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ISBE CASE NO. 2008-0261

MAY 29 2008

SPECIAL EDUCATION
SERVICES

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)
) ISBE CASE NO. 2008-0261
)
) **James Wolter**
) Impartial Due Process
) Hearing Officer

Procedural Background:

The parents submitted a due process complaint by letter from their attorney dated December 19, 2007. It was received by the local education agency (district) on December 20, 2007. The complaint was received by the Illinois State Board of Education on December 27, 2007. This extends the statute of limitation in this matter back to December 27, 2005. The attorney for the district filed a response on July 26, 2007. The case was assigned to this hearing officer on December 27, 2007.

The parties were sent a notification of the pre-hearing conference and due process hearing on January 10, 2008. Five pre-hearing conferences were conducted by teleconference on January 18, 2008, January 26, 2008, March 20, 2008, April 2, 2008 and April 7, 2008. The parties waived the 14-day waiting period between the conclusion of the pre-hearing conference and the start of the due process hearing. The due process hearing started on April 15, 2008.

The due process hearing was April 15, 16 & 17, 2008 and on May 12 & 21, 2008 in a conference room at the student's school.

Evidence

The district submitted 1572 pages of documents into evidence.

The parent submitted 597 pages of documents into evidence. It is noted that the following pages were redacted from the parent evidence packet because they were found to be inadmissible in a pre-hearing ruling, pages: 131-148; 152-168; 505-512 and 589-590. For the integrity of the administrative record, it is noted that page 66 is incorrectly placed in the parents' documents.

Witnesses

The parent and the district jointly presented the following witnesses:*

[REDACTED]

3. [REDACTED]

4. [REDACTED]

Mother
Father
High School Assistant Principal
Former Case Manager

The parent presented the following witnesses:*

1. [REDACTED] Advocate for Parents
2. [REDACTED] Student
3. [REDACTED] 7th grade Science Teacher
4. [REDACTED] Private Therapist
5. [REDACTED] 7th grade Honors Language Arts (LA) teacher
6. [REDACTED] 7th grade Social Studies Teacher

The district presented the following witnesses:*

1. [REDACTED] Consulting Psychologist
2. [REDACTED] 8th grade Honors Language Arts (LA) Teacher
3. [REDACTED] 8th grade Case Manager
4. [REDACTED] 8th grade Social Studies Teacher
5. [REDACTED] 8th grade Science Teacher
6. [REDACTED] 8th grade Honors Math Teacher
7. [REDACTED] Assistant Principal
8. [REDACTED] Director of Special Education

* The witnesses will be referred to by title rather than name in the remainder of this document to ensure the privacy of the student. In addition, the district and school are not identified by name for that same reason.

ISSUES: The issues of this due process are:

1. Whether the district failed to implement the student's 2007-2008 IEP.
2. Whether the student required and the district failed to provide necessary accommodations for the student as requested by the parent.
3. Whether the district disciplined the student for behaviors that were a manifestation of his disability.
4. Whether the 2008-2009 IEP/BIP proposed by the district are reasonably calculated to provide the student with more than *de minimus* educational benefit.

REMEDY: The resolutions sought in this due process hearing are:

1. The parent desires the hearing officer order the district to provide the student with compensatory education in the form of one-on-one tutoring in place of the student's Language Arts class and extending into the summer.
2. The parent desires the hearing officer order the district to include on his 2007-2008 IEP all of the 2006-2007 modifications and accommodations.
3. The parent desires the hearing officer order the district to provide the student with specific break times during the school day.
4. The parent desires the hearing officer order the district not to discipline the student for behaviors that are a manifestation of his disability.
5. The parent desires the hearing officer order the district to implement the 2008-2009 IEP/BIP developed by the parent.

The due process hearing exceeded the 45-day timeline for conducting a due process hearing for several reasons. The parents were not prepared to prosecute their case at the time of the first pre-hearing conference and requested an extension. The district agreed. The parties then entered into settlement negotiations and agreed to obtain a functional behavioral assessment from an expert on Asperger's Syndrome who would also assist in developing a behavioral intervention plan. The parent rejected the first expert offered by the district. The hearing officer directed the district to provide the parent with the names of three experts and directed the parent to select one of those individuals.

By the time, the parties agreed to an independent evaluator and the evaluation was conducted, the district was starting the process of conducting annual reviews for all students with IEPs and developing IEPs for the 2008-2009 school year. The hearing officer directed the parties to utilize the findings of the independent evaluator and proceed with developing the student's 2008-2009 IEP and BIP.

An IEP/BIP meeting was held on March 19, 2008. The parties did not reach agreement on the BIP and did not complete the student's 2008-2009 IEP. The busy schedules of the attorneys presented problems scheduling meeting time for the IEP/BIP and the parent expressed concern about the lack of time before summer school and the new school year. The parties agreed to exchange proposed contents for inclusion in the student's 2008-2009 IEP/BIP prior to meeting. The parties were unable to reach an agreement on the student's 2008-2009 IEP/BIP so the due process complaint was amended, per the March 20, 2008 pre-hearing conference, to include the determination of the appropriateness of the district proposed IEP/BIP. The parent submitted an alternate 2008-2009 IEP/BIP for the hearing officer's consideration.

The due process hearing was scheduled for three days but extended to five days. The parent elected to have the student's due process hearing open for training other parent advocates.

It is noted that the student remained in school and continued to receive special education and related services during the duration of the due process hearing.

Attorneys represented both parties in this matter.

The hearing officer has jurisdiction to hear this matter under PA 94-1100, Section 14.02(g) of the Illinois School Code, 34 CFR 300.506-509, and 23 Illinois Administrative Code 226 Subpart G.

Findings of Fact:

1. The student is a 14-year 2-month old male completing 8th grade. He is eligible for special education and related services under the category of Autism (Asperger's Syndrome) and Other Health Impaired (ADHD) [District Exhibit B1 Page 111 (here after DE B1 111)] and Parent Exhibit page 56 (here after PE 56)].
2. The parent called the student as their first witness. He testified that his 7th grade year was a good year and he enjoyed learning. He felt his teachers were helpful and he learned a lot including self-advocacy skills. He can identify when he needs help and

seek it out. He uses Speaking Dragon, a voice activated computer program to write long assignments. He stated that he is able to do assignments that require short paragraphs without using Speaking Dragon. This school year has been difficult. He feels stressed and frustrated by the work. Math is difficult and he has a hard time recalling material he had learned. He goes to Homework Club after school two times per week to work on math. He thinks his language arts teacher is cruel. He said she ridicules and makes fun of students in her class. He said other students make fun of him because he receives special education. He stated that schoolwork gets more difficult and there is more of it each successive school year and this year the work has been the most difficult but he is learning. He acknowledged participating in "psychological profiling" with his mother. She has a master's in counseling and, since he has Asperger's Syndrome, this helps him understand where people are coming from. This allows him to avoid mean people.

3. The parent advocate testified that she has a Bachelor's degree and has a teaching certificate but has not obtained the highly qualified status. She currently is employed to provide homebound instruction to students unable to attend school for medical reasons. She stated that she has a child with Asperger's Syndrome and has presented seminars on how to work with children who have Asperger's in the classroom. She stated that social workers in her district and countywide refer parents of newly diagnosed children with Asperger's to her. She claims to have special education training in an undergraduate class she took. She tutored the student in math two hours per week for three weeks during the 2007-2008 school year. She also observed the student at his home and in social situations. She stated that she provides the student's mother with direction on what modifications and accommodations the student requires in school. She has attended IEP meeting with the parents to advocate for those modifications and accommodations. The parents have accepted her and she was presented by the parents as an expert witness and a witness of fact. She stated that she met the student and his mother approximately four years through a therapy group her son and the student attended. Since that time she has assisted the mother in modifying the student's homework assignments, accompanying the parents to IEP conferences as an advocate and tutored the student approximately two times per week for 3 weeks this school year. She testified that the student's teachers did not modify instruction for him or provide the accommodations listed on his IEP.

The advocate testified that she assisted the parents prepare their version of what they believe the student's 2008-2009 IEP/BIP should be by writing the majority of that document. She contends that the district violated procedural safeguards by failure to provide her with a blank format that she could fill in on her computer. She included door-to-door transportation as a related service but failed to state why the student was unable to use regular transportation. She listed that the student would have no more than 60 minutes of homework per night and was unable to explain why that number was reduced from 80 minutes per week the previous year other than it was a typographic error. She summarized the major difference with the modifications / accommodations section of the 2008-2009 IEP was that the district wanted to leave the application of the modifications / accommodations to the discretion of the student's teachers and the parents want the modifications/accommodations to apply to

all subjects at all times.

The advocate contends the district violated procedural safeguard for failure to attach the Functional Behavioral Assessment (FBA) to the Behavioral Intervention Plan (BIP) as requires on the BIP/FBA form [PE 78]. An examination of that document indicates that it states, "When used in developing a Behavioral Intervention Plan, the Functional Behavioral assessment must be reviewed at an IEP meeting and should be attached to the IEP". The advocate acknowledged that the FBA was reviewed at the IEP meeting. She stated the BIP target behavior, "completion of class assignments", is inappropriate because it is not observable and not a major problem. She also claimed that the BIP was faulty because it contained no baseline data. She stated the target behaviors should be to reduce nail biting and stuttering. She stated that nail biting and stuttering has increased this school year and primarily occurs in his current language arts class. It is instructive to note that the parents' proposed BIP also lists "completion of assignments" as the target behavior [PE 78]. The advocate was unable to specify how nail biting had a negative impact on the student's learning in school. Further, the advocate has not observed the student in school and therefore, has no basis to assert nail biting has increased, much less to specify which class it occurs. Finally, there is no indication that the student stutters. Under cross-examination, the advocate stated that Asperger's is a communication disorder and since the student has Asperger's, he has a communication disorder that she defines as stuttering.

The district challenged the advocate's expertise in Asperger's Syndrome. She testified that she obtained an undergraduate degree in elementary education in 1991. She stated that she took one course in special education as an undergraduate. The witness denied the course was a "Survey of Exceptional Children" course and described it as a methodology course where she learned how to implement IEPs and modify curriculum for students with disabilities in a regular education class. It is noted that at the time the witness was an undergraduate a survey course of exceptional children was required to obtain a teaching certificate in Illinois. The advocate has not undertaken any graduate study in Asperger's, special education or general education nor has she attended professional educational seminars. She possesses a Standard Elementary Teaching Certificate from State of Illinois with endorsements in general education Kindergarten to Grade 9 and Junior HS Language Arts/Social Studies as verified in the written record [Parent Evidence Page 586]. She is not a certified special education teacher or related service provider. She listed her general professional experience as being a substitute teacher, homebound tutor, private tutor and director of a pre-school program at various times since 1991. She has never held a full-time tenure tracked teaching position. Her experience is limited to that of a mother of a child with Asperger's Syndrome and interactions with other families of children with Asperger's Syndrome.

The advocate's direct working knowledge of the student's 2007-2008 school year performance is limited to tutoring him in math for approximately two hours per week for three weeks. It is noted that she is not certified to teach math but she maintains that she can teach math. She did not administer tests to him. She did not observe the student in school nor did she observe him doing homework. The district's challenge

to the advocate being presented as an expert witness on Asperger's Syndrome was sustained because she lacks formal education, certification and/or professional experience in the area. The advocate's testimony as a factual witness to the student's school performance is limited by her lack of direct experience with and observation of him in school.

The advocate's recollection of facts is inconsistent. She testified that she provided homebound instruction to students over several years and that she obtained experience modifying curriculum and instruction to assist them learn. However, when asked how many students she taught at any one time during that period she stated that she did not recall. She testified that she witnessed the student have a "major meltdown" in December 2007 but was unable to recall when in December the incident occurred.

It is noted that the hearing officer had to remind the advocate that in responding to questions regarding the student her testimony is to be specifically about the student and not about children with Asperger's Syndrome in general.

4. The parents presented the student's former private therapist as an expert witness and a witness of fact. He stated that he is a licensed clinical social worker employed as an assistant professor of psychiatry at the local medical school. He teaches a survey course on psychiatric diagnoses. He has a master's degree in social work, a doctorate in mathematical biology and post-doctorate work in neurobiology. At the time, he was studying, not much was known about autism. He became interested in it about ten years ago and learned about it by reading a lot and attending workshops. He stated that he learned most of what he knows about Asperger's Syndrome by running therapy groups for high functioning children and adolescents with autism and Asperger's Syndrome. Currently there are five therapy groups for children and adolescents at the medical school. About two years ago, he gave two one-day long seminars for parents and teachers.

The private therapist started working with the student in group therapy approximately four years ago and stopped sometime during the summer of 2007. He stated that the student feels lonely and isolated at school. The student experiences pain when other students tease him and if teachers do not understand him. He has difficulty understanding what others are thinking and feeling. The private therapist testified that the student had no verbal communication disorder. [It is noted this contradicts the advocate's testimony that the student has what she termed a stuttering problem.] He is a "good actor" and will mask his feelings if he feels discomfort. He will not express his feeling unless he feels comfortable. The private therapist gave as an example that sometimes the student's mother will call him and report the student broke down in tears when they got home after the student had apparently had a successful and pleasurable group experience. Therefore, the therapist believes the student needs someone at school with whom he feels comfortable.

He believes administering disciplinary consequences to the student was appropriate not so much that the student learns right from wrong but learns that he will get caught and get a consequence if he violates social norms of behavior.

The district challenged the designation of the private therapist as a expert witness. He acknowledged that he has not had professional training in Asperger's Syndrome. He has not conducted research on the groups the medical school is operating. He has

not published articles about Asperger's Syndrome in peer-review professional journals.

The district challenged the private therapist as a witness of fact beyond his direct professional experience with the student in therapy. He has not seen the student professionally during the 2007-2008 school year. He has not observed the student in school. He has not talked to or consulted with school personnel. He has not attended or participated in the student's 2007-2008 or 2008-2009 IEP/BIP meeting.

The district asked the private therapist if he keep clinical notes of his therapy secessions. When he stated that he did, the district registered an objection because it had requested the clinical notes so that it could prepare an adequate cross-examination of the witness at the due process hearing and all that the parent provided was billing information. In reviewing the billing records with the private therapist, it was established that the student attended therapy secessions since January 2007 on January 10 & 17, 2007; February 14, 2007; March 21, 2007; April 18 & 25, 2007; May 30, 2007; October 24, 2007; November 7 & 28, 2007; January 16, 2008; February 27 & 27, 2008; and March 12 & 19, 2008 [DEB2 549.6 - 549.8]. It is noted that the billing record of the medical school contradicts the parents' assertion that the student attends group therapy every Wednesday night and cannot have homework on Wednesdays.

It is noted that the hearing officer had to remind the private therapist that in responding to questions regarding the student his testimony is to be specifically about the student and not about children with Asperger's Syndrome in general.

The district's challenge of the parent presenting the private therapist as an expert witness on Asperger's Syndrome was sustained. Additionally, his testimony as a witness of fact was limited because he did not have professional contact with the student this school year.

5. The consulting psychologist was presented by the district as an expert witness on Asperger's Syndrome and as a witness of fact. She testified that she has an undergraduate degree with honors in psychology, two master's degrees in psychology and educational psychology respectively, a doctorate in school psychology and a postdoctoral fellowship working clinically with children with Asperger's Syndrome. She has studied under the mentorship of leading authorities in the field of autism and Asperger's Syndrome, conducted research and worked with children with Asperger's in renown clinics on the east coast, west coast and Midwest. She has published extensively in peer review journals. She is peer reviewer for two of the most respected professional journals pertaining to autism and she is credited for contributing the dictionary of terms describing autism She has been a presenter at numerous professional conferences and conferences for parents and teachers. [DED 1360 - 1369]. The consulting psychologist established that she is an expert in the area of Asperger's Syndrome.

She was selected by the parent to conduct the functional behavioral assessment and assist with developing the student's behavioral intervention plan from a group of three experts in the field provided by the district [DED 1378]. Upon receiving the parent's written consent to conduct the FBA, she proceed to interview the student, parents, student's psychiatrist and school personnel working with the student [DEB2

548-560]. She observed the student in school and reviewed his class and homework assignments. She reviewed the student's entire school record including all past IEP's and psychological evaluations. She testified that the student's IQ score did not drop 20 points [DEA 117.1]. She stated there was a discrepancy of what she observed in school and what the teachers reported was occurring in school with what the student was reporting and the parents were reporting. This misunderstanding resulted in feelings of hostility toward the school.

She stated that she found the major issue affecting the student's functioning in school was the completion of assignments. The violation of the school code of conduct was an isolated incident. It did not represent a pattern of behavior that would constitute an expression of his disability. Therefore, he did not need a BIP for using inappropriate language in school. She stated that providing him with a consequence for inappropriate behavior was appropriate and necessary to provide him with a concrete reinforcement to learn what not acceptable behavior is. Additionally, she did not find his nail biting to be an interference with academic progress and therefore he did not need a BIP for nail biting.

She reviewed the student's assignments and the modifications made to the assignments by the student's 8th grade teachers. She believes they were appropriate. In particular, she stated that assignments in language arts that required the student to analyze characters would be difficult but not impossible for the student and constructive in helping him in his development.

The consulting psychologist participated in the March 19, 2008 IEP team meeting to discuss the FBA and develop the BIP [DEB2 494]. She testified that she reviewed the FBA verbally at that IEP meeting as required [DEB2 495]. However, she had left the notes upon which she formulated the FAB back in her office. She stated that the parent's, their advocate and attorney started shouting angrily over this. It is noted that the consulting psychologist's office is approximately a two-hour drive from where the meeting was being held. Additionally, the statement regarding the development of the BIP states, "When used in developing a Behavioral Intervention Plan, the Functional Behavioral Assessment must be reviewed at an IEP meeting and should be attached to the IEP". There is no requirement stating the FBA must be attached to the IEP. That notwithstanding, the consulting psychologist apologized for not bringing FBA to the March 19th IEP meeting. The FBA was attached to the district's subsequent proposed IEP/BIP.

The consulting psychologist testified that the parties did not complete the IEP/BIP at the March 19, 2008 IEP meeting. They exchanged proposed draft IEP/BIPs. She stated that she reviewed the parents' proposed drafts [PE 74-101] and participated in the district's proposed drafts. The district changed its first draft [DEB2 435 - 450] to incorporate some of the parents' proposals in its second draft [DEB2 543 - 594]. She believes the district's proposed 2008-2009 IEP/BIP is designed to help him be more organized in school, which will enable him to experience more success with school assignments and thereby reduce the hostility the family feels toward the school. She stated that she has provided the staff with in-service and will provide the high school staff with additional in-service during the year.

6. The student's mother testified that the student was very successful in 7th grade. He

started the year with little work and he was able to do more as the year progressed. His confidence grew and he had incredible increases in skill development and made leaps in learning. She met with his 7th grade team weekly at first to modify the student's instruction and later in the year, she only needed to meet with them monthly.

She stated that the 8th grade math teacher is terrific but that the 8th grade year has been very difficult. The student experiences a lot of stress. She denied the stress was a result of her mother's death. The 8th grade teachers are not communicating with her. She claims the teachers did not write his assignments in his agenda (assignment notebook) per the IEP. They are not following his IEP. On page 6 of 15 [PE 46] there is a short-term objective which states, "The student will utilize the help of the resource teacher with organization, agenda and assistance with homework". She testified that the district failed to help the student with his agenda because there were a series of dates on which no assignments were written in the student's agenda. Specifically, she testified the district failed to utilize the agenda on October 1 -8, 10 -16, 18 -23, 26 -29 [PE 223 - 231]. It is noted that there was no school on October 5 & 8 [DEB2 600] and the student was absent from school on October 10, 12, 15, 16, and on a field trip on October 18 [DEB2 601 & 602].

The mother testified that the student was given note cards [DEB2 673] to use to write assignments in his agenda. She stated that he did not do that because he could not read the cards. It is noted that the parent did not observe the student in school and had no verifiable basis for this conclusion. Subsequently the student's 8th grade case manager contradicted this assertion by testifying the note cards were communications between him and the student's resource teacher.

The mother asserted there should have been an IEP meeting when the district disciplined the student for violation of the school code of conduct by using profanity on another student but the district refused to hold an IEP meeting. However, on cross-examination she acknowledged that the student's IEP stated that he was subject to the standard discipline code and the special education behavioral interventions but said she did not recall receiving the standard discipline or special education discipline handbook as indicated on the IEP [PE 47]. This assertion was contradicted by the assistant principal and the director of special education.

The mother claimed that student's psycho educational evaluation of October 23, 2007 [DEB1 109] indicates the student's IQ test score fell 20 points from his previous IQ test. This assertion was contradicted by the consulting psychologist. Further, an examination of that evaluation [DEB1 109-110] indicates that claim is without foundation.

The mother claims the stress exhibited by the student in the early part of the 2007-2008 school year was not caused by her mother's death as stated in the district's social history [DEB1 101 - 103] because his stress started prior to the death. A reading of the social history, the mother's testimony and the 7th grade case manager's testimony indicates the student's stress and family stress started when it became known that the grandmother was terminally ill during the summer of 2007 before school started.

She stated that the December 13, 2007 disciplinary incident caused the student great stress that lasted several days. He could not sleep at nights and paced about and

she had to take him to see his psychiatrist. Under cross-examination, she was unable to explain how the student was able to attend a Lego tournament on December 15, 2007 if he was under so much stress. Additionally, the student's psychiatrist's note indicate that he did not see the student until February 28, 2008 [DEB2 594.9], about two and a half months after December 13, 2007.

The mother's testimony is collaborated by the testimony of the parent advocate. However, like the parent advocate, her testimony is not founded on substantiated fact, is contradicted by the written record, and contradicted witnesses directly involved in educating the student.

7. The student's 7th grade science teacher testified that the student had a successful 7th grade. She stated that the mother was a valuable source of information in understanding the student's needs and the modifications/accommodations he required to complete assignments. She stated that she did not have to modify all his assignments and used her professional judgment in determining when to do so. She stated that she sees the student during the current school year in Lego Club. He appeared more stressed this year, particularly in the early part of the year, than last year. However, he was able to win a Lego competition. She acknowledged that the time she observed the student being stressed occurred at the time his family was undergoing stress related to his maternal grandmother's illness and subsequent death.
8. The 7th grade social studies teacher testified that the student had a successful 7th grade. At the beginning of the school year, the student had some difficulty but did well as the year progressed. The teacher had to make some modifications, such as shortening some assignments for the student but he did not have to change the assignment completely. He did not have to modify every assignment every day. He used his professional judgment as to when to do so.
9. The 7th grade LA teacher testified that the student was in her honors language arts class and made progress during the 2006-2007 school year. The student was able to handle the material presented with modifications. She selected a group for him to participate with in group activities, allow the student to report orally when doing so in writing was difficult, cut back on the amount of required work, talked with him to help organize his thoughts, gave extended time to complete assignments and allowed the student to use Speaking Dragon for written assignments. However, the student did not require all of his assignments to be modified nor did he require modification every day. She used her professional judgment to determine when and how to modify assignments. She stated that the student did not experience "meltdowns" in her class. However, he became frustrated with assignments a couple of times a week and would stop working. At those times, she explained why the assignment was required and he would either start work at that time or come back the next day and do the assignment. She testified that the student is mature, articulate, more comfortable with adults, bright, loves to converse, has a huge fund of knowledge, is polite and a pleasant child. He is able to ask for help when needed honors language arts curriculum requires inferential thinking. He was able to do inferential thinking and scored very well on the ISAT, which consists of approximately 80% critical thinking questions. His writing skills improved and he was able to write paragraphs prior to using the laptop. She did not give much, if any, homework because the student spent 100 minutes a day in her

class and were able to complete assignments in class.

She testified that she was also the 7th grade team leader. As part of that roll, she reviewed the 7th grade IEP developed in May, 2006 and summarized its contents on two sheets of paper to share with other teachers on her team as a reference [DE A-52 & A-53]]. That document was also shared with the April 24, 2007 IEP team in preparation for the student's 2007-2008 IEP [DEA 41-55] and was attached to that 15-page IEP as pages 13 & 14 [DEA 52-53] respectively. It is noted that the Instructional Modifications / Accommodations are listed on page 15 of the 2007-2008 IEP [DEA 55].

The 7th grade language arts teacher testified that she did not know what the 8th grade honors language arts curriculum was. She did not teach or observe the student being taught during the 2007-2008 school year.

10. The father testified that he did not tell the consulting psychologist that his major concern for the student was work completion. In fact, he stated that he told her the complete opposite. He said he told her what was most important was how much education occurs. An emphasis on production rather than what is learned work to the student's weakness. He said another problem that he shared with the consulting psychologist was the illogical way the school was communicating with them. As parents, they had to look in the student's agenda (student planner) to find out what he is doing in school. If he fails to fill out the agenda, a task that is difficult for him, then the parents are not informed. He also complained that the district refused to let the parents tape record meetings. He said they (he & his wife) agreed to the April 2007 IEP. They felt a lot of trust but that all and the good communication with the school evaporated when the 2007-2008 school started. He said he does not know what the student's IEP is or if the student has a complete IEP for the 2007-2008 school year. He stated his wife met weekly with the 7th grade teachers to work out modifications and accommodations. They collaborated.

He said he believed the 2008-2009 IEP must give the parents the authority to change the student's modifications; in particular, they want authority to limit the amount of homework required. If they find him unable to complete a homework assignment, they want the authority to tell him he can stop. He said assignments are too long. It takes him longer to complete assignments than other students. He thinks the computer assisted writing program is terrific. He thinks teachers correcting the student's papers emphasize his errors and do not praise the positive aspect of his work.

The father stated the district failed to attach Functional Behavioral Assessment to the IEP as required in writing on the Functional Behavioral Assessment form [DEB2 547]. He stated that when the parents raised that at the IEP meeting a staff member responded that they could just "white out" the written requirement. He criticized the district for cutting off email communications to his wife and for refusing to let the parents tape record IEP meetings.

On cross-examination, he acknowledged that he was not a special education teacher and did not have a teaching certificate. He was not familiar with the ISAT and did not know that the district's curriculum was based upon ISAT standards. He acknowledged attending a resolution meeting with his wife, parent advocate and

attorney on January 10, 2008 [DED 1315]. He read from DED 1316, "School discussed the need to move forward with separating behavior of what *the student* can do, can't do, and will not do". He agreed that his wife gave consent to the district to conduct a Functional Behavioral Assessment on January 28, 2008 [DED 1380]. He did not agree that the words "regarding Work Completion" meant the FBA would focus on the student's completion of work [DED 1382]. He testified that he was unaware of whether the student's honors math and honors LA teacher sent calendars home with assignments. He stated he believed the parent should not only determine the amount of homework assigned to the student. He acknowledged the district did not white out the writing on the FBA. He acknowledged the district was prepared to tape record an IEP meeting but was prevented from doing so by a union representative enforcing teacher's rights not to be tape-recorded.

On re-direct, the father criticized the district's proposed 2008-2009 IEP goals. On re-cross, he acknowledged there were no difference between the district 2008-2009 IEP goals [DEB2 576-579] and the parents proposed 2008-2009 IEP goals [DEB2 523-526].

11. The high school assistant principal (HASP) testified that she was the assistant principal at the student's school prior to current assignment. As part of her responsibility, she observed and supervised faculty including the student's current teachers. Specifically, she and the building principal formally observed the language arts teacher two times per year and frequently observed the honors language arts teacher by "pop-ins", unannounced visits of 10 to 15 minutes in duration. The LA teacher had high expectations for her students to learn, was well organized, worked well with all students and made special efforts to help students requiring extra assistance. She was always appropriate with students; never cruel or harsh. The HASP testified that she has never received a complaint from a parent about the teacher in the five years that she supervised her nor has she received a complaint from a student. She testified that she supervised the student's social studies teacher, science teacher and former case manager. She had no complaints from parents or students regarding them. She supervised the student's honors math teacher. She received no complaints about the teacher but occasionally had parent inquiries on how their children could raise their grades. As a result, the district offered an algebra tutorial class where students could get extra help in algebra.

The HSAP's responsibilities at the high school include coordinating student placement at the high school in biology, English and math. The criteria used are an Explorer Score of 21 to 25, "exceeds standards" on the 7th grade ISAT and teacher recommendations. In math there is an additional criteria, students are required to take Algebra in 8th grade and receive a letter grade of "A" or "B". Additionally, IEP team recommendations are considered.

It is important to note that the HASP's uncontested testimony was that the district has a procedure by which parents can appeal a class placement decision other than requesting a due process hearing and that parents are aware of that process.

12. The student's 7th grade case manager/special education resource teacher testified that she remained the student's case manager at the start of 8th grade in part because she had a good working relationship with the family. In addition to providing the student

with special education consulting and resource service during 7th grade, she provided him one-on-one tutoring in math beyond the time required on the 2006-2007 IEP and in addition to the math help he received in Homework Club. The student's math homework was half that of the class assignment. The student received reduced homework assignments in all subjects. Every teacher made modifications / accommodations in their instruction but not every assignment needed to be modified every day. She stated that she attended the 2007-2008 IEP meeting on April 24, 2007 [DEA 40-45]. Prior to that meeting she telephoned the mother to express her concern that the student was struggling in pre-algebra and her concern that honors math in 8th grade is high school algebra and he would have to get a B or better in that course and, if he did not, he would have to repeat algebra in high school. She reported to the mother that in consulting with the 7th grade math teacher, the student's sub-skills were not as strong as they could be. She testified that the mother told her that she wanted to go ahead and keep the student in honors math. The mother was told there would be a possibility that the student would have to repeat algebra in high school but she felt he comprehended the concepts even if some of his sub-skill were weak and wanted him in the 8th grade algebra class. She said the problems the student was experiencing in math and the problems he would encounter in 8th grade honors math were discussed at that IEP meeting.

She testified that as the 8th grade case manager, she met with the 8th grade team gave them copies of the student's IEP and informed them of the training they would receive about Asperger's Syndrome. She said the student struggled at the beginning of 8th grade because of a new semester, new teachers, the 8th grade curriculum is more demanding than 7th grade and the student's mother was out of town because her mother was ill. The student told the case manager at various times that he was worried about his mother's safety. There were family struggles going on and he was very worried. She said the student was absent for a big chunk of time at the beginning of school and fell behind and felt overwhelmed. He started refusing to follow class instruction, instead pulling out a book to read for pleasure. She talked to him and explained that he had to work on class assignments not read his book. She said she reviewed the assignments he refused to do and believed them to be properly modified.

At the end of October 2007, she stopped being his case manager. Logistically, her schedule was geared to the 7th grade team and students and she thought it would work better for the student if he had an 8th grade case manager.

She testified the student would have difficulty transposing the characters in Of Mice and Men into another time frame and would have difficulty with the assignment comparing and contrasting Scout and Tom Sawyer. She stated that the student would be capable of doing the assignments but it would be difficult.

She testified that during the time she worked with the student in 8th grade he was successful in science and social studies but struggled in math and language arts. She stated he was successful in all his courses but less successful in the honors courses. If he were her child, she would not have placed him in honors math. She was less sure about honors language arts because he got the concepts but struggled with production of thought on paper and became fatigued.

The parent's attorney referred the 7th grade case manager to the student's agenda

[DEB2 604 - 637] and had her identify dates where there were no entries of assignments or comments listed. The district's attorney had the witness identify 7 days students were not in attendance because school was not in session and 14 days the student was not in school because of absence and 1 day the student was on a field trip during that period. It is noted that the student's agenda contains more entries January 2008 - March 2008 [DEB2 641-662].

13. The parents contend that the 8th grade language arts teacher failed to provide the student with the modifications/accommodations listed on the student's 2007-2008 IEP. The language arts teacher testified that in addition to an under graduate degree in education and a standard teaching certificate she has a master's degree in curriculum development and has obtained the status of a highly qualified teacher. She is knowledgeable of the 7th, 8th and 9th grade honors language arts curriculum. That curriculum is structured and taught to comply with the Illinois State Board of Education standards. The 8th grade curriculum places much more emphasis on writing than the 7th grade curriculum in preparation for the 9th grade curriculum. The 9th grade curriculum requires students to apply the writing skills learned in 8th grade. She testified that students improve their writing skills through practice, and having their writing corrected.

The 8th grade language arts teacher testified that she reviewed the students 2007-2008 IEP and provided him with the modifications/accommodations listed on his IEP. She gave specific examples of how she gave the student more time to complete assignments, gave him simplified sequenced instructions [DE C1 -943, 959 &960], adjusted the length of assignments, tests and homework [PE 308 & 309 and DE B1 - 135 & 136], provided correct completed examples of assignments to show the student end results [DE C1 -837 to 839], broke assignments into smaller segments and gave him feedback, provided instructional notes [DE C1 - 872], allowed the student to use computer for long assignments [PE 287 & 289 and DE C1 849], modified Greek/Latin assignments [DE C1 - 736 to 753]. The 8th grade language arts teacher provided accommodations beyond those listed on the IEP such as allowing the student to answer prompts orally to the teacher [DE C1 812 to 81816] and giving him a calendar of assignments for the week. She testified that the 100 minutes of language arts class starts with approximately 10 minutes of silent reading. Students in the class are to read from an assigned class text. The student elects to read from an outside text. The language arts teacher testified that this causes the student to fall behind and in part is the reason he received grades of incomplete.

The parents criticized the 8th grade language arts teacher's knowledge of Asperger's Syndrome, how it affects the education of students with that condition and her inability and/or refusal to provide the student with appropriate modifications/accommodations on three specific assignments (i.e. To Kill A Mockingbird, Tom Sawyer and Pigman). The parents contend the student was unable to complete the assignments because they required the student to interpret what the characters were thinking/feeling and students with Asperger's Syndrome have a social/communication disorder that precludes their ability to perceive and understand what others are thinking/feeling. The teacher responded that the student demonstrated his ability to understand what others were thinking/feeling in class activities and

extracurricular activities. He was able to complete other assignments, he enjoyed and excelled in an activity called "Voice Centers" [DE C1 948 to 956], which required him not only to understand but also to take on the persona of others. She stated that the student participates in Drama and is able to interpret the characters that he plays. With respect to To Kill A Mockingbird [DE C1 - 810 & 811], the student demonstrated that he understood the assignment, could successfully complete it and was very enthused about working on it with his study group until he went home and reviewed the assignment with his mother. He came back to school and focused on tasks he could not do because he has Asperger's Syndrome. The parents contended the student's disability precluded his completing an assignment that required students to compare Tom Sawyer and Scout. The teacher testified that State of Illinois Standards and future success in high school required students to write compare/contrast essays and that she provided the student with step-by-step instruction [DE B1 125 & 126] that would enable him to use his abilities to learn this writing skill and complete the assignment. The parents contend again that the teacher requested the student to interpret what a literary character was thinking/feeling in Pigman [DE C1 -908 & 909] when he was unable to do so because he has Asperger's. She stated that the student was able to analyze why John and Lorraine were friends but elected to write about why their relationship was detrimental to Lorraine. She testified that the student was able to analyze whether Pigman should be banned based upon his interpretation of what impact reading it could have on youth [DE B1 - 928].

The 8th grade language arts teacher testified that the student received an incomplete grade on his report card because he did not complete To Kill A Mockingbird and Tom Sawyer and Scout assignments. She stated that all her students have been informed that they may obtain extra assistance from her before or after school. She affirmed that by way of her testimony she was informing the student's parents of her offer to provide the student with individual instruction before and after school to enable him to complete those assignments successfully. She stated that she could select and modify a specific assignment for the student to complete the To Kill A Mockingbird requirement.

An incident occurred in the 8th grade language arts class that gave rise to the parents filing this due process complaint contending that the district disciplined the student for behaviors that were a manifestation of his disability. The 8th grade language arts teacher testified that during a group activity the student used profanity on another student in his group when the other student refused to go along with what the student wanted the group to do. She testified that the student never exhibited that behavior before or since the incident.

In concluding her testimony, the 8th grade language arts teacher testified that the student has made academic and social progress during the 2007-2008 school year. His writing skills have progress, he is able to identify when he requires assistance and ask for help, he is becoming less dependent on the teacher and utilizes peers for assistance and has demonstrated an enhanced ability to work with other students. The conclusion that the student made academic progress in language arts is substantiated by the written evidence [DE C1 - 695 to 715 & DE B1 - 100].

14. The 8th grade case manager testified that he became the student's case manager on

following the IEP meeting on October 30, 2007. He participated in the IEP team meetings of October 24, 2007 and October 30, 2007. The first meeting reviewed the results of the student's 3-year reevaluation and the second meeting replaced the instructional modification / accommodations page of the April 24, 2007 IEP [DEA 54] with a revised list of modifications / accommodations by subject area [DEB1 125 and 126].

The case manager stated that he shared with the team that the student had demonstrated his ability to read cursive writing by reading a sample the case manager had obtained on the internet. The parent dismissed that by saying the cursive sample had perfectly formed letters. He further stated that the student demonstrated his ability to read cursive by obtaining an "A" on a Greek/Latin test that was given to the class in cursive.

The case manager stated that the mother and her advocate participated in the meeting by adding their comments. The IEP team came to an agreement on the modifications / accommodations and him becoming the case manager. The mother and her advocate had an opportunity to and did participate in the development of the modifications and accommodations. The IEP team agreed to meet in a month to see how the student was responding to the revised modifications / accommodations and to him as the case manager.

The case manager provided consultation service by meeting with the student's classroom teachers each day before, during and after school. They discussed the lesson for the day and what if any modification would be required. The student met with the autism specialist for 10 minutes of resource at the end of each day as required in his IEP [DEA 47 & 48]. When the autism specialist went on maternity leave, the case manager provided the daily resource service. In addition, the case manager also assisted the student each day during guided study.

The case manager stated his duties also include being a liaison between the mother and classroom teachers. He communicates with her through the student's daily assignment sheet, by telephone and email. The district decided to limit the mother's email contact with the student's teachers after the mother sent a broadcast email containing unsubstantiated accusations attacking the professionalism and personal character of the 8th grade LA teacher [DEB1 172].

The case manager was aware of the student not completing the assignment on To Kill A Mockingbird. The student told him that he had Asperger's and the assignment was not modified appropriately for him. The student did not tell him what was inappropriate or how it should have been modified. The case manager felt the student was repeating something told to him by his mother. The case manager said the student has demonstrated an ability to make choices and is capable of choosing an assignment off the To Kill A Mockingbird assignment sheet.

The case manager stated the student has demonstrated an ability to make choices and the student has made progress. The student is more consistently recording assignments in his agenda, verbalizing his needs when he requires assistance in the classroom and with assignments. The student has demonstrated progress meeting his 2007-2008 IEP goal's [DEA 45]. Additionally, his peer interactions have improved. He gets along well with other students in class, the lunchroom and around school.

15. The 8th grade social studies teacher testified that the student has obtained grades of “A” on quarter grades [DEB2 500.1] and has performed well on daily assignments and quizzes [DEC1 695-699]. He stated that the student participates in class, works well in group and gets along with other students appropriately. He has demonstrated the ability to select an assignment when given a choice of multiple assignments. The social studies teacher consults with the case manager on a daily basis regarding possible needs for modifications. He stated that the student does not need every assignment modified every day and he uses his professional judgment as to when and how to make modifications. Some of the modifications include extended time for assignments and tests and limiting the student’s workload. The student has learned this past year and is ready to progress to high school general education social studies with modifications and accommodations.

The 8th grade social studies teacher’s testimony, as supported by the written record, indicates the student has derived educational benefit from that class.

16. The 8th grade science teacher testified the student has obtained grades of “A” on quarter grades [DEB2 500.1] and has performed well on daily assignments and quizzes [DEC1 708 - 710]. His grade may drop to a B+ for the 4th quarter. He stated that the student participates in class, demonstrated leadership in group work and gets along with other students appropriately. The science teacher consults with the case manager on a daily basis regarding possible needs for modifications. He stated that the student does not need every assignment modified every day and he uses his professional judgment as to when and how to make modifications. Some of the modifications include providing the student with lecture notes and waiver of more complicated math portion of science projects and extended time for long assignments. The student has learned this past year.

The 8th grade science teacher’s testimony, as supported by the written record, indicates the student has derived educational benefit from that class.

17. The 8th grade honors math teacher testified the student has obtained grades “C” on quarter grades [DEB2 500.1] and struggled with daily assignments [DEC1 703 - 708]. She consulted with the 7th grade honors math teacher at the start of the year and was told that the student struggled with math concepts and had a difficult time keeping up with the workload. Assignments had to be cut in half. She testified that 7th grade honors math is a pre-algebra course that requires pretty basic operations and concepts while 8th grade honors math is a high school algebra class that requires operations that are more complex and concepts that are more abstract. The student struggled in math this year because his skill level was deficient to begin with and then he was absent for several days early in the school year and fell behind. Once he fell behind the math class, he needed help to catch up so the teacher was not able to pre-teach math to him per his IEP [DEA 41]. She testified that math is a cumulative subject where one concept builds upon another. Further, math is a skill that is acquired through practice. The student’s assignments were cut by half so he missed half of the required practice. Additionally, if he did not do homework on Wednesdays, he was not prepared for the instruction on Thursdays. The honors math teacher consults with the case manager on a daily basis regarding possible needs for modifications. She stated some of the modifications include providing the student with a calculator, study guides, adjusting

the length of assignments and him more time to complete assignments and tests. She did not allow the student to use study guides on quizzes and testes because that would have been giving him the answers to the questions. She also provided the student with a calendar of assignments for the week. She stated that the student has learned this past year. The student was able to ask for help and attended homework club two times per week to get help with math.

She concluded that the student has learned and made progress in math. However, since the student has struggled, she recommends the student take a regular high school algebra class next year rather than honors geometry. She is not recommending the student, nor is she recommending 4 other students in her current honors algebra class, for honors geometry next year either because their math skills are not adequate to handle the requirements of that class. Her conclusion that the student has obtained educational benefit from math this school year even though he is not recommended to take honors geometry next year is supported by the written record [DEB2 500.1] [DEC1 703 - 708]. She believes it would be a disservice to place the student in honors geometry because he has not mastered the skills to succeed in that course.

18. The assistant principal testified that her administrative responsibilities for the student's team. Some of those responsibilities include disciplinary responsibilities and participating in IEP team meetings. She has a bachelor's degree in elementary education with a major in reading and a master's degree in educational administration. She has 15 hours of post-masters study in the areas including special education and multiple intelligence. She has an Illinois State Board of Education Type 75 Certificate in school administration, which is the appropriate certification for her current position and job responsibilities.

She testified that she participated in the October 24, 2007 IEP team meeting held to review the student's 3-year reevaluation. They met for one and a half hours and were able to review the evaluations but were unable to accomplish more than that so it was agreed to hold another meeting [DEB1 117] on October 30, 2007 to replace page 15 [DEA 54] of the student's IEP.

She developed an agenda for that meeting [DEB1 122] to help keep the IEP meeting on track, She stated the mother thank her for developing the agenda. She met with the student's 8th grade teachers to develop a list of modifications / accommodations by subject area to facilitate replacing page 15 of the student's IEP [DEB1 128 -129]. She distributed those pages at the IEP team meeting on October 30, 2007. She testified that each item on the two pages was discussed as well as additional items. The parent and advocate participated in that discussion. The assistant principal made hand written notes on the pages reflecting the consensus of that discussion. It was agreed by the IEP team that she would re-type the pages with the changes and that would replace page 15 of the IEP. She typed the replacement pages [DEB1 125 & 126] and sent it to the parents on October 30, 2007 [DEB1 123]. The mother responded to the assistant principal by email on October 31, 2007 stating there were some omissions [DEB1 133.1] The assistant principal replied by email on November 1, 2007 with a highlight of some items the mother thought were omitted and stating "Any other items can be discussed at the next IEP meeting on November 27th [DEB1 134 - 136].

The assistant principal was also involved in providing the student with a disciplinary consequence when he violated the school code of conduct by telling another student to "F--- Off". She checked the student's IEP and found he was subject to standard disciplinary policy and procedures of the district [DEA 46]. In consultation with the principal, another assistant principal, the student's social worker and the director of special education it was determined to give the student one lunch detention as a disciplinary consequence. The student refused to serve that consequence and he was given a second lunch detention. He refused that detention and was given a one-day in-school suspension. He refused to serve the in-school suspension. It is noted that the student's mother and her attorney supported the student's refusal to accept the disciplinary consequences. The district was concerned that the situation would escalate further and made a one-time exception and waive all disciplinary consequences. As a result, the student never served the disciplinary consequence for violation of the school code of conduct.

The parent had claimed earlier that she did not recall receiving the school's handbook describing the code of conduct. The assistant principal stated that it was included in registration materials sent to the parents. The student signed a note stating that he had received it and it was explained by the 8th grade social studies teacher when school opened in August 2007. Finally, she stated it was given to students with the student's agenda. It is noted that the parent provided copies of multiple pages of the student agenda [PE 188-284]. Additionally, it is noted that there are no reports of major disciplinary issues with the student prior to or after the events surrounding December 13, 2007.

It should be briefly noted that the parent made a request for an IEP meeting to conduct a manifestation determination. The district did not conduct nor was it required to conduct a manifestation determination because the changes in IDEA 2004 with regard to a school district's authority to administer disciplinary consequences makes that issue moot.

19. The director of special education (hereafter, director) has bachelor's degree in special education, a master's degree in educational leadership and 30 hours beyond the master's degree. She has a special education teaching certificate Type 10 and a Type 75 school administration certificate with a Director of Special Education Endorsement. She testified that she first met the mother when the mother was acting as a parent advocate for another family at a mediation session. The director testified that she responded to the mother's October 30, 2007 email to the assistant principal on November 5, 2007 [DEB 1143 and again on November 9, 2007 [DEB1 145]. She attempted to clarify for the mother that the content of the students October 2007 IEP did include items that she claimed were omitted, that some additional items that she listed were not on the prior IEPs and that an IEP cannot be changed outside an IEP team meeting. She concluded by offering to discuss the matter further over the telephone.

The director testified that she was consulted regarding student's violation of the school's code of conduct. She reviewed the student's IEP and found he was subject to the standard disciplinary policy and process. She stated the parents had received the special education cooperative parent's rights handbook, which contains a description

of discipline under IDEA 2004 [DEA 46]. She stated that disciplinary consequences not exceeding 10-day do not require a manifestation determination.

The IEP scheduled for November 27, 2007 did not take place. The parent elected to bring legal counsel to that meeting and the district's legal counsel was not available on that date. The district proposed three alternate dates [DEB1 160]. The parent declined further IEP meetings and requested mediation on November 20, 2007. The parent withdrew that request and filed a due process hearing complaint by way of a letter from their attorney on December 19, 2007.

The director testified that there is no substantive difference between the modifications / accommodations on page 15 of the April 24, 2007 IEP [DEA 54] and the two replacement pages on the October 30, 2007 IEP [DAB1 130 & 131]. If anything, the replacement pages are an improvement because they are subject specific, it is clearer to all parties what modifications are to be made in which subject areas, it is easier to read and comprehend and it will facilitate the student's continued development in self-advocating by specifying which accommodations he should be receiving in each of his classes.

20. The parties' dispute what portion of the student's April 24, 2007 IEP constitutes the modifications/accommodations section. The parents contend that DE A-52 constitutes the April 24, 2007 IEP team's consensus of the instructional modification/accommodations for the 2007-2008 school year. The district contends that DE A-52, and A-53 are two summary sheets prepared by 7th grade language arts teacher, as so on that document [DEA 52] and that the team consensus of the instructional modification/accommodations for the 2007-2008 school year are listed on the page so titled at DE A-54. It is the parent's contention that, whether or not DE A-52 was considered by the district as the modifications/accommodations those are the modifications/accommodations the student required and should have but did not receive during the 2007-2008 school year.

Further, the parent contends that DE A-52 should have been included in the October 30, 2007 IEP as well as the student's IEP for the 2008-2009 school year. It is noted that DEA 52 & 53 are listed in the Table of Contents for parent's evidence packet as "IEP Implementation Notes from 7th grade honors LA teacher" at pages 517 & 518.

21. Both parties stated that the district informed the parent that the format of page 15 of the April 24, 2007 IEP had to be changed to conform with Illinois State Board of Education requirements from a "check list" [DE A-54] to a narrative format. The parties agreed to hold an IEP conference on October 30, 2007 [DE B1 - 120 & 121]. The district developed and presented the parent with a copy of the modifications/accommodations in a narrative subject specific format [DE B1-125 & 126] prior to the IEP meeting. The district adjusted that document reflecting parent input [DE B1-128 & 129]. The document was retyped reflecting parent input and sent to the parent [DE B1-127. 130 & 131]. The narrative document is a substantive improvement over the check list that it replaced in the April 24, 2007 IEP and summary pages prepared by the 7th grade language arts teacher [DE A-52] in that it provides subject specific modifications/accommodations tailored to the student based upon current functioning, recent evaluations [DE B1 - 110 to 112] and input from the

parents and other IEP team members [DE B1 -124]. It should be noted that the student's composite score on the Explore test is 98% and was above average in English, Mathematics, Reading and science [DE B1 - 100].

22. The parent stated in closing arguments that the student undeniably made progress this school year. There is no dispute that the student made progress and learned but the parents contend he struggled and was under undue stress because the district failed to provide him with appropriate accommodations and the teacher's did not provide appropriate modifications particularly in honors math and honors language arts. They contend the district failed to follow the students IEP by not pre-teaching him algebra concepts, by not assisting him with his agenda, assigning too much homework, assigning homework on Wednesdays and failing to modify assignments. They claim the district refused to grant their requests for modifications /accommodations. They claim the district improperly administered a consequence to the student that was an expression of his disability and they believe the district's proposed 2008-2009 IEP/BIP is not adequate to the student's special education and related service needs.
23. The district stated that the parent, as the moving party in this matter, had the burden of persuasion. They failed to meet that burden. They, in fact acknowledged that the student derived progressed and learned last year. The district note the parent presented numerous distortions and outright lies during the due process hearing and attempted to shift the issues.

DISCUSSION AND CONCLUSION OF LAW:

An application of relevant case law, statutes and regulations, as they apply the to the facts pertaining to the issues and desired remedies of this case, follows:

ISSUES:

1. Whether the district failed to implement the student's 2007-2008 IEP

This complaint has evolved into a two-part complaint. The first part concerns the April 24, 2007 IEP. The second part concerns the replacement of the general checklist format for modifications / accommodations with a subject specific narrative format at the October 30, 2007 IEP meeting.

With respect to the April 24, 2007 IEP, the parents claim the district, particularly the language arts teacher, failed to implement the student's 2007-2008 IEP. This complaint is primarily based upon the parent advocate's opinion. However, the advocate lacked credibility as an expert witness and a witness of fact.

- The parent advocate has no professional training in the area of special education, autism or Asperger's Syndrome. She has never been employed as a full-time tenure track teacher. Her testimony exhibited critical errors in interpreting the DSM IV definition of Asperger's Syndrome and the way in which it affected the student's ability to learn.
- The advocate also was an unreliable witness of fact. She provided testimony on matters over which she lacked direct knowledge. Other than tutoring the student in math for 2 hours per week for three weeks, the advocate had no direct experience with him as a student. Incredibly, she provided testimony that the language arts teacher was not providing the student with modifications/accommodations in the classroom without ever observing the classroom.

- The parent advocate's testimony is contrary to the written record. She testified, under oath, that page 66 of the parents' documents was part of the October 24, 2007 IEP when it clearly was not. An examination of the written documents indicates an IEP team meeting was held on October 24, 2007 [DE B1-98] to review the student's 3-year evaluation [DE B1-111]. A second meeting had to be held on October 30, 2007 because the team did not get to replacing page 15 of the IEP. The parents presented those two meetings as one meeting [PE 56-73]. There is no substantive harm in doing so because, in fact, the October 30 meeting was a continuation of the October 24 meeting. However, the parent did commit a grave violation by including page 66 in that document and attempting to pass it off at the due process hearing as the modifications and accommodations adopted at that IEP meeting. Page 66 is the summary notes created by the 7th grade language arts teacher for the student's seventh grade team. It clearly was not created on October 24 or 30, 2007. There is no evidence that it was discussed on either date and it certainly was not on the agenda for the October 30, 2007 IEP meeting. When given the opportunity to retract her testimony concerning page 66, the parent advocate persisted in representing it as the modifications / accommodations agreed to by the October 24, 30, 2007 IEP team.
- She testified that the district violated procedural safeguards by failing to attach the Functional Behavioral Assessment (FBA) to the student's IEP. There is no requirement mandating the FBA be attached to the IEP. The only requirement is that it "must" be reviewed at an IEP meeting with a recommendation that it "should" be attached to the IEP.

It is noted that the parents, in particular the mother, reiterated the advocate's testimony. However, like the advocate, neither parent observed the language arts class or any other class for that matter. At the end of the day, it makes no difference how many times, how many people or how loudly a falsehood is repeated, it is still a falsehood.

The 8th grade honors language arts teacher testified, and the parent agreed that the student learned and made progress in language arts during the 2007-2008 school year. This conclusion is supported by graded assignments and tests scores.

The parents are correct when they assert that "pre-teach math" is on the student's 2007-2008 IEP and the district failed to do that. The student's 7th grade math teacher and 7th grade case manager advised against the student taking algebra in 8th grade because he lacked the math skills to do so. The 7th grade case manager testified that the mother persisted in the student taking algebra because she thought he understood the algebra concepts even if his skills were a little weak. There was time during the school day for the student to have supplementary tutoring but the student would have had to give up one of his elective subjects. The April 24, 2007 IEP team decided not to do that.

The 8th grade honors math teacher testified that math was relatively easier at the start of the year because it was a review of 7th grade material. Shortly after the beginning of the school year, the student was absent for a week or more and he fell behind. Given his weak math skills, he was struggling to catch up. Later in the school year, he attended her Homework Club after school to get extra help from her with math and his parents consented to his replacing physical education with a period of guided study where he could get extra help. Finally, the student's struggle is a result of his not having the

required level of skill to excel in 8th grade honors math. This was exacerbated by his absence from school at the start of the semester.

The 8th grade honors math teacher testified, and the parents agreed, that the student learned and made progress in math during the 2007-2008 school year. This conclusion is supported by graded assignments and tests scores. The student received a free appropriate public education (FAPE) during the period covered in the due process complaint. The courts have held that where a student has obtained FAPE the failure to strictly implement an IEP [*Van Duyn v. Baker School District 51*, 47 IDELR 182(9th Cir. 2007)] or to maximize a student's potential [*Bradley v. Arkansas Dept of Ed.*, 45 IDELR 149 (8th Cir. 2006)] does not constitute an IDEA 2004 violation.

With respect to the October IEP meeting, the parents appear to have three complaints; the assistant principal brought a pre-printed modification / accommodation to the meeting, the parent's and her advocate's views were not taken into consideration and the district refused to make changes to the October 30, 2007 by mail. The parent is correct that the assistant principal came to the October 30, 2007 IEP meeting with a pre-printer modification / accommodation form. However, her testimony as supported by the testimony of other district personnel is that she went over each item on the form at the IEP meeting. It is their testimony that all members, and in particular the parent and parent advocate, provided comments and suggestions that were incorporated into the revision of that form. The testimony of district personnel as supported by the written record indicates the form, discussed and revised at the October 30th IEP meeting. It was retyped and sent to the parent later that day.

The parent further contends the district subsequently violated her rights by refusing to make changes to the October 30, 2007 without reconvening a full IEP team meeting. It is noted that the parties may mutually agree to make changes to an IEP without convening an IEP meeting, but the agreement must be mutual [20 U.S.C. Sec. 1414(d)(3)(D)]. There was no mutual consent to change the IEP without an IEP meeting. The district specifically stated that additional changes would be considered at the IEP meeting that had already been scheduled for November.

As stated above, the parent advocate testified that page 66 of the parents' documents was a part of that IEP. This assertion has been previously discredited.

The parents are the moving party in this matter. As such, they had the burden of persuasion in this matter [*Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005)]. The parents failed to provide any credible evidence or testimony to support their complaint that the district failed to implement the student's 2007-2008 IEP.

CONCLUSION: The issue of whether the district failed to implement the student's 2007-2008 IEP is unfounded and without merit.

2. Whether the student required and the district failed to provide necessary accommodations for the student as requested by the parent.

Both parties agree that the student has undeniably learned and made progress during the 2007-2008 school year. The written record of his grades and test scores

supports this. All of the evidence presented over 5-days of hearing support the fact that the student's teachers provided him with the modifications / accommodations listed on his IEP.

The mother and parent advocate picked at the way the modifications / accommodations were implemented and the mother's October 31, 2007 email stated some items were not included in the October 30, 2007 IEP that should have been. The assistant principal responded to the parent by pointing out where the items she was requesting were listed and offered to discuss the other items at the next IEP meeting in November.

The courts recognize teachers must be granted latitude in exercising when, where and how to implement modifications / accommodations. In this case the teachers and district have demonstrated that they took a thoughtful, measured approach to accommodating the student's education and the way IEP meeting were conducted [*Alex R. v. Forestville Valley CUSD #221*, 40 IDLER 375F.3d 603 (2004)].

The parents are the moving party in this matter. As such, they had the burden of persuasion in this matter [*Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005)]. The parents failed to provide any credible evidence or testimony to support their complaint that the student required and the district failed to provide necessary accommodations for the student as requested by the parent

CONCLUSION: The issue of whether the student required and the district failed to provide necessary accommodations for the student as requested by the parent is without factual or legal foundation.

3. Whether the district disciplined the student for behaviors that were a manifestation of his disability.

The parent requested this due process hearing after the student was disciplined for violating the school's code of conduct on December 13, 2008 by shouting out an obscenity in his language arts class. The parent asserts that the district should have conducted a manifestation determination prior to administering discipline. The parent's assertion is inaccurate as a matter of law. School personnel have the authority, if not the responsibility, to administer discipline to students with disability who violate the school code of conduct [34 CFR 300.530 (b)(1)]. A manifestations determination is only required when the district decides to change the placement of a student with a disability for violating the school code of conduct [34 CFR 300.530 (e)]. Further, the parent presented no evidence that the use of profanity was a manifestation of the student's disability. Contrary, as evidenced by the consulting psychologist, the use of profanity was a one-time event. It did not constitute a pattern. If it were a manifestation of his disability, it would be reasonable to expect the student to have exhibited a pattern of that type of behavior.

Additionally, the student did not and was not required to serve the disciplinary consequence for his violation of the school's code of conduct.

CONCLUSION: This complaint of whether the district disciplined the student for behaviors that were a manifestation of his disability is frivolous in that it is without

factual or legal foundation.

4. Whether the 2008-2009 IEP/BIP proposed by the district are reasonably calculated to provide the student with more than *de minimus* educational benefit.

The parties were under time constraints to complete the student's 2008-2009 IEP/BIP because they elected to have their respective attorneys present at IEP/BIP meetings. Since both attorneys have very busy practices, they agreed to exchange draft copies of IEP/BIP through the mail in an attempt to resolve as many differences as possible before meeting in person. The IEP team met on March 19, 2008 but there was no agreement to accept the district's proposed IEP/BIP so the due process complaint was amended to include this complaint on March 20, 2008.

A duly constituted IEP team [23 Illinois Administrative Code 226.210] followed all procedural safeguards in conducting and developing the March 19, 2008 IEP/BIP [23 Illinois Administrative Code 226.230] and making a placement recommendation [23 Illinois Administrative Code 226.240]. The IEP team addressed the behaviors that impedes the student's progress [20 U.S.C. Sec. 1414(d)(3)(B) and 34 C.F.R. Sec. 300.324(a)(2). The Functional Behavioral Assessment [23 Ill. Admin. Code Sec. 226.75] and the Behavioral Intervention Plan [23 Ill. Admin. Code Sec. 226.30(b)] are thorough and appropriate

The district has demonstrated that it has met the two-prong standard appropriateness test in *Rowley* [*Board of Education, 458 U.S. 176, 102 S.Ct. 3034 (1982)*]. The parents, their advocate and their attorney were provided with a full opportunity to participate in the district's proposed 2008-2009 IEP/BIP for the student. The consulting psychologist, the expert on Asperger's Syndrome chosen by the parent to conduct the FBA and assist in the development of the BIP, testified that the district's proposed IEP/BIP is calculated to provided the student with significant benefit.

The parents are the moving party in this matter. As such, they had the burden of persuasion to demonstrate that the 2008-2009 IEP/BIP proposed by the district are not reasonably calculated to provide the student with more than *de minimus* educational benefit [*Schaffer v. Weast, 44 IDELR 150 (U.S. 2005)*]. The parents failed to provide any credible evidence or testimony to support their complaint that the 2008-2009 IEP/BIP proposed by the district are not reasonably calculated to provide the student with more than *de minimus* educational benefit. .

CONCLUSION: The 2008-2009 IEP/BIP proposed by the district are reasonably calculated to provide the student with more than *de minimus* educational benefit. Therefore, the issue of whether they are is without merit.

REMEDIES:

1. The parent desires the hearing officer order the district to provide the student with compensatory education in the form of one-on-one tutoring in place of the student's Language Arts class and extending into the summer.

The parent presented no evidence that the student was denied access to a free appropriate

public education. The testimony of all of the student's current teachers, supported by the written evidence, and agreed to by the parent in closing arguments, is that the student has undeniably learned and progressed during the 2007-2008 school year. Therefore, there is no basis to order the district to provide the student with compensatory education. .

There is no legal or factual basis to award this request.

2. The parent desires the hearing officer order the district to include on his 2007-2008 IEP all of the 2006-2007 modifications and accommodations.

The parents provide no credible foundation for this request. There is no substantive difference in the modifications and accommodations between the 2006-2007 and 2007-2008 IEPs. It is the parent's desire to have page 66 in the parents' documents accepted as the modifications and accommodations on the 2006-2007 IEP when clearly they were not.

There is no legal or factual basis to award this request.

3. The parent desires the hearing officer order the district to provide the student with specific break times during the school day.

The district's proposed 2008-2009 IEP for the student is reasonably calculated to provide him educational benefit.

There is no legal or factual basis to award this request.

4. The parent desires the hearing officer order the district not to discipline the student for behaviors that are a manifestation of his disability.

The parent presented no evidence that the student was disciplined for behaviors that are a manifestation of his disability. Further, as indicated above, school personnel have the authority to discipline student for violating the school code of conduct [34 CFR 300.530 (b)(1)]. An impartial due process hearing officer does not have the authority to waive Federal Regulations. Finally, the consulting psychologist stated receiving a consequence is a valuable way to provide the student with a concrete message that he exhibited inappropriate behavior.

There is no legal or factual basis to award this request.

5. The parent desires the hearing officer order the district to implement the 2008-2009 IEP/BIP developed by the parent.

The finding of this due process hearing is that the district's proposed IEP/BIP for the 2008-2009 school year has been designed to provide him with more than *de minimus* educational benefit. The parents were provided a full opportunity to give input to the districts proposed 2008-2009 IEP/BIP [DEB2 594.3 & 594.4]. The district incorporated that input in the final draft of the district's proposed 2008-2009 IEP/BIP. There is no cause to substitute the parents' IEP/BIP for that developed by the district.

There is no legal or factual basis to award this request.

The finding of fact and application of law warrant issuing following conclusion:

All of the testimony and written evidence indicates the student has continued to learn and grow during the 2007-2008 school year. The district has provided the student with a free appropriate education in the least restricted setting for the 2007-2008 school year. The district's proposed 2008-2009 IEP/BIP are likely to provide the student with more than *de minimus* educational benefit.

Order:

1. The district need take no further action with respect to this due process hearing

Right to request clarification:

Section 14-8.02a (h) of the School Code, allows the hearing officer to retain jurisdiction after the issuance of the decision for the sole purpose of considering a request for clarification. A request for clarification must be submitted to me within five (5) days after receipt of the 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 parties and to the Illinois State Board of Education. The request shall operate to stay the implementation of those portions of the decision for which clarification is sought. I shall issue a clarification of the specific portion of the decision or issue a partial or full denial of the request in writing within ten days of receipt of the request and mail copies to all parties to whom the decision was mailed.

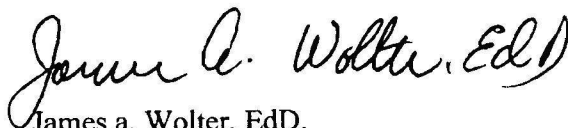
FINALITY OF DECISION: This decision shall be binding upon all parties.

RIGHT TO FILE CIVIL ACTION:

Any party to this hearing aggrieved by the final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 ILCS 5/14-8.02(I) that civil action shall be brought in any court of competent jurisdiction within 120 days after this decision was mailed.

DATE OF DECISION AND ORDER:

This Decision and Order rendered this 27th day of May 2008.



James a. Wolter, EdD.
Impartial Due Process Hearing Officer

CERTIFICATE OF SERVICE

In the Matter of: [REDACTED] vs. [REDACTED]
ISBE Case Number: 2008-0261

The following parties have been served a copy of the Decision and Order.

7006 2760 0000 9438 6952

[REDACTED]

7006 2760 0000 9438 6969

[REDACTED]

7006 2760 0000 9438 6976

Andrew Eulass, Esq.,
ISBE Due Process Coordinator
100 North First Street
Springfield, Il 62777-0001

James A. Wolter
James A. Wolter, EdD

5/27/08
Date