

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

MAR 26 2009

[REDACTED])
Student)
)
and) Case no. 2009-0076
) Stacey L. Stutzman
[REDACTED]) Impartial Hearing Officer
District)

DECISION AND ORDER

This matter is before the undersigned impartial hearing officer for a due process hearing concerning Parent's request for Orders that District appoint a properly trained psychologist or psychiatrist to evaluate Student for a mathematics disorder and autism, designate Student eligible for special education and related services due to autism and a mathematics disorder, provide Student with specialized instruction and other accommodations relating to his disabilities, place Student in an environment conducive to such specialized instruction and services, and provide Student with transportation to and from school. Parent also requests that hearing officer order the District to raise Student's past grades to be commensurate with his standardized test scores. The hearing officer has jurisdiction to hear and decide this matter, with the exception of any issues that come exclusively within Section 504 of the Rehabilitation Act and not within the IDEA, under 105 ILCS 5/14-8.02a(g)(2008). The parties have been informed of their hearing rights under 23 ILAC 226.625 and 34 CFR 300.512. The undersigned Hearing Officer has also advised the parties that there are and have been no conflicts which have prevented her from conducting a fair and impartial hearing and rendering a fair and impartial decision in this cause.

Procedural History

Student's Father submitted correspondence to the Principal of Student's school of attendance on September 2, 2008 requesting a due process hearing regarding Student's IEP. The request did not include the reason for the request or information about the Student or the Father other than their names. Student's Father faxed correspondence to the principal of Student's school of attendance on September 4, 2008 requesting a due process hearing in regard to District's refusal to accommodate Student's disabilities and referring to his correspondence of September 2, 2008. No further information was provided. Also on September 4, 2008, Student's Mother submitted correspondence to the Principal stating that she, as biological parent with equal educational rights to Father's, disagreed with Father's request for an autism evaluation and did not wish the District to proceed with any evaluations of Student at that time, as she wished to review Student's records, obtain information, and address any issues. All three of the above correspondences were forwarded to the Illinois State Board of Education by District on September 12, 2008 with a request for assignment of an impartial hearing officer, noting on the request form that District had received Father's hearing request on September 5, 2008 and noting Student's eligibility as "Section 504."

ISBE received the aforesaid request on September 17, 2008 and assigned the matter to the

undersigned hearing officer, who received it electronically on the ISBE Special Education Database System (SEDS) web site on September 18 and via United Parcel Service delivery on September 19, 2008. The Pre-Hearing Conference was initially scheduled by SEDS for October 10, 2008 and Hearing Officer left it at that date when she did not receive return phone calls from either party in an attempt to confirm a Pre-Hearing Conference date. SEDS initially scheduled the hearing in this cause for October 24, 2008. Hearing Officer was able to contact Mother by phone. Mother advised that she did not wish to participate in the Pre-Hearing but that she did wish to be notified of the hearing date and to attend the hearing. Correspondence advising the parties of the October 10 Pre-Hearing and addressing other pertinent issues was submitted to Mother, Father, and District counsel on September 24, 2008.

District did not submit a Notice of Insufficiency in this matter. On September 23, 2008, District counsel issued correspondence to Father, with a copy to the undersigned Hearing Officer, which he designated as his Response to Father's request for a due process hearing. Therein he advised that Student did not have an IEP but rather that he had a 504 Plan most recently updated on February 13, 2008. He also advised Father that District stood ready to convene a domain meeting to determine appropriate assessments and conduct a full individualized evaluation of Student. Counsel also explained the processes of resolution session and mediation and offered dates of his availability for mediation. He requested that Father contact him regarding same.

Hearing Officer attempted to convene the Pre-Hearing Conference in this matter as scheduled on October 10, 2008 by initiating a telephone conference call with Father and District counsel. However, Father, an attorney, was not available when called for the conference, and District counsel, when contacted, advised that the resolution session had not yet been held, nor had it been waived. Therefore, the Pre-Hearing Conference was continued to October 24, 2008 by Order dated October 11, 2008.

Hearing Officer again attempted to convene the Pre-Hearing Conference in this matter as scheduled on October 24, 2008 by telephone. District counsel submitted a Pre-Hearing Disclosure Statement including his witness and document lists prior to the conference. Father did not submit witness or document lists. Both Father and District counsel were available for the conference, and they advised the Hearing Officer that a resolution session had been convened on October 22, 2008 and that an IEP meeting was scheduled for October 29, 2008. Father stated that he would attend the IEP meeting as scheduled and also requested leave to amend his hearing request on or before October 31, 2008. Per Status Report and Order dated October 24, 2008, Father was given leave to do so. The Pre-Hearing Conference was therefore continued, as reflected in the aforesaid Order, to December 1, 2008.

Father submitted his Amended Due Process Hearing Request, which included the required information about Student, the nature of the problem, and proposed resolution, on October 31, 2008. District counsel submitted correspondence designated as his Response to same on November 15, 2008, wherein he requested that Father consent to evaluation of Student in all relevant domains, including a Social Assessment, in order to complete an FIE and convene an IEP meeting to review the results. Counsel further provided information regarding mediation and resolution session and offered dates of his availability. He asked that Father contact him regarding same.

Neither party wished to convene a resolution session or participate in mediation regarding the Amended Due Process Hearing Request. They wished to proceed with the Pre-Hearing as scheduled, and the Pre-Hearing Conference was therefore held as scheduled on December 1,

2008. A copy of the Pre-Hearing Conference Report, dated and issued on December 2, 2008, is incorporated into the record as Hearing Officer Exhibit A. Although SEDS had the hearing scheduled for December 16, 2008 and the Hearing Officer offered dates beginning December 15, 2008, Father and District counsel requested postponement until mid-January due to professional commitments, school holiday, and other scheduling conflicts. The hearing was therefore rescheduled to January 14, 2009.

On December 29, 2008, District counsel requested that the hearing be continued in order to allow District to evaluate Student and convene an IEP meeting. Father objected and stated that he wished to go forward without any further delays. Therefore, per Order dated December 30, 2008, District's request for continuance was denied.

Hearing was convened but not completed on January 14, 2009 at the Student's school of attendance. It was reconvened and completed on March 4, 2009 after having been scheduled for February 11, and rescheduled to February 10, and then to March 4, 2009 at Father's request, per Orders dated January 21, February 2, and February 9, 2009. This Decision is being issued within 10 days of completion of the hearing. It is not being issued within 45 days of the initiation of the 45 day timeline due to the above described continuances.

In attendance at the hearing on January 14 and March 4, 2009 were Father, who conducted his own examination of the witnesses, Mother, and District counsel, [REDACTED]. The hearing was reported by [REDACTED] Ltd. (800-232-0265) on January 14, 2009 and by [REDACTED] Inc. (312-263-0052) on March 4, 2009. Common to the final witness lists of both parties and therefore testifying on behalf of Parent and District were: [REDACTED] private speech/language pathologist; [REDACTED] Student's Stepmother/private occupational therapist; [REDACTED] school case manager/counselor; [REDACTED] District autism itinerant; [REDACTED], Student's current math teacher; [REDACTED] Student's current homeroom, Spanish, and writing teacher; [REDACTED] Student's 4th and 5th grade teacher; [REDACTED] Student's current reading teacher; [REDACTED], Student's current science teacher; and **Father**. [REDACTED] school psychologist, also testified on behalf of District.

Parent submitted 40 pages of documents within the disclosure deadline in this matter, which he labeled as Exhibits 1 through 14 and which are referred to by their Exhibit numbers in this Decision, preceded by the letter "P". District submitted 95 pages of documents within the disclosure deadline, numbered 1 through 95, which are referred to by page number preceded by the letter "D" in this Decision.¹ In addition to the documents submitted by the parties, the hearing officer requested witness [REDACTED] to produce any and all consents for evaluation signed by Parent in Spring of 2008 in her file on Student and she produced a one page document entitled *CONSENT FOR EVALUATION* dated 4/9/08 and signed by Father on 4/14/08, which was marked as H.O. Exhibit B. During her testimony on March 4, 2009, witness [REDACTED] produced her Report of Psychological Evaluation, numbering 8 pages, which was put into evidence as Parent Ex. 15. The evaluation date is stated as 1/14/09. The report was not provided to Parent until the hearing on 3/4/09 and was allowed into evidence at hearing because of its relevance to the issues in the case.

¹ District documents numbered SD77-95 are copies of Pre-Hearing Documents, including the Amended Hearing Request, District's Response to same, Pre-Hearing Statements, and the Pre-Hearing Conference Report which were not used by the parties at Hearing and which are found elsewhere in the record.

The following documents were used by the parties at hearing: P1-6 and 8-15; D1-18, 26-52, 57-60. H.O. Exhibit B was also considered in this Decision.

District counsel submitted copies of *Roland M. v. Concord*, 910 F.2d 983 (1st Cir. 1990) and the 4th Circuits Court of Appeals decision in *Schaffer v. Weast*, *Weast v. Schaffer*, 377 F.3d 449 (4th Cir. 2004). Parent did not cite to or submit law in this matter.

Issues Presented

Whether District has violated Student's right to a free appropriate public education as follows:

1. Failure to evaluate Student within 60 school days of receipt of written consent for evaluation?
2. Failure to recognize Student as eligible for special education and related services under the IDEA as a Student with autism and a mathematics disorder?
3. Failure to provide Student with proper academic assistance and modalities necessary for his academic development?
4. Failure to understand and accommodate Student's disability resulting in Student's receipt of poor grades from his instructors?
5. Labeling Student as "bad" and/or "terrible" due to behavior related to his disability?
6. Failure to provide Parent with a copy of its autism evaluation report?
7. Failure to attend a scheduled IEP meeting on October 29, 2008?
8. Failure to provide Student with transportation after receiving medical records showing Student's need for same due to his asthmatic condition?

Findings of Fact

The material facts relevant to the aforesaid issues are as follows: Student is a 12 year old male, now in grade 6, who transferred to his current school from another school in the District on or about January 25, 2007, in the middle of grade 4. (stipulation of parties) He has attended 3 different schools. (P14, 15) Student is of average intelligence, with a Full Scale IQ of 104 and a verbal IQ of 110. (P14-15) At the time of the completion of this hearing, he had not been determined eligible for special education and related services under the IDEA², but he has had a 504 Plan in place pursuant to the Rehabilitation Act of 1973 since October 4, 2006, under which he is to receive accommodations due to asthma, allergies, and ADHD.³ These accommodations include an epi-pen and an inhaler at school. He has been prescribed medication for his ADHD, which he takes at home. He receives occupational therapy for development of fine motor skills, sensory processing, and independent functioning. His 2/13/08 504 Plan provides for educational strategies including access to the classroom computer, visual strategies relating to organization and follow through on assignments, visual schedules to aid in transitions from class to class, extra time for transition and classroom assignments, and provision of homework assignments in

² On March 4, 2009, the final day of hearing, the parties advised hearing officer that the FIE had been completed and that an eligibility IEP meeting was scheduled for that afternoon, following the hearing. The only documents presented and entered into evidence in relation to the evaluation performed by the District are the school psychologist's evaluation dated 1/14/09(P15) and the autism itinerant's report on the results of the ADOS dated 10/21/08.

³ Hearing Officer does not have jurisdiction over violations allegedly committed pursuant to section 504, those complaints to be placed before the Office of Civil Rights, and does not make any determinations in this case other than those coming within the IDEA and Article 14 of the Illinois School Code and the regulations attendant thereto.

writing on assignment chart/calendar. Father was provided with a copy of his rights at or prior to the 2/13/08 conference. (D1-12)

Student was transferred from the 4th grade classroom to which he had been assigned to another 4th grade classroom in mid-April 2007 because he was having difficulty in relation to his interactions with other boys in the class. ([REDACTED]; Father; P13) Student's peer interactions and academics improved with the new teacher, who also tutored him after school in math because he did not complete his work. He remained with the same teacher for grade 5, Fall 2007 through Spring 2008. Although she was not initially aware of Student's 504 Plan when Student was placed in her class, his teacher was advised of same by the Case Manager, and the teacher participated in the preparation of his annual 504 Plan on 2/13/08 and implemented it. [REDACTED]

On the Illinois Standards Achievement Test (ISAT) for Grade 4, results given in Spring 2007, Student exceeded state standards for reading, ranking in the 86th percentile nationally, exceeded state standards in science, ranking in the 95th percentile nationally, and met state standards in math, ranking in the 79th percentile nationally. On the ISAT for Grade 5, results given in Spring 2008, Student's scale score in reading exceeded state standards, ranking in the 99th percentile nationally, and his score in Mathematics met state standards, ranking in the 58th percentile nationally. In Math, his ISAT testing reflected strength in number sense and mathematical knowledge, but weakness in written response to mathematic questions. [REDACTED] P9; D53-56; D57-60)

Student's grades for the 2007-08 grade 5 school year consisted of As, Bs, and Cs, including final grades of C in both reading and mathematics standards and B in writing standards. (P10) He complained that writing hurt his hands, and he had access to the classroom computer. He preferred to read a novel rather than attend to the work at hand. The classroom teacher implemented a system relating to homework completion. [REDACTED] (Father)

Father secured a private clinical psychological evaluation due to concerns about social functioning, attention, and academic performance. The private evaluation was performed between May and July of 2007 at the end of and summer after grade 4. He received a report of same dated 9/7/2007 sometime thereafter. (Father; P14) Stepmother told the Case Manager about the report, but she doesn't know when she told her about it. She was told to "bring in the diagnostics". [REDACTED]

A meeting was held to review Student's 504 plan on February 13, 2008, during grade 5. (D8-11) Father and Stepmother attended, as did Student's 5th grade teacher. The team addressed Student's organizational needs and also discussed preparing Student for transitioning from class to class in the upcoming grade 6 year. The aforesaid private psychological evaluation was shared with the 504 team at the meeting. Parent did not object to the 504 plan that was written, including the accommodations that were included to assist Student. [REDACTED] P12; P14) Father asked that Student's "disability be recognized." [REDACTED] According to the notes from that meeting, Parents asked that the school psychologist, who was not in attendance at the meeting, review the private psychologist's report. (D10) Father does not have a copy of any written consent for evaluation of that date. He has not reviewed the Student's school records. (Father)

The 5th grade teacher who helped prepare the 2/13/08 504 plan implemented the plan in Spring 2008. She feels that the plan was appropriate to Student's needs at that time. She sent home progress reports and homework sheets. Student did well in reading but gave less effort, as did other students, to tasks in which he had less interest. She saw progress in Student in 4th and 5th grade. [REDACTED]

The case manager gave the private evaluation to the school psychologist the week following the 2/13/09 504 meeting. [REDACTED] The school psychologist reviewed the report at the request of the case manager after the 2/13/08 meeting in February or early March, 2008 and was prepared to accept it's findings. [REDACTED] The private evaluation was based upon the clinical psychologist's review of records, clinical interview, teacher checklist, WISC-IV assessment of Student's intelligence, TVMI, WIAT-II achievement testing, BASC-II behavioral testing, including Student, Parent, and Teacher rating scales, Incomplete Sentence Blank, Connors' Parent and Teacher Rating Scales, Gilliam Asperger's Disorder Scale. Her DSM-IV-TR Diagnostic Impressions included Attention Deficit Hyperactivity Disorder, Asperger's Disorder, and Mathematics Disorder (Dyscalculia) She recommended, inter alia, that Student's school *provide him with an accommodation plan to support him and address his difficulties related to inattention, hyperactivity, and impulsivity, along with his mathematics deficit.* [REDACTED] The school psychologist thought the private evaluation was to be used to fine tune Student's 504 Plan, since the report suggested the need for an accommodation plan and did not recommend testing for or placement in a special education program. She suggested that Case Manager, [REDACTED], contact the District's autism department. She was not asked to test Student herself until October of 2008, at which time she completed portions of the October 22, 2008 domain sheet relating to Intelligence and Academic Performance. [REDACTED]

[REDACTED] faxed a form entitled *Student Referral* to the District's Autism Department on March 14, 2008. [REDACTED] P1; D26-27)⁴ Therein she requested a Special Evaluation for the reason of Student's outside diagnoses of Asperger Disorder, ADHD, and Mathematics Disorder, and noted that the referral was being made by Parent. She further noted Student's 504 plan for the related service of O.T.(P1; D27) Father signed a form entitled *CONSENT FOR EVALUATION (Additional Information Needed)*, dated 4-9-08, on 4/14/08.⁵ Consent was sought for a Special Evaluation. Although the form is signed by Father, the box indicating *consent* is not checked. (H.O. Ex. B) [REDACTED] did not have any contact from the District Autism Department during the remainder of the school year in regard to the aforesaid form. She advised Father that she had sent it to the Autism Department but that they had not gotten back to her by the end of the school year in June, 2008. No evaluation was done. [REDACTED] Father)

Father went to the school on September 2, 2008 before classes started at the beginning of Student's grade 6 year. He asked to speak with the Principal and was told she was unavailable. He submitted the following handwritten note, addressed to the school principal, to the assistant in the office:

Dear Sir/Madam

I, (Father), as the parent of (Student), do hereby request a "Due Process" Hearing regarding (Student's) IEP.

⁴ The form included in both District and Parent documents does not appear to be complete, as it is only one page and the fax cover sheet accompanying it indicates that the number of pages being faxed are 3, including the cover sheet.

⁵ District documents do not include any signed consents for evaluation. Parent documents include an unsigned consent form for a Special Evaluation dated 9/19/08 and a signed consent for an Initial Evaluation undated but signed by Father on 12/30/08. At the hearing on 1/14/09, Hearing Officer requested [REDACTED] to go and search her file for any consent for evaluation forms signed by Parent, at which time she was able to produce only the form signed on 4/14/08, which was marked as H.O. Ex. B.

*Yours Truly
(Father)*

(see *Due Process Hearing request dated 9/2/08 and Procedural History above*) Thereafter, Father was contacted by the nurse and the social worker. (Father)

On September 4, 2008 at 10:00 a.m., Student's Mother faxed a letter to the school principal with a copy to the [REDACTED] advising her of her equal say in Student's educational issues. Therein, she requested that evaluation for Student "be put on hold" until she has had an opportunity to review school records, procure a solution through mediation, be properly informed of Student's progress, and have an opportunity to address any issues. (see *letter from Mother attached to District's Request for an Impartial Hearing Officer and Procedural History above.*)

At 4:14 p.m. on September 4, 2008, Father faxed the following letter addressed to the principal on his law firm letter head:

*Re: (Student)
Request for Due Process Hearing*

Dear (Principal):

On September 2, 2008, I came to your office and requested a request for due process hearing with regards to the (District)'s refusal to accommodate my son's disabilities. This letter is my second request for a due process hearing regarding this issue. Since my last request I have not received any information from you office. If there is any thing else I need to do in order to get a hearing , please let me know.

Thank you for your attention

Very truly yours,

(Father)

(See *request for due process hearing dated 9/4/08 and Procedural History above*)

[REDACTED] sent a consent form dated 9/19/08 home with Student on September 18, 2008 seeking Father's signature for consent to a special evaluation. The following note was attached: "Please sign this consent for Autism testing. [REDACTED] from Due Process suggested we have a form for this school year." Father did not sign the consent form. [REDACTED] (Father; P4)

A *Student Referral* form, consisting of 4 pages, was prepared by someone other than [REDACTED] possibly by the school psychologist, and is undated except for the signature of the teacher dated 10/2/08 and the signature of the principal dated 10/6/08 and a fax stamp of 5:17 p.m. on October 3, 2008. It indicates a referral being made for a special evaluation and notes that Parent requested the referral. It further states that "Members of the team have observed indications that Student maybe a student w/autism and or Asperger Syndrome." It notes that Student currently receives 504-related services including nursing for his asthma and O.T. It makes no reference to

ADHD but does indicate that "Student is very focused with his writing and independent reading" and that he "seems to take a long time to become organized. He takes a long time at his locker. In class, Student seems to get along better with the boys." (██████████ D28-31)

Pursuant to a referral received on or about October 7, 2008, ██████████ a District autism itinerant, administered the Autism Diagnostic Observation Schedule (ADOS) to Student at his school on October 21, 2008. She drafted her report of evaluation and forwarded it to District counsel, who had requested it in order to share it with Parent, but not to Parents or to the school. ██████████ report includes a statement that *Student's parents requested a full and individual evaluation to determine appropriate educational placement and services.* Therein, ██████████ opined that *Student does appear to exhibit characteristics that are consistent with Autism Spectrum Disorder and is eligible for services from the Autism Department, ...and would most likely benefit from an autism coach to consult with and educate staff about ASD and provide strategies, accommodations and modifications across all curriculum areas to assist in developing social communication and socialization skills in the educational setting deemed appropriate by the team.* ██████████ does not know if ASD effects Student's classroom performance. The classroom teacher advised her on October 21, 2008 that it does not. The ADOS is but one piece of information in the FIE of Student. The question of whether Student has a disability requiring special education is a team decision. (██████████ P8)

A Conference Notification was issued to Father by ██████████ the Case Manager, on October 15, 2008 for a meeting to be convened on October 29, 2008, the purposes of which were designated as the review of recent evaluation and eligibility determination, eligibility and special education needs review, and review and/or develop IEP and determine placement. (██████████ Father; P2; D13)

On October 21, 2008, ██████████ issued to Father an Amended Conference Notification of the October 29, 2008 meeting to which was added the purpose of reviewing Student's educational status and determine what additional data were needed to complete Student's evaluation. Also, District counsel, the autism coach, and the special ed teacher were added to the list of invitees. (Father; ██████████ P3; D14)

A Domain Sheet was completed and dated October 22, 2008. It listed the relevant domains for assessment of Student as Health, relative to asthma and ADHD, General Intelligence and Academic Performance, including review of existing information from the private clinical psychologist's evaluation, the autism department assessment, and updated academic testing, observation, and interviews to be conducted by the school psychologist, Communication Status, and Motor Abilities, to include review of outside evaluations and updated speech-language and fine and visual motor skills data and evaluations. Social/Emotional Status was not designated as a relevant domain for assessment and was left completely blank. (██████████; D13)

Student's grades for the first quarter of the 2008-09 school year included Bs, Cs, and 2 Ds, one in writing and one in math. (P11) His math grade did not reflect his ability, in the opinion of his grade 6 math teacher, because Student did not complete his assignments, did not turn in his homework, sometimes read a book in class rather than attend to his work, did not read the questions, and hurried through his work. He received low test scores. He is disorganized and spends a lot of time looking for things. When he does do his math notebook, however, it is done very well. The math teacher did not receive his 504 plan until January 12, 2009. She did provide the types of accommodations in the plan, however, prior to that in her classroom for Student. Student has no problems with peer relationships in class, and he does participate in class when he

is not reading a book. (S.L.)

Student's homeroom teacher is also his Spanish and writing teacher. She was verbally informed of his 504 plan when he was enrolled but did not receive a copy of it until January 12, 2009. Student is academically average. He is an above average reader. In writing, although he received a D in the first quarter, he has a B average in the 2nd quarter. He was disorganized at the beginning of the year but has improved drastically. He is functioning well in her class. She saw his ability and pushed him. He has turned in every assignment. He is a very creative writer. He gets along pretty well with the other students and relates better to boys. His behavior is not atypical of students his age. He is appropriate and polite and mild mannered. His performance in Spanish is phenomenal. He initially forgot to bring his supplies to class, which is typical of Students in grade 6 when they first start having to transition from class to class. But he eventually got it. He has greatly improved from first quarter. She provides all of the accommodations delineated in the 504 plan. [REDACTED]

Student received a C in Reading first quarter because he did not complete all of his assignments. He told the teacher that he forgot it or it was in his locker or his bag or that he forgot to do it. His teacher has had his 504 plan and has implemented it all year. He is now completing more assignments. He is sometimes extra social and also prefers to do his own personal reading instead of attending to his work. He is getting a little better organized. She has no behavioral concerns. [REDACTED]

Student's Science teacher has had his 504 plan since September and has implemented it. Student received a C first quarter because he is not organized. He does not bring the right supplies to class. He gets along well with peers. He has a good grade average on in class assignments. He has not turned in his science journals. He is getting better organized. [REDACTED]

On October 22, 2008, Father met District counsel at the school for a resolution session in this matter. He was advised that the District needed to do a global assessment of Student, per the Domain Sheet dated 10/22/08. He did not sign the consent counsel wanted him to sign on for a Special Evaluation and Reevaluation. (D17; Father) The conference that had been noticed for October 29, 2008 and the evaluations of Student were cancelled by [REDACTED] when District counsel told her that consent for evaluation had been revoked. The school psychologist, who was prepared to evaluate Student was told by District counsel to stop because Father had "revoked" his consent. [REDACTED] Father received an email from District counsel on October 28 advising that the conference scheduled for October 29, 2008 was cancelled because Father would not consent to evaluations other than the autism test. (Father)

At the Pre-Hearing Conference held in this matter on December 1, 2008, District counsel reported that Father had not signed the consent for evaluation. Father stated that he would do so. Father said that he had not received a copy of the report of the autism evaluation conducted on October 21, 2008 and District counsel stated that he would obtain same and provide it to Father. (H.O. Ex. A) Father signed consent for an initial evaluation on 12/30/08, to which the October 22, 2008 Domain Sheet was attached. (Father; P5)

Upon receipt of the aforesaid consent, [REDACTED] the school psychologist, evaluated Student. She adopted the test results of the private evaluator and also administered the KTEA-II achievement test. Student tested in the superior range at the 98th percentile in spelling, in the high average range at the 82nd percentile in reading, but was deficient in math calculations at the 1st percentile. She will recommend to the team at the scheduled eligibility conference that Student be provided with learning disability services due to the discrepancy between aptitude and

achievement in math and also due to his processing deficits, including visual motor speed, spatial organization, and concentration. [REDACTED] P15)

Student receives private occupational therapy services from his Stepmother, [REDACTED]. He receives private speech/language therapy from A.M., to address pragmatic language skills and social use of language in communicating with others. Although A.M. has evaluated Student and tested him every six months and given his parents written reports, her reports have not been shared with the school. [REDACTED] Both [REDACTED] and [REDACTED] believe that Student should receive occupational and speech/language therapy in his natural environment, the classroom. [REDACTED]

A doctor's prescription for transportation is required by the school for transportation due to asthma each new school year. Parents have been asked to bring in the prescription but have not done so. The school nurse receives the prescriptions. The case manager has not seen the physician's report dated 10/29/08 marked as P6. [REDACTED]

Conclusions of Law

At a due process hearing convened pursuant to the provisions of the Illinois School Code, it is incumbent upon the District to present evidence that it has provided or has offered to provide the student in question with a free appropriate public education in the least restrictive environment, in accordance with the stated issues in the case. *ILCS 5/14-8.02a(g-55)(2008)* However, the burden of persuasion falls upon the party seeking relief, in this case, Parent. *Schaffer v. Weast*, 546 U.S. 49(2005)

An appropriate education, or FAPE, as it is commonly designated, is an education that is reasonably calculated to provide the student with meaningful educational benefit, as based on an individual education plan, or IEP, developed by an IEP team, including the student's parents. *Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, 458 U.S.176(1982) The school district is required to follow procedures that are designed to allow the parents to participate in the development of the IEP. The applicable procedures are set forth in *34 CFR 300.300-.328(2006)* and *23 ILAC 226.110-.350(2007)*. The determination of eligibility for special education in the category of specific learning disability is subject to additional procedures. *23 ILAC 226.130(2007)* Development of an IEP for a student with a disability on the autism spectrum disorder requires compliance with specific provisions set forth in *105 ILCS 5/14-8.02(b)(2008)*

Per IDEA 2004 and its attendant regulations, procedural violations alone cannot be deemed a denial of FAPE unless the evidence proves that the violations impeded the student's right to FAPE, the parents' right to participate in the decision making process, or caused the student to be deprived of an educational benefit. Otherwise, a hearing officer's determination of whether FAPE was received must be based on substantive grounds. *20 U.S.C. 1415(f)(3)(E)(2007)*; *34 CFR s. 300.513(a)(2006)*

Based on the material facts that are relevant to the issues in this cause, the undersigned concludes as follows:

Issue 1: Whether District violated Student's right to a free appropriate public education by

⁶ Parent did not disclose any reports from the private speech therapist in this case.

failure to evaluate Student within 60 school days of receipt of written consent for evaluation?

“Consent”, pursuant to the IDEA, means that the parent has been fully informed of all information relevant to the activity for which consent is sought and that the parent understands and **agrees in writing** to the execution of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom. Further, consent means that the parent understands that consent is voluntary and may be revoked at any time, although the revocation does not negate an action that occurred after consent was given but before it was revoked. *34 CFR s.300.9 (2006); 23 ILAC 226.540(2007)* Prior to December 31, 2008, there was no statutory requirement for the revocation of any consent under the IDEA to be written. *id.*

The determination as to whether a child is eligible to receive special education and related services must be made within **60 school days from the date of written parental consent** to evaluation. When written parental consent is obtained with fewer than 60 pupil attendance days left in the school year, the eligibility determination shall be made and the IEP meeting shall be completed prior to the first day of the following school year. If the child is determined to be eligible for special education, the IEP must be implemented no later than the beginning of the next school semester. *105 ILCS 5/14-8.02(2008)*

The problem in determining the date of parental consent in this case, to the extent that Parent argues that it was other than December 30, 2008, is that neither party produced a written consent that comes within the definition of legal consent for evaluation in IDEA cases, with the exception of the consent signed by Father on December 30, 2008, to which the Domain Sheet dated 10/22/08 was attached, and submitted at hearing as Parent Ex. 5. According to the evidence, evaluation was begun in January, 2009, after winter break, and an eligibility meeting was scheduled for March 4, 2009, well within 60 school days from the date of the written consent.

Although Father testified that he signed a consent on February 13, 2008, no such signed consent was introduced into evidence by either party. Father stated that he did not keep a copy and that he did not review his child’s school records at any time prior to this hearing. There is no evidence that a domain meeting was held or a domain sheet prepared prior to October 22, 2008 or any other documentation of what assessments would be included in the evaluation. When asked to search her file for any consents signed by Parents on or after February 13, 2008, in the Spring of 2008, the Case Manager was able to produce a form dated 4/9/08, which Father did sign on April 14, 2008, but he did not check the box required to give consent to the requested collection of additional data.

Although there is no evidence of a specific date upon which written informed consent was received by the District from Parent in this matter, testimony from the District’s witnesses and their documents, including [REDACTED] and her note of September 18, 2008 with the consent form dated September 19, 2008 and [REDACTED] and her report regarding the ADOS assessment concede that there was parental consent in the Spring of 2008. Since Father was provided a consent to sign on April 9, 2008 and signed it on April 14, 2008 without checking the consent box, it is inferred that whatever consent was provided must have been on or after April 14, 2008. If there were not 60 school days left at the point of the consent in the Spring of 2008, Illinois law would still require the evaluation to have been completed before the beginning of the Fall 2008 school year, an IEP developed if eligibility was determined, and placement and implementation of the IEP no later

than the beginning of the second semester of the 2008-09 school year.

Another problem with the presentation of evidence, or lack thereof, in this case is that even if District's own employees concede that Father gave consent at some point in the Spring of 2008, it is not known what he was consenting to absent the document itself and its domain sheet. No one testified that a domain meeting was held or a domain sheet completed at any time before October 22, 2008. [REDACTED] report however states that her evaluation was being done pursuant to "parents request for a full and individual evaluation." Therefore, District is conceding that it had parental consent to conduct a full and individual evaluation of Student since sometime in the Spring of 2008 on or after April 14, 2008. There is no indication that Parent objected to the District's psychologist testing of Student or the autism department testing Student before the beginning of the 2008-09 school year as part of an FIE, and that testing should have been completed within the timeline. The October 22, 2008 domain sheet indicates that assessments were also to be performed in all other domains, with the exception of social/emotional status, and, since the District felt that those domains were relevant in the Fall of 2008, they would also have been relevant in Spring 2008, and those assessments also should have been completed before the beginning of the Fall 2008 school year. To the extent that father was objecting to assessment of social/emotional status, as District counsel indicated at the Pre-Hearing Conference, Illinois law allows the FIE to be completed with a notation as to why that domain was not assessed if necessary. Father's refusal to consent to assessment of social/emotional status in October 2008 does not constitute revocation of the consent for an FIE which the District's employees claimed that they had had since Spring 2008.

As to whether the District's failure to complete the evaluation within 60 school days of receipt of parental consent to evaluate resulted in the deprivation of FAPE to Student, the preponderance of the evidence indicates that it did insofar as the school psychologist's determination that Student has a learning disability related to mathematic calculations and her recommendation that he should receive learning disability services for same. Her determination is supported by the grade 6 math teacher's testimony. Had the evaluation been completed in a timely manner, it is most likely that the team would have found Student eligible in the category of specific learning disability and Student would have received [REDACTED] services no later than the beginning of the second semester of the 2008-09 school year, which began in January, 2009. There was not sufficient evidence presented at hearing to find that any additional deprivations have been suffered by Student due to the lack of completion of the FIE within 60 days of receipt of parental consent.

Issue 2: Whether District violated Student's right to a free appropriate public education by failure to recognize Student as eligible for special education and related services under the IDEA as a Student with autism and a mathematics disorder?

A child with a disability under the IDEA is one who has been determined to be in need of special education services due to a qualifying disability that adversely affects his educational performance. No child can be deemed eligible without the careful completion of a case study fully reviewed by professional personnel in a multidisciplinary staff conference. Among the 13 categories of eligibility for special education are autism, which includes Autism Spectrum Disorder, emotional disability, other health impairment, and specific learning disability. *20 USC 1401(3) and 1414(2007); 34 CFR 300.8; 300.301 et seq(2006); 105 ILCS 5/14-1.02; 105 ILCS*

5/14-8.02 (2008); 23 ILAC 226.75, .226.110 et seq(2007)

When a parent requests an evaluation to determine eligibility of a student for special education under the IDEA, the school district is responsible for processing the request, deciding what action should be taken, and initiating the necessary procedures. *23 ILAC 226.110(c)(2007)* Within 14 school days of receipt of the request, the district must decide whether or not an evaluation is warranted. If it decides that it is not warranted, it must advise the parent of same in writing. If the district decides an evaluation is warranted, it must convene a meeting of individuals, including parents, who can determine what assessments are and are not needed and explain same to parents. This is commonly referred to as a domain meeting. The district must provide parents with notice of the conclusions reached at that meeting within the same 14 day timeline after the request is made and must also request parent's consent to perform the assessments delineated therein. *23 ILAC 226.110(c)(3)(A)-(C) (2007)*

As stated under the discussion under Issue 1 above, once the informed written consent is signed by the parent, the evaluation is to be completed within 60 school days and the IEP developed at a meeting no later than 30 school days beyond that, unless there are less than 60 attendance days left in the school year at the time the consent is received, in which case the eligibility must be determined and the IEP developed before the beginning the following school year and implemented no later than the following semester after that. *105 ILCS 5/14-8.02(2008)*

For the reasons stated above, the evidence shows that the District dropped the procedural ball in this case and did not complete the evaluation in a timely manner. Based on the testimony of the school psychologist and the 6th grade math teacher, there is sufficient evidence that Student should have been found eligible for special education due to a specific learning disability in math calculation by the beginning of the current school year and should have received learning disability services for same no later than the beginning of the second semester. There is not sufficient evidence to allow a determination as to whether Student qualifies for special education due to autism. Although the results on the ADOS support the private psychologist's diagnosis of Asperger's Disorder, it cannot be determined, from the evidence presented at hearing, that Asperger's Disorder is negatively impacting Student's educational performance within the parameters of the IDEA. The IEP team must meet and make that determination.

Issue 3: Whether District violated Student's right to a free appropriate public education by failure to provide Student with proper academic assistance and modalities necessary for his academic development?

Following the appropriate evaluations, if a child is determined eligible for special education, the IEP team, including Parents, meets to develop an Individual Education Plan (IEP) for Student. The instruction and related services to be provided depend on the goals that the team develops for the child based on his individual needs. *20 USC 1414(d)(2007); 34 CFR 300.320 et seq (2007); 23 ILAC 226.230 et seq (2007)*

Parent has not specified what he believes to be "proper academic assistance and modalities". Student has been receiving 504 accommodations, including occupational therapy, according to the evidence presented. Parent did not provide the District with any reports from his private speech therapist. The teachers who testified at hearing were all properly certified and qualified and testified that they accommodated Student in their classrooms. Student's grade 4/5 teacher was able to accommodate him and tutor him in math and he received grades and ISAT

scores commensurate with his cognitive ability or above.

That being said, as set forth in the discussion for Issues 1 and 2 above, the preponderance of the evidence does support a finding that Student should have been deemed eligible for special education due to a learning disability in math by the beginning of the current school year and should have received learning disability services no later than the beginning of the second semester.

Student's IEP will be developed in accordance with Student's educational needs, and any necessary related services will be provided to allow him to benefit from special education.

Any Section 504 complaints should be directed to the Office of Civil Rights.

Issue 4: Whether District violated Student's right to a free appropriate public education by failure to understand and accommodate Student's disability resulting in Student's receipt of poor grades from his instructors?

The preponderance of the evidence does not support the allegation that Student's teachers did not understand or accommodate Student's disability thereby causing receipt of poor grades. To the contrary, the teachers were accommodating him. Student received grades commensurate with his cognitive ability with the exception of the Ds he received in Math and Writing during the first quarter of the current school year. His writing teacher testified that once she pushed him to turn in his assignments, he raised his grade to a B in the second quarter. It has not been proven that the Math teacher's failure to understand or accommodate Student's disability caused his D in Math, and, as stated above, he should be eligible for special education and receive learning disability services, which may or may not help him to improve his grade. He will still need to turn in his homework, and the teachers cannot go home with him and make sure he does it.

To the extent that Parent has complaints about the 504 Plan developed by the 504 team for Student, those should be directed to the Office of Civil Rights.

Issue 5: Whether District violated Student's right to a free appropriate public education by labeling Student as "bad" and/or "terrible" due to behavior related to his disability?

This allegation is not supported by any evidence presented at hearing.

Issue 6: Whether District violated Student's right to a free appropriate public education by failure to provide Parent with a copy of its autism evaluation report?

A parent has the right to inspect and obtain copies of his child's education records that are collected, maintained, or used by the District, and the district must comply with a request without unnecessary delay and before any meeting regarding an IEP, hearing, or resolution session and no later than 45 days after the request has been made. *34 CFR 300.613(2006)* In a due process hearing, parents must be afforded the opportunity to inspect and review all educational records of their child relating to the identification, evaluation, and placement of their child. *34 CFR 300.501 (2006)* The *Illinois School Students Records Act* requires the requested records to be produced for inspection and copying no later than 15 school days after the date of receipt of a request for same by the official records custodian. *105 ILCS 10/5 (2008)*

At hearing, [REDACTED] testified that she drafted her report of the ADOS assessment, which may

or may not mean she dictated it and someone else had to type it up, "within a few days" after the evaluation. She forwarded it to District counsel, who had requested it in order to share it with Parent. She did not provide a copy directly to school personnel or to either parent. The evidence in this case does not reflect any request for records made by Father to the school records custodian, who is usually the principal of the school. No motions were submitted by Father seeking an order to compel production of any reports or school records. The Amended Due Process Hearing Request submitted by Father on October 31, 2008 refers to an "autism test" having been "conducted" and asks that a copy of the "autism test result" be provided to him if in fact such a test had been conducted as one of his requested remedies for hearing

At the Pre-Hearing Conference on December 1, 2008, Father asked to see the report of the evaluation conducted on October 21, 2008, and District counsel stated that he would obtain it and provide it to Father. The report was included in Parent's documents as Parent Exhibit 8. It does not appear that the report was available for the resolution session on October 22, one day after the evaluation was conducted. Counsel for District indicated at the time of the Pre-Hearing Conference that he did not yet have it. Parent did not seek a delay of the Pre-Hearing Conference on the grounds that he did not yet have the report. He did not submit a written request for the report other than reference to it in his hearing request. Father did not testify as to when he received the report, nor did he testify or otherwise submit evidence as to how receipt of the report after the Pre-Hearing and before the Hearing denied Student FAPE, and the evidence therefore does not support a finding that Student was denied FAPE in regard to the failure to provide Father with a copy of the report any sooner than it did.

Issue 7: Whether District violated Student's right to a free appropriate public education by failure to attend a scheduled IEP meeting on October 29, 2008?

It appears from the testimony and the documents relating to the scheduling of this conference that District had attempted to get Father to sign consent to conduct an evaluation in September and October and hoped to have a meeting scheduled to review any testing that could be done by the end of October and make an eligibility determination, and/or to discuss whether any further assessments were needed. Father and District counsel had a dispute regarding consent and the social/emotional assessment, and Father did not sign either of the consents presented to him. District counsel then told the psychologist, who was prepared to do her evaluation, and the case manager, that Father had revoked consent, and [REDACTED] cancelled the 10/29/08 conference. As discussed above, the District has conceded through the testimony of its own witnesses that it had consent to do an FIE in the Spring of 2008, and the FIE should have therefore been completed and an IEP developed prior to the beginning of the 2008 school year. By canceling the evaluations and the IEP meeting at which they were to be considered by the IEP team, District further delayed an evaluation that should have already been completed, which delayed the development of an IEP which would have, at a minimum, provided Student with L.D. services in relation to his math disorder, thereby effectively depriving Student of FAPE.

Issue 8: Whether District violated Student's right to a free appropriate public education by failure to provide Student with transportation after receiving medical records showing Student's need for same due to his asthmatic condition?

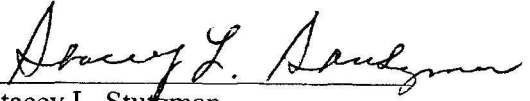
There is no evidence of transportation as part of Student's 504 plan, and, as stated above, any complaints in relation to the development and implementation of that plan should be directed to the Office of Civil Rights. The only document presented at hearing addressing Student's asthma, P6, indicates that transportation is a "special need" per his personal physician, but it is dated 10/29/08, and the case manager testified that she had never seen it. She testified that the school required a new prescription for transportation from a doctor for each school year and that none had been received from Parents. The school nurse would keep the prescriptions. Father did not call the school nurse to testify at this hearing.

Transportation to and from school is considered as a related service under the IDEA. Whether or not Student is to be provided transportation under the IDEA is to be determined at the development of the IEP. There was insufficient evidence presented by Father at hearing for a determination that transportation must be provided pursuant to the IDEA.

IT IS THEREFORE ORDERED:

1. That District shall convene an IEP meeting and designate Student eligible for special education and related services in the category of specific learning disability, not to preclude eligibility in any other categories which the IEP team determines warranted by the Student's FIE, if it has not already done so upon receipt of this order.
2. That District shall convene an IEP meeting on or before March 26, 2009 for the purpose of developing an IEP to address Student's learning disability and any other disabilities as determined at the aforesaid eligibility conference, which IEP shall include, but not be limited to, the provision of learning disability services to address his mathematics disorder.
3. That District shall provide proof of compliance with the above orders to the Illinois State Board of Education, Program Compliance Division, 100 N. First Street, Springfield, IL 62777-0001 on or before April 23, 2009.

DATED: March 13, 2009


Stacey L. Stutzman
Impartial Hearing Officer

1242 Deer Trail Lane
Libertyville, IL 60048
(847) 362-1950

RIGHT TO REQUEST CLARIFICATION

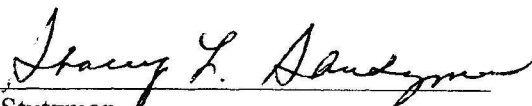
Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party 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 5/14-8.02a(i)(2007), 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 Parent, Parent's counsel, District counsel (who works in District offices desires to accept service on behalf of District as well), and the Illinois State Board of Education at their respective addresses by depositing same as Certified Mail, postage prepaid, with the United States Postal Service at Libertyville, IL before 5:00 p.m. on March 13, 2009.



Stacey L. Stutzman