

Case Number: 2008-0573  
[Redacted] vs. [Redacted]  
Hearing Officer: Julia Quinn Dempsey

Illinois State Board of Education  
Special Education Services  
100 North First Street  
Springfield, Illinois 62777

### Impartial Due Process Hearing Decision Cover Page

Instructions: Complete this form and return it along with the decision. The information collected on this form will be used for the purpose of indexing the decision by subject matter as required by 23 Illinois Administrative Code 226-695

District Name [Redacted]

Phone: [Redacted]

Superintendent  
Address [Redacted]  
Represented by [Redacted]

Parent Name [Redacted]

Phone: [Redacted]

Address [Redacted]  
Represented by [Redacted]

#### Date and Timelines

Date of Written Request: 06/18/2008  
Date of Pre-hearing Conf: 07/21/2008

Date of Hearing: 11/17/2008 to 12/05/2008 12:00:00 AM  
Date of Decision: 12/22/2008

#### Summary of Decision

Student was a severely involved autistic, non-verbal, 10 year old girl who had been educated, with District assistance of almost \$100,000.00 since she was educationally eligible, in a home primarily Lovass based program, with intermittent short periods of public school attendance. The District became more insistent when the Student was going to be eight so she was enrolled in a co-op program that she attended 3 days per week for about one and three quarter hours max. The Student also had unexplained periods, intermittent, all her life, of withdrawal and loss of learned skills with some recovery after a period. She had abnormal brain wave patterns, seizure activity during sleep, significant environmental sensitivities, food allergies, and sensory sensitivities. She was difficult to evaluate but at best seemed borderline MR and more probably lower. She did achieve some skills with toileting, eating, dressing and self-care as well as some minimal language, math art and music. The Mother was educated and successful in business and had learned much about autism and methodologies used to educate autistic children. She is not an educator, but with another parent has started a school for autistic children-Lovass and its progeny based. The student made some progress in the co-op program and in 2007-2008 in the District's newly started Autism program which pulled from many disciplines and schools of thought regarding education of autistic children. The teachers and administrators were well trained and properly certified, but not in ABA, DTT, etc (or any Lovass or other particular autistic educational theory). The Student made progress and then fell back, just as she had in the home-based programs, and for at least 3+ months after removal from the district, at the Mother's school. District program was found to meet the requirements of the law that the Student receives some educational benefit. No reliable reports or documentation of any better progress was produced by the mother other than her testimony. Decision was for the District.



ILLINOIS STATE BOARD OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING

**IN THE MATTER OF**

[REDACTED]

v.

**Cary CCSD 26**

- )
- ) **ISBE CASE NO. 2008-0573**
- )
- ) **Julia Quinn Dempsey**
- ) Impartial Due Process
- ) Hearing Officer

**PROCEDURAL INFORMATION**

On Monday November 17, 2008 at 9:30 AM, an Impartial Due Process Hearing was convened by Judge Julia Quinn Dempsey, the Hearing Officer, on behalf of [REDACTED], hereinafter the Student, at the [REDACTED] hereinafter the District, Administration Office 2109 [REDACTED]. The hearing continued on November 18, 19 20, 2008, then testimony was concluded on November 21, 2008. No transcript was ordered. The Hearing was then adjourned so that the Parties could prepare and submit Briefs and Points and Authorities, which were due on December 1, 2008. They were received by e-mail but due to their length, the Hearing Officer requested of the Parties hard copies of the briefs and attachments (over 200 pages) and kept the hearing open to receive them. The Parties agreed to this extension of the date for the hearing to end. The last of these materials were received in hard copy on December 5, 2008 so the Hearing Officer closed the hearing and the record on that date. The written decision, with the agreement of the Parties is then to be issued by December 19, 2008. The Hearing Officer has jurisdiction to hear and decide this matter under 105ILCS 5/14 - 8.02a et seq., 23 Illinois Administrative Code 226.600 et seq., the Individuals with Disabilities Education Act, as amended 20 USC 1400 (IDEA), and 34 CFR 300.507 et seq. The parties were informed of their rights under 105 ILCS 5/14 – 8.02 et seq., 23 Illinois Administrative Code 226.636 and CFR 300.509.

The Mother notified the district on May 20, 2008 that she was removing the student from the District in 10 days and placing her in the [REDACTED], a private placement and stating that she planned to ask the District to reimburse her as required by law. This was followed by a June 3, 2008 submission to the District of ISBE form 19-86A, PARENTAL REQUEST FOR AN IMPARTIAL DUE PROCESS HEARING. (SDx#71- 72). On June 19, 2008 the attorney for the District, [REDACTED] wrote to the Mother and her Advocate [REDACTED] explaining the delay in submitting the request to ISBE and sending copies of the ISBE District request form and information on Procedural Safeguards and a list of Legal/Advocacy Services. (Dx.p. 36-69). This was date stamped in at ISBE on June 19, 2008 by the Division of Program Compliance. On the same day, ISBE mailed the notice of appointment to the Hearing Officer and it was received on June 20, 2008. (H.O.x.A, pp 1-8). The District Response to Parents Due Process Complaint Notice was submitted on July 18, 2008. (SDx.p.18-20).

The Hearing Office notified [REDACTED] the attorney for the District and the Mother and her advocate, [REDACTED] of the pre-hearing conference that had been scheduled by ISBE for July 21, 2008 and restated

that the parties rights and the procedures for the hearing were sent by Mr. Eulass, the ISBE Due Process Co-coordinator, in his notice to the Parties of the Hearing Officers appointment. On July 17, 2008, the Mother e-mailed the Hearing Officer that she was available on July 21, 2008, but "I would rather my advocate [REDACTED] take this meeting on my behalf".(H.O. x.B,p2) On July 18, 2008 the Hearing Officer e-mailed the Mother that she would move the P/H date to convenience the Mother, but that she, the Mother would need to be in attendance on the conference call and although her advocate was welcome to be with her, it was she, the Mother ,who was representing her daughter and she would be expected to participate in that manner. It was explained that only an attorney, properly licensed in Illinois could represent her, speak for her and question on her behalf. This occasioned an e-mail from the advocate/attorney explaining that he was an attorney, with special education experience, but was not admitted to practice in Illinois. He further stated that the Mother would be there for the P/H conference and her witness and document lists would be forwarded. (H.O.x.B, p1) The P/H conference was convened and held by teleconference on July 21, 2008 at 9AM. The report of the P/H conference is included. (H.O. x. C, pp 1-3). The Hearing Officer's position that an attorney not admitted to practice in Illinois could not appear and represent the Mother as an attorney, but would be limited to sitting with her and helping her to put on her case at the hearing was clearly stated. [REDACTED] was advised at the P/H conference of the procedures to secure Supreme Court permission to appear as an attorney for the Mother in this case. Hearing dates of September 29 through October 3, 2008 were established.

A Pre-hearing report was issued to the parties on September 16, 2008. In that report, it was further reiterated that [REDACTED] would be expected to demonstrate that he had regularized his status as an attorney in Illinois if he wished to represent the Mother and present her case. (H.O. x.C, p3). The Hearing Officer called a status conference on September 26, 2008 since nothing had been heard from the Mother or [REDACTED] regarding representation and the presentation of the case, set to begin on the next Monday September 29, 2008. At that teleconference, the Hearing Officer ascertained from [REDACTED] that he believed he would be allowed to represent the Mother, even though he had not secured admission to the Illinois bar or been admitted PRO HAC VICE because he had been led to believe that ISBE allowed such representation. (See e-mail dated September 26, 2008 requesting continuance-H.O.x D.p2.) The Hearing Officer, during this phone call reiterated her previously stated ruling that neither the federal statute, the state law, the cases interpreting state law and the federal practice, which defers to state law in this area, allow for non-licensed attorneys to represent Parent in due process hearings. The relevant statutes and rules are:

105 ILCS 5/14-8.02a(g-55(1) "Any party to the hearing shall have the right ...(inter alia) to(1) be represented by counsel and be accompanied and advised by individuals with special knowledge or training with respect to the problems of children with disabilities, at the party's own expense".

20 USC 1415(f)(2); 1415(h) and 34 CFR 300.512 Hearing Rights-paraphrased-A Party shall have the right to be accompanied and advised by counsel and by individuals with special knowledge and training with respect to problems of children with disabilities.

The United States Department of Education has interpreted this language to leave to the individual states the determination of the role of so-called non-attorney advocates in due process hearings and has introduced legislation to put that language into the law.

The Illinois Supreme Court has ruled in at least two leading cases in the area of representation and the role of non-attorneys in administrative proceedings before state agencies. In the first case, People v.Goodman, 366 Ill. 346, 8 N.E.2d 941, Sup.Ct.IL, 1937 the Court in a case of first impression involving the Industrial Commission said:

**\*\*944** The power to regulate and define the practice of law is a prerogative of the judicial

department as one of the three divisions of the government created by article 3 of our Constitution. The legislative department may pass acts declaring the unauthorized practice of law illegal and punishable. Such statutes are merely in aid of, and do not supersede or detract from, the power of the judicial department to control the practice of law. *In re Day*, 181 Ill. 73, 54 N.E. 646, 60 L.R.A. 519; *Rhode Island Bar Ass'n v. Automobile Service Ass'n (R.I.)* 179 A. 139, 100 A.L.R. 226. The power is inherent in this court to prescribe regulations of the study of law and the admission of applicants\*350 for the practice of that profession. *People v. People's Stock Yards State Bank*, 344 Ill. 462, 176 N.E. 901; *In re Day*, supra. It follows, as an incident to such power, that this court has jurisdiction to discipline or disbar, for cause, attorneys licensed by it. It would be an anomalous situation if a layman actively engaged in the practice of law, in defiance of the requirements necessary therefore announced by this court, could stay the hand of the court from suppressing his illegal acts. The practice of law, both in courts and out of courts, by one not licensed, is an illegal usurpation of the privilege of an attorney and is a contempt of this court. *People v. Chicago Motor Club*, 362 Ill. 50, 199 N.E. 1; *People v. Ass'n of Real Estate Tax-Payers*, 354 Ill. 102, 187 N.E. 823; *People v. People's Stock Yards State Bank*, supra.

[6] In modern times the affairs of the people requiring the services of a lawyer have become more intricate and complex, demanding a corresponding increase in the standards of the profession through preliminary education and a lengthened and more diversified course of study by those who would engage in the practice. Administrative law, although of comparatively recent growth, is recognized today as an important branch of the law. Classes for the study thereof are now taught in many of our leading law schools. Relatively speaking, not many years ago that part of a legal education was unknown to the curriculums of law colleges. In addition to the rigid educational requirements, the applicant must possess a good moral character. These prerequisites are not for the purpose of creating a monopoly in the legal profession nor for its protection, but are the better security of the people against incompetency and dishonesty. *People v. Alfani*, 227 N.Y. 289 Mass. 607, 194 N.E. 313.

(Further)

In *People v. People's Stock yards State Bank*, supra, 344 Ill. 462, at pages 475, 176 N.E. 901, 907, the court stated that the definition of the 'practice of law' therein set forth was substantially correct. This court and other courts have always been reluctant to adopt an all-inclusive definition of the term 'practice of law'. It has been held that 'persons acting professionally in legal formalities, negotiations, or proceedings by the warrant or authority of their clients,' are engaged in the practice of law. *In re Duncan*, 83 S.C. 186, 65 S.E. 210, 24 L.R.A. (N.S.) 750, 18 Ann.Cas. 657, Likewise it has been decided that, (a) giving an opinion as to the right to maintain an action against another, (b) furnishing legal services, or giving advice to others on questions of law, and (c) soliciting, settling, or adjusting personal injury claims, constitute the practice of law. *Fichette v. Taylor*, 191 Minn. 582, 254 N.W. 910, 94 A.L.R. 356.

In the later case of *In re Jiro Yamaguchi*, 118 Ill.2d 417, 515 N.E.2d 1235, Sup.Ct.IL, 1987, the Court again held:

**\*\*1239 \*\*\*932** [4] Respondent also clearly violated Rule 3-101(a) of the Code (107 Ill.2d R. 3-101(a)), which prohibits a lawyer from aiding a nonlawyer in the unauthorized practice of law. There can be no doubt that Ebert's conduct (which respondent condoned and furthered) was, in fact, the unauthorized practice of law. Although we have previously permitted in *Chicago Bar Association v. Quinlan & Tyson, Inc.* (1966), 34 Ill.2d 116, 214 N.E.2d 771, a real estate broker to fill in factual data on certain form contracts, the completion of a valuation complaint is quite unlike the completion of a form contract. The insertions which Ebert was making on the form valuation complaints did not involve mere factual data. Rather, Ebert, without the supervision of

an attorney, was setting forth on the valuation complaints the results of his legal analysis of the facts which he deemed justified a tax reevaluation. Further, after Ebert or his secretary filed those valuation complaints, Ebert was appearing for oral argument before the tax board. Both the unsupervised completion of the complaint and the appearance before the administrative tribunal constituted the unauthorized practice of law.

Respondent's conduct is analogous to the conduct proscribed in \*427 People ex rel. *Chicago Bar Association v. Goodman* (1937), 366 Ill. 346, 8 N.E.2d 941, wherein a nonlawyer was held in contempt for representing others in worker' compensation claims before the Industrial Commission. (See also *Chicago Bar Association v. United Taxpayers of America* (1941), 312 Ill.App. 243, 38 N.E.2d 349 (holding that the preparation and presentation of Retail Occupation tax refund claims before the Department of Finance was the practice of law).) As we stated in *Goodman* (366 Ill. 346, 357, 8 N.E. 2d 941), it is not the tribunal involved (e.g., a court or administrative agency) but the character of the work which is determinative of whether the practice of law is involved.

In evaluating Ebert's practice of completing valuation complaints and appearing before the tax board, we find no justification in the assertion that the conduct was widely adopted by realty brokers and acquiesced in by the tax board. As we stated in *Chicago Bar Association v. Quinlan & Tyson, Inc.* (1966), 34 Ill.2d 116, 120, 214 N.E.2d 771, if by their nature acts require a lawyer's training for their proper performance, it does not matter that there may have been widespread disregard of the requirement or that considerations of business expediency would be better served by a different rule.

On September 29, 2008 further rescheduling e-mails were sent, the Hearing Officer allowed the Parent request for a continuance over the objection of the attorney for the District and final continuance dates were agreed. The hearing was rescheduled for Monday, November 17, 2008 through Friday, November 21, 2008. Prior to that time [REDACTED] Motion was allowed to appear PRO HAC VICE in ISBE case # 2008-0573 by order of the Illinois Supreme Court in M.R. 22743, dated November 12, 2008. (P. x.1)

## AGREEMENTS

1. All Parties understood that the Hearing Officer would rule on any evidentiary objections at the Hearing and that the Parties could raise on the record at the beginning of the hearing any matters where they disagreed with the hearing officer's prior rulings.
2. It was agreed that the Student would not attend the Hearing.
3. No interpreter would be needed.
4. All witnesses would be excluded prior to their testimony. The hearing would be closed. (This was reversed at the Hearing-observers were allowed)
5. The District would arrange for a court reporter.
6. The parties were told of the 5-day exclusionary rule.
7. The parties would confer and submit as many Joint Exhibits as possible.

**ISSUES PRESENTED**

1. Whether an appropriate IEP, with appropriate placement and services for the Student was developed and adhered to by the School District for the 2006-2007 and 2007-2008 school years and specifically, was the transition plan incorporated in the 2007-2008 IEP followed?
2. Whether the training and experience of the Student's teachers has been adequate to provide a free appropriate public education (FAPE) in the least restrictive environment (LRE) for the Student?
3. Whether the District failed to modify the curriculum for the Student to her level so that she was left behind those in her class?
4. Whether the District provided appropriate training of staff and supervision of the program of the Student?
5. Whether the District should pay for or reimburse the parent for the cost of the unilateral private school placement made by the Parent at the [REDACTED] beginning May 29, 2008?

**PARENTS POSITION**

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It is the Parent's position, as stated by the Mother in her testimony at the hearing and by her attorney in his opening statement at the hearing, that the Student is a now 10-year-old girl, diagnosed as Severely Autistic. She has a history of significant difficulties in the area of language development, communication skills, retention and numerous significant health related problems. She is on significant amounts of medication with many severe food and environmental allergies, and generally fragile health much of the time. She is somewhat apraxic and severely deficient in her communication skills and in her ability to relate and interact with others, especially in the school setting. Because of the severity of her Autism, she has complicated needs. She has been educated at home for most of her life since age 3 when the district became responsible for her education. She began a part-time attendance at school when she was 8 years old at the insistence of the District. At the time she was removed from school she was not being dealt with in a manner that indicated to the Mother that she was being educated appropriately. She did not believe the Student met her goals and what she has learned academically during school year 2007-2008 had in fact been mastered earlier. She thinks the District has not recognized the severity of her problems. The Mother does not believe her teachers have been adequately trained in working with a severely autistic child, and the District is just trying to fit her into an eclectic program rather than a full time Lovass based ABA/DTT program which the Mother is convinced is the only methodology that will meet the Student's needs. The Parents are asking for payment for the [REDACTED] program at the rate of \$80,000.00 per year. The Mother is well educated regarding her rights under Federal and State law and utilized proper procedures to notify the District that she was placing the Student in a private special education facility and wanted the District to pay for it.

### DISTRICTS POSITION

The School District Position is that the issue is whether a private school placement is necessary to meet the Student's educational needs or whether they can be appropriately addressed in a less restrictive Public School District program. They argue that the law only requires that the District adequately meet the Student's educational needs by assuring a FAPE in the LRE. They claim they have done that because of her success in the District programs since she was attending. They acknowledge that she is a very involved student with significant communication, retention, medical and other autism related difficulties but state that her problems are not all unique and that autistic students can be educated in the targeted program the District began during the 2007-2008 school. The eclectic Autism program they began that year included a 1-1 aide, extremely small class size, a full range of full time available related service providers, adaptive PE and transportation. The location is the Student's home school, the same classrooms that [REDACTED] used the previous year. They believe the IEP developed for the 2007-2008 school year was appropriate and they took the Mother's input into consideration. They claim there is no educational basis for such a restrictive placement as education in the only recently approved Alexander Leigh private facility at the rate of \$80,000.00 per year as the Mother requests. The District believes the legal standard does not require the District to fund such a restrictive placement, which they allege violates the least restrictive environment requirement of the law, just to accommodate the Student's alleged learning style, when a substantially similar program can be provided in a public school. They believe the District has followed the law – there are no procedural violations alleged except the baseless claims by the Mother of inadequate notice and the holding of the last IEP conference without her when she did not come after she had sent the 10-day notice to the District that she was withdrawing the Student and placing her in a private facility. They state that the Student did achieve educationally and make progress and that stands as evidence of the appropriateness of their position. They claim they have been responsive to the Mother's concerns in most instances, have communicated almost daily with the Mother, held many face-to-face, and telephone conferences with her. They point to the fact that they have funded the Student's home programs since she was 3 years old, in an amount of almost \$100,000.00 as evidence of their willingness to co-operate with the Mother. They assert that the mother was not honest with them, withheld information that the Student was attending another program in the afternoons and never sent the student to school for longer than a 12:30PM dismissal time, even though the Mother had agreed to a transition plan that went to 2:30PM.

### FINDINGS OF FACT

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There were a number of witnesses who testified during the hearing. Five of them were called by the Parent during her case-in-chief because she requested the due process hearing and thus bore the burden of going forward as well as the burden of proof. *Schaffer v. Weast*, 546 U.S. 49, (U.S. S.Ct. 2005) Both Parties, in their post-hearing briefs presented interpretations of the testimony. The witnesses testified over a period of five days. There was one volume of Exhibits, submitted by the District. There were 2 other exhibits-totaling 3 pages tendered by the Parent, one being the rate information for [REDACTED] (\$80,000.00 per year) (Px2), and the other a copy of the Supreme Court Order allowing [REDACTED] to appear in this case Pro Haec Vice (Px1) There were 400+pages of additional material admitted by agreement, the material being back up data sheets for the graphing data in the District evidence book at pp284-330. The Findings of Fact summarize the most significant and relevant information the Hearing Officer relied upon in reaching a decision. All written material was read and considered. The references to testimony rely on the Hearing Officer's handwritten notes, taken contemporaneously with the

testimony, as no transcript has been ordered. The Hearing Officer is including all of this material (except the notes) as part of the hearing record. This was agreed to by The Parties agreed to this at the beginning of the Hearing.

The Student was born on August 13, 1998. She turned 10 years old just prior to the current 2008-2009 school year. The [REDACTED] had arranged to adopt her before she was born. She had an Apgar of 9 and was healthy at birth. The reports included in the record are all consistent in recording the details of her development as they depend on the relation of the Mother, who testified extensively at the hearing. The Student was slow in developing and sickly; she had recurrent ear infections and tubes in her ears. The unusual type of behaviors did not really begin to emerge until she was 14 to 15 months old. At that time, she began to seem less socially interactive and less responsive to interpersonal activity, more withdrawn in her behaviors. She stopped pointing, responding to her name, began waking at night for several hours and "singing". At first, this was thought to be the result of hearing difficulties, but her hearing has been eliminated as the source of her difficulties. After 2 years, she did not register or respond to other children in her playgroup. She then had an Early Intervention Evaluation that showed she was 30% to 35% delayed. They took her to the University of Illinois where she was diagnosed As Pervasive Developmental Disorder, NOS. This is a common scenario in histories of childhood autism. The Student has received early childhood services from a variety of home based providers, family, friends, Occupational Therapists (OT) and Speech/Language Therapists (S/L/T) and when she was three years old her education became the responsibility of her local public school district [REDACTED]

She was enrolled in the District 26 Early Childhood Education Program after age 3 and received those services in a cross-categorical program for 3-4-5 years to Pre-K, at risk children. She had IEP's, she was the most severe and profoundly affected student, the class met Monday through Thursday from 9AM to 11:30AM. The Mother drove her to school and then she began taking the bus coming home. Mother was dissatisfied with her progress and hired an attorney who negotiated funding from the District for a home program with intensive ABA/DTT. This began in January 2003. The District agreed to reimburse the Parents up to \$12.00 per hour for 30 hours per week of home services. They also agreed to funds for Professional development and a portion of S/LT and OT services. The Mother employed KGH for consulting, treatment and set-up. Some directed Floor-Time coaching for the family was done. The Mother testified to all this and said it went for 30-40 hours per week. It continued through 2004. The District was continually pressing for the Student to come to school. On April 19, 2005 an assistive technology evaluation was done by [REDACTED] (the special education co-operative to which the District belonged), the result was the acquisition of an augmentative communication device, a MT4 machine, by the District. The Mother testified that the Student had some success with the device but it was not really helpful as the Student has no desire to communicate so a speech synthesizer is most useful to the Student for typing, not the major intended use for a several thousand dollar piece of equipment. The assistive technology evaluation was done in conjunction with the triennial re-evaluation by the district. At that time, the funding for the at-home program was dropped to 25 hours per week and the Student was to be enrolled in the [REDACTED] program at [REDACTED] for the 2005-2006 school year. This was for 3x per week for an hour each time. (Mother's testimony). This ran into difficulty-apparently in the planning stages and was not implemented until August of 2006 (the 2006-2007 school year) when the student began the [REDACTED] program. The June 14, 2006 IEP is included as Dxpp177-190). The district was still funding a home program with [REDACTED] as the therapist. The Mother testified she did not think the [REDACTED] program was appropriate but she had no choice-the District insisted that the Student-then 8 years old should be in school-at least part of the time. She began with three one-hour sessions three days per week. This was to continue through the end of November to develop data. The IEP meeting held on recommended an increase in services to 1 hour and 45 minutes three times per week. The district wanted much more time but it could not be implemented because according to the Mother the Student was having chelation therapy. The Student was funded for the home program through the summer ESY because of the possible difficulty of the Student with a summer program in a different school building.

On June 6, 2007, an IEP was written for the 2007-2008 school year that contained 20 pages of goals and objectives.(Dxpp144-171) There was a transition plan attached at P. 170 that provided for the Student to attend for August and September from 8-11 and then in October to attend from 8 to 12:30. In November, she was to begin coming full days-from 8 to 2:30. This was the newly developed Autism program started by [REDACTED] to replace the prior year's [REDACTED] program. The Mother did not agree with the Program, but the District persisted and reduced the funding for the Home based program to 10-12 hours per week. The end result-by testimony of several witnesses was that sometime after December the Student began to come at 9AM or thereabouts and stayed until 12:30. The Mother continually denied to the school staff that there was anything different going on in the home program when in fact it was no longer being held in the home but had been moved to wherever the [REDACTED] was located and the Student began going in November. The Mother minimized this by saying the program had not changed but clearly, a different building-not her home, not where she sleeps, not where she is used to using the toilet, bathing, even eating or having a snack and coming and going is a totally different experience for this severely environmentally sensitive Student. By January, she had stopped using her voice as she had been doing earlier in the year at school. The Mother, when queried by the District staff continued to deny any changes in the home program.

As regards testing the Student was administered a comprehensive psychological evaluation at age two that showed some delays but close to her age mental developmental scores. However, on the Childhood Autism Rating Scale her Parents rated her just slightly below the cut-off for mild autism. In the speech/language evaluation done at 24 months, she was primarily between the 15 and 18-month level. An EEG was done in 2000 that was slightly abnormal. It was repeated 3 years later and again twice in 2004. All of those EEG's were abnormal and indicated some seizure activity during sleep. The results were consistent with a partial seizure disorder and secondary generalization. (Dxp208) The Student's father died in 2004, 2 months before the last reported EEG. There is no report of their having been repeated since 2004.

The Student was seen again on May 9, 2005 by clinical psychologist [REDACTED]. Her report is at Dxpp246-251. She tested and observed the child in her home classroom/playroom. The testing was inconclusive since the student was unable to complete most of the tests. The summary and recommendations state on Dxpp251, "The Student also demonstrates some availability and interest in different persons and activities especially when the structure and pace of such interactions is controlled or she has options such as electing a break. *With a gradual introduction and one on one assistant, Student could be attending her designated community school class.* It would be important for her to have the option of a designated space to regroup and away from sensory overload. Task planning to accommodate her visual motor skills training and incorporate her new communication system as well as to generalize some of her at home tasks can build a productive educational experience." (Emphasis added)

Another psychological report is included at Dxpp 242-243, done by [REDACTED]. It was consistent with the prior report and recommended "a highly individualized and highly flexible educational setting with a range of support services, including a full time educational aide, regular and consistent on-site occupational and speech therapy." The most extensive psychological evaluation was done by the [REDACTED], its Executive Director. [REDACTED] also testified at the Due Process Hearing. His report, including his Speech Language professional's evaluation is included as Dxpp 205-237. [REDACTED] report is dated 2-26-07 so the report was submitted at some time thereafter. [REDACTED] saw the Student in November 2006, did extensive testing, took, and related an extensive history of the case. He observed the Student for ½ hr at the [REDACTED] Program in January and observed her at home in her home classroom/playroom for 1 hour. He later saw her in September of 2008. His testing results are summarized on Dxpp 237-231. In general, the Student was very significantly delayed and low functioning. Her overall ability standard score was 30 <1<sup>st</sup>

percentile. It was noted that Scores between 90 and 110 are average, below 85 are considered below average and over 115 above average. On tests of Phonological Processing, the Woodcock-Johnson Tests of Achievement, the Developmental/Neuropsychological Assessment, the Developmental Test of Visual Motor Integration, and the Scales of Independent Behavior her scores were all in the <1<sup>st</sup> percentile. In age-equivalent testing on a variety of measures and scales, she was usually around the 3-year-old range, with some scatter. This was when she was almost 8 ½ years old and had been receiving since age 3, home programming supervised by the Mother almost exclusively, with occasional short daily stints in district programs for short daily periods. At the time of the hearing she had never spent a full day in a school district building-the longest she had been there was 3-3and1/2 hours depending on when she arrived-which was inconsistent. [REDACTED] ½ hour observation was not of the District's new autism program but of the 2006-2007 prior [REDACTED]als program. After his observation, the District personnel met with him and the program was modified with his input. He felt the meeting was collaborative, all desired the Student to achieve, and differences were on how. He said they were successful in how the IEP was written-eventually there were measurable goals and the team took many of his suggestions. He also testified to phone calls and e-mails around this evaluation in winter of 2007-with nothing in 2008. He did testify that the Student was the 2<sup>nd</sup> most complicated child he had examined, that her response changes moment to moment and day to day, that she had a broad list of needs-not just communication, that she could not play alone in a functional way, He had not observed a public school program that could meet her needs, but did mention possibly the Schaumburg [REDACTED] public therapeutic day program and a private program "Helping Hands". [REDACTED] saw the Student again in September of 2008 for one hour, with her Mother, who was the source of all information about what was going on with the Student. He said the Student was the worst of any time he had seen her. He has never seen the [REDACTED] and only knows what he heard from the Mother and that a woman who consults there is very qualified. He also stated the Student needed transition planning that focused on basic self-care and functioning and could use OT, SL and SW services. He also testified that he knew this Student had multiple periods of regression and that generally with autistic students when they are successful you then build on the goals achieved. He had never seen the Students pattern or seen her reach a plateau where you could build from there.

The first Parent witnesses were [REDACTED] she was trained while an undergraduate at Marquette University, by the Wisconsin Early Autism Project as a line level therapist and hired in 1999 after graduation with a B.S. in Health Science as a Senior Therapist, with a caseload, she did autism treatment plans, supervised and did assessments following the Lovass method. Her training seemed to be what she learned while in college in the 2 years she worked with the Wisconsin project. She said it was like an internship-she was observed 1x per week, to be a senior therapist took 13 weeks working in the field and classroom supervised one week by a senior therapist and one month by a psychologist who gave her input. She mentioned no other specialized training such as in "Floor Time" or PECS, although she used these techniques and criticized the use she saw at the Student's program at [REDACTED]. She met the Student in April of 2007 ( while the Student was at [REDACTED] and described her as verbal, very prompt dependent, with no natural language , very happy, in therapy and incredibly compliant In June of 2007 she became the therapist in the home program with the Student as her private client. She said the Student had stopped being verbal. She was employed by the Mother at [REDACTED] from June 2007 to October 2008. She worked with the Student t at home and at the [REDACTED] building. She observed the [REDACTED] program monthly and participated in monthly meetings. She was very critical of all the employees of the [REDACTED] m but it seemed to revolve mainly around the lack of Lovass appropriate methodology-the only one she seemed to be trained to use and had experience with using. She acknowledged that the Student was subject to periods of regression and that even though the [REDACTED] Speech/Language therapist was trained in PECS the Mother had refused to provide information to her about what the Student was doing at home.

The second Parent witness was [REDACTED]. She had met the Student but was not her therapist. In

August and September of 2007 she observed in the [REDACTED] new autistic classroom for 2 to 3 hours for 15 times, for the purpose of observing another child for whom she had been hired to observe and make recommendations. She came in the afternoon after lunch and never saw the Student in question in this hearing-who at the time was coming from 9AM or so to 11AM. She never saw the morning program and activities of the classroom, only the afternoon and only the first few weeks of the program. She was concentrating on the child she was hired for and the way the teacher and aide interacted with him-he used sign language, which was not understood by the staff. I found her testimony useless-irrelevant to anything about the Student in question in this hearing.

The third Parent witness was [REDACTED] who has a B.S. in Music Therapy and in 1991 did an internship in music therapy at the Wisconsin Center for D/D. She spent 13 years in Joliet in their school and adult programs as a music therapist. She met the Student in 2006 in her home program when she answered an ad in the paper. She was trained by [REDACTED] who she said was a Behaviorist in the home program. The training was in ABA and sensory integration. She was an employee of the ALCA since December of 2007 as a 1-1 therapist using ABA-Behavior Analysis, but worked with the Student the year before that, since August of 2006. She felt the Student was doing well until February of 2008 and blamed the regression on the staying at [REDACTED] school autism program until 12:30, which according to her began in January 2008. She testified that as soon as the Student was removed in May 2008 she saw improvement and by the end of June there was a big improvement and all through the summer of 2008 while at [REDACTED]. She testified that the OT comes in 2 days per week, 1 full time, the Speech therapist comes in 2 days a week 1 day full time, that both these service providers worked in group and individually with all the students at [REDACTED]. There was no P/E or adaptive P/E teacher.

The fourth Parent witness was [REDACTED], a friend of the Mother who accompanied her to a meeting with the interim school superintendent of the District. The meeting she said was because the Mother had complained about issues of not enough or prompt response to her communications during the summer with the District Special Education Director. She said the Superintendent said the right things at the meeting and that the Mother had complained about no aide on the bus and no meeting being held yet on the Student's medical plan.

The Mother testified about much of the foregoing, discussed the Student's history and told, from her point of view, all that was wrong, from 2002 on, with the way the District tried to provide services to her daughter. The Mother also testified as a rebuttal witness after the district witnesses testified. She denied much of what the district witnesses testified to and described her program at the [REDACTED].

The first witness for the district was the school psychologist [REDACTED]. He has worked with [REDACTED] and the [REDACTED] school district for 26 years. He was a competent and highly experienced professional, with at least weekly observation of the Student-spread over the 2007-2008 school year. He remembered her from the early childhood program several years before. He did extensive reporting and cumulating of the Student's performance in the classroom and translated this into graphs, which are related to the Student's progress on her IEP goals. These goals and the 400 + pages of supporting data plus the graphs are all included in the record. (D.x.pp. 284-330 and Jt.x 1a and 1b). I found his testimony to be truthful and helpful in understanding the extensive data presented. He is well educated with a M.A.+30hrs in school psychology and has been practicing for 26 years. He concluded that the Student was making progress in the District program, that it was very appropriate for her, the Staff used an eclectic approach which suited the Student-he too had noticed the fall off in her performance in winter of 2008, but said she was still working in school through the spring.

The Special Education Director, [REDACTED], testified next on behalf of the District. She is exceptionally well qualified for her position as she is very experienced, 16 years in public education, and has a Masters degree and all but dissertation eligibility for a Doctorate. Much of her training and

experience has been with educating autistic children. She began a successful program for autistic Students at Brookline Public Schools in Massachusetts before coming to the District to do the same. She is responsible for all 500+ special education Students and the staff. She testified at great length regarding the District autism program, the planning that went into it, the consultants used, the training and experience of staff. She is responsible for the on-going training for special education personnel and has developed a well thought out and varied in-service program for the staff. It is set out in Dx.p 88. All the District staff who testified had attended many of the workshops that are listed and which cover many aspects of educating autistic children. [REDACTED] also observed the Student many times in the classroom at [REDACTED] in 2007-2008, at the [REDACTED] program in 2006-2007, at her home the summer of 2006 and she observed her at the [REDACTED] last summer in the strip mall location. She concluded that the district program was very appropriate for the Student, and testified that she made fine progress for a while until after the holidays in 2008, and even then, she was still learning, but slower. [REDACTED] felt the district program was much better for the Student than the [REDACTED] start-up she saw in the summer, because of the experience and training of staff, the ability to utilize the full-time OT, OT, S/LT, adaptive PE services in the building and the physical environment with an onsite gym and playground. She talked about the ability to deliver FAPE in the LRE because of the proposed inter action with regular education students at [REDACTED], the Student's neighborhood school and the successful use of the bus to return the Student home during 2006-2007 without incident which she felt this could have continued if the Mother had allowed it. She was by far the most knowledgeable and experienced witness regarding the education of autistic children and I found her truthful, credible, professional and extremely helpful. I relied on her testimony.

The Student's teacher for the 2007-2008 school year in the new district program was [REDACTED]. She testified regarding her qualifications, Bachelors in elementary education, masters in special education, her experience, over a dozen years in education, her attendance at the District in-service workshops and the techniques she used in working with the Student. I found her well trained, but obviously very unused to speaking before a group of adults in any kind of a didactic manner. She was very intimidated by testifying at the hearing. Her voice and mannerisms are stereotypically those of a teacher of young children, a soft, whispery, "inside" voice, a non-assertive demeanor, a sweet smile. The Students probably love her, but she is clearly not a professional witness. However, she is well trained; spoke effectively about what was done in the classroom and the methodologies utilized, which she was familiar but not used to explaining. She described the Student's activities, giving many examples, her progress; her successful interaction with others in the classroom, mentioning the many questions from the other students this fall about where the Student was and what had happened to her because she did not return. Ms. Schweer felt strongly that the Student was benefiting and could continue to do so in the District program. I found her truthful and credible.

The 1-1 aide, [REDACTED] also testified. She is well educated and well trained, having a B.A. in Psychology from the University of Illinois where she was trained by [REDACTED] a well-recognized expert in special education. She has worked extensively with autistic adults, including in California with ABA programs-but again with adults. She likes working with the autistic and when she decided to return to work after having children, she applied at the District and was employed in 2007. She made a home visit with the new teacher, [REDACTED] in August of 2007. They spent an hour and a half and she looked forward to working with the Student and [REDACTED]. When school began, there was only the Student and one other child. The Mother was very critical and confrontational-even from the first day. She said the room was not well organized but it was set up with much thought-to evolve throughout the year. [REDACTED] said the home was not supportive at all-even throughout the year, the aide had to ask for informational the time and then the request would be "turned back" on her. She testified in detail regarding the Student's daily activities, food, interactions with others. She was most helpful this way. On cross-examination she, like [REDACTED] could not explain the dialectic of research based-peer reviewed methodologies, but her testimony revealed she certainly knew how to put them into practice. I

found her truthful and reliable.

In contrast-the District's Speech/Language Pathologist [REDACTED] was a most vocal witness, explaining how she worked with Student, her observations in the home to see how they were working with the Student, 3 times in September of 2007, first by herself, then with the aide and then with the teacher. She is very experience, 25 years as a speech /language pathologist with a Masters degree. She also has a type 75 administrative certificate. She testified the Student was non-verbal in September of 2007 and she provided services in group and individually. She was in the classroom every day for varying periods of time. She said the Student needs a full-time Speech/Language Therapist, her speech skills are at a very early stage. She became verbal in October, first ant home then it emerged at school. It was very rote in nature-not communicative-she never used speech as an interactive system-she had no intent to communicate. The witness was trained in PECS and tried to get [REDACTED] i the home therapist who occasionally visited the school to share what they were doing at home with PECS but despite bringing it up several times only learned that Mother did not want the information shared. [REDACTED] felt it was a "control thing" with the Mother. She described how she worked with the Student, saying she was very interactive with other children. She said if the Mother had returned the MT4 to school as asked she would have worked on it with the Student. She felt the District program was good for the Student and that she needed to be in school all day. She gave a very lucid explanation of what was needed to develop communication and indicated the major problem with the Student was lack of intent to communicate and that her strength was her receptive language skills. She was helpful and credible witness.

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### CONCLUSIONS OF LAW AND OPINION

The Hearing Officer has read and considered the post-hearing briefs submitted by the Parties, the cases and scholarly article, the District exhibit book, the approx 400 pages of supporting data for the District's graphs at pages 284-331, (Jt.x. 1a-1b) and reviewed her contemporaneously developed notes on the witness testimony-no transcript having been ordered. All of this material has informed the following decision. Both Parties agreed that all of this material (except the hearing Officers personal notes) should be included in the administrative record of the hearing.

In every dispute regarding a handicapped child and a school district the analysis necessary to reach a decision must begin with the bedrock teaching of Rowley (Board of Education of the Hendrick Hudson Central School District, Westchester County et al. V. Rowley by her Parents, Rowley et ux. 458 U.S. 176 (1982). In that case, the United States Supreme Court set forth a two-pronged test to determine whether a school district has offered a student a free appropriate public education (FAPE) in the least restrictive environment (LRE). The first inquiry to be made is whether the school district has complied with the statutory procedures; (no substantial procedural violations) required by the Individuals with Disabilities Education Act (IDEA) 20U.S.C. 1401 et seq. Any denial of procedural rights must result in an adverse impact on the parents' participation or the Student's education so as to result in a loss of educational opportunity in order to be a denial of the law's requirement of a free appropriate publicly funded education (FAPE). The first test of Rowley allows relief only if the alleged procedural violations have resulted in substantial harm to the Student. (W.G.v.Board of Trustees, 960 F.2d 1479, 1484 (9<sup>th</sup> Circuit 1992)).

The only issue raised by the Mother that involves the procedural rights of the Parties is that the District held the IEP meeting of May 28, 2008 without her presence. The IEP meeting was set with the Mother present at the May 12, 2008 MDC Conference held to discuss the results of the Triennial re-evaluation.

(D.x.pp.123-129) She signed two of the documents. In the interim, on May 20, 2008 she notified the District that she was removing the Student from the District in 10 days and placing her privately and she expected the District to pay for the private placement. (Dx.p.71-72). 34 CFR 300.32 (a) and 23 IL. Admin. Code 226.210 state that the required members of an IEP team include the Parents, a regular education teacher, a special education teacher, someone who can interpret instructional implications of the results of an evaluation and a District representative who is qualified to supervise or provide especially designed instruction, is knowledgeable of the general education curriculum and knowledgeable of the availability of resources of the District. There is no requirement that in a situation such as prevailed at that time, May 2008, when a Parent has thrown down the gauntlet so to speak, that the District may not hold an IEP meeting for the subsequent year so as to demonstrate to the Parent the program that they would make available to the Student should the Mother change her mind—a real possibility since in May, 2008 the [REDACTED] was not an approved school on the ISBE list available for placement and reimbursement by public school districts. There was no procedural violation committed by the District and certainly, there was no loss of educational opportunity because of procedural violations. There were no other procedural violations alleged with any specificity.

The second prong of the Rowley test is whether the individualized program developed through such procedures is reasonably calculated to enable the Student to receive educational benefits (Rowley at 206-207) The Sixth Circuit set out in Tullahoma City Schools what it understands Rowley to mean by "reasonably calculated to enable the child to receive educational benefits".

*"The Act requires that the Tullahoma schools provide the educational equivalent of a serviceable Chevrolet to every handicapped student Appellant, however, demands that the Tullahoma school system provide a Cadillac solely for appellant's use. We suspect that the Chevrolet offered to Appellant is in fact a much nicer model than that offered to the average Tullahoma student. Be that as it may, we hold that the Board is not required to provide a Cadillac." (Tullahoma City Schools, 9 F 3<sup>rd</sup> at 459-460)*

Using the Rowley standard the 7<sup>th</sup> Circuit Court of Appeals in Alex R. v. Forrestville Valley C.U.S.D., 3755 F. 3d 603 (7<sup>th</sup> Cir. 2004) held that objective factors such as regular advancement from grade to grade with passing grades is the usual way to show satisfactory progress and the provision of FAPE. Recent cases interpreting the new amendments to the federal law seem to have expanded the "basic floor of opportunity" and "meaningful educational benefit" standards quite a bit beyond the "something more than minimal progress" requirement enunciated in the cases following Rowley. Those older cases saw making a year or bit more progress in 2 to 3 years as an acceptable performance by school districts. (See Peter G v. Chicago Pub.Sch.Dist. #299, 2003 U.S. Dist. LEXIS 460, N.D. Ill.2003, Todd v. Duneland Sch. Corp., 299 F.3<sup>rd</sup> 899, (7<sup>th</sup> Cir. 2002), and E.S. v. Indep.Sch.Dist. #196, 135 F 3<sup>rd</sup> 566(8<sup>th</sup> Cir. 1998)). The focus in these newer cases is on the IDEIA intent that students with disabilities be educated to facilitate their ability to eventually live independently and be economically self sufficient and far less on employing accommodation and other compensatory strategies that do not increase a student's skill and functioning level. (See J.L. and M.L. and their minor daughter, K.L. v. Mercer Island Sch. Dist., U.S. Dist. Ct, West Dist. of Washington, 46IDELR 273, 106 LRP 71145, 2006 and Maine Sch. Adm. Dist #56 v. Ms. W., on her own behalf and on behalf of her son, K.S., U.S. Dist. Ct., Maine, 47 IDELR 219, 107 LRP 17136, 2007).

Mercer Island is a transitional services case. Its focus is post-secondary education planning. Its language and holding are broader. For this Student, who was removed by the Mother at the end of 2007-2008 when she was 9 years old and who had never attended at the District beyond 12:30PM, (or for that matter any public school program for any significant period of time), preparation for the rest of her life, and at least limited self-sufficiency is what the District seems to have been trying to do. There was testimony that they begin this transition planning even in the grammar schools. Successfully teaching her to eat, toilet, begin to read and write—even though at a primitive stage, ride the school bus and function and get

along with others in the real world of a public school building and classrooms, is preparation for some self-sufficiency, however minimal. Even this severely challenged Student is needs this preparation. The whole purpose of the Congress in passing the predecessor legislation to IDEA, commonly called 89-313 and 94-142 (referring to the public laws they represent) was to open the school house doors to the children who had been previously either totally excluded or segregated in special "schools" for the deaf, blind, crippled retarded and mentally ill and such. It was never the goal of the Congress to create a funding program to resegregate privately the very children it sought to benefit and mainstream into public schools. The decision of the District to start an Autism program to serve its own resident children is a laudable one and its decision, at the 2007-2008 and 2008-2009 IEP meetings to keep her in the District Autism program in a self-contained, admittedly small program, but in her home school with neighborhood students attending and riding the bus with her was much less restrictive and in keeping with the intent of the law than enrollment in the very much smaller full time educational program, with only handicapped students as peers, at [REDACTED] would be.

The Student's slow rate of progress and frequent, sometimes lengthy regressions are troubling, but have characterized her life for years. All who testified acknowledged them and references to this problem appear in all the reports. Just as an example, the psychological evaluation done by [REDACTED] in May 2005, when the Student was 6 years old. (Dx.p246-251) On page 250 [REDACTED] relates that the Mother described the Student's program "as being modified to include floor time with some semi-structure and "islands of ABA" and previous work with a TEACCH model. Mother reported a serious regression of one year in skills following a discrete trial program." [REDACTED] went on on page 251 to conclude after her evaluation that "With a gradual introduction and one on one assistant, Student could be attending her designated community school class." Given this history and the unknown etiology of these happenings with the Student, the Mother has still concluded that the District program caused the latest reported regression in the spring of 2008, which has been testified to by all who worked with her. This has not been a total withdrawal, as demonstrated by the daily log sheets from the school to home and home to school after the Christmas holiday found at Dxp365-421. However when contrasted with those from before Christmas, Dxp331-365 a slowdown in activity is evident. This also coincides with her home program being moved to the [REDACTED]. There is no way to know what triggered the regression, so blaming either program is useless. It is significant that after she was removed in May 2008 and enrolled only in [REDACTED] she spent the 3-4 months that [REDACTED] characterized in his testimony as resulting in her presenting "as the worst he had ever seen her" in September 2008. The Mother testifies she is doing beautifully now-as does [REDACTED] ll, the music therapist at [REDACTED]. The same could be said of how she was doing in the District program in the fall of 2007, even though the Mother only allowed her to attend for a couple of hours a day for most of the fall-it was only at the end, and after much insistence from the District that she began to stay until 12:30 PM. The mother never complied with the transition plan and allowed her to stay until 2:30PM for the afternoon school activities.

The Student made some progress during her time with the [REDACTED] program in school year 2006-2007. [REDACTED] observed the program for ½ hour in January of 2007. He testified that the program he saw was not appropriate to educate the Student. His standards are extraordinarily high-he also testified that he knew of only one public and possibly two private schools that could educate the Student. The Student, when observed for the ½ hour was in her first public school structured program since early preschool. She was attending 1 hour per day-3 days a week. Given that when he saw the Student in November of 2006, the ½ hour at [REDACTED] and the 1 hour at the home program, he worked with the SEDOM staff to modify the IEP and he agreed it was a collaborative effort and the IEP was modified. (Dxpp. 172-176). The 2007-2008 IEP summarized the progress the Student had made at SEDOM at Dxpp146-147. Although she did not achieve all of her goals, the law does not require that. The most recent case law is clear in stating that the *Rowley* standard that gives school districts the discretion to use any methodology to confer an educational benefit on a child-there is no requirement that the method with the greatest body of research be used in order to provide FAPE-even *the failure of a district to provide*

*services based on peer-reviewed research does not automatically result in denial of FAPE.* Joshua A. v. Rocklin Unified S.D., 49IDELR 249 (U.S. Dist. Ct., E.D.CA 2008).

The Mother states that [REDACTED] uses different approaches to educate autistic children, but it is clear they are not running an "eclectic" program- from her testimony and that of the other witnesses for the Mother it is clear that it is all about Lovass and its progeny. The Mother criticizes the training of the District staff, as not being research based, yet the teacher, [REDACTED] is extremely well trained and experienced, although not certified in, ABA/DTT, PERT, TEACCH or any other alphabet soup methodology, but rather had a B.S. in education and an M.S. in special education, as well as many years experience. The program she implemented with the Student had elements of several recognized methodologies, which she knew from her training and years of experience, she testified to using ABA & DTT but in short periods. She also testified to using TEACCH and other methods, unique to each child- to meet their needs. The 1-1 aide, [REDACTED] also followed a similar method, they used breaks and the motor room, they had a Buddy project for lunch and recess beginning 1 or 2x a week last year and every day this year, as they are both still with the program and there are 6 children this year, last year eventually up to 4. They were both nervous witnesses, obviously not oriented to giving explanations of research based methodology or to the lingo of many educators who are also trainers-but their descriptions of their program, their interaction with the children, their knowledge of the Student's progress and their telling of how they worked with he and her unique needs in the classroom was very compelling. It also complies with the standards discussed in all the more recent cases such as Deal v. Hamilton Cnty Dept. of Ed., 49 IDELR 123( U.S. Ct. of App., 6<sup>th</sup> C., 2008) and

One of the Mother's major concerns was the Student's environmental sensitivities. The District accommodated for this in both the classroom and the activity rooms. For example, new equipment for those rooms was aired out for a time before the Student came in contact with it or used it. The District staff testified that a health plan was in place (for example see Dxpp271-283) which includes an emergency seizure care plan, physician information medications, permissions to administer medication at school, and permission and directions for the bee sting possibility. However, there never was an incident or accident at school. Her communication log that never noted an incident corroborates this. (Dxpp. 331-422).

The District Special Education Director, Classroom teacher, Speech Language Pathologist and the 1-1 aide who testified were all involved and working together to implement effective strategies to educate the Student and alleviate the education related manifestations of the Student's severe autistic handicapping condition. That they tried to do so was borne out by the testimony of the mostly credible and qualified educators who testified and corroborated by the documentary evidence of the IEP's for the 2007-2008 school year, supported by the very instructive graphs and extensive supporting data collected by and at the direction of School Psychologist [REDACTED] contained in the District Exhibits at pages 284-330. This is backed up by supporting data submitted as the almost 400 pages of Jt. Ex. 1a-data accumulated by trimester and Jt. Ex. 1b-data accumulated by goal; and the daily activity logs included as District Exhibit pages 331-442 as well. These activity logs demonstrate the Student's progress in class, including her regressions and the clear slowdown in activity that occurred after the holiday break in 2007-2008. This slowdown also came soon after the move from the Student's home to a commercial building of her home therapy program, which the Mother denied to District staff, was a change for the Student that might explain the regression. The Mother believed that the fact of the same equipment and teacher-just a similar room in a different building equated to "no change for the Student", ignoring the differences between receiving a program in a child's home classroom/-playroom, the same place where you sleep, eat, interact with your Mother, bathe and toilet, clearly a great challenge to this very environmental and sensorial challenged Student. Yet the district documentation and testimony acknowledge the regression but note she still made progress, albeit much more slowly. When a Student makes some progress-

commensurate with her history and ability as was this Student's progress- there is no implementation failure. The IDEA does not mandate an optimal education, or one which will allow a student to reach maximum potential, only an appropriate one from which the student derives some educational value. Lachman v. ISBE et al, 852F. 2nd 290 (7<sup>th</sup> C.1988) and Gill v. Columbia 93 School District et al 217 F. 3<sup>rd</sup> 1027 (8<sup>th</sup> C. 2000).


This District has been complying with the law in all respects. They were providing the Student with an exemplary program in both education and related service areas. The Student was performing albeit at her own limited level. The testimony shows she was happy, smiling, engaged learning. She got along with her peers, never a behavior problem; they felt she was "beginning to find her voice". She was well liked by staff and fellow students. Her learning and social skills were progressing appropriately, given her limited ability, thus she received obvious benefit from the District. All the school witnesses testified to this. The law does not require more. (Schroll v. Bd. Of Educ. Champaign C.U.S.D. #4 2007 WL 2681207 (C.D.IL.2007; Todd v. Duneland Sch. Corp., 299F.3<sup>rd</sup> 899(7th Cir.2002); Alex R. v. Forrestville Valley C.U.S.D. 375 F.3<sup>rd</sup> 603(7thCir.2004). The Parents have failed to sustain their burden of proof on any of the issues raised in their Due Process Hearing request and on which testimony was taken and evidence submitted at this Due Process Hearing. The District is not required to provide reimbursement or any of the other relief requested by the Parents.

#### **DECISION ON ISSUES**

1. The IEP for SY 2007-2008 was appropriate and adhered to by the District. The [REDACTED] 2006-2007 IEP was included, modified on January 19, 2007. Minimal summary evaluation data was included which detailed some progress; the Student attended approximately 5 hours per week from 2/2007 through 5/2008 and 3 hours per week prior to that. Since there was no contrary evidence supplied it appears there insufficient evidence to reach any conclusion other than that the IEP was appropriate for the 2006-2007 year. The district attempted to follow the agreed upon transition plan for 2007-2008 but the Mother never sent the Student for the agreed upon time periods.
2. The training and experience of the District staff working with the Student was adequate to provide FAPE in the LRE for the Student.
3. The district modified the curriculum to accommodate the daily variation in the Student. The Student was the lowest functioning child in her class-there is no way to know if she was behind the others, but presumably, she was.
4. The district provided evidence of appropriate training of staff and supervision of the program by the Special Education Director.
5. There is no legal basis to order the District to pay for or reimburse the Parent for the unilateral private school placement made by the Parent at the [REDACTED] beginning on May 29, 2008.

#### **ORDER:**

1. The District is not required to reimburse the Parents for any of the expense involved in the

 nor is the Parent entitled to any other of the relief requested.

2. If the Parent re-enrolls the Student, the District shall convene an IEP meeting to do transition planning and shall invite private school representatives as well as any private consultants and related services providers. Part-time attendance should be considered to ease transition for the Student. It is not ordered.

**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 parties and to the Illinois State Board of Education. **The right to request such a 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 A CIVIL ACTION**

This decision shall be binding upon the parties unless a civil action is 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 5/14-8.01(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.

**CERTIFICATE OF SERVICE**

The undersigned hearing officer certifies that she served copies of the aforesaid Decision and Order upon Counsel for the Parties by fax on December 22, 2008 and on Parents, District and counsel, and the Illinois State Board of Education at their stated addresses by depositing same with the United States Postal Service at Forest Park, Illinois with postage prepaid on December 22, 2008.

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**JUDGE JULIA QUINN DEMPSEY  
IMPARTIAL DUE PROCESS HEARING OFFICER**

ENTER: December 21, 2008