

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

[REDACTED]
Student,

v.

[REDACTED]
Local School District.

)
)
)
)
)
)
)

CASE NO. 2008-0144

MARY SCHWARTZ
Due Process Hearing Officer

RECEIVED

MAY 27 2008

DECISION AND ORDER

SPECIAL EDUCATION
SERVICES

Jurisdiction

This matter is before the undersigned hearing officer on the parent's request for a due process hearing. This hearing officer has jurisdiction pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. § 1400 *et. seq.*, 105 ILCS 5/14-8.02a *et. seq.*, and 23 Il. Adm. Code § 226.600 *et. seq.* The parties have been fully advised of their rights pursuant to these statutes and regulations.

Procedural Background

The district received the parent's due process complaint on October 22, 2007, the same day that it was filed. The hearing officer originally appointed to this matter by the Illinois State Board of Education ("ISBE") was substituted by one of the parties. The undersigned was appointed by the ISBE on November 2, 2007. Upon appointment, the undersigned immediately sent a Preliminary Scheduling Order to the parties and set an initial telephone status conference call. The pre-hearing conference was set for November 26, 2007.

On November 5, 2007, the district filed a Motion for Insufficiency, alleging that the parent's complaint contained only generalized statements rather than a detailed description and specific facts as required by 20 U.S.C. § 1415(b)(7)(A)(ii). The undersigned, on November 7th, issued a Determination of Sufficiency, finding the complaint insufficient on its face. The parent was given ten days to file a complaint meeting the requirements set out in the November 7th order. The parent, through her advocate, filed a lengthy Response arguing that the parent was not required to plead specific facts. After the district filed a Reply and the undersigned issued a second order, the parent's advocate then filed a complaint that met the standard set out in the November 7th order.

The district agreed to conduct a Case Study Evaluation of the student and, upon its completion, to convene an IEP eligibility meeting. Because of these events, the district requested an extension of time, which the undersigned granted. At the IEP eligibility meeting held on January 24, 2008, the IEP team determined that the student was not eligible for special education and related services under the Individuals with Disabilities Education Improvement Act ("IDEA").

On January 28, 2008, the parent's current attorney filed his appearance in this matter. Through her counsel, the parent presented the district with a written request for two Independent Education Evaluations ("IEE") at public expense on February 1, 2008. The IEE request asks for a central auditory processing evaluation and a complete social/emotional and psychoeducational

evaluation of the student. On February 5th, the district filed for due process to show that its evaluation was appropriate. The next day, February 6th, the parent filed an amended due process complaint, which re-commenced the IDEA timelines. The pre-hearing conference was held on March 11, 2008, via telephone conference call. During the prehearing, the undersigned informed parent's counsel that she did not have jurisdiction over several issues stated in the amended complaint, including claims under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the federal and state constitutions. The parent was granted leave to amend one issue, in which she alleged that the district had engaged in a pattern of intimidation, threats, coercion and retaliation, with specific instructions as to what the amendment must contain. The district objected to the parent's Second Amended Complaint and asked that it be dismissed as it failed to adhere to the hearing officer's prehearing directives. On March 29, 2008, the undersigned dismissed the Second Amended Complaint, finding that it had not followed the undersigned's order when it contained numerous and significant changes to the Amended Complaint and did not provide the information specifically required in the undersigned's order.

During the prehearing conference, the parent requested the psychological test protocols from the district's evaluation of the student. Because the parties disagreed on whether the district had to disclose the protocols, a briefing schedule was set. On April 14, 2008, the undersigned ordered the district to disclose the test protocols to parent's counsel pursuant to a Protective Order.

The due process hearing was held at the district's administrative office on May 12, 15, and 16, 2008. The district provided a court reporter throughout the proceedings. This decision is issued within the ten-day timeline required by Illinois law.

Issues Presented and Remedies Sought

As presented in her first Amended Complaint, and agreed to as issues identified for hearing by the parties prior to the hearing, the parent alleges the following:

1. The district failed to fulfill its Child Find duties, which resulted in the exclusion of the student from special education;
2. The district failed to evaluate the student in an expedited manner after the parent filed a due process complaint and failed to provide 14 day notice as to whether an evaluation was warranted, as required by 23 Ill. Adm. Code § 226.110(a)(3), thereby violating the procedural safeguards afforded the student and parent;
3. The district failed to determine the student eligible for special education and related services, thereby denying the student a free appropriate public education; and,
4. The district failed to conduct a Manifestation Determination Review within ten school days of the change in the student's placement and failed to notify the parent of her procedural safeguards as required by 34 C.F.R. § 300.530(h), thereby violating the procedural safeguards afforded the parent and student.

For the above alleged violations, the parent requests that the district:

1. Reimburse the parent for the evaluation of the student by [REDACTED]
2. Reimburse or pay for an auditory processing evaluation of the student by [REDACTED] M.A., CCC-A;
3. Reimburse the parent for therapy provided by [REDACTED] to the student from the date of the parent's due process request until the ultimate date of decision in this matter;

4. Reimburse the parent for the cost of tutoring the student at [REDACTED] from the date of the due process request until the date of which the district began providing homebound services to the student;
5. Place the student at a placement recommended by [REDACTED]
6. Provide the student with one full year of compensatory education, at [REDACTED] or a private school recommended by [REDACTED], including transportation, to be used during periods chosen by the student and parent, including summers; and,
7. Provide six hours of Drivers Education to the student, at district expense.

The district, having denied the parent's request for an IEE at public expense, must show that its evaluation of the student was appropriate.

Burden of Proof

In an administrative hearing, the party seeking relief bears the burden of proof. *Schaffer v. Weast*, 126 S. Ct. 528, 539 (2005). Therefore, in this matter the parent has the burden of proof as to issues 1 through 4 above, as she filed the due process complaint. The district has the burden of proof on the issue of appropriate evaluation of the student.

Stipulations Entered During the Hearing

The district stipulated to the following during the hearing: the school psychologist is a school psychologist, not a licensed clinical psychologist.

Findings of Fact¹

On October 8, 2007, during the student's second period U.S. History class, the student's teacher noticed that that student had brought a book bag to class. According to school rules, book bags are not allowed in the classrooms. The teacher, [REDACTED], asked the student not to bring the book bag again. [REDACTED] testified that in response to this request, the student called him "a fag." [REDACTED] testified he tried to talk with the student about his behavior, but the bell rang and the student left. [REDACTED] testified that he did not make a written referral to the dean's office because he wanted to talk with the student about the incident. He stated that he sees part of his job as building relationships with students and changing things through talk rather than discipline. The student, who was listed on the parent's final witness list, was not called to testify during the hearing.

The next day, October 9th, when the student entered the class, [REDACTED] thanked him for not bringing the book bag into the classroom. He also asked the student not to speak to him that way again. [REDACTED] testified that the student responded to this request by saying, "Don't say shit to me." [REDACTED] testified that he then asked the student to leave the class, to which the student responded again "Don't say shit to me dude." [REDACTED] called the security guard to assist with the incident.

While the precise details of what transpired next are somewhat contradictory, it was clearly established that the student made some move and gestures toward the teacher and then was restrained by the security guard. Assistant principal [REDACTED], who had been summoned by the

¹ The parent's documents are cited as PD followed by a page number; the school district's documents are cited as SD followed by a page number; TR indicates transcript, followed by a page number.

security guard, asked the student to leave several times. When the student refused to comply, Mr. ██████ called the Student Resource Officer ("SRO"). Officer ██████ testified that when he arrived, the student was "agitated" and "making comments." After Officer ██████'s arrival, testimony shows that the student left, stating that he was doing so because he respected Mr. ██████. Both Mr. ██████ and the security officer testified that as the student left, he called ██████ a "punk ass."

The staff involved in the October 9th wrote disciplinary referrals and statements describing the incident, as is required for major disciplinary infractions. (SD 18-23; PD 217-222). The student's dean, Ms. ██████ testified that the student was asked to write a statement but declined to do so. Mr. ██████ testified that he met with the parent and student, described the incident to them, and told them that the student was suspended for ten days. The district decided to recommend expulsion; however, the discipline process was halted by the parent's October ____ requests for a due process hearing and an evaluation of the student. Prior to this incident, the student had not been identified for special education or related services.

The district's Director of Special Education, Ms. ██████ is responsible for ensuring that the district complies with its child find obligations. Ms. ██████ testified that the district maintains a website, which includes information on child find. Additionally, she testified that the district distributes a child find flyer with the district's newsletter, which is sent to the community at large. At the high school level, Ms. ██████ testified that deans and guidance counselors identify at risk students, determine what the students' problems are, and develop intervention plans to help the identified students succeed. If necessary, parents are brought into the process. Ms. ██████ testified that "at risk" for academics means that the student is struggling with mastering basic skills; for behavior, the term means that the student has behavioral issues multiple times daily on an ongoing basis.

Numerous documents were introduced into evidence regarding the student's academic and disciplinary records. The student's 2005 ISAT scores show that he received an overall scaled score of 160 on the math portion and 161 on the reading portion. (SD 2). His subtest scores in reading ranged from a high score of 100 on Application of Strategies: Explicit Ideas to 50 on Vocabulary Skills. (SD 2; PD 196). The student's highest math score was a 90 in Data Organization/Analysis, and the lowest was 33 in Geometric Relationships. (SD 3; PD 196). Ms. ██████ testified that 162 was the mean score on the 2005 ISAT. In ninth grade, the student's first and second semester grades as follows: Computer Aided Draft I and II, C/D; Freshman English, F/F; Summer School Freshman/Sophomore English, B; Physical Education, C/C; Algebra I-B, F/F; Biology, F/F; Experience in Social Studies, D/D; and U.S. and Illinois Constitutions, F. (SD 10; PD 192). In tenth grade, the student received the following first and second semester grades: Fundamentals of Art, D; Computer Applications, B; Sophomore English, D/D; Cinematography, D; Freshman/Sophomore English PM, C; Spanish I, F; Driver's Education, D; Health, C; Co-ed Physical Education, B; Algebra I, D/D; Biology, F/F; and, Consumer Economics, C. (SD 10; PD 192). The student earned a total of 3.5 credits in his freshman year and 5.5 credits in his sophomore year. (SD 10; PD 192). As mid-quarter grades in 2007-08, the student received: Junior English, B; Geometry, C; Biology, B; U.S. History, C; 2-Dimension Art, B; Website Design, B; and, Co-ed Physical Education, A. Teacher comments include: "disruptive behavior in class" for U.S. History; "shows imagination/conscientious/diligent student" in art; and "pleasure to have in class; cooperative, asset to class" in website design. (SD 17; PD 193).

Between February 13, 2006, and April 27, 2007, the student's discipline record shows that he was tardy 17 times, walked out of class without permission once, was gone too long once after being given a pass to go to his locker, left class three minutes early one time, and had one

unexcused absence. District staff testified that a student is tardy if he is not in the classroom when the bell rings; for discipline purposes, no distinction is made between missing the bell by one second or ten minutes. Consequences for these infractions included in-school suspensions and after-school and in school detentions. (SD 6-8). On September 18, 2007, the student wore an inappropriate shirt to school. He was asked to turn his shirt around and was given a warning. (SD 16). There is only one other entry on his 2007-08 discipline record, which is for the October 9th incident. (SD 15-16).

The district held a resolution meeting with the parent and her advocate and also convened a building level meeting with the high school's administration, the parent, and her advocate. (SD 33). Neither of these meetings resulted in resolution of the issues raised in the parent's due process complaint. On November 30, 2007, the district offered to evaluate the student for special education eligibility and to place the student at the district's Education Center Alternative program ("CAP") or provide him with homebound tutoring. (SD 33).

Ms. [REDACTED] met with the parent on December 5, 2007. The Notification of Conference form indicates that the parent agreed to the date and time of the meeting without written notice. (SD 37). The parent signed Consent for Initial Evaluation on December 5th. (SD 35). At the meeting, the domains identified as requiring assessment were academic achievement, cognitive functioning, communication status, health, hearing/vision, and social/emotional status. (SD 36). The domain sheet indicates that the student has maintained average to above average grades through sixth grade and, from seventh grade through the present time, the student's grades ranged from "A's to F's." (SD 36). The district's Notification of Decision Regarding a Request for an Evaluation, dated December 5, 2007, indicates that the parent was concerned that the student might have a learning disability or emotional disability. (SD 38). The parent's advocate also attended the December 5th meeting. (SD 39).

The district's school psychologist, Mr. [REDACTED] conducted a psychological evaluation of the student in December 2007. Mr. [REDACTED] testified that the evaluation was conducted on several different days in a private room at the [REDACTED] Public Library. According to Mr. [REDACTED] testimony and report, the student was polite, respectful, articulate though reserved, and able to focus on the tests presented. (SD 54). A variety of assessments tools were used, including intellectual and achievement tests, behavior rating scales, an adolescent depression scale, a personality assessment, and parent and student interviews. (SD 55). Mr. [REDACTED] also reviewed the student's records. (SD 55).

On the Wechsler Intelligence Scale for Children, Fourth Edition ("WISC-IV"), the student's full scale IQ was 99. (SD 56). On the verbal comprehension subtests, the student received the following scaled scores: similarities, 13; vocabulary, 11; comprehension, 10; information, 8; and, word reasoning, 9. His perceptual reasoning subtest scaled scores were: block design, 10; picture concepts, 10; matrix reasoning, 11; and picture completion, 8. The student's scaled scores on the working memory subtests were: digit span, 9; letter-number 12; sequencing arithmetic, 9. On the processing speed subtests, the student achieved the following scaled scores: coding 7; symbol search, 5; and cancellation, 8. (SD 55). The student's verbal comprehension index was 106, his perceptual reasoning index was 102, his working memory index was 102, and his processing speed index was 78. (SD 56). The 28 point difference between the student's verbal comprehension index and processing speed index was found to be significant, leading the evaluator to conclude that the student's full scale IQ might not "be the best measure of (the student's) overall ability." (SD 58).

The Wechsler Individual Achievement Test – Second Edition ("WIAT-II") was administered

to assess the student's level of academic achievement. The student received the following standard scores: word reading, 101 reading comprehension, 126; pseudoword decoding, 105; numerical operations, 87; math reasoning, 99; spelling, 96; written expression, 96; listening comprehension, 101; and, oral expression, 120. These subtest scores yielded composite scores of: reading, 111; mathematics, 91; written language, 95; and oral language, 112. The student's total composite score was 102. (SD 56). The student's scores were in the superior range of achievement in reading comprehension and oral expression. (SD 58). His lowest math score was in numerical operations and was in the low average range of achievement. (SD 58).

On the Behavior Assessment Scale for Children, 2nd Edition ("BASC-2") parent rating scale, the student received "at-risk" ratings in two areas, leadership and functional communication. On the student's rating of himself on the BASC-2, all his scores were at the "not significant" range. (SD 57, 59). The teacher rating on the BASC-2 revealed "both clinically significant and at-risk scores in the areas of aggression and conduct problems." (SD 61). The student also was given the Reynolds Adolescent Depression Scale ("RADS"), on which he received a raw score of 38. (SD 58). The evaluation report states that this score is "far below the cutoff score of 77 which is used to judge the severity of depressive symptoms revealed by adolescents." (SD 59). On the Piers-Harris Children's Self-Concept Scale ("Piers-Harris"), the student received a raw score of 73, which is at the 96th percentile. The evaluation report indicates that this score is in the "extremely positive range, reflecting supreme self-confidence, and a lack of critical self-evaluation." (SD 59). The report cautions that this score should be "interpreted cautiously" because while it could reflect the student's positive self-evaluation, it could also reflect a "need to appear supremely self-confident and/or lacking in critical self-evaluation." (SD 60). The evaluator also administered the Incomplete Sentences-Personality Assessment, which did not show any significant areas of concern. (SD 60).

The district's speech/language pathologist conducted a speech/language evaluation of the student that screened for central auditory processing disorder ("CAP-D"). (SD 74). The Test of Auditory Processing Skills -3 (TAPS-3) was used to assess the student. (SD 74). On the TAPS-3, the student received the following standard scores: word discrimination, 100; phonological segmentation, 105; phonological blending, 85; number memory forward, 95; number memory reversed, 100; word memory, 90; sentence memory, 75; and, sentence (auditory) comprehension, 110. These subtest scores resulted in a phonologic (perceptual) index score of 97, and a memory index score of 90. (SD 74). All of these scores are within the average range except sentence memory, which is in the borderline range. The evaluator reported that the sentence memory score was lower because the student made minor errors such as adding "and" and "the" to the sentences he was asked to repeat and that this weakness did not compromise his comprehension of spoken information. His index scores for perception and memory were within the average range. (SD 75).

The final components of the district's CSE were the social development study and the health history. The district's social worker, Ms. [REDACTED], interviewed the parent for the social development study. The parent reported that the student had "anger issues, becomes easily agitated and has outbursts." (SD 63). The mother described the student as "disrespectful, short tempered, angry and not able to have a conversation with him without him being argumentative." (SD 64). She also reported that "he can be very sweet and gets along fine with his siblings, but towards her and even at adults becomes easily irritable and has outburst." (SD 64). She also stated that the student "has never seen his father" but did speak with his father two years ago. Reportedly that contact lasted for five months and then was abruptly terminated by the father. (SD 63). The mother wondered if the student "acting out" was because he does not have a father in his life. The parent told the social worker that the family had gone for family counseling for two months when the student was six years old. (SD 64). Regarding academics, the mother reported that the student began doing poorly in sixth or seventh grade but was "working harder to bring his

grades up.” (SD 64).

The student’s medical history is, overall, unremarkable, other than that he was born premature and delivered via emergency C-section. (SD 69). His developmental milestones were reported to be within normal limits. (SD 70). The parent reported that he is healthy and has had no hospitalizations. (SD 66-67). The evaluator checked “speech problems” on the form, noting “can’t understand” and “emotional trauma,” which included the father’s contact and subsequent termination of that contact as well as a “romantic involvement, break up.” (SD 68). The student passed his vision and hearing examination. (SD 73).

The district convened an eligibility meeting on January 24, 2008. The parent and her advocate attended the meeting. (SD 47). The IEP team reviewed the evaluations and determined that the student was not eligible for special education or related services. The IEP team specifically determined that the student was not eligible under the categories of emotional disability or speech/language. (SD 51-52). Both the parent and her advocated indicated that they disagreed with that determination. (SD 50).

The parent had the student evaluated by a private licensed clinical psychologist, Dr. [REDACTED]. Dr. [REDACTED] met with the student both for a psychological evaluation and individual psychotherapy for a brief time. (PD 233). The mother told Dr. [REDACTED] that the student’s maternal grandmother was “very controlling” of the student and “put a lot of pressure” on him. The mother also reported that the student had “dark moods” and could be argumentative and verbally aggressive. (PD 233). The student reported that he spent most of his time with his girlfriend and friends. He also stated that he did not have any hobbies or particular areas of career interest. (PD 234). Dr. [REDACTED] reported that the student was very respectful but showed flat affect and did not respond to her attempts at humor. She thought his self-esteem was low. She also reported that the student told her that “when he met with the school, he would try to convince them that he would be alright if they would just let him return” to high school. (PD 234).

Dr. [REDACTED] gave the student the Minnesota Multiphasic Personality Inventory-Adolescent Interpretive System, 2nd Edition (“MMPI-A”) and the Reynold’s Adolescent Depression Scale – 2 (“RADS-2”). Although her report does not include the MMPI-A scales, her report states that the student received a clinically significant score on the Depression Clinical Scale and on the Anger Scale of the Content Scales. (PD 234). On the RADS-2, the student “revealed a number of items indicative of depression in adolescents, though not in the clinically significant range.” (PD 234). The report also notes that the RADS-2 is “not considered to be a formal diagnostic tool and is dependent on what the rater (i.e. the adolescent) is willing to reveal.” (PD 234). Dr. [REDACTED] diagnosed the student with Dysthymic Disorder, with a rule out diagnosis of Major Depressive Disorder, Single Episode. The student was in individual psychotherapy with her for a brief time.

In addition to securing the above private psychological assessment, the parent took the student to [REDACTED] for tutoring on October 30, November 12, November 15, and November 27, 2007. (PD 199, 477).

Statutory Framework

A school district must seek out, identify and evaluate children within the district who may be eligible for special education and related services. 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111; 23 Il. Adm. Code § 226.100(a). This affirmative duty is known as a district’s “child find” obligation. In Illinois, districts are required to have procedures for an “(o)ngoing review of each child’s performance and progress by teachers and other professional personnel, in order to refer

those children who exhibit problems which interfere with their educational progress and/or their adjustment to the educational setting, suggesting that they may be eligible for special education and related services.” 23 Ill. Adm. Code § 226.100(a)(2). These provisions impose an affirmative duty on a school district to seek out and identify students with disabilities.

A student who has not yet been found eligible for special education and related services pursuant to the IDEA, and who has engaged in behavior that violates a code of student conduct may assert the IDEA’s procedural protections if the district had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred. 20 U.S.C. § 1415(k)(5)(A); 34 C.F.R. § 300.534(a). A district must be deemed to have knowledge that a student is a student with a disability if “before the behavior that precipitated the disciplinary action occurred –

(i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(ii) the parent of the child has requested an evaluation of the child pursuant to Section 1414(a)(1)(B) of this title; or

(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.”

20 U.S.C. § 1415 (k)(5)(B).

If the district does not have knowledge that the student is a student with a disability prior to taking disciplinary actions against the student, the student may be subjected to disciplinary measures applied to students without disabilities who engaged in comparable behaviors. 20 U.S.C. § 1415 (k)(5)(D)(i).

An expedited evaluation must be conducted if a request is made for an evaluation of the student during the time period in which the student is subjected to disciplinary measures. 20 U.S.C. § 1415(k)(5)(D)(ii); 34 C.F.R. § 300.534(d)(2)(i). The student remains in the educational placement determined by school authorities – including suspension or expulsion without educational services – until the evaluation is completed. 34 C.F.R. § 300.534(d)(2)(ii). A district has 14 school days after receiving a request for an evaluation to determine whether an evaluation is warranted. 23 Ill. Adm. Code §226.110(c)(3). In Illinois, a non-expedited evaluation must be conducted within 60 school days of the date of parental consent for the evaluation. 23 Ill Adm. Code §226.110(d).

To determine whether a student is eligible for special education and related services, a district must assess a student in all areas of suspected disability and must use a variety of assessment tools and strategies to gather “functional, developmental, and academic information.” 20 U.S.C. §1414(b)(2)(A). A district may not “use any single measure or assessment as the sole criterion for determining whether a child is child with a disability or determining an appropriate educational program for the child.” 20 U.S.C. §1414(b)(2)(B). The IDEA defines a specific learning disability as “a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.” 20 U.S.C. §1401(30)(A). The term includes dyslexia and perceptual disabilities. 20 U.S.C. §1401(30)(B). Emotional disturbance is:

“a condition exhibiting one or more of the following characteristics over a long period of

- time and to a marked degree that adversely affects a child's educational performance:
- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
 - (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
 - (C) Inappropriate types of behavior or feelings under normal circumstances.
 - (D) A general pervasive mood of unhappiness or depression.
 - (E) A tendency to develop physical symptoms or fears associated with personal or school problems.

34 C.F.R. § 300.8(C)(4).

A parent has a right to an IEE at public expense if the parent disagrees with the district's evaluation. 34 C.F.R. § 300.502(b); 105 ILCS 14-8.02(b). A request for an IEE at public expense must be made in writing to the district superintendent. The district must reimburse the parent for the IEE if the district's evaluation is shown to be inappropriate. If a parent requests an IEE at public expense, the district has five days from the date of a written request to request a due process hearing to show that its evaluation is appropriate. 23 Ill. Adm. Code § 226.180(a). A parent is entitled to only one IEE at public expense each time the district conducts an evaluation with which the parent disagrees. 34 C.F.R. § 300.502(b)(5).

Conclusions of Law

I. *Did the district fail to fulfill its Child Find duties?*

Ms. [REDACTED], the district's Director of Special Education, has a bachelor's degree in special education, a master's degree in educational administration, and is a certified school psychologist. She also has an endorsement in learning disabilities and behavior disorders and Type 73 and 75 certificates. (TR 82). She testified that the district maintains a website with information about special education programs and child find information. The district also includes flyers about child find in district newsletters, which are sent to residents in all four communities in the district, not just families with children in district schools. (TR 39). Ms. [REDACTED] testified that within the schools, intervention teams are in place for child find referrals of students at risk for failure due to academic or behavioral reasons. Recently the district has moved to a response to intervention ("RTI") model, which she described as a data-driven problem solving model in which at risk students are brought to the attention of a building's RTI team. Classroom teachers, deans and guidance counselors can refer students for intervention. Parents can also refer or request an evaluation. (TR 40, 41). Upon referral, the team looks at the individual student and designs an intervention plan and strategies to address the student's needs. (TR 41).

The parent argues that the district failed to fulfill its child find duties regarding this student in two ways. First, the parent asserts that the district knew that the student was at risk for an emotional disorder because it knew that he comes from a single parent family and because he has emotional difficulties with his father. Regarding these two factors, district personnel and the parent's expert witness expressed disagreement as to whether either or both factors required the district to evaluate the student for special education. Ms. [REDACTED] testified that hardships do not automatically qualify a student for special education. (TR 100). She stated that a majority of the district's students come from single parent families, foster families or disadvantaged families. (TR 105). She testified that "at risk" refers academically to students who struggle with mastering basic skills and behaviorally to students who exhibit behavioral issues multiple times daily on an ongoing and consistent basis. (TR 42). She stated that she did not consider either coming from a

single parent family or having a problematic relationship with a parent as a risk factor that by itself would require evaluation for special education and related services. Moreover, she testified that prior to the district's case study evaluation ("CSE"), no one at the school knew of the student's situation with his father.

Dr. [REDACTED] is a licensed clinical psychologist and director of the [REDACTED]. She has a doctorate in psychology and a master's degree in education. She is an adjunct professor at [REDACTED]. Dr. [REDACTED] serves as an educational advocate for parents and has also advised districts on special education matters. (PD 230-232). Dr. [REDACTED] testified that having no father in the home is a risk factor. (TR 336). Given that neither the parent nor student informed the district prior to the CSE of the student's situation with his father, this testimony carries little weight.

Next, the parent contends that the student displayed clear warning signs of a specific learning disability and/or an emotional disorder, which the district ignored. Clear warning signs trigger a district's duty to evaluate a student. Clay T. v. Walton County School District ("Clay T"), 952 F. Supp. 817 (M.D. Ga. 1997). The parent herein asserts that the clear warning signs shown by the student included: a decline in academic performance; insufficient academic credits to attain the junior status that is commensurate with his chronological age; failure to achieve commensurate with his intellectual potential; numerous disciplinary incidents prior to October 8, 2007; and, the behavioral incidents that occurred on October 8 and 9, 2007.

The district's child find policy requires "an ongoing review of each child's performance and progress by teachers and other professional personnel, in order to refer those children who exhibit problems with their educational progress." (SD 117). The district's Administrative Procedure - Protocol for Responding to Students with Social, Emotional, or Mental Health Problems states that "(a) pre-referral team shall be established at either the District or building level to review the profiles and progress of those student experiencing academic, social, or emotional difficulties." The team is to suggest interventions to address the student's problems and to reconvene if the student's difficulties persist. (SD 86).

Ms. [REDACTED] testified that an academically at-risk student – another way of saying a student who shows a clear warning sign – is one who has difficulty mastering basic academic skills. (TR 42). She testified that because this student had been academically successful in earlier years, his poor performance was not a sign of a suspected disability. Ms. [REDACTED] testified that not completing homework is the "number one" reason for a student's grades to decline. She was unable to specify if this was the reason for this student's decline because teacher comments on grades are removed from the database on an annual basis. (TR 78). She testified that the student had never been referred to an intervention team. (TR 77). She also stated that his cumulative grade report shows that he is able to achieve academically. In ninth grade, the student received an F in English but was able to bring his grade up to a B in summer school. He also received passing grades in computer classes, English, health and physical education, and consumer economics in ninth and tenth grades. (SD 10). Immediately prior to October 9th, his mid-quarter grades were B's in most classes (SD 17).

A comparison of this testimony to the district's written procedures raises the question of whether the district followed its procedures as written. The student was not referred for intervention, according to Ms. [REDACTED] because his academic performance prior to high school showed that he had mastered the basic academic skills necessary for academic achievement. However, the written policy requires referral of a student who is showing problems with his educational progress. The student's decline in grades shows a problem with academic progress,

though it does not indicate the reason for the problem. Did the district not refer him to an intervention team because it knew that his declining performance was due to homework not being completed? The answer is unknown because those records no longer exist, and no testimony was presented on this issue. When a due process complaint alleges a procedural violation, a hearing officer may find that a student did not receive a free appropriate public education ("FAPE") only if the procedural inadequacies impeded the student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of FAPE, or caused a deprivation of educational benefit. 34 C.F.R. § 300.513(2). Based on the final decision in this matter, a procedural violation of the district's child find obligation did not fulfill any of three criteria specified in 34 C.F.R. §300.513(2).

Regarding the student's numerous disciplinary infractions prior to October 8th, 2007, the evidence shows that none of these disciplinary incidents was a major infraction. Ms. [REDACTED], who was the student's dean last year, testified that the student had no major discipline infractions prior to the October 9th incident. His disciplinary record includes tardies, and a dress code violation. (TR 180 - 182). Mr. [REDACTED], the district's Director of Safe Schools, testified that there are 2500 to 3000 tardies per month in the high school, for 1500 students. (TR 527). A student is counted tardy if he enters the classroom door after the second bell rings. (TR 526). Mr. [REDACTED] stated that the district uses a uniform progressive disciplinary system, in which consequences are progressive in nature and commensurate with the behavior. For tardies, consequences range from a telephone call to the student's home to an after school detention or in-school suspension. (TR 527).

The parent contends that the October 8th incident should have alerted the district of a need to evaluate the student. Mr. [REDACTED] has been teaching in the district for seven years. Prior to his current position as a regular education teacher, he taught special education to students with emotional/behavioral disorders. (TR 465, 466). Mr. [REDACTED] testified that prior to October 8th, the student had shown no behavioral problems in his class. He also testified that in his experience, the student was not angry or irritable. (TR 471). Mr. [REDACTED] stated that while the student "was not a go-getter," he did seem concerned about doing his work and was performing "ok" in class. As to why he did not make a referral to the dean on the October 8th incident, Mr. [REDACTED] testified that he wanted to talk with the student about the incident. He said his goal with students is to build a relationship and use that relationship to change things. (TR 480, 481). The hearing officer found Mr. [REDACTED]'s testimony credible and persuasive, particularly given his experience as a special education teacher of students with emotional and behavior disorders.

By all accounts, the incident that took place on October 9th was a major incident and out of character for this student. District staff – both administrators and the teacher – stressed that a teacher must be able to manage problems within the classroom and refer the most severe to the deans. The testimony taken as a whole shows that the student refused to leave the classroom, swore at his teacher multiple times, and at a minimum moved very close to Mr. [REDACTED] in what was described as an intimidating manner by Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED]. These behaviors were set off, at least overtly, when Mr. [REDACTED] thanked the student for not bringing his book bag to class and asked the student not to call him names. It was this incident, followed by the disciplinary consequences to the student, that resulted in the parent filing a due process request and a request that the district evaluate the student. Parent's counsel spent considerable time arguing that this incident could have been prevented had Mr. [REDACTED] completed a discipline referral on October 8th. Parent's counsel also asserts that this incident shows that the student was being targeted for his "characteristics" – he is African American and 6'6" in height. No evidence of such discrimination was shown during this hearing nor, as counsel was informed prior to the hearing, was this an issue before this hearing officer.

While the district's position, discussed above, is that none of these behaviors – singly or taken together – triggered its child find duty to evaluate the student, Dr. ██████ asserted the opposite. Dr. ██████ testified that the student's poor academic performance should have alerted the district of the need to evaluate the student. She testified that in adolescents, depression is manifested as irritability, low motivation, and poor concentration. In her opinion, the student's poor academic performance was reflective of depressive symptomatology. She also testified that he had had several detentions and in-school suspensions, which in her opinion were signs of depression. (TR 403). However, these opinions were formed without any information from the district regarding the student. The parent must prove, by a preponderance of the evidence, that the district did not fulfill its child find obligations to this student. Based on the foregoing analysis, the parent has not done so.

The parent has also argued that because she had no knowledge of special education services and procedures, the district failed in its child find obligations. The district has an obligation to inform the public about special education and its procedures. 23 Ill. Adm. Code § 226.110. Ms. ██████ testified that the district had done so via its website and flyers sent to residents of the community. No evidence to the contrary was introduced. Thus, there is no evidence showing that the district did not disseminate this information to district residents, fulfilling its duty to inform the residents of the communities that it serves.

II. Did the district fail to evaluate the student in an expedited manner, and fail to provide 14 day notice as to whether an evaluation was warranted, after the parent filed her due process request?

A district must conduct an expedited evaluation if a parent requests an evaluation of the student during the time period in which the student is subjected to disciplinary measures. 20 U.S.C. § 1415(k)(5)(D)(ii); 34 C.F.R. § 300.534(d)(2)(i). While the statute does not provide a timeframe for an expedited evaluation, Illinois law provides that an evaluation must be conducted within 60 school days of the date of parent consent for evaluation. 23 Ill Adm. Code §226.110(d). The evidence shows that the parent signed the Consent for Initial Evaluation on December 5, 2007. The domain sheet, which determines areas to be evaluated, was completed that same day. The Notification of Conference is also dated December 5, 2007, and has a hand-written note stating "Parent agreed to date & time w/out written notice." Ms. ██████ testified that she completed these forms and entered the handwritten note. (SD 35-37).

Mr. ██████ testified that he began the student's psychological evaluation on December 7th. He tested the student in three separate sessions during December. Ms. ██████ met with the parent on December 14, 2007, to complete the social development study. (SD 63). The medical history was also completed on December 14th. (SD 70). The speech/language pathologist conducted her assessment on December 20, 2007. (SD 74). The evidence clearly shows that the district began its evaluation of the student two days after it received parental consent and completed the evaluation within fifteen days of parental consent. Each of the district evaluators testified that other than conducting the evaluation in an expedited manner, no other changes were made to normal evaluation procedures. The hearing officer finds that a preponderance of the evidence shows that the district conducted its evaluation in an expedited manner.

A district has 14 school days after receiving a request for an evaluation to determine whether an evaluation is warranted. 23 Ill. Adm. Code §226.110(c)(3). The parent requested the evaluation when she filed her due process request, on October 22, 2007. (SD 38). On November 30, 2007, the district formally offered to evaluate the student. (SD 33). Between October 22nd and November 30th, the district and parent participated in at least one meeting in an attempt to resolve

the issues raised in the parent's due process request. The IDEA requires that parties engage in a resolution process after a due process request is filed. This hearing officer has no knowledge as to whether evaluating the student was discussed at that meeting; however, no evidence was introduced showing that the district refused to conduct an evaluation. Further, the IDEA requires parties to engage in a resolution process after a due process complaint is filed. The evaluation was completed in a timely manner. Assuming *arguendo* that the district did not make a determination within 14 school days that it would evaluate the student, the question is whether such a procedural violation harmed the student in some way. There is no evidence showing that such was the case.

III. *Did the district fail to conduct a Manifestation Determination Review within ten school days of the change in student's placement and fail to notify the parent of her procedural safeguards as required by 34 C.F.R. §300.530(h)?*

A manifestation determination review (MDR) must occur within 10 school days of a district's decision to change the placement of a student with a disability because the student has violated a code of student conduct. 34 C.F.R. § 300.530(e)(1). It is a condition precedent that the student must be a student with a disability, i.e. found eligible for special education and/or related services pursuant to the IDEA. In the matter before this hearing officer, the student was not eligible under the IDEA on October 9, 2007, when he violated the district's code of student conduct. He was a regular education student. Ms. [REDACTED] testified that no MDR was necessary, as the student was found not eligible for special education. (TR 99).

If the parent is attempting to argue that the district had knowledge that the student is a student with a disability before October 9th, she must show that before that date, she expressed written concern to supervisory or administrative personnel or to the student's teacher that the student needed special education or related services, that she requested an evaluation of the student, or that the student's teachers or other district personnel expressed concerns to the special education director or other supervisory personnel about a pattern of behavior shown by the student. 20 U.S.C. § 1415 (k)(5)(B). The parent testified that in November 2006, she had talked with Mr. [REDACTED] about the student's grades. (TR 555). Such a conversation does not meet the statutory criteria. 20 U.S.C. § 1415 (k)(5)(B). There is no evidence that district staff expressed concerns about a pattern of behavior; in fact, the district did not note anything remarkable in the student's behavior prior to October 9th. Because the district is not deemed to have had knowledge prior to October 9th that the student had a disability, it was not required to conduct a manifestation review. And, since the district did not have such knowledge prior to October 9th, it could subject the student to the disciplinary measures applied to students without disabilities who engaged in comparable behavior. 20 U.S.C. § 1415(k)(5)(D)(i). Parent's counsel spent considerable time arguing that the disciplinary consequences given by the district were out of proportion to the conduct. However, that is not an issue properly before this hearing officer, who therefore declines to comment or rule on such.

As to the allegation that the parent was not notified of her procedural safeguards, there was no removal of the student that constituted a change of placement because he was not a special education student and because the district is not deemed to have knowledge prior to October 9th. 34 C.F.R. §300.530(h).

IV. *Did the district fail to determine the student eligible for special education and related services, and did that failure deny the student a free appropriate public education?*

The parent argues, essentially, that the district's evaluation was neither complete nor appropriate. The district's case study evaluation of the student consisted of a psychological

assessment, a social development study, a medical history/current health status, and a speech and language evaluation. (SD 54-75). Dr. [REDACTED] testified that the district's evaluation was flawed in many respects and was particularly critical of the school psychologist's evaluation. She testified that while behavior rating scales should be part of an evaluation, they are based on subjective judgment and so can include rater bias. She testified that she was concerned that the teachers who completed the surveys had not known the students long enough, had not had enough contact with him, and had completed the surveys several months after their last contact with the student. (TR 343, 344). She also stated that on the BASC, one teacher who had known the student the longest rated him in the at-risk range. As to the behavior survey completed by the student, she testified that he had told her that he would present himself as "fine" to the school so that he would be allowed back to school. (TR 345).

Dr. [REDACTED] testified that Mr. [REDACTED] used an outdated version of the RADS. She testified that the current version is the RADS-2, which she used, and that the sample for norms on RADS was skewed and unrepresented African Americans. (TR 341, 342). It is a serious concern that a portion of the district's evaluation was done using an outdated test. The school psychologist should have been aware of that, as should have Ms. [REDACTED], who is also a school psychologist. That the version used was the only one the district had is no reason to use an outdated test. Despite this, both Dr. [REDACTED] and Mr. [REDACTED] reported that the student did not score in the clinically significant range on either version of the test. (TR 404, PD 234).

As to the 28 point discrepancy between the student's processing index and his full scale IQ, Dr. [REDACTED] testified that such a discrepancy could mean many things, including poor sustained energy and low motivation, which in her opinion could be indicative of a mood disorder. (TR 355, 356). Mr. [REDACTED] on the other hand, testified that the student's low processing speed index indicated that he could have a weakness in learning new material under a time constraint. He further testified that there was not enough evidence in his evaluation to indicate that the student has a mood disorder. (TR 139).

As to her clinical impressions of the student, Dr. [REDACTED] testified her observations were, for the most part, consistent with those reported by the school psychologist. However, she reported that she thought the student showed flat affect and was "not spontaneous." She testified that he reported that he had had sleep problems within the last few months. She also stated that the student was upset over a recent breakup with his girlfriend and noted that he "perseverated" on that breakup. Dr. [REDACTED] formal evaluation of the student included the Minnesota Multiphasic Personality Inventory-Adolescent Interpretive System, 2nd Edition and the RADS-2. He received a clinically significant score for depression on the clinical scale and for anger on the content scale. On the RADS-2, he received no score within the clinically significant range. (PD 234).

In assessing this testimony, it must be noted that Dr. [REDACTED] had limited contact with the student. She testified that she saw him only six or seven times, and at least one of those times was for testing. (TR 380). She has not seen him since January 2008. Her impressions of him were formed during a stressful period in his life: he had been suspended from school and, according to Dr. [REDACTED] testimony, was also upset over a break up with his girlfriend. It is possible that some of her observations were due to the current stressors in his life, and that these stressors also impacted his performance on the formal assessment tools. It is also noted that none of the problems noted by Dr. [REDACTED] – sleep problems, "dark moods," irritability, lack of spontaneity, or flat affect – were noted by the district or reported by the family to the district.

Ms. ██████ conducted the district's speech/language assessment. Ms. ██████ has a bachelor's degree in speech and hearing science and a master's degree in communication disorders. She also has certificate of clinical competency, a Type 73 certificate, and is licensed in Illinois as a speech/language pathologist. (TR 202). Ms. ██████ used the Test of Auditory Processing Skills-3 ("TAPS-3") to assess the student's functional auditory processing skills (TR 205, 206). She testified that she used this assessment because it has seven subtests that specifically screen for central auditory processing disorder ("CAPD"). (TR 205). Based on her assessment, Ms. ██████ determined that the student's auditory processing skills are within the average range of abilities, with a weakness in the area of repeating sentences verbatim. Her report indicates that he scored lower in this area – within the borderline range – because he made minor errors such as adding "the" and "and" to the sentences he was repeating. (SD 75). Upon noting this weakness, Ms. ██████ administered another subtest to assess how he understood spoken information. (TR 213, 214). This weakness did not compromise his comprehension of spoken information. (SD 75).

There is no evidence that the student has a specific learning disability. His achievement as measured by the WAT-II was within the average range. He scored in the superior range in subtests measuring reading comprehension and oral expression. He scored in the low average range in numerical operations. (SD 61). His auditory processing skills are within the average range. (SD 75).

To be eligible under the IDEA category of emotional disorder, a student must show one or more of the following characteristics over a long period of period of time and to a marked degree: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; a tendency to develop symptoms or fears associated with personal or school problems. Showing one or more of these characteristics in not enough – it must also be shown that the characteristic(s) adversely affects the student's educational performance. 34 C.F.R. §300.8(c)(4).

General Pervasive Mood of Unhappiness or Depression

Dr. ██████ diagnosed the student with Dysthymic Disorder, which she stated would meet the eligibility characteristic of general pervasive mood of happiness or depression. She testified that dysthymic disorder requires a finding of depressive symptoms for at least one year and that in adolescents, depression is often manifested by irritability and symptoms such as insomnia, low energy, low self-esteem, poor concentration, and hopelessness. (TR 329). She testified that her diagnosis was based on what the student and mother reported to her and their description of the student's relationship with his maternal grandmother. (TR 390). She also stated that this was a "working diagnosis" and that she would have reconsidered it if she had information from the district. (TR 390). Dr. ██████ testified that the student's poor academic performance and tardy record were signs of depression and irritability. She stated that his tardy rate was "severe." (TR 401). She testified that the 28 point discrepancy between the student's processing speed index and overall IQ "could" be due to attention, concentration or motivation problems, which "might" be indicative of a mood disorder. (TR 355). She also testified that his low processing speed score might show a low energy level but stated that this was a "possibility" not a conclusion. (TR 419). She opined that the student had shown these symptoms to a marked degree over a long period of time and that they had affected his academic performance.

A diagnosis of dysthymia or depression does not require that a district determine a student eligible for special education and related services. Oxford City Sch. Bd., 27 IDELR 673 (Ala. SEA 1998); Bonita Unified Sch. Dist., 32 IDELR 273 (Ca. SEA 2000) ("Bonita"). In *Bonita*, the student expressed suicidal thoughts, refused to participate in class or complete assignment, received F's in core academic subjects, and had a record of truancy. However, she also had average social skills and was able to establish and maintain relationships. Only the student's therapist opined that the student's diagnosed emotional disorder adversely impacted her educational performance. The hearing officer found this insufficient as there was no support for the conclusion that the student's poor grades were due to depression. The parent did not report depressive symptoms that occurred over a long time and to a marked degree to those who interviewed her for the CSE. None of the district personnel reported depressive symptoms within the school environment. Similarly, only the private evaluator of the student in this matter has suggested that he is depressed and that such depression has impacted his academic performance. None of the student's teachers or district personnel have observed behavior indicative of depression.

Inability to Build or Maintain Satisfactory Interpersonal Relationships with Peers or Teachers

Dr. [REDACTED] testified that while the student showed positive peer relationship, it was "a possibility" that he also showed an inability to build or maintain satisfactory relationships with his teachers. (TR 412). She testified that this opinion was based on what she had been told by the student and parent and was not included in her report. (TR 412). Several district staff, however, testified that they had professional relationships with the student, including [REDACTED] and Officer [REDACTED] (TR 482, 544). There is no evidence showing that the student was unable to form or maintain satisfactory relationships with teachers.

Inappropriate Types of Feelings or Behaviors Under Normal Circumstances

Dr. [REDACTED] testified that the student showed inappropriate types of feelings or behaviors under normal circumstances. (TR 414). Her opinion was based on the student's report of the October incidents, which she said the student had taken "so personally the statement that the teacher made to him regarding his book bag," and his feeling that he was being picked on when asked to turn his shirt around. (TR 414). She also testified that on the BASC, one teacher had rated the student as externalizing aggression. (TR 415). Although the student's comments to [REDACTED] on October 8th were inappropriate for the situation, there is no evidence that the student exhibited such inappropriate behaviors to a marked degree and over a long period of time. Even Dr. [REDACTED] agreed that the student had not shown inappropriate types of feelings or behavior under normal circumstances over an extended period of time criterion. (TR 415).

Dr. [REDACTED]'s testimony, while credible, is not persuasive. Her assessment was based solely on what the student and parent reported to her, the grade and discipline records they provided to her, and the two rating tools she administered. When asked by the hearing officer if it was possible that the student did not tell her the whole story about some things, Dr. [REDACTED] replied: "Very true, and he also may not have told me his – he may have told me what he perceived to be the truth about certain things." (TR 437). She testified that the student's description of what occurred on October 9th, for example, had definite discrepancies from the district's report. (TR 437). The fact that she did not talk with any district personnel about the student raises significant questions about her interpretation of the student's behaviors within the school setting. For example,

she concluded that the student's tardiness was severe and therefore showed a problem with social relationships. (TR 351, 373). However, she was unaware that the district does not consider tardiness a major disciplinary infraction. In fact, as testimony revealed, tardiness is so common in the high school that the student's behavior in this regard did not stand out. The district does not even consider the amount of time one is tardy when consequences are enforced, and there is no evidence that Dr. [REDACTED] knew this when determining the emotional reasons contributing to the student's detentions and suspensions.

It is important to note that Dr. [REDACTED] never spoke with anyone from the district regarding the student. All her information – other than school records – came from the student and his parent. This lack of contact has resulted in skewed information. For example, Dr. [REDACTED] stated that the record contained descriptions of the October 9th incident from district personnel but not from the student. District personnel testified that the student was asked to write a statement but refused to do so. Although Dr. [REDACTED] reported that the student had told her he was tried to appear "fine" on the district's evaluation, she also testified that it was possible that he tried to do the opposite with her. She was unaware of the district's evaluations until the time of the hearing, which occurred at least five months after she concluded her work with the student. As to Dr. [REDACTED] assertion that she was prevented from contacting the school by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the undersigned takes judicial notice of the fact that HIPAA permits disclosure of personally identified health information when a proper release of information is completed. 45 C.F.R. 164.508.

While parent's counsel made much of the fact that the district did not contact Dr. [REDACTED] district staff testified that the parent did not provide her name to them. Although the parent initially testified that she had told the social worker and psychologist that the student saw Dr. [REDACTED], upon direct questioning by the hearing officer she testified that she had not given Dr. [REDACTED]'s name to the social worker. (TR 551, 571). When asked why she did not give Dr. [REDACTED]'s business card to the district, she testified that she did not "feel there was a need to." (TR 572). The parent is employed by the bus company that provides transportation for the district. She also is understandably upset over her son's current educational situation. However, the district cannot be held accountable for information that was withheld from it during the evaluation process.

The parent must prove that the district improperly determined that the student is not eligible for special education and related services and that the district's determination thereby deprived the student of a free appropriate public education. She had not shown this by a preponderance of the evidence.

Order

IT IS ORDERED THAT: the student is not eligible for special education and/or related services under the IDEA.

The district has asked that the undersigned order the student to attend the CAP program. As this hearing officer has found that the student is not IDEA eligible, she has no jurisdiction over him and so denies the district's request.

Parent's counsel has asked that the undersigned order the district to report Mr. [REDACTED] to the Illinois Department of Financial and Professional Regulation for "making a false statement under oath that he is a licensed clinical psychologist." (Parent's closing statement, p. 7). While Mr. [REDACTED]

did make that statement during direct examination by parent's counsel, he later – through district's counsel – corrected and apologized for his mis-statement. The district stipulated during the hearing that Mr. [REDACTED] is not a licensed clinical psychologist. It is not this hearing officer's opinion that Mr. [REDACTED] intentionally mis-represented his credentials, particularly given that he also testified that he is a school psychologist and holds a master's degree. The parent's request is denied.

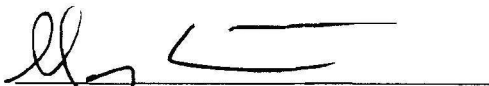
Right to Request Clarification

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party(ies) and the Illinois State Board of Education. After a decision is issued, the hearing officer may not make substantive changes to the decision. The right to request such clarification does not permit a party to request reconsideration of the decision itself, and the hearing officer is not authorized to entertain a request for reconsideration.

Right to File Civil Action

This decision is binding on the parties unless a civil action is timely commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-8.02a(i), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision is mailed to the parties.

ISSUED: May 24, 2008



Mary Schwartz
Due Process Hearing Officer

CERTIFICATE OF DELIVERY BY MAIL

The undersigned hereby certifies that a true and correct copy of the Decision and Order was sent by certified mail with return receipt from Chicago, Illinois, and directed to:

[REDACTED]
[REDACTED] 5
[REDACTED] 0
[REDACTED]
[REDACTED] a
[REDACTED] n
[REDACTED]

Mr. Andrew Eulass
Due Process Coordinator
Illinois State Board of Education
100 North First Street
Springfield, Illinois 62777-0001

before 3:00 p.m. on May 24, 2008



Mary Schwartz
Due Process Hearing Officer
6116 S. University Avenue, 2N
Chicago, Illinois 60637
773.684.3035(voice & facsimile)
708.912.0755 (cellular)
maryschwartz@gmail.com