility to identify █████ as a disabled child pursuant to its child find obligations under the Individuals with Disabilities Education Act (20 U.S.C. §1412 (a)(2)(3)(A)), and the Illinois Administrative Code. (Ill.Admin. Code § 226.100) Specifically, the Parents contend that █████ was without educational services from October 25, 2006 to March 15, 2007. During that time, they made several unsuccessful attempts to make the District aware of the serious nature of █████ condition, including: attending a school board meeting, providing the District with diagnosis letters from █████ therapist, pediatrician and psychiatrist, as well as the therapist's proposed safety plan. (Student's Post Hearing Memorandum p. 6) A careful analysis of the facts and the chronology in which events occurred, however, fails to support the Parent's claim that the District violated its child find obligations.

According to the Individuals with Disabilities Education Act, school districts have a responsibility to identify, locate and evaluate all children residing within the district who have disabilities and are in need of special education and related services. 20 U.S.C. §1412 (a)(2)(3)(A) (*See also* Ill. Admin Code § 226.100) Once a child who may be in need of special education is located and identified, that child is to be referred for an initial evaluation. Once referred, the District must determine whether to conduct an evaluation, and if it decides to proceed, the evaluation and an IEP meeting must be completed within 60 days of the referral. 23 Ill. Admin. Code §226.110 ¹⁴ A district may not simply rely on upon parents to initiate this process. Rather, a district's obligation is triggered when the district has reason to suspect a disability. *See Jamie S. v. Milwaukee Public Sch.*, 519 F. Supp. 2d 870 (D. Wis. 2007).

The first step, then, in analyzing whether the District violated its child find obligation in this case is to determine when the District had reason to suspect that █████ was a student with a disability. The evidence establishes that at the latest, the District had reason to suspect that █████ disability on December 21, 2006. On that day, █████ hand delivered three letters to the District. The first letter, dated December 11, 2006 was from █████ therapist, █████ (JX 6) The

¹⁴ IDEA requires an evaluation to be conducted within 60 days of receiving consent for the evaluation. 34 C.F.R. §300.301(c)(1). IDEA expressly defers to timetables set by state law on this issue. (*Id.*)

second letter, dated December 20, 2006, was from Dr. [REDACTED] physician. (12/20/06 [REDACTED] Letter, JX 12) Both letters state that [REDACTED] is suffering severe anxiety about returning to school after being bullied. Dr. [REDACTED] letter makes clear that [REDACTED] is being referred to a child psychologist, and requests that the school assist [REDACTED] and her family in finding other options for schooling besides returning to [REDACTED] (*Id.*)

In addition to those letters, [REDACTED] also delivered a written request for a special education evaluation. (JX 30) In the letter, [REDACTED] states that [REDACTED] is under the care of a counselor and may be suffering from PTSD. She expressly requests that her daughter be evaluated as soon as possible to determine if she should begin receiving homebound services or be placed in a private school. She also mentions the possibility that [REDACTED] may be eligible for a 504 plan if she is ineligible for an IEP. (*Id.*)

The Parents maintain that the District had notice of [REDACTED]'s disability prior to December 21, 2006. In support, they point to two earlier incidents: the District's receipt on October 30 of the safety plan written by Ms. [REDACTED] and [REDACTED] and Ms. [REDACTED] presentation to the school board on November 20, 2006. (Student's Mem. at 6) It is important to note that these incidents must be viewed in light of what the District knew at the time, without the benefit of hindsight. At the time the District received the safety plan, for example, events, such as [REDACTED] long absence and diagnosis, were just beginning to unfold.

Moreover, in assessing what the District should have gleaned from those two incidents, fairness also requires that they be placed within the context of other evidence known to the District at the time -- in particular, the videotape of the bus injury. According to three individuals who viewed the videotape of the incident, [REDACTED] and Officer [REDACTED] the encounter between [REDACTED] and the other student did not appear to be serious -- [REDACTED] initiated the altercation, and after it concluded, she returned to her seat and did not appear to be injured or in distress. (*See* JX 19, JX 20)

While the content of the safety plan was undoubtedly important, the evidence demonstrates that the document itself did not appear significant in any way. Indeed, the document is little more than a sheet of paper with a few cryptic, handwritten ideas. (*See* JX 11) There is no indication who authored the plan or where it came from. While, [REDACTED] did explain to [REDACTED] that it was a plan that [REDACTED] had made with her counselor to feel safe at school, this discussion did not occur in the context of a meeting to discuss [REDACTED] needs. Instead, [REDACTED] handed the note to Mr. [REDACTED] in a brief encounter in the school parking lot. Mr. [REDACTED] did not suspect, based on this incident, that [REDACTED] was a student with a disability and the evidence fails to demonstrate that he should have.

Second, in considering the import of the school board meeting, the evidence shows that [REDACTED] addressed the board to make members aware that she believed another student had repeatedly bullied [REDACTED] and she wanted it stopped. (Tr. 147, 152) Superintendent [REDACTED] confirmed that [REDACTED]'s presentation concerned disciplinary issues. She did not tell the Board that she believed [REDACTED] was in need of special services. (Tr. 380-81)

For each of these reasons, therefore, I conclude that the District's child find obligation was not triggered until December 21, 2006.

Given that the District's child find responsibilities were triggered on December 21, the next step is to determine whether the District timely met its obligations to evaluate [REDACTED] and conduct an IEP meeting. As stated above, once [REDACTED] was referred, the District was required to complete its evaluation (if it determined an evaluation was merited) and hold an IEP meeting within 60 days. If the analysis were simply a matter of math, it would be obvious that the District had failed in its obligation -- sixty days from December 21 is February 21. Here, the team did not even agree to conduct an evaluation until February 23, 2007. (JX 16. B-5) An analysis of the events, however, leads me to conclude that, while there were delays in completing the process, the District did not violate its obligations under the law.

First, Principal [REDACTED] did not dispute that [REDACTED] delivered her request for an evaluation and diagnosis letters on December 21, 2006. He stressed, however, that this was the Friday before the District closed for its two week winter break. (Tr. 239-40) On the first day that school was back in session, January 4, Mr. [REDACTED] promptly set the wheels in motion by sending a letter inviting [REDACTED] and other key individuals to attend a meeting on January 17. The purpose of the meeting as stated in the letter was to discuss an evaluation for [REDACTED] (JX 23)

The meeting went forward as planned on January 17, 2007. [REDACTED] who led the meeting, testified that the team had intended to plan an evaluation for [REDACTED] but as the meeting progressed, it became clear [REDACTED] goal was to obtain homebound services for her daughter as quickly as possible. [REDACTED] explained that a 504 plan would allow [REDACTED] to get the services she desired more quickly than a special education evaluation and drafting an IEP. (Id. 261-63) [REDACTED] therefore opted to pursue the 504 plan. (Id. at 262)

The parties disagree about whether [REDACTED] dropped her request for an evaluation during that meeting. [REDACTED] says she didn't. [REDACTED] and [REDACTED] recall that she did. I found [REDACTED] testimony was more credible on that point, particularly since the evidence demonstrates that [REDACTED]'s communications in the meetings were very limited. In any event, [REDACTED] clearly renewed her request for an evaluation a week later. (See PX 14) At this point, the record confirms that the District delayed scheduling a meeting for two weeks while Principal [REDACTED] tried to make the Parent choose between an evaluation and a 504 plan. [REDACTED] delay in *arranging* the next meeting, however, did not delay when the meeting *occurred*. Specifically, the record indicates that [REDACTED] (who would not speak to anyone from the District) wanted Ms. [REDACTED] to attend the next meeting even if that meant waiting until her schedule allowed her to attend. (Tr. 265-67) The first day [REDACTED] was available was February 23, and that is the day that the team met.

The team made plans to conduct a special education evaluation and the parent gave her consent when they met on the 23rd. (Tr. 268-69, 166) They also completed a 504 plan for [REDACTED] (TR. 268-70) With the 504 plan completed, the District hired a teacher, and [REDACTED] began receiving five hours of tutoring a week by March 15, 2007.

During the same period, the team proceeded with the evaluation, which was completed on April 13. (JX 31) They met on April 23, 2007 to review the results of the evaluation. Consistent with IDEA requirements, the meeting was 60 days from the date the Parent had given consent for an evaluation. The team also began the process of drafting an IEP for [REDACTED] Though they did not complete the IEP on that day, it was the Parent who requested the delay so she could tour the facilities that were mentioned as possible placements for her daughter. (Tr. 168-69)

Thus, for the reasons described above, I find that the Parents have failed to meet their burden of demonstrating that the District violated its child find obligations to identify and evaluate [REDACTED]

2. Whether the District Denied [REDACTED] FAPE by Failing to Provide Her with an Appropriate IEP, and by Failing to Implement that IEP

The second contention by the Parents is that the District denied [REDACTED] FAPE, by failing to implement the IEP in a timely manner and by failing to provide the services required by the IEP. There is a third issue that the Parents did not expressly raise, which I also will address, and that is whether the IEP as written was reasonably calculated to provide [REDACTED] with educational benefit.

The foundation of this analysis is *Board of Educ. v. Rowley*, 458 U.S. 176, 188-89 (1982). That case established that a free appropriate public education is an education “specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction.” In *Rowley*, the United States Supreme Court set forth a two pronged test to determine whether a school district has offered a student FAPE. The first inquiry to be made is whether the school district has complied with the statutory procedures required by [REDACTED] (20 U.S.C. 1401 et seq.) Parents are entitled to relief for procedural violations only if the alleged violations resulted in substantial harm to the student. *W.G. v Board of Trustees*, 960 F.2d 1479, 1484 (9th Cir. 1992)

The second prong of the *Rowley* test is whether the district has developed an IEP reasonably calculated to enable the child to receive an educational benefit. *Rowley* at 206-07. To meet that obligation, *Rowley* requires a school district to provide a “basic floor of opportunity” in the form of specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child. *Id.* at 201.

• ***The District’s Timeliness in Implementing the IEP***

The essence of the Parent’s argument on this procedural issue is that, although the IEP was completed on May 22, 2007, the District improperly delayed implementing it until October 15 -- two months after school started. While there is no dispute that [REDACTED] did not begin receiving services under her IEP until October 15,¹⁵ the evidence does not support the Parent’s position that this delay is attributable to the District. Instead, the Parent bears the primary responsibility for the delay.

First, as Parents point out, the team met on May 22, 2007. They wrote an IEP for [REDACTED] that provided goals for her to transition back to school, while also specifying that she would continue to receive 300 minutes per week of homebound tutoring services. (JX 9A) The Parent, however, refused to give consent at the meeting for the IEP to be implemented. (Tr. 170, 276-77) Ms. [REDACTED] expressly cautioned the Parent that her delay in granting consent could delay the District’s ability to locate and hire a qualified teacher in a timely manner. Nevertheless, [REDACTED] waited until August 1 -- more than two months-- to provide her consent. (*Id.* at 129) Mr. [REDACTED]

¹⁵ As already noted, [REDACTED] received tutoring services under her 504 plan from March 15, 2007 until the end of the school year.

the junior high principal, conceded that he did not become aware of [REDACTED] IEP until two weeks later. At that point he began looking for a teacher to fill the position and hired Ms. [REDACTED] by the end of August. (*Id.* at 356) As it turned out, Ms. [REDACTED] could not fill the position because her schedule didn't correspond with the [REDACTED] (*Id.* at 357)

[REDACTED] informed Mr. [REDACTED] of the schedule conflict on or about September 10, and he began a search for another tutor. He hired [REDACTED] on October 4. Mr. [REDACTED] was able to contact [REDACTED] on October 11, and the tutoring began on October 15, 2007. (PX 33)

In short, the evidence demonstrates that much of the delay at issue -- over two months -- is directly attributable to the Parent's decision to withhold her consent to the IEP. Moreover, the Parent's decision to withhold consent until just before school started virtually guaranteed that the District would not have a tutor for [REDACTED] when school opened. Once consent was given and Principal [REDACTED] realized the need to hire a homebound tutor, he made reasonable efforts to hire a qualified candidate. That the first candidate, Ms. [REDACTED] could not take the job because her schedule conflicted with the [REDACTED] is neither the District's nor the Parent's fault. Once [REDACTED] dropped out, [REDACTED] did not delay in hiring [REDACTED] a few weeks later (October 4). [REDACTED] began tutoring [REDACTED] on October 15, 2007. [REDACTED] did concede that there was a two week delay before he learned of the need to hire a tutor. I do not believe that delay substantially harmed the Student so as to constitute a denial of FAPE -- particularly since the Parent bears primary responsibility for the delay in services. For these reasons, I find that the District did not deny [REDACTED] FAPE by failing to timely implement her IEP.

• *Whether [REDACTED]'s IEP was reasonably calculated to meet her educational needs*

Though the Parents do not raise this issue in their Memorandum, the evidence presented at the hearing has led me to consider whether [REDACTED] May 22, 2007 IEP was reasonably calculated to provide her with educational benefit. *See Rowley* at 206-07. While there is no bright line test defining "reasonably calculated," the Seventh Circuit has considered this issue and explained that an IEP must "respond to all significant facets of the student's disability." *Alex R., ex. Rel. Beth R. v. Forestville Valley Community Unit School Dist. # 221*, 375 F.3d 603, 613 (7th Cir. 2004) (citing *CJN v. Minneapolis Pub. Sch.*, 323 F.3d 630, 642 (8th Cir. 2003)). Further, an individualized education plan is acceptable "when it is 'likely to produce progress, not regression or trivial educational advancement.'" *Id.* at 615 (quoting *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 248 (5th Cir. 1997)). Analyzing the content of [REDACTED] IEP in light of these legal requirements confirms that the District denied [REDACTED] FAPE because her IEP was not reasonably calculated to provide [REDACTED] with an educational benefit.

First, to address [REDACTED]'s emotional disability, [REDACTED] testified that the team recognized that the most important step for [REDACTED] was to make the transition from home back to school. (Tr. 299-300) To that end, the primary focus of [REDACTED] IEP is reflected in two goals which, in essence, state that [REDACTED] will successfully participate in the public school setting. (JX 9A at B-26, 27) The team also wrote several short-term benchmarks and objectives, but they fail to support the IEP goals because they don't take effect until *after* [REDACTED] has returned to school. (*Id.*) As such, the benchmarks and objectives are ineffective and irrelevant in helping [REDACTED] meet her goal of returning to school. The IEP, therefore, fails to respond to the most significant facet of [REDACTED] disability -- her inability to return to school. Under the *Forestville Valley* standard, then, [REDACTED] IEP is not

reasonably calculated to provide her with educational benefit, and the District has denied her FAPE. Nor can it be said that [redacted] IEP is "likely to produce progress," as *Michael F.* requires, since it fails to address her need for assistance in returning to the school environment.

Additionally, [redacted] IEP specifies that [redacted] will receive the related service of tutoring for five hours a week. (JX A, p. B-29) Ms. [redacted] testified that in her experience, five hours is the minimum amount of tutoring that a homebound student receives. (Tr. 305) In [redacted] situation, it is evident that FAPE requires that she be provided with more instructional time with her tutor. Specifically, as a junior high student, [redacted] faces an increasingly rigorous curriculum that she cannot be expected to learn on her own. Both parents, however, testified that [redacted] spends a great deal of time completing assignments on her own. Indeed, Mr. [redacted] stated that [redacted] is "teaching herself." (Tr. 220-21) There also is ample evidence that [redacted] becomes frustrated and discouraged when, working on her own, she encounters material that she doesn't understand. Perhaps most significantly, Mr. [redacted] testified that he doesn't believe that five hours of tutoring is sufficient to meet [redacted] needs. (Tr 345-46)

In sum, I find that the District has denied [redacted] FAPE because it has failed to provide her with an IEP that is reasonably calculated to provide [redacted] with educational benefit,

• ***Whether the District Failed to Monitor [redacted]'s Progress***

In addition to its responsibility to provide [redacted] with an IEP intended to provide her with educational benefit, the District also had a duty to monitor [redacted] progress. 34 C.F.R. §300.324(b)(1) [redacted] assistant director for [redacted] testified that, normally, a student's homebound teacher is the case manager of the student's IEP team. (Tr.376) The homebound teacher documents the level of intervention and the student's progress in meeting the IEP goals and objectives. The teacher then meets regularly with the IEP team to assess the level of success on the student's IEP goals. (*Id.*) In a case such as [redacted] where the teacher is unqualified to assess her progress on goals relating to her emotional status, [redacted] testified that one of the [redacted] coordinators would typically take the lead in assessing those goals, working closely with the Parent to determine whether the Student was meeting IEP goals and objectives. (*Id.*)

[redacted] testimony concerning how the process normally works is a stark contrast to the facts of [redacted] case. In [redacted]'s situation, no one assumed responsibility for overseeing her IEP. Though Mr. [redacted] was her homebound teacher, he had no responsibility for monitoring [redacted]'s progress on her IEP goals. Nor could [redacted] have been expected to assess [redacted]'s progress since he is not qualified to assess [redacted] emotional status. In any event, [redacted] testified that he had not been provided a copy of [redacted] IEP, and had not even read it. (Tr. 332) Likewise, Principal [redacted] admitted he hadn't read [redacted] IEP either. (*Id.* at 361) Smith also conceded that the District had not made any effort to determine if [redacted] was making progress on her IEP goals. (*Id.*)

There is evidence that the District intended to rely on reports from Ms. [redacted] concerning [redacted] progress for the period of [redacted]'s homebound instruction. Even if [redacted] failed in her

responsibility, that is no excuse. The District is still responsible for monitoring [REDACTED] progress, and [REDACTED] testimony confirms that procedures existed for the District to do so.¹⁶

Accordingly, I find that the District has denied A. FAPE by failing to monitor her progress on reaching her IEP goals.

3. Whether the District Committed Other Procedural Violations that Denied [REDACTED] FAPE

The Parent's third contention is that the District committed other procedural errors that denied [REDACTED] FAPE. According to the Parents, the District: 1) failed to provide them with written notice of its refusal to evaluate [REDACTED] and, 2) failed to provide them with a copy of procedural safeguards.

The Parent's first assertion fails because the record does not support their claim that the District refused to evaluate [REDACTED]. As discussed above, when [REDACTED] provided the District with the December 21 letter requesting an evaluation, the District timely arranged a meeting to plan the evaluation. Once the meeting was in progress, the team switched its focus to establishing a 504 plan. In doing so, the District was not denying the Parent's request for an evaluation, but honoring her request that they pursue the option that would provide [REDACTED] with services in the shortest amount of time.

Subsequently there was a two week period when Mr. [REDACTED] delayed scheduling a meeting on the grounds that [REDACTED] had to choose between a 504 plan and an evaluation. I have previously made clear, however, that even if Mr. [REDACTED] actions constituted a procedural violation, such a violation did not constitute a denial of FAPE.

Second, with respect to Parent's assertion that the District failed to provide them with a copy of procedural safeguards, the Parents have failed to meet their burden of proof because the record is devoid of evidence that supports this claim.

4. Denial of Services in the Least Restrictive Environment

Parents' last contention is that [REDACTED] homebound instructional placement violates her right to be educated in the least restrictive environment. Specifically, Parents argue that [REDACTED]'s special needs do not require her to be educated at home, isolated from peers. While [REDACTED] can't attend [REDACTED] because her PTSD prevents it, Parents claim that she could succeed in a less restrictive environment than her homebound placement -- [REDACTED]. Accordingly they urge that I order that the District pay for [REDACTED] to attend [REDACTED].

Not surprisingly, the District disagrees with the Parents' position for two primary reasons. First, the District claims that ordering it to reimburse the family for tuition to [REDACTED] a [REDACTED] School, would violate the First Amendment to the Constitution because it would have the

¹⁶ To the extent that the District might claim that the Parent prevented it from monitoring [REDACTED]'s progress, I am mindful that the District cannot force the Parent to cooperate in this process. The District, however, must still attempt to comply with its obligations and, in doing so, should create written documentation of the Parent's intransigence.

purpose or effect of advancing a religion. (Post Hearing Brief of District, p. 10) Second, the District argues that Parents have failed to demonstrate that [REDACTED] is an appropriate placement for [REDACTED] (*Id.* at 13) Though I find in favor of the District on this issue, my reasoning differs somewhat from the District's. Specifically, though Parents claim that [REDACTED] does not require homebound instruction, there is significant evidence to the contrary. Moreover, even if they had demonstrated that homebound instruction is not the least restrictive environment for [REDACTED] they have failed to meet their burden of proof that [REDACTED] is an appropriate placement for [REDACTED]

First, Parents correctly point out that the law requires an IEP not only confer some educational benefit, but it must do so in the least restrictive environment. *See Beth B. v. Mark Van Clay*, 282 F.3d 493, 496 (7th Cir. 2002). The least restrictive environment is one that allows the disabled child to be educated with her nondisabled peers to the greatest extent appropriate. *Id.* at 498. Such a determination must be made on a case by case basis, taking the student's unique needs into account.

Here, the Parents' claim that there "is no evidence that [REDACTED] needs to be educated at home," (Student's Mem. at 9) is simply not true. The evidence demonstrates that when drafting her IEP last May, the team considered several placement options for [REDACTED] including returning to [REDACTED] attending [REDACTED] or [REDACTED] Schools, and homebound instruction. The team decided that homebound instruction was the appropriate, least restrictive option for [REDACTED]. Indeed, [REDACTED]'s therapist, [REDACTED] agreed that [REDACTED] should receive homebound instruction. (Tr. 98-99) More recently and more significantly, Dr. [REDACTED] [REDACTED] psychiatrist, testified that he believes homebound instruction continues to be the best option for [REDACTED] for now. (Tr. 60-61)

Moreover, there was testimony that [REDACTED] suffers extreme anxiety and panic attacks in settings other than at [REDACTED]. Specifically, both Mr. and [REDACTED] testified that their daughter has been unable to participate in organized activities outside the home, such as camp and softball. (Tr. 170-74, 221-22) Though those incidents were not in an educational setting, they undoubtedly provide evidence that [REDACTED] is not yet ready to cope with educational demands outside the home. Viewed together, I find that the evidence indicates that homebound instruction remains the least restrictive environment for [REDACTED] at this time.

Even assuming that the Parents had demonstrated that a school environment is the least restrictive environment for [REDACTED] they failed to meet their burden in demonstrating that [REDACTED] would be an appropriate placement for [REDACTED]. When questioned about [REDACTED] as a possible placement for [REDACTED] Director [REDACTED] stressed that the school does not provide services to students with special needs. Indeed, the school handbook makes clear that the school is not equipped for special education students. (*Id.* at 188) That being said, [REDACTED] noted that there are [REDACTED] students who receive special services. Only one, however, has an IEP. (*Id.* at 188-89)

With respect to [REDACTED] specific needs, it was apparent that neither Mr. [REDACTED] nor the Parents have any real notion of whether [REDACTED] could succeed at [REDACTED]. Indeed, [REDACTED] testified that he has not met [REDACTED]. While he is aware that [REDACTED] has an IEP, he had not seen it at the time of his testimony, and it is unclear whether [REDACTED] is familiar with [REDACTED] diagnosis. (*Id.* at 187-88, 194) Significantly, when asked whether he would make sure [REDACTED] is an appropriate placement for [REDACTED] [REDACTED] could only respond that the school would "attempt" to. (*Id.* at 193)

Nor does [REDACTED] appear to satisfy her therapist's key recommendations for [REDACTED]. Both Dr. [REDACTED] and Ms. [REDACTED] stressed that [REDACTED] needs a small class size. Dr. [REDACTED] said it should be 8-10 children. (Tr. 46) [REDACTED] however, testified that [REDACTED] would attend the school's largest class with nineteen students. (Tr. 191) In addition, both [REDACTED] and [REDACTED] said that [REDACTED] should attend a school with a nurturing and warm environment, and little aggressive behavior. (Tr. 38-40, 80-83) [REDACTED] testified that he believes [REDACTED] does offer a warm and supportive environment. He conceded though, that kids argue and fight at [REDACTED] (Tr. 190-96)

In short, the Parents have failed to demonstrate that [REDACTED] is the least restrictive environment for [REDACTED]. Because that is the case, I do not decide the question of whether reimbursing the Parents for tuition at [REDACTED] is constitutionally permissible. In reading the cases submitted by the parties, though, I found the line of cases cited in *Board of Education Paxton-Buckley-Loda-U. Sch. Dist. No. 10 v. Jeff S.*, 184 F. Supp. 2d 790, 798 (C.D.II. 2002) to be particularly instructive, suggesting that the Constitution would not bar the District from reimbursing the family for attendance at St. Mark's.

Pursuant to the above findings of fact and conclusions of law, it is hereby ordered:

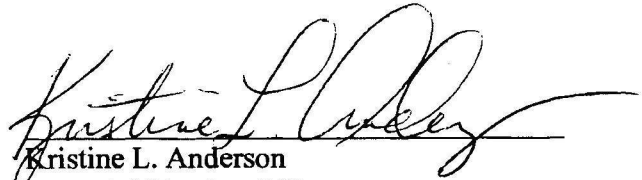
1. The Parents' request that the District be required to reimburse the Student for private school tuition is denied.
2. The Parents' request that the District be ordered to implement a general education curriculum with special education services with an emphasis on therapeutic services is granted: Members of the IEP team will meet within two weeks of this order to draft an appropriate IEP for [REDACTED]. The IEP shall specify that [REDACTED] is to receive homebound instructional services for not less than 480 minutes per week to be provided during regular school hours (unless the Parent requests otherwise). The IEP must include measurable goals intended to address [REDACTED] emotional disability. In particular, the goals should be written with the purpose of assisting [REDACTED] in transitioning from homebound instruction to a public school setting.¹⁷ The team may choose to include interim steps that are not expressly related to school, but that would help [REDACTED] begin to be successful in organized activities outside the home. The IEP must also provide for [REDACTED] to receive weekly therapeutic services. The District and Parent may agree that [REDACTED]'s current counselor will provide those services. If so, Ms. [REDACTED] must provide the District with monthly reports on [REDACTED]'s progress in reaching her goals.
3. Parents' request for extended school year services for [REDACTED] is granted. When the Parents and the District meet to draft a new IEP for [REDACTED] a plan for appropriate esy services must also be established. Parents' request for compensatory services also is granted. Once [REDACTED] is successful in returning to the school setting, she will be entitled to receive, for one school year, additional one-on-one tutoring for up to three hours a week if needed.

¹⁷ By ordering that the goals focus on helping [REDACTED] to return to [REDACTED] am mindful that as her therapists suggested, [REDACTED] may be unable to reach this goal. I have directed that it be included in [REDACTED] new IEP, though, because Dr. [REDACTED] conceded that she might be able to succeed, and because the failures in her current IEP precluded [REDACTED] from making any real progress in achieving that goal.

4. Parents' request for private home tutoring for [REDACTED] is granted. The details are described in Nos. 2 and 3 above. Additionally, the District shall make arrangements for the tutor to meet regularly and in person (not less than one hour a week) with [REDACTED] teachers to plan upcoming lessons for [REDACTED] and to assess her progress. This time must be in addition to the minutes of instructional time that the tutor spends with the Student.

5. The District shall provide proof of compliance with the aforesaid orders to the Illinois State Board of Education, Compliance Division, 100 no. First St., Springfield, Il. 62777-001, on or before May 2, 2008.

DATED: April 1, 2008


Kristine L. Anderson
Impartial Hearing Officer
P.O. Box 7065
Evanston, Il. 60204