

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

RECEIVED

OCT 21 2008

[REDACTED]
Student,

v.

)
)
) CASE NO. 2009-0027
)
)

SPECIAL EDUCATION
SERVICES

) MARY SCHWARTZ
) Impartial Hearing Officer
)
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)

DECISION AND ORDER

Jurisdiction

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

Procedural Background

The parents, through their attorney [REDACTED], filed a due process complaint on July 24, 2008, which the district received on July 28, 2008. The Illinois State Board of Education ("ISBE") appointed the undersigned as hearing officer on August 5, 2008. On August 6th, the undersigned sent the parties a Preliminary Scheduling Order and shortly thereafter held an initial status telephone conference with the parties.

The district, through its attorney [REDACTED] of [REDACTED] filed its response on August 11, 2008. The parties participated in a resolution meeting on August 13th and agreed to convene an IEP eligibility/504 meeting on August 21st. At the August 21st meeting, the district determined that the student is not eligible for special education and related services under the IDEA but is eligible under Section 504 of the Rehabilitation Act of 1973.

The hearing was held on September 15, 16, and 17, 2008. [REDACTED] served as court reporter throughout the hearing. This hearing officer has reviewed all the documents presented at the hearing and entered into evidence at the hearing's conclusion. No transcript was ordered prior to this decision, so testimony below is based on the undersigned's memory and hearing notes. This decision is issued within ten days after the hearing's conclusion, as required by Illinois law. 105 ILCS 5/14-8.02a(g55)(5).

Stipulations Entered at Hearing

The parties agreed to the following stipulations at the beginning of the hearing:

1. The student resides in [REDACTED]
2. She is enrolled as a regular education 5th grade student at [REDACTED] her home school.
3. The credentials, experience, and certifications of the student's teachers, school administrators and related service providers are sufficient to make them qualified as such.
4. The qualifications of the outside (non-District) witnesses are accepted as sufficient to make them experts in their respective fields.
5. The translations provided by [REDACTED] are accepted as true and complete renditions of the original documents that were translated.

Issues Presented and Remedies Sought

The parents contend that District 47 did not provide the student a free appropriate public education from July 24, 2006, through the present time based on its:

1. Failure to conduct timely and adequate assessments of the student in all areas of potential disability, with the result that her educational program for this period did not address, or inadequately addressed, her emotional, behavioral, and academic difficulties;
2. Failure to provide the student with essential psychological and social work services at adequate levels of intensity;
3. Failure to fulfill its child find duty to provide timely assessments of the student when the district had substantial evidence that she was a child with a disability that affected her ability to access educational opportunities in the regular classroom; and,
4. Failure to authorize an appropriate educational placement to meet the student's educational needs.

As remedies for the above alleged violations, the parents request that the undersigned order:

1. that the student has a disability that requires special education services;
2. [REDACTED] to provide the student an appropriate educational placement at public expense, which is either a therapeutic day placement or a residential placement, depending on the student's needs at the time a decision is issued in this matter;
3. [REDACTED] to pay for an independent educational evaluation in areas of identified need, including a neurological assessment of the student's cognitive skills and academic functioning, and a social assessment;
4. [REDACTED] to offer related services in sufficient intensity to allow the student access to educational opportunity, including direct social work and/or

psychological services for 90 minutes per week ("mpw") and consultative services of 60 mpw;

5. [REDACTED] to provide the following compensatory education services:
 - a. Social work services for 60 mpw for two years, outside of the regular school day, by a provider selected by the parent;
 - b. Provide for monthly visits by the parents should the student be placed in a residential facility at public expense, for the duration of the student's placement at such facility; and,
6. [REDACTED] to convene an IEP meeting that will consider results of the IEEs and implement the foregoing relief.

Burden of Proof

In an administrative hearing, the party seeking relief bears the burden of proof. *Schaffer v. Weast*, 126 S. Ct. 528, 539 (2005). Therefore, in this matter the parents have the burden of proof as they filed the due process complaint. Under Illinois law, the school district must provide evidence that it has appropriately identified the student's educational needs and that the special education and related services are adequate, appropriate, and available. 105 ILCS §14-8.02a(g). This statutory provision requires the district to produce evidence but does not shift the burden of proof to the district. *Kerry M. v. Manhattan Sch. Dist. #14*, 106 LRP 5847 (N.D. Ill. 2006).

Findings of Fact¹

The student was born in Poland on [REDACTED] (SD 500). Both of her biological parents were alcoholics. (PD 989). For her first three years, the student lived with her biological parents and two older sisters. Then, all three girls were removed from their home due to severe lack of parental care and placed in an orphanage in Poland. (PD 985). The student and her two sisters were adopted by [REDACTED] in 2003, when the student was six years old, and moved to the United States. The adoptive parents are bilingual, fluent in both English and Polish. (PD 959).

The student began attending school in the district in kindergarten. She was a regular education student and also received English Language Learner ("ELL") services. (SD 301). Her kindergarten report card indicates that her listening skills had improved over the year, but she needed many redirections. At the end of the school year, the teacher reported that the student had made great progress and was ready for first grade. (SD 316).

She continued to receive ELL services, which included a specialized reading program, in first grade. Her report card that year indicates that she progressed very well in English but needed to memorize math facts and reinforce her math skills at

¹ The parents' documents are cited as followed by a page number; the district's documents are cited as SD followed by a page number. When a referenced document appears in both parties' binders, it may herein only be referenced to one party.

home. (SD 320). The teacher described her as an eager and delightful student who was excited to learn and worked hard. (SD 321).

In the middle of her first grade year, the student's parents made their first request for a Case Study Evaluation ("CSE"). Their January 5, 2005 request letter asks that the district evaluate all three of their adopted daughters for "lack of comprehension and inability to advance at a normal pace." As to this student, the parents note that while she had made academic progress, she continued to exhibit inappropriate behaviors. They asked that the CSE be conducted in Polish. (SD 313).

The district denied the parents' request on January 13, 2005, stating that it would initiate a pre-referral process to document the student's progress. (SD 312). The district convened a Teachers Assisting Teachers ("TAT") meeting on February 4, 2005 to address the parents' concerns. (SD 300). The TAT performance reports indicate that the student was making grade appropriate progress in reading in all identified areas except two – fluency and noticing when something does not make sense when reading. In the latter two areas, her skills were reported to be "in progress." In writing, she was performing at a grade appropriate level in all identified areas but three – composing complete sentences, correct paragraph formation, and organizing writing activities. Her math skills were at a grade appropriate level in rote counting to 100, ordering numbers correctly, addition facts, counting one-to-one, and recognizing numbers. She also demonstrated grade appropriate skills on all pre-academic skills except stating her home address and telephone number. (SD 302). The only attending/study skill indicated as a deficit was interrupts/talks out. All her motor skills, speech/language skills, and adaptive skills grade appropriate. (SD 303). The student's first grade teacher completed the Achenbach, a behavioral checklist, and checked only five statements out of 113 as "somewhat or sometimes true": argues a lot ("with peers" added); cant' sit still, restless, or hyperactive; disturbs other pupils; breaks school rules ("minor" added); hangs around with others who get in trouble; and, talks out of turn. In comparing the student to typical students of the same age, the teacher reported that she was average in behaving appropriately, working hard, and happiness, and was learning slightly more than others. (PD 700-703). Based on its review, the TAT team decided that the student showed progress in all areas. (SD 305).

The parents' January 5th request identified several behaviors that the parents had observed at home, which were of particular concern to them: when anxious, she was restless and fidgety and bent her fingers to an extreme angle; when bored or sitting for an extended time period, she rocked back and forth; and, when nervous, she pinched her cheek or pulled on her eyebrows and eyelashes. The parents asked the district to notify them if such behaviors occurred at school. The district sent a memo to appropriate staff stating that if they observed these behaviors, they should notify the student's first grade teacher, who would then inform the parents. (PD 704).

On April 20, 2005, the district informed the parents that none of the behaviors of concern had been observed at school. Per the parents' request, the district also offered to contact [REDACTED] to observe the student in various settings during the school day. (SD 299, 443-448). On May 10, 2005, the parents notified the district that they were obtaining a private psychological evaluation of the student. They asked that the district pay for the evaluation because it's April 19, 2005, response was not timely. The parents asserted that they only received oral notification that the district had denied their CSE request.. (SD 442).

The district met with the mother on May 26, 2005, to update her on the student's academic performance. (SD 288). The student was reading at the second grade level, which was above her grade level. Her scores on the Developmental Spelling Test had increased over the year, from 33% in October 2004 to 82% in May 2005. She also scored 92% on the Developmental Sentence Test. She scored at the high end of the Limited Oral English rating on the IPT Test of Oral Language. The classroom teacher reported that the student had friends. He also reported that he had not observed any of the behaviors identified by the parents earlier in the year. (SD 289). The mother requested that the district develop a behavior plan and convene a meeting prior to the start of the next school year with the new teacher. (SD 288). The district provided written denial of the parents' CSE request that same day, based on the TAT team's determination that the student was functioning within grade level expectations. (SD 287).

██████████ conducted a comprehensive psychological evaluation of the student on May 14, 2005. He conducted the evaluation in both Polish and English. (SD 290). ██████████ administered the Wechsler Intelligence Scale for Children -Third Edition ("WISC-III") to assess the student's intellectual functioning. His report does not provide individual subtest scores. Rather, it states that the student obtained an IQ score of 101 on the verbal subtests, 94 on the perceptual and perceptual motor subtests, 98 on the full scale subtests, 98 on the verbal comprehension subtests, 108 on the perceptual organization subtests, and 96 on the perceptual speed subtests. (SD 291, 292). On the Ravens Standard Progressive Matrices, the student obtained an IQ score of 76, which is within the borderline range. On the Beery Buktenica Developmental Test of Visual Motor Integration ("Beery"), she obtained an IQ equivalent standard score of 84, which is in the low average range. He assessed the student's receptive language skills and auditory information processing skills as average. On the Wide Range Achievement Test -Third Edition ("WRAT-3"), the student obtained an IQ equivalent standard score of 99 in word recognition and 90 in spelling. Dr. Zagar also administered the Kaufman Test of Educational Achievement ("KTEA"), on which the student obtained IQ equivalent scores of 97 in math, 105 in reading and comprehension, and 101 in spelling. ██████████ determined that the student was at performing at age, grade and ability level and should be promoted to third grade in the upcoming academic year. (SD 292).

██████████ also assessed the student's social, emotional, and behavioral functioning. He reported that her projective drawings were "filled out with imagination and creativity consistent with a happy disposition and positive outlook." On the Vineland Adaptive Behavior Scales ("Vineland"), she was rated at the borderline delayed range in receptive, expressive and written communication and in personal, domestic, and community daily living skills. She was rated in the average range in the socialization domain. ██████████ report does not indicate who completed the Vineland. The student's scores on the Conners-Wells Self Report Scale were all within normal limits. (SD 293). Based on his evaluation, ██████████ determined that the student had attention and concentration problems that impact her learning both at school and at home. (SD 293). He diagnosed her with Post-Traumatic Stress Disorder ("PTSD") and an Acculturation Problem. His report also indicates that she might have fetal alcohol exposure. He recommended a cognitive behavioral social skills program for 30 to 60 minutes per week ("mpw") to help her develop coping skills and to address acculturation problems. He also recommended a behavior plan. (SD 295).

On June 6, 2005, the parents informed the district that they did not want the student to attend ELL classes in 2005-06. (SD 441). The parents requested a meeting to discuss the accommodations for behavioral issues that [REDACTED] had recommended. (SD 440). The meeting was convened on September 1st. The district decided to informally implement [REDACTED] recommendations through several different means. The classroom teacher was to provide clear expectations and use a discipline system that incorporated accountability. The teacher would check with the student to ensure that she understood directions and tasks. The student was to be given preferential seating in the classroom. A daily and weekly communication system was developed to facilitate school/home communication. The parents also were to be notified of any concerns that warranted immediate attention. The district agreed to notify the parents if staff observed the student pinching her cheek or pulling her eyebrows or eyelashes. The school social worker was to meet with the student for 30 mpw, using a cognitive based social skills program. The mother signed consent for the social work services. (SD 280-284).

In the beginning of second grade, the student and another girl were sent to the office for "repeated problems on the playground." They were given a time-out for hitting and kicking a group of boys and because these problems usually occurred when the children played chasing games, they were no longer allowed to play such games. (PD 534). The student also was sent to the nurse on October 5th after falling off a swing during recess. (PD 531). The mother informed the district on October 21st that the student was not bringing home her parent papers and homework. She also reported that the student had punched or kicked another child twice, had lied about a boy flashing her in the cafeteria, and had hidden sandwiches in her backpack. The mother stated that the student had regressed to "nearly Kindergarten behavior." She reported that the student's behavior had been worse for the prior three weeks, which she said coincided with the regular classroom teacher's absence due to family medical issues. At the same time, however, the mother reported that the student had adapted well to second grade, was excited about her new class, and loved her teacher. The mother asked that someone supervise the student in organizing her backpack at the end of each day and email her daily to inform her what the student would be bringing home. The district agreed that the classroom teacher would check the student's home/school folder and the social worker would address the school behaviors during her meetings with the student. The district also agreed that the social worker would check in with any substitute teacher assigned to the student's classroom. (PD 533, 534).

The student's second grade report card indicates that her academic progress continued that year. At the end of second grade, she was above grade level in reading and at grade level in writing and math. Her report card states that she had "blossomed academically" but needed to improve in self-control and using her time wisely. (SD 325, 327). Her Terra Nova scores, which is the district's standardized assessment, report that her scaled scores were at the 24th local percentile in reading, the 59th local percentile in language, and the 4th local percentile in math. (SD 324).

The parents requested to meet with the student's third grade teacher prior to the start of the school year. The district held the meeting on August 31, 2006. The mother reported that the student had a successful camp experience over the summer except that "she was begging for snack money on a daily basis." The parents had purchased a clear backpack for the student to use at school because they were concerned that she

had stored moldy food in her backpack the prior year. They also reported that she had a history of stealing. The mother asked that the student be monitored at lunch and not permitted to share food with other children. (SD 278). The mother requested that the student not be allowed to wear flip-flops at school and stated that she must wear her glasses all day. The district and parents agreed to continue using the daily assignment book to facilitate home/school communication, to provide preferential seating for the student in class, and to continue social work services. The mother asked the teacher to be on the watch for the signs of nervousness that she had observed at home the prior year. (SD 279). The mother signed consent for group counseling, which was to address social skills, boundaries, and appropriate problem solving skills. (SD 277).

The student adjusted well to third grade and demonstrated satisfactory behavior in school (SD 329). She made satisfactory progress in reading and math and, as in second grade, needed practice and support in math. (SD 329, 331). Her report card again noted that she needed to improve in self-control and using her time wisely. (SD 330). On the Otis-Lennon School Ability Test, a standardized test given in October 2006, her verbal score was below average in comparison with students of the same age and slightly below average when compared to students in the same grade. Her nonverbal score was in the average range. (SD 334). On the ISAT, given in Spring 2007, she scored below Illinois standards in reading and met the standards in math. (PD 521-524).

On January 4, 2007, the mother presented the district with a prescription from [REDACTED] which stated that the student "would benefit from a 504 education program because of her ADHD." (SD 430, 435). After receiving consent from the mother to speak with the doctor, the district sent him a letter requesting information regarding his assessment and recommendations for services and accommodations. (SD 429, 431). There is no indication in the record that [REDACTED] responded to the district's request.

The student was admitted to [REDACTED] on May 12, 2007, for physical aggression toward her parents and destruction of property. According to the doctor's report, the student stated that she had gotten upset at dinner because she did not want to finish what was on her plate, and her father sent her to her room. She had a tantrum, which escalated into violent behavior. The student reported that she had thoughts of hurting herself and had tried to stab herself with a pencil. The report indicates that the parents stated that the student behavioral problems had increased since she stopped taking Concerta and Straterra. (PD 421-426). She was discharged from the inpatient unit on May 29th and placed in [REDACTED] partial hospitalization program. (PD 420).

The student was re-admitted to [REDACTED] patient unit on June 5, 2007, following reports from the parents of mood lability, destruction of property, and aggression toward the parents. The report notes that the "parents did not want her to be home because they felt they were not capable to taking care of her and wanted her to go to a residential placement." At discharge, her diagnoses were Bipolar Disorder NOS, and Attention Deficit Hyperactivity Disorder ("ADHD"). The student had been diagnosed with a thyroid disorder while she was hospitalized. She also had an abnormal EEG, which was suggestive of a seizure disorder. On June 22, 2007, she was discharged from [REDACTED] (SD 273, PD 427-429).

Upon admission to [REDACTED] the student demonstrated a dysthymic mood, intermittent anxiety, and constricted affect. (PD 551). The psychosocial assessment indicates that the student reported that her adoptive mother had grabbed her by the arm and dragged her down the stairs on her stomach. The [REDACTED] social worker made a report to the Department of Children and Family Services ("DCFS"). The assessment also reports that the parents were seeking a permanent placement for the student. (PD 558-561). The student's treatment plan identifies her primary problems as poor impulse control and mood modulation. (PD 562-565). [REDACTED] Education Treatment Plan identifies constant talking out during school as the student's main problem, noting that she needed constant redirection to raise her hand before speaking. To address this problem, the student was to receive five minutes of 1:1 staff time for each academic hour in which she raised her hand to speak. Staff were to provide verbal reminders at the beginning of each hour to help her remember to raise her hand. (PD 566). During her stay at [REDACTED] the student received individual/group/milieu therapies, pharmacotherapy, and educational services. Over the course of her treatment, her mood stabilized and her judgment and insight improved. Her symptoms of homicidal and suicidal ideation declined significantly. She was discharged from [REDACTED] on July 23, 2007, to her parents. (PD 153-157).

The parents arranged for the student to stay with family friends for respite care until she was admitted to [REDACTED] on October 8, 2007. (PD 1004). According to a [REDACTED] report, the family had been under stress for the past year because both of the student's sisters had made allegations against their adoptive father, which resulted in involvement with DCFS and the criminal justice system. The charges were eventually unfounded. The adoptive mother was also investigated by DCFS because bruises had been found on the student. (PD 456, 491). Although the student's at-home behavior was reported to be out of control, she reportedly was performing well both academically and behaviorally at school. (PD 497).

The student was the youngest girl in her unit at [REDACTED] and her transition to the unit was difficult from the beginning. (PD 503). Her behavior toward the girls on her unit is described as defiant, disrespectful, and antagonistic. She was physically restrained seven times over six weeks. The incident reports indicate that she became agitated when she could not have her own way or when staff and peers confronted her about her behavior. Her agitation often escalated during a restraint. (SD 242-270: PD 503). Despite these difficulties on the residential unit, the student was able to develop a working relationship with her therapist. During one individual session, the student reported that she had been "humped" by a family friend during an overnight pass. She was taken to the emergency room for a sexual assault exam, which was inconclusive. The hospital reported the incident to the authorities. (SD 366, 258). While at [REDACTED] the student attended school at [REDACTED] is a regular education school. [REDACTED] reported that the student was not engaged in the classroom, isolated herself from her peers, rarely turned in work or studied, and frequently asked to go to the school nurse. (PD 457). There is no report directly from the school. [REDACTED] hospitalized the student at [REDACTED] because of her aggression and the difficulty and frequency of restraints. (PD 518). She was officially discharged from [REDACTED] while she was [REDACTED] encouraged the parents to pursue an Illinois Care Grant ("ICG") to secure funding for long-term residential treatment. (SD 364-368).

██████████ Psy.D. conducted a psychological evaluation of the student while she was at ██████████. ██████████ evaluated her intellectual and achievement functioning on November 9, 2007. On the WICS-IV, the student achieved a verbal comprehension index of 85, a perceptual reasoning index of 71, a working memory index of 74, and a processing speed index of 88. Her full scale IQ score was 74, which is within the borderline range. Dr. Hunneke noted variability within her index scores, which he opined might be due to her being bi-lingual and having been exposed to substances in utero. On the Woodcock Johnson Tests of Achievement, her scores were well below average on the majority of the scales. On the Berry-Buktenica, the student received a standard score of 86, which is within the average range. Based on his assessment, ██████████ recommend a medical evaluation to rule out Fetal Alcohol Syndrome and an occupational evaluation because of fine/gross motor delays. He also recommended intensive educational intervention to "address pockets of cognitive deficits and learning problems." He opined that she was likely to struggle in an academic setting and required accommodations and a great deal of structure. ██████████ educational recommendations included a highly structured and consistent educational environment, 1:1 assistance to sustain/redirect attention and concentration and solve daily social and functional problems. Additionally, he made numerous suggestions for classroom strategies (e.g., clear communication, minimal distractions, break down tasks into small units, frequent rewards for on-task behavior) and accommodations (e.g., extended time on tests, use of calculator and computer, lecture notes from teacher, reduced written work). (SD 237-241).

The student was hospitalized at ██████████ from November 14, 2007, to December 4, 2007. Her psychiatric diagnoses at discharge were Bipolar Disorder mixed with psychotic features and PTSD. She also was given medical diagnoses of Fetal Alcohol Syndrome and two thyroid disorders, Hashimoto's Disorder and Graves Disease. ██████████, her psychiatrist at ██████████ recommended residential placement. (PD518-521).

The student returned home and attended Alexian's partial hospitalization program from December 7, 2007, to January 9, 2008. She did not report hallucinations or delusions at admission. While the discharge objective was to return her home, staff were concerned because of the parents' difficulty tolerating minor variations from their behavioral expectations. The student reportedly had difficulty dealing with and meeting parental standards. Due to the unstable home situation, staff discussed both a boarding school and residential placement with the family. (SD 232-235, 392; PD 401-402).

While the student was in ██████████ partial program, the parents registered her in the district and asked the district to place her in a therapeutic school due to her history of behavioral problems and placements in psychiatric hospitals and residential facilities. The parents informed the district that they were applying for an ICG. (SD 416, 420). The district offered to work with the parents to address their concerns about the student but emphasized that she needed to be in a district school for the district to determine if her behaviors impacted her educationally. The district stated that it would work with the Mental Health Board to provide the education portion of funding if the student received an ICG. (SD 376). The student was discharged from the partial program on January 9, 2008. (SD 392).

The student was hospitalized at [REDACTED] from January 12 to 18, 2008, because of homicidal ideation toward her mother, sister, and therapist. The admission report states that the student admitted to feeling depressed and having suicidal thoughts for two years. She received individual, group, and family therapy, as well as milieu treatment and medication management at Streamwood. (PD 395-398). She attended [REDACTED] educational program while she was an inpatient. She responded well to the program's structure and completed her schoolwork daily and behaved respectfully toward staff and peers. She was given the Wide Range Achievement Test on January 14th. Her reading score was at the fourth grade level, and her spelling and arithmetic scores were at the third grade level. (PD 362, 365). She achieved a "10" on her educational progress report. (PD 380). Her discharge diagnosis was reactive attachment disorder ("RAD"). (PD 391-394).

The parents requested a CSE on January 21, 2008. Their request letter included documentation from treatment providers who had worked with the student since she had last attended the district. (SD 350). The district agreed to conduct a CSE on January 25th. (SD 219). The student started back to school in the district on January 24th. She was placed in a regular education classroom with counseling support to assist her with transitioning back to school. (SD 215). On January 28th, the mother brought the student to school and informed the district that over the weekend, the student has threatened to kill two teachers and another student. The mother reported that the student made these threats when the mother asked her if she had thoughts of hurting herself or others at home or school. The mother reported that the student had said she was angry at the teachers for telling her to pay attention in class and for making her listen to students play their recorders when she did not have one to play. The mother reported that the student planned to take a knife from home and stab the teachers. (SD 349).

Following district policy, the school notified the local police of the threat. A police officer was dispatched to the school, where he interviewed the student and mother. The student confirmed that she had told her mother that she wanted to kill the teachers but said she did not currently feel like killing them. The officer's report states that the mother was at the school "to document that the school was aware of her daughter's comments and mental health issues." The officer reported that the mother said she did not feel it was safe to leave the student at school. The local crisis line was called to evaluate the student. The DCFS was also informed of the incident. According to the police report, DCFS had an open case on the family and was going to investigate the "concern of possible mental injury." (PD 693-696).

The student was admitted to [REDACTED] that same day. She did not show signs of delusions, hallucinations, or suicidal/homicidal ideation upon admission. The psychiatrist planned to withhold medications to do a "med wash" so that the student could be observed without medication to "see what is underlying some of the behavioral difficulties." (PD 373-375). The student participated in the hospital's educational program and received the highest rating each day at the school. The teachers reported that she did a good job in class, followed directions, and completed her work, though she did have some trouble with math. (PD 370-372).

The district convened a domain meeting on February 8th, while the student was at Streamwood. The parents consented to have the student evaluated. The team determined that it needed additional information, including a standardized assessment

of the student's written expression, an assessment of her reading comprehension using an open-ended format, a standardized assessment of her non-verbal intelligence such as the CTONI, and, if indicated, an assessment of her memory/executive functioning. The team also requested information on the student's current vision status/diagnosis and an occupational therapy assessment. (SD 193-196). The district's meeting notes report stressors placed on the family by the student's behaviors at home and indicate that the parents were discussing funding for a [REDACTED] residential facility with their insurance company. The team discussed how the assessments would be conducted if the student did not return to the district. (SD 198-203). On February 26th, the parents informed the district that the [REDACTED] facility had agreed to conduct the evaluation. (SD 347).

The student was discharged from [REDACTED] on February 20, 2008, and admitted to [REDACTED] that same day. [REDACTED] is a residential treatment facility in [REDACTED]. (SD 347; PD 366-369). While at [REDACTED] the student attended the [REDACTED] [REDACTED] identified the student's problems as mood lability with homicidal and suicidal thoughts, oppositional and defiant behaviors, and family discord. Her initial diagnoses were Mood Disorder NOS, Mood Disorder secondary to cerebral dysrhythmia, RAD, rule out ADHD, and parent child relational conflict. (SD 474, 475). The initial psychiatric evaluation reports prognosis is "poor without intervention at this time." (SD 489-491).

The psychiatrist at [REDACTED] was concerned about how much reinforcement the student was getting from her homicidal threats and asked the staff to carefully document any suicidal or homicidal threats she expressed. The psychiatrist noted that the student expressed homicidal thoughts randomly and without specific plan or intent. (PD 203.) The psychiatrist reported that when she asked the directly about such statements and whether the student would follow through, "she shakes her head and says 'of course not.'" (PD 256). In a later note, the doctor reported that the student had told her that she did not know what her mother wanted when she repeatedly asked her question. (PD 254). Nursing notes report that the student once said she wanted to kill someone because another student had mispronounced her sister's name and another time told a staff member that she sometimes thinks about killing people, including a peer who sometimes touches her. (PD 186, 210). The majority of the nursing notes indicate that the student complied with the daily routine and interacted positively with peers. (PD 185, 186, 206-210, 213). An individual therapy note reports that although the student stated that she wanted to kill peers who excluded her, she "didn't think she could ever hurt them, she just felt angry and hurt by them." (PD 202). By May, the student was exhibiting role model behavior most of the time. She had had no aggressive episodes on the unit. However, she did exhibit behavioral problems with her mother during visits. (PD 230- 254). On July 16th, the parents asked to extend the student's stay at [REDACTED] "for as long as possible" because they believed the student still presented a danger to herself and others. (PD 255).

[REDACTED] conducted a neuropsychological evaluation of the student on February 25th and March 17th. The evaluation included the following: the Wide Range Assessment of Memory and Learning-Second Edition (WRAML-2); WIAT-II; Delis-Kaplan Executive Functions System, Verbal Fluency, Design Fluency, Trail Making 1-5 (D-KEFS); Conners' CPT-II; Index Finger Tapping, Lateral Dominance; Reitan-Indiana Aphasia Screening Test; Screen of language comprehension and expression; and, a neurobehavioral exam. The examiner also reviewed the student's 2007 WISC scores.

On the WRAML-2, the student scored 97 on the verbal memory index, 88 on the visual memory index, 92 on the attention/concentration index, and 91 on the general memory index. Her verbal/auditory memory index score was in the average range overall. On the WRAML-2 measures of attention/concentration, she scored in the low average to average range. The student's grade based standard scores on the WIAT-II were 101 in word reading, 102 in numerical operations, 95 in spelling, and her age based standard scores in the same areas were 96, 96, and 91. All scores are within the average range, and the examiner found no learning disability. She had mild difficulty with verbal comprehension of one and two-step directions. Her nonverbal executive functioning was generally intact, but letter sequencing was in the borderline impaired range. The examiner noted that verbal cognitive flexibility was a notable weakness for the student, which she attributed to the student's age when she began to learn English.

Based on her findings, the evaluator made the following educational recommendations: teachers should avoid power struggles and provide the student with a safe place to go if she becomes overstimulated or overwhelmed; consistency across the home/school environments with regular team meetings and progress reports to reinforce this; all staff should be familiar with the student's limitations and needs; the student should be informed of changes in advance; clear and consistent methods for indicating what work need to be done, how much work is involved, when the work is to be finished, and what will happen when the work is completed. (SD 476-483).

The [REDACTED] is a general education school located on [REDACTED] campus. The school has approximately 100 students in grades K-12. There are two classrooms for elementary school children. Each classroom has a certified teacher and an aide. The usual classroom ratio is about 1:8. The school is quite structured. An aide or teacher meets the students at the start of the day and escorts them to class. The children are also escorted to a bathroom or water break individually, as requested. Students sit at individual desks and work individually or in small groups for reading, language arts and math. Science and social studies are taught in group instruction, with specific assignments given at each student's grade level. The teachers are trained in behavior management. (PD 82-85).

The student made academic progress at UCS. She scored between 86 and 95 in all academic subjects and physical education. (PD 164, 166). Her classroom teacher reported that she behaved well in the classroom, followed directions, and interacted appropriately with peers. She had no behavioral outbursts in class. (PD 64). Although she sometimes became frustrated in school, she was able to self-modulate her frustration. She was very compliant and worked well. (PD 235, 239, 262, 263, 268).

The [REDACTED] conducted a full individual evaluation of the student, including a review of educational and psychological records, teacher information, and a neuropsychological evaluation. (SD 453-454). The mother consented to the evaluation on March 30, 2008. (SD 464). On the Kaufman Brief Intelligence Test -2 ("K-BIT2"), the student achieved a verbal SS of 85, a non-verbal SS of 99, and an IQ composite of 91. The examiner reviewed the student's 2007 psychological evaluation, which had reported an IQ within the borderline range. The [REDACTED] examiner opined that the lower score could be due to the significant emotional and behavioral problems the student was experiencing at [REDACTED] at the time of that evaluation. The examiner was confident that the student's IQ was at least low average to average, as shown on the KBIT-2. The student demonstrated some difficulty when asked to retrieve a specific word describing

an object or action but was able to correctly identify the correct picture when given a verbal description of an object or action. The examiner opined that this impacted by the student's not learning English until age 6. (SD 457).

Based on the scores the student achieved on the Measures of Academic Progress ("MAP") and the Woodcock Johnson III Test of Achievement ("WJ III"), the examiner concluded that the student was capable of functioning at or above grade level. The student scored at the 4th grade level on the Flynt-Cooter Reading Assessment. The occupational therapy assessment included classroom observations and formal and informal testing. The examiner determined that the student had adequate gross and fine motor skills within the classroom, and that both skills were within normal limits. She scored in the average range in overall visual motor coordination and visual perception. Her scores were within normal limits on the Children's Depression Inventory. She reported "at risk" scores in Typicality and Attention Problems on the BASC-2. She did not report overtly psychotic symptoms in the classroom, and none were observed. The student's teacher at [REDACTED] reported that the student was well behaved in class, interacted appropriately with peers, followed directions, and had no behavioral outbursts since enrolling at [REDACTED] (SD 453-461).

[REDACTED] held an eligibility meeting on May 8th to review the school's evaluation. The team determined that the student was progressing well behaviorally and academically and did not demonstrate a learning disability or emotional problem that required special education. She behaved well in the school setting, followed directions, and interacted appropriately with peers. She was not hurting herself or others at school. The parents disagreed with the determination. The team agreed to convene a meeting to discuss a 504 plan if the parents so requested. (SD 467-474).

By letter dated May 12, 2008, the parents asked the district to convene an emergency IEP meeting to address their concerns that the student requires residential care. Their request letter states ten incidents that had occurred in school between the student's first and fourth grade years, which the parents contend support their request. The list includes deliberately breaking a ruler in class, cutting her clothing in class, punching a peer in the stomach, falsely accusing a boy of flashing her, stabbing her hand repeatedly with a pencil, banging her head on her desk in class, receiving a detention for being disrespectful, and voicing homicidal ideation toward two teachers and a student. The parents stated that the district had not complied with the timeline for responding to a request for an evaluation. (SD 345).

The district received the parents' letter on May 14th and responded the next day. The district informed the parents that it had kept in contact with the residential facility throughout the student's placement and had been informed that [REDACTED] had completed the CSE, determined that the student was not IDEA eligible, and offered to develop a 504 plan. The district stated that if the parents chose to reenroll the student in the district, it would be prepared to write a 504 plan. (SD 343).

On August 17, 2008, the student was discharged from [REDACTED]. Her psychiatric diagnoses at discharge were Mood Disorder NOS, Mood Disorder secondary to general medical condition (cerebral dysrhythmia), ADHD inattentive type, PTSD, RAD, and parent child relational conflict. The discharge report indicates that she had responded well within a structured milieu and had demonstrated the ability to consistently self modulate her behavior and mood. (PD 329, SD 451).

The district convened an eligibility meeting on August 21st, at which the student's records and evaluations from [REDACTED] and [REDACTED] and [REDACTED] were reviewed. The team determined that the student was not eligible for special education and related services under either emotional disability or other health impairment. (SD 171-187). However, the district did determine that the student qualified for a 504 plan and so prepared a plan to address her inattentive behaviors, anxiety in transitioning between programs, and stress under time constraints. Several accommodations were also developed to address these concerns. (SD 166-169).

[REDACTED] at [REDACTED] assessed the student in early September 2008. [REDACTED] reviewed the student's birth records and [REDACTED] 2007 psychological evaluation and interviewed the mother. [REDACTED] concluded that the student has a "documented history of prenatal exposure to alcohol, documented growth impairment at birth, microcephaly and central nervous system impairment as indicated by her psychological evaluation by [REDACTED] Psy.D., in November 2007." [REDACTED] diagnosed the student with Alcohol Related Neurodevelopmental Disorder ("ARND"), which is a Fetal Alcohol Spectrum Disorder ("FASD"). [REDACTED] report states that children with prenatal exposure to alcohol may exhibit a combination of cognitive impairments, behavior problems, emotional and social dysfunction, sensory integration disorder, and developmental delays. (PD 997, 998).

[REDACTED] assessed the student on September 6, 2008, using the Minnesota Multiphasic Personality Inventory-Adolescent ("MMPI-A"). [REDACTED] read the MMPI-A to the student, and she gave oral responses to the questions. Based on the MMPI-A, he concluded that the student has impaired thought, attention, and concentration problems and may have an organic component to her social, behavioral, and emotional issues. He recommended a highly structured environment, untimed exams, and close monitoring of her progress. (PD 1015-1018).

Conclusions of Law

The central issue in this case is whether the district correctly determined that the student is not eligible under the IDEA for special education and related services. The parents argue that the student is eligible under the category of emotional disturbance or other health impairment ("OHI"). They assert that she has severe impairments that adversely impact her educational performance.

To be found eligible under the category of serious emotional disturbance ("SED"), a student must exhibit one or more of the following characteristics over a long period of time and to a marked degree: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; a tendency to develop physical symptoms or fears associated with personal or school problems. A student with an emotional problem is only eligible under the IDEA if the emotional problems impact her educational performance. 34 C.F.R. §300.8(c)(4)(i). A child with ADHD or other chronic health problem meets the definition of other health impairment if the student's health problem results in "limited strength,

vitality, or alertness, including a heightened alertness of environmental stimuli, that results in limited alertness with respect to the educational environment” and adversely impacts the student’s educational performance. 34 C.F.R. §300.8(c)(9). A student with a disability must also need special education and related services because of her disabling condition. 34 C.F.R. §300.8(a)(1). If a child needs related services and not special education, that child is not a child with a disability for purposes of the IDEA. 34 C.F.R. §300.8(a)(2). Thus, the eligibility determination is a multi-step inquiry.

The principal testified that although the student was nervous and upset when she began kindergarten, she adjusted well within a few weeks. The student participated in the district’s ELL program in kindergarten and first grade. The ELL program is designed to address and/or rule out any dual language concerns that might impact a student’s educational progress. (SD 438).

The principal testified that the student continued to progress academically in first grade, as shown both on teacher assessments and district benchmarks. As to the two behavioral instances about which the mother had raised concerns – breaking a ruler in class and cutting her clothes with scissors – the principal testified that staff had not observed these incidents. However, she stated that such behaviors are not unusual in first grade where first graders sometimes “go home with new haircuts” because of their first experiences using scissors. The district responded to the parents’ behavioral and academic concerns by convening a TAT meeting. The evidence shows that the student was making appropriate academic progress even though there were some variations in her skill levels across subjects. The behavioral concerns noted by the parents at that time were never observed within the school setting.

Although the student did have a few behavioral incidents in second grade, there was no testimony or evidence presented showing that these were other than typical second grade behaviors. The discipline imposed by the district when the student and a peer were hitting and kicking some boys on the playground appears to have been an appropriate response to second grade behavior and a constructive way to teach cause/effect: the girls were no longer allowed to play chasing games because the behaviors occurred during such games. The principal testified that sometimes the students do hit each other. When the student punched a boy in the stomach in second grade, staff discussed it with her, and she wrote a letter of apology to the boy and read it to him. The principal testified that she never hit another student again. Evidence also shows that the district was responsive to the mother’s requests to help the student with her organizational skills, by checking her home/school folder and addressing these skills in her work with the social worker. (PD 532). There is no evidence showing that these behavioral incidents interfered with her ability to progress academically. She was above grade level in reading and at grade level in math and writing at the end of second grade. Her standardized test scores were all within average range.

Evidence and testimony shows that this progress continued in third grade. The student’s third grade teacher testified that the student enjoyed being at school and performed at grade level in math and writing and above grade level in reading. The teacher testified that when the student was nervous about math and lacked confidence in her ability to do math, she stopped class about 15 minutes early each day to allow the students time to do their math homework. Although this accommodation was initiated because of the student, the teacher instituted it for everyone because she did not want the student to stand out. She testified that this worked wonderfully for the student

because she got her homework done and had assistance if she needed it.

The parents point to comments on the student's report card that she needed to improve in self-control and using time wisely as indications that she was struggling. However, the third grade teacher testified that these areas were checked for needing improvement because the student was a "social butterfly" and busy visiting with her peers. The teacher testified that this is very common behavior for third graders. She testified that she did not observe the student having attention or focusing problems nor did she observe any of the signs of nervousness the mother had described in their meeting before the school year started. The teacher testified that she never observed signs of aggression or self-injury, such as head banging or poking herself with a pencil, in the student. The testimony of the staff involved with the student in these early years was credible. Their care and concern for the student, coupled with their responsiveness to the parents' concerns about behavioral issues, was clear from their testimony. The evidence shows that the student demonstrated academic progress in school and developed satisfactory relationships with her peers and teachers. She did not show any physical symptoms or fear associated with personal or school problems.

The parents also argue that the following behavioral incidents were signs of her emotional problems and occurred at school: deliberately breaking a wooden ruler in her first grade classroom; cutting her clothes in her first grade classroom; punching a male peer in the stomach in second grade; falsely accusing a boy in the cafeteria of "flashing" her in second grade; bringing home a "pile of moldy ash and food" in her backpack at the end of her second grade year; repeatedly stabbing the palm of her hand in third grade; banging her head on her desk in the third grade classroom; detention for being disrespectful in third grade; banged her head in the school bathroom at St. Bede's; and, a "homicidal plan to kill two teachers and one student" two days after she returned to the district in January 2008. The parent provided this list to the district in their May 12, 2008, letter requesting residential placement.

The district's social worker testified regarding the above incidents. The social worker has a master's degree in social worker. She has been with the district for 20 years. Prior to that, she worked in a residential facility for three years. The social worker testified that neither breaking a ruler nor cutting her clothes was a sign of emotional problems. As to punching the other student, the social worker testified that this also was not a sign of emotional disturbance and that the student had written an apology letter to the other student. The social worker stated that the district had investigated the "flashing" incident and determined that there was a boy whose boxer shorts were showing above his pants; however, he was not "flashing" anyone. She further testified that the district had found something in the student's backpack but did not think it was food. She testified that no one had observed the student banging her head and that there was no evidence that the student had stabbed her hand at school. She also said that the school does not give detentions. As to the January 2008 incident, the social worker testified that she had been called to the office on that day to interview the parent and student. She testified that the student was not agitated or upset, from which the social worker concluded that the student would not act on the threat. She testified that she has never heard the student threaten anyone and does not believe the student is capable of harming anyone.

The hearing officer finds that these incidents prior to January 2008 do not qualify as inappropriate behaviors under normal circumstances. At most, these are isolated behaviors, one or two incidents a year. The parents have offered no evidence that these incidents occurred as stated, and district witnesses have testified that most of these incidents were not observed by staff. Of those that were observed, the district has credibly explained that these are examples of typical student behaviors in various grades. The student was appropriately disciplined for one incident. The district investigated another and determined that it did not happen as the student reported it to her parents. As to the incident at [REDACTED], no one from that school was called testified nor were any documents from [REDACTED] entered into evidence. Thus, there is no credible evidence regarding that incident.

As to the January 28th incident that resulted in the student's hospitalization at [REDACTED] and eventual placement at [REDACTED] the threats that form the basis of that incident were made in the home. It only entered the educational arena when the mother brought the student to school and told the district about the threats the student had made over the weekend. The fact that the parents did not seek help for the student as soon as she made the threats raises questions about how seriously they took the threats. The district has implied that the parents' motivation in asking for a therapeutic placement is the first step in seeking residential placement for the student. The parents' alleged motivation is not relevant in this matter. At issue is the eligibility of the student for special education and related services, not the parents' motivation.

The parents have provided several cases in support of their position that the above behaviors and hospitalizations demonstrate that the student should have been found IDEA eligible as a student with a serious emotional disturbance.² The record shows that the student had significant absences from school due to psychiatric hospitalizations and residential placements. The parents cite *Board of Education of Montgomery County, Maryland v. N.G.* ("Montgomery County"), 230 Fed. Appx. 329 (4th Cir. 2007) for the proposition that absences alone can impact the student's educational performance. In *Montgomery County*, the student's academic and social functioning deteriorated after she returned to school from her hospitalizations. The court also found that there was significant evidence that the school environment had aggravated the student's symptoms, which then increased her absences. Although there is no doubt that the student herein has missed a great deal of school over the past year, there is no evidence showing that her absences have impacted her educational or social functioning. In fact, district staff testified that the student was able to pick up academically and socially from where she had left off when she returned to school. Other than needing to practice math facts, her absences did not impact her educational progress. Further, unlike *Montgomery County*, the district's educational setting has thus far been one place where the student's behavioral symptoms have not evidenced themselves.

The district has provided case authority for its assertion that the student's psychiatric diagnoses alone are insufficient to show that the student has an emotional disturbance under the IDEA. See, *C.J. v. Indian River County School Board*, 41 IDELR 120 (11th Cir. 2004); *John Doe, Jr. v. Board of Education of the State of Connecticut*, 17 IDELR 37 (D.C. CN 1990). In these cases, each court determined that a psychiatric

² The undersigned has reviewed all the case authority submitted by each party and herein cites only to those most significant to rendering this decision.

diagnosis alone is insufficient to show that a student meets the IDEA definition of emotional disturbance. *Id.* Likewise, even with the student's multiple psychiatric diagnoses, the parents still must prove that her emotional disturbance adversely affected her educational performance.

The parents, on the other hand, contend that *Elgin Unit School District 46, 40 IDELR 82 (Ill. SEA 2003)* supports their position that the student's multiple hospitalizations are sufficient to meet the criteria for emotional disturbance. In *Elgin*, the student's educational performance and behavior at school were adversely affected by her emotional problems. Although the student's educational performance between kindergarten and fourth grade were not adversely impacted by her emotional problems, the question remains as to the impact during the subsequent time.

The student's intellectual performance as measured by standardized psychological assessments was within normal limits when she was evaluated in 2005. When she was evaluated in 2007, her functioning was assessed as in the borderline range. [REDACTED] who conducted the 2007 evaluation, testified that the student's performance was impacted by the emotional turmoil she was experiencing when he evaluated her. He testified that her emotional turmoil accounted for the discrepancy between her 2005 and 2007 IQ scores. The evidence and testimony supports [REDACTED] conclusion. When [REDACTED] evaluated the student, she was in what was, from all accounts, a very difficult residential placement at [REDACTED]. [REDACTED] Director of Residential Services, testified that the student was the youngest girl on her unit. She stated that the facility had to obtain a waiver from DCFS to admit her because it was not licensed for children her age. All the other girls on the student's unit were between the ages of 12 and 14. [REDACTED] testified that the student did not "gel well" with Mercy's structure and routine, was restrained multiple times for physical aggression, and was hospitalized because the residential facility could not manage her behavior. It is clear from this testimony that the student was in "emotional turmoil."

The [REDACTED] psychological assessment supports the determination that the student's intellectual functioning is at least average.³ The [REDACTED] evaluator independently opined that the student's low scores in 2007 were likely due to the significant emotional and behavioral problems she was experiencing at [REDACTED].⁴ The [REDACTED] evaluator determined that the student was functioning at least at a low average to average range. While the foregoing testimony shows that the student's functioning was impacted by her tumultuous placement at [REDACTED] it is important to note two things. The parents, not the district, placed the student at [REDACTED]. More importantly, she recouped her functioning once she was no longer in that environment. Her performance within the district, even though she was there only for a short time, supports a finding that her educational functioning stabilized and was no longer impacted by emotional problems. Similarly, the student performed well at [REDACTED] both behaviorally and academically. The parents have not shown by a preponderance of evidence that the student's emotional problems adversely impacted her educational performance such that she requires special education and related services.

³ None of the [REDACTED] staff testified at the hearing, although each party had witnesses from these placements on their final lists and had agreed that these witnesses could testify by telephone. When the parent called the [REDACTED] Director of Special Education to testify on August 16th, she stated that she would not be testifying on advice of her counsel.

⁴ Although [REDACTED] testified that the student's IQ scores were impacted by her emotional turmoil, his written report does not reflect this opinion.

[REDACTED] is medical director of psychiatry at [REDACTED]. He is a board certified child and adolescent psychiatrist. He is on staff at [REDACTED] and also in private practice. [REDACTED] testified that he had worked during her hospitalization at [REDACTED] and recently evaluated her in his private practice. He met with the student on August 28, 2008, for ten minutes and also met with her mother for half an hour. He testified that he has diagnosed her with Bipolar Disorder, mixed state with psychotic features and Oppositional Defiant Disorder. [REDACTED] testified that the student is emotionally fragile and at risk for decompensating. He testified that a stressful situation could "easily spiral her downward." He did state that she was stable when he examined her at the end of August. He expressed a concern that the student could lose all she has gained from her past treatment if she is not in a therapeutic setting. Despite these concerns, [REDACTED] testified that he has neither observed the student in school nor talked with district staff.

[REDACTED] is the student's current treating clinical psychologist. She has worked with the student since February 2008, when the student was at [REDACTED]. [REDACTED] testified that she provided family therapy to student and her mother via telephone conference call while the student was placed at [REDACTED]. She testified that she currently sees the student and mother together. [REDACTED] testified that the student is currently stable but shows some impulsivity. She testified that the student has never expressed any homicidal thoughts to her. She testified that the student could decompensate quickly and needs special education to prevent decompensation. She was unable to say what the student's emotional needs are in the school setting nor could she state how the student's educational performance is adversely affected by her emotional problems.

The testimony of [REDACTED] and [REDACTED] is speculative at best. Although both testified that the student is currently stable, they expressed concern that she might decompensate at some unspecified time in the future without special education. Notably, neither could identify specific ways in which the student's problems adversely impact her educational performance. The concern of these treating professionals is understandable and admirable; however, that is not the standard for deciding whether the student is eligible for special education.

The parents also assert that the student is also eligible under OHI. [REDACTED] is a pediatrician at the Children's Research Triangle ("CRT"). She evaluated the student on September 2, 2008, at the parents' request. (PD 997, 998). She testified that she reviewed the student's Polish medical records and of [REDACTED]'s 2007 psychological assessment for her evaluation. She also conducted interviews with the mother and student. (PD 997, 998). [REDACTED] testified that Alcohol Related Neurodevelopmental Disorder ("ARND") is a fetal alcohol spectrum disorder caused by prenatal exposure to alcohol. A diagnosis of ARND requires a documented history of prenatal exposure to alcohol and evidence of central nervous system impairment. (PD 997). [REDACTED] testified that the student's medical records show a prenatal exposure to alcohol. [REDACTED] testimony and report indicate that the student showed central nervous system impairment in two ways: first, she has microcephaly – a small brain and head size; and second, [REDACTED] evaluation showed that the student has central nervous system impairment. [REDACTED] testified that she would diagnosis ARND even without [REDACTED] evaluation.

██████████ also testified that some students diagnosed with ARND can be educated within a regular education classroom. She testified that she has seen students with ARND who do not have an IEP or 504 Plan. She provided no testimony as to how the student's ARND impacts his education, other than stating that the mother reported that the student has "emotional issues." The undersigned has several concerns about ██████████'s testimony and report. First, her assessment was based on an evaluation ██████████ that is not current and has been shown to be an inaccurate assessment of the student's intellectual functioning. Of course, she could only review records that she was given; nonetheless, the 2007 evaluation does not provide an accurate assessment of the student's intellectual functioning. Also, there was no testimony or evidence of how ██████████ determined that the student had a small brain/head size. ██████████ evaluation was conducted after the district made its eligibility determination, so the district did not have the opportunity to consider her findings. Most importantly, this testimony is not specific enough to show whether the ARND diagnosis adversely impacts the student's educational performance and if so, how. Thus, the hearing officer does not give significant weight to ██████████ testimony. It raises important questions, but it does not prove by a preponderance of the evidence that the ARND adversely impacts the student's educational performance and that therefore the student needs special education and related services.

Much testimony and evidence was presented during this hearing regarding the student's emotional problems, psychiatric diagnoses, and hospitalizations and residential placements that occurred because of those problems. However, the law requires the parents to show by a preponderance of the evidence that the student has an emotional disorder or OHI that adversely impacts her educational performance. They have not sustained their burden on this issue. Because the undersigned has found that the district's determination was correct, the issues of whether the student received an appropriate placement with a sufficient level of services are moot.

The next issue is whether the district's evaluation was appropriate and timely. At the district's August 2008 eligibility meeting, the testimony and evidence shows that it considered the assessments conducted by ██████████ in 2005, ██████████ in 2007, ██████████ in 2008, and ██████████ in 2008. Based on these evaluations, the district determined that the student's intellectual functioning was at least average and that she was making satisfactory progress in regular education. The disparate results shown in the 2005 and 2007 psychological evaluations are discussed above and will not be repeated here. The evidence and testimony supports the ██████████ determination that the student's intellectual functioning is at least average. On the ██████████ achievement assessments, the student received grade equivalent scores were 3.5 (broad reading) and 5.9 (written expression). The ██████████ staff did not report any behavior or academic problems within the school setting. Based on its evaluation, the ██████████ team determined that the student did not have a learning disability or emotional problem that required special education.

The district's school psychologist testified that the ██████████ evaluation met the district's expectations. She also testified that she had reviewed the ██████████ neuro-psychological evaluation, found it a thorough evaluation and agreed with its findings. She testified that the neuropsychological evaluation provided the additional information that the district had requested at its domain meeting. The district's school psychologist observed the student twice this year in her classroom. She testified that the student was alert and oriented. She reported that the student participated in class by raising her

hand and was very happy when she was called on and gave a correct answer. She testified that she did not observe any atypical behaviors.

██████████ testified that the K-BIT is only a screening test and does not assess processing speed or working memory. However, the ██████████ neuropsychological evaluation does discuss processing speed and working memory. The ██████████ evaluator determined that the student's working memory was in the borderline impaired range. (SD 480). On the WRAML-2, the student also received scores related to working memory. (SD 479). Because ██████████ and ██████████ staff declined to testify, one doing so on the advice of counsel, there is no testimony from them regarding these reports. Likewise, there is no credible testimony that their evaluation was not adequate or flawed in any way. The apparent omission of an assessment of processing speed does not invalidate the entire evaluation. The parents have not shown by a preponderance of evidence that ██████████ assessment was inadequate. Further, the parents agreed to have ██████████ assess the student in lieu of the district assessing her and gave consent for the evaluation. Additionally, there has been no showing that the assessment was not timely. Because the student had been evaluated at ██████████ only a few months prior to the district's eligibility meeting, there was no need for the district to re-evaluate the student.

A district has an affirmative obligation to evaluate all children suspected of having a disability. 34 CFR 300.111(a)(1)(i). The statute of limitations in IDEA is two years. 20 U.S.C. §1415(6)(B). In this case, the statute of limitations began to run on July 24, 2006. On and after that date, the district knew that the student had numerous diagnoses, both psychiatric and medical. This information should have alerted the district that the student might have a disability, particularly given the parents' concerns. The district was providing "informal" services to the student in 2006 to address social skills, boundaries, and problem solving." (SD 277). Rather than proceeding informally, the district had a duty to evaluate the student, and this it did not do until recently. Therefore, the district failed to fulfill its child find duty. However, given the undersigned's determination that the student does not have a disability as defined in the IDEA, this failure is *de minimus*.

The foregoing facts and conclusion of law warrant the following order:

Order

All the parents claims against the district in this matter are hereby dismissed. The district need take no further action in this matter.

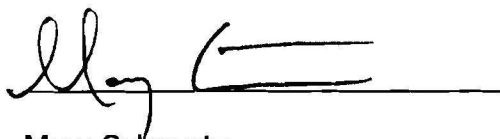
Right to Request Clarification

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

Right to File Civil Action

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

ISSUED: September 29, 2008

A handwritten signature in black ink, appearing to read 'Mary Schwartz', is written over a horizontal line. The signature is stylized and cursive.

Mary Schwartz
Impartial Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Decision and Order was sent by certified mail, prepaid and directed to:



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

before 6:00 p.m. on September 29, 2008

A handwritten signature in black ink, appearing to read "Mary Schwartz", written over a horizontal line.

Mary Schwartz
Impartial Hearing Officer
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