

Case Number: 2009-0133

Hearing Officer: Julia Quinn Dempsey

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

Impartial Due Process Hearing Decision Cover Page

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

District Name [Redacted]

Phone: [Redacted]

Superintendent Address [Redacted]
Represented by [Redacted]

Parent Name [Redacted]

Phone: [Redacted]

Address [Redacted]
Represented by [Redacted]

Date and Timelines

Date of Written Request: 12/08/2008
Date of Pre-hearing Conf: 01/12/2009
Date of Hearing: 02/12/2009 to 2/12/2009 12:00:00 AM
Date of Decision:

Summary of Decision

PROCEDURAL INFORMATION

On February 2, 2009 at 8:00 AM an impartial due process hearing was convened by Judge Julia Quinn Dempsey, the Hearing Officer, on behalf of [Redacted] hereinafter, the Student, at the [Redacted]. The hearing continued on February 3 and 4, 2009 at 7:30 AM. At its conclusion, the Attorneys requested time to retrieve and review staff e-mails requested at the hearing, and to submit copies of cases supporting their respective positions. No transcript was to be prepared prior to the decision. These materials were submitted electronically by both Parties within a week, received, and printed by the Hearing Officer on February 12, 2009. The Hearing Record was officially closed at that time. The Hearing Officer has jurisdiction to hear and decide this matter under 105ILCS 5/14 - 8.02a et seq., 23 Illinois Administrative Code 226.600 et seq., the Individuals with

Disabilities Act, as amended 20 USC 1400 (IDEA), and 34 CFR 300.507 et seq. The parties were informed of their rights under 105 ILCS 5/14 – 8.02 et seq., 23 Illinois Administrative Code 226.636 and 34 CFR 300.509.

The Student and her Mother requested this hearing by letter dated September 15, 2008 to the [REDACTED] and ISBE. The District wrote to ISBE requesting a due process hearing with a form dated October 3, 2008. This was date stamped in at ISBE on October 6, 2008 by Special Education Services. On October 6, 2008 ISBE mailed the notice of appointment to the Hearing Officer and it was received on October 7, 2008. The Hearing Officer took immediate steps to contact the parties. Mediation was set for mid-November. The School District response was filed by their attorney, [REDACTED] on October 9, 2008.

On November 21, 2008 the Hearing Officer was sent a letter by [REDACTED] an attorney [REDACTED] noting that they, along with [REDACTED] attorney, were filing their appearance to represent the Student and her Mother and asking to amend the due process hearing request filed pro se by the Student and her Mother. The Hearing Officer spoke to both attorneys and granted Leave to Amend. The amended complaint was filed on December 8, 2008. The parties were contacted, a notice of amended complaint was sent and it was agreed that the Pre-Hearing Conference would be held by telephone on January 12, 2009. An additional notice was sent.

The Pre-Hearing Telephone Conference was held on the scheduled date. Each party provided some background. Both parties provided preliminary Witness Lists and Document Lists. These, as well as the initial request and appointment and other preliminary documents are included as Hearing Officer Group Exhibit #1 *pp.1-12*. There was some extended discussion about the allegations and relief requested by the Student and it was noted that if there was disagreement with the Pre-Hearing report it could be raised again at the beginning of the hearing, on the record. The Hearing was scheduled to begin on Monday, February 2, 2009 at 8 AM and to continue from day-to-day until concluded on February 4, 2009. The early start was required as the District witnesses would usually not stay beyond 3 PM. An abbreviated lunch was also scheduled. The Pre-Hearing report was sent on January 22, 2009 finalizing all matters and setting the Due Process Hearing to begin at 8:00 AM Monday, February 2, 2009 at the [REDACTED]. At the Pre-hearing Conference an agreement was reached whereby the Parties would jointly exchange their documents and witnesses by January 27, 2009, the cut-off date for such disclosures to be admissible at the hearing. (H.O. X #2). The Student was ordered to attend the Hearing (18 years old), the Hearing was to be closed and the District would provide a Court Reporter. A hearing schedule was developed including closing arguments on the record at the end of testimony, no transcript prior to decision, no briefs or memorandums, but copies of cases argued to be submitted.

ISSUES

1. Did The District create and implement an Individual Education Plan, hereinafter IEP, for the Student that provided a Free Appropriate Public Education, hereinafter FAPE, for the Student during the 2006-2007, 2007-2008 and 2008-2009 school years so that the Student could make adequate educational progress?
2. Were appropriate, adequate and timely Assessments conducted to address the Student's needs?
3. Were appropriate, adequate and timely Related Services provided to the Student?

4. Was an adequate, appropriate and timely Transition Plan developed and implemented?
5. Should the district be ordered to pay for independent evaluations to determine if the Student has potential unassessed disabilities?
6. Should the District pay to place the Student at [REDACTED] a private therapeutic day school, for the remainder of the 2008-2009 school year and for an additional compensatory fifth school year of high school without regard to how many credits the District has already awarded toward graduation?
7. Should the District provide additional tutoring and social work services during her time at [REDACTED] and then for an additional year (2010-2011) as compensatory services?

STUDENT AND MOTHER POSITION

The Student's (hereinafter *and Mother*) position is set forth initially in the letter from the Mother to ISBE and [REDACTED] dated September 15, 2008 requesting a due process hearing. This letter was expanded upon and added to when Legal counsel appeared for the Student and Mother by letter dated December 8, 2008, sent to the Hearing Officer as an Amended Complaint. The Student's position was also stated by her Attorney in his opening statement on the first day of the due process hearing. In addition, both the Mother and Student testified at length at the Due Process Hearing. They were dissatisfied with the Student's progress in the District's [REDACTED] program from her entry in the fall of 2006 to the present time. They did not feel she was learning, she was having problems from the very beginning that intensified over the next two years because of lack of services. They saw little educational progress and no assistance with the Student's significant emotional problems. She seemed very sad, unhappy and depressed most of the time.

The Mother has done much on her own to arrange therapy and testing for the Student and is convinced that the Student needs receive more specialized educational and social work services than have ever been provided by the District. They also believe they have had procedural rights violated by the lengthy delay from September 2006 to December 2007 before an IEP meeting was held, by the improperly conducted December 2007 IEP meeting where her only special education provider was not in attendance and the failure to reconvene later, at the Mother's request, with that special education provider. They also allege failure of the District to provide sufficient and appropriate services, during the 207-2008 school year. They state that during the 2008-2009 school year even the services called for in the Student's only high school IEP, including 250 mpw of direct and consultative services in Language Arts by a Special Education Provider and access to a resource room were not available. They state that this failure of the District to provide a continuum of services, including social work services, has exacerbated the Student's emotional problems, leading to more depression and feelings of sickness that contribute to and cause the excessive absences and tardys, as well as her poor grades and general lack of the educational achievement she has the capability to make. They ask, as compensation for the District's past bad practices, for private placement for an additional school year, as well as tutoring and counseling to remediate her educational deficiencies and to facilitate her ability to achieve success in college or other post-graduate education.

DISTRICT POSITION

The District position is that it has proposed an appropriate program for the Student that integrates her most fully into a "Least Restrictive Environment" (LRE) with non-handicapped Students. They believe the Student can meaningfully participate with the modifications and accommodations that they have made but that she has failed to attend on a regular basis. Further, their position is that the District has a broad continuum of program options from which to choose to meet the Students needs in the event that a recommended program proved to be inadequate. The District maintains that what they characterize, as "minor flaws" in the development and implementation of the IEP do not call for the significant relief of private placement and compensatory education and related services requested by the Student.

They state that they observed the procedures required by IDEA and that the IEPs developed were reasonably calculated to provide the Student educational benefits, and that in fact, she did benefit. They indicate they did appropriate evaluations they also maintain that the District can provide the Student with an education. The Student should not be placed in a private facility when the District Special Education program is adequately and appropriately meeting her needs.

BACKGROUND AND FACTUAL FINDINGS

The Student is an 18-year-old young woman who attends at the [REDACTED]. The Student lives at home with her Mother, the Mothers friend, her older brother and sometimes other family members. She has attended there since October of 2006, her sophomore year in high school. She attended [REDACTED] for her freshman year. Prior to that time, she was enrolled in grammar school at various [REDACTED] for 6-8th grade. She was found eligible for Special Education services in 5th grade at [REDACTED] on November 26, 2001 as Learning Disabled. PXp64. The IEP gave her 80 mpw of direct 1-1 services from the special education teacher to help her with word attack, comprehension and decoding skills. PXp68. On January 24, 2003 at [REDACTED] in 7th grade, an IEP was held because of Mother's concern about her ability to achieve in high school. The result seemed to have been that Mother was to take her to [REDACTED] PXp60-63. On April 2, 2004, another IEP was developed at [REDACTED] providing for 400 mpw of direct services in Language Arts, Reading, and English. PXp47-57. In May 2004, she attempted suicide and was hospitalized at [REDACTED] for 3 weeks. She was put on Prozac and received individual therapy privately from May 2004 until September 2004 when it was discontinued, as it seemed unnecessary. PXp 34. On November 29, 2004, an IEP meeting was held when she was in 8th grade. This IEP had both 8th grade, PXp38-400 mpw direct special education services in Language Arts and Math and beginning high school coverage PXp44-360 mpw direct special education services in Language Arts and Math for the 2005-2006 school year. These were never implemented as the Student attended [REDACTED] for her freshman year of high school. On September 6, 2006, the Mother approached her then home high school in the District [REDACTED] signed consents for evaluation, and attended a domain meeting convened that day. The School Nurse also interviewed her. SDXp1-5. The Student was then enrolled at [REDACTED] where they were referred as the family had moved and there was no room for the Student at their new home High School. ([REDACTED] I believe). She began in October 2006. She received no special education services that school year other than being allowed to go to the Resource Room after January, 2007 when the Mother inquired about the services and the evaluation she had requested and consented to in September, 2006. The Student received no direct service special education minutes at all. The Student was hospitalized twice during this school year in psychiatric hospitals, [REDACTED] for 30 days and at [REDACTED] for 5-10 days. She was under the care, in her private practice, of [REDACTED] of the [REDACTED] and a [REDACTED] for 30 years. She testified at the due process hearing on the Student's behalf and attended, because of her

concerns, the only IEP convened during the Student's high school career at the District schools, on December 4, 2008. Also in school year 2006-2007 The Student tried out for and made the Girl's high school basketball team. (She had been co-captain of the Girls team a [REDACTED] during her freshman year.) After 2 ½ weeks on the team, she was told that she could not continue because of her grades, she was not maintaining a C average. Her Mother protested that she was special education and receiving no services or accommodations at that time, but this was to no avail. The Student testified that she loved sports and still played at the [REDACTED] but that by the time some special education services started in her junior year, she was no longer interested in playing.

Her grades and attendance had been satisfactory during her grammar school years and at [REDACTED] during her freshman year when she was absent 5 days the 1st Semester and 4 days the 2nd Semester. SDXp60. She also had a 3.0 GPA in January 2006 and 2.75 in June 2007 a [REDACTED] Her 1st [REDACTED] she was absent 33.5 days (part of which was the psychiatric hospitalizations for 4 ½ weeks in October and November) SDXp19. and 15.5 days the 2nd Semester. Her GPA was 1.16 for the 1st Semester and 2.0 for the 2nd (when she was allowed at least the use of the Resource Room). In junior year she had a reported 65 ½ days of absence. SDXp60-61. The Student testified she felt sick and depressed much of the time so did not attend school. She is able to pull herself together at times and put up a good front-witness her interview with the school psychologist (SDX19-21) and the school social worker (SDXp80-81) in November 2007 and the private psychologist in November 2008 (PXp83-87). The testimony of [REDACTED] to support her note of November 12, 2007 and her attendance at the IEP supports the Student and Mother version of events and the lack of special education services prior to the December 2007 IEP meeting (from October 2006 to December 2007) and then the withdrawal in September 2008 of what little there had been during the 2nd Semester of her Junior Year (co-teaching by [REDACTED] her special education provider of her Literature class and access to the Resource Room). Every one acknowledged that there was no special education provider who was teaching her during senior year, even though there was a special education co-teacher in her U.S. History class the Student was not on her caseload. She remained on [REDACTED] case load-even though [REDACTED] testified she saw her only rarely in the halls as she was not teaching her in any classes. As regard the resource room it had been closed and a very small room off the lunch room was designated a math resource room during all the many lunch periods during the day and was designated for special education students on Thursday only, when each special education teacher was assigned to be there for 1 period. This room was extremely noisy, being behind the lunchroom, very small and equipped only with a table and a couple of chairs. There was nothing resource about it.

The District evidence book at pages 1 -18 contains what it labels as "Consent for Evaluation and Domain Sheet" DXp1-2; "School Nurse RE-Evaluation Form" DXp3-4; and "IEP" DXp5-18. The first four pages were testified to by the Mother as being the result of her September 6, 2006 visit to Tilden to request an evaluation and services for her daughter, as well as her interview with the school nurse who was present. Mother also signed DXp5, an IEP conference attendance form dated 9-6-2006 with the box called "other-Special Domain" checked. No IEP meeting was ever held, nor was there an IEP developed on September 6, 2006. Yet this form- on p5- is followed by three pages dated 11/29/04 and titled "eligibility determination". Pages 9- 18 are undated, and purport to detail services needed, MODIFICATIONS AND ACCOMODATION(SDXp12), a one page Goal statement in READING to be provided by SPEC ED TEACHER(SDXp13) and best of all SUMMARY OF SPECIAL EDUCATION AND RELATED SERVICES IN THE LRE -600 MINUTES PER WEEK (SDXp14).! Every one of the District teachers who testified, including the 2007-2008 case manager identified this as the IEP they had received and read at the beginning of the school year from the then Case Manager, [REDACTED]. They all pointed to SDXp12 as the Modifications and Accommodations they implemented. Yet the testimony is also clear that the Student did not get 600 minutes per week, or even ½ that in Special Education Instruction. The Document was also given to either the Mother or the

Student's attorney as it also appears in the PX book at PXp 24 through either p 35 or p 46- it is impossible to determine where it ends. Its inclusion by the District as a legitimate IEP and its use-to attempt to appear as though there was an IEP in place when the Student entered in October 2006- verges on fraudulent and is certainly at the very least the "smoking gun" that displays and collaborates the District's incompetence, mismanagement and blatant disregard of the Student and Parents rights under both Federal and State law. It is a procedural violation of the highest order and requires a finding for the Student of all the relief she is requesting. Unfortunately, this is the only sanction the Hearing Officer can order.

It should be noted that there are other violations of the Student's rights that have occurred. Despite the Mother's best efforts the Student was without an IEP from her entry in October, 2006 to December 2007. The only service she received in her sophomore year was that she was allowed to go to the resource room after the Mother complained mid-year. During her senior year the resource room was closed and she was not assigned to any special education teacher in any of her classes- a violation of the only IEP ever done in high school-that of December 2007. The District was aware of her depression and suicide attempts and her three psychiatric hospitalizations, references to them occur in the district records; the initial school nurse assessment SDXp4; the psychological evaluation at DXp19; the social work assessment at SDX80-81. They were aware of her absences and tardys, they all testified to this- they did nothing-they talked to her. She was never referred for social work services-direct minutes from a social worker-who if a LCSW is a person in the school very capable of doing therapy with the Student and at the very least addressing the underlying causes of the excess absences. The District knew from 5th grade that she was LD-her achievement test scores have improved only slightly through grammar school and high school and she is still 5 to 6 years behind where she should be as a senior who has acquired the credits necessary for graduation. Yet no real remedial services were provided in high school. Having a Student do work over and over and take more time does not teach them techniques to work with and around their learning disabilities-it only discourages them so the spiral into depression, low self esteem, school avoidance, class cuts and worse begins to occur. The December 2007 IEP meeting was held without her special education provider [REDACTED], who testified she was in the school that day and never contacted. She protested, the Mother asked for a rescheduled meeting and was told in two or 3 months and then it was never rescheduled. Examples of bad faith on the part of the District abound in the testimony and the record.

An additional witness who testified for the Student was the independent Clinical Psychologist whom the Mother hired to test the Student in November 2008. His report can be found at PXp83-87. I found him to be credible, truthful and very helpful. He tested the Student with more and varied tests than were used by the District school psychologist. His report demonstrated her lack of progress in high school as well as documenting her learning disability and her significant difficulties processing auditory/verbal information. His testing and conclusions are helpful in pointing at the direction her future instruction should take to help her improve her academic achievement.

CONCLUSIONS OF LAW AND OPINION

As regards the record, the Hearing Officer has read all of the material presented at the hearing and contained in the document books submitted by the Parties and utilized at the Hearing. All of the IEPs, reports, evaluations, and law submitted were considered. The Hearing Officer is including all of this material as part of the hearing record and taking Judicial Notice of any of it that was not formally marked and moved into evidence, as agreed by the Parties at the Hearing.

In every dispute regarding a handicapped child and a school district the analysis necessary to reach a

decision must begin with the bedrock teaching of *Rowley* (Board of Education of the Hendrick Hudson Central School District, Westchester County et al. v. Rowley by her Parents, Rowley et ux. 458 U.S. 176 (1982)). In that case, the United States Supreme Court set forth a two-pronged test to determine whether a school district has offered a student a free appropriate public education (FAPE) in the least restrictive environment (LRE). The first inquiry to be made is whether the school district has complied with the statutory procedures; (no substantial procedural violations) required by the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1401 et seq. for services. Any denial of procedural rights must result in an adverse impact on the parent's participation or the Student's education so as to result in a loss of educational opportunity in order to be a denial of the law's requirement of a free appropriate publicly funded education (FAPE). The first test of *Rowley* allows relief only if the alleged procedural violations have resulted in substantial harm to the Student. *W.G.V. Board of Trustees*, 960 FF2d 1479, 1484 (Ninth Circuit 1992). The District is also under an obligation to fully evaluate the Student and conduct assessments in all areas related to the suspected disability (IAC 226.130(h)). Failure to do so would violate the law.

Once a child is evaluated and determined to be "a child with a disability" under the IDEA, an "IEP team" is formed. See 34 C.F.R. § 300.344(a). The IEP team normally includes the parents, a regular education teacher, at least one special education teacher, a School District representative, other individuals with relevant expertise, and the child (if appropriate) 34 C.F.R. §§ 300.344(a)(1)-(7). After the IEP team is formed, meetings are held and an IEP is developed. See 20 U.S.C. § 1414(d) (1) (A) (i) (describing the necessary contents of an IEP). During the IEP-development process, parental involvement is critical; indeed, full parental involvement is the purpose of many of the IDEA's procedural requirements. See *Doe v. Alabama State Dep't of Educ.*, 915 F. 2d 651, 661 (11th Cir. 1990); see also *Weber v. Cranston Sch. Comm.*, 212 F.3d 41, 51 (1st Cir. 2000); 34 C.F.R. § 300.345 (outlining parental involvement in the IEP process).

The school the Student attends is required to provide for the services outlined in the IEP. See 34 C.F. R. § 300.342 (outlining when IEP's must be in effect). The burden is on the Parent once an IEP has been proposed to take proper action to notify the District of their dissatisfaction. In this case, that happened as regards the 2006-2007 and 2007-2008 School Years. Even though the Parent appeared at the District on September 6, 2006, signed documents waiving notice, participated in a domain conference and signed permission for her then minor daughter to be evaluated, such evaluation never occurred. The school nurse interviewed the Mother that day and a health history was taken. She waited; waited, and complained about no resource room and that did not happen until 2007. She complained about the exclusion from the basketball team when the Student was special education and getting no services and it did not get her anywhere. There is such significant non-compliance with legal requirements and such substantive deficiencies in the IEP that it appears to be a demonstration that these were attributable to bad faith on the part of the District.

Turning to the December 7, 2007 IEP, procedural flaws in the formulation of an IEP can result in a denial of FAPE. (*W.G.; B.G., v. Board of Trustees of Target Range School District No.23, Missoula, Montana* 960 F.2d 1479 9thCir. 1992) In that case, the school district failed to make efforts to include the student's teacher in the process, as required by 34 C.F.R. 300.344. Although the student was enrolled in a parochial school, the school district, Target Range, was required to ensure participation in the formulation of the IEP, 34C.F.R.300.348. See also, in accord, *Shapiro v. Paradise Valley Unified School District No.69*, 317 F.3d 1072, 9thCir. 2003, involving a deaf, cochlear implanted student. The only special education teacher (provider) with the Student on her caseload testified that she was not provided notice of the December 2007 IEP meeting, that she had done much to prepare for it and she

subsequently talked to the Mother and told her she wanted to be at the meeting and would attend a reconvened meeting. She also complained to the Case Manager. The District failed to respond, to reschedule the IEP or to arrange a reconvening of it when the Mother asked. At the beginning of the 2008-2009 school year, the Student's senior year in high school the District dropped the Special Education Resource room and assigned the Student to classes with no special education provider. She did not receive even the paltry services and accommodations that were written in the December 2007 IEP, the only IEP the District did during her high school career. This all adds up to very significant deprivation of substantive and procedural rights to a FAPE by the District. Although the Student did not request a due process hearing until September 15, 2008, the District was well aware of her difficulties and declining mental health, evidenced by her increasing sicknesses and absences from school as well as her generally sad affect.

The second prong of the Rowley test is whether the individualized program developed through such procedures is reasonably calculated to enable the Student to receive educational benefits. (*Rowley* at 206-207) The Sixth Circuit recently set out in *Tullahoma City Schools* what it understands *Rowley* to mean by "reasonably calculated to enable the child to receive educational benefits". "The Act requires that the Tullahoma schools provide the educational equivalent of a serviceable Chevrolet to every handicapped student." (*Tullahoma City Schools*, 9 F3rd at 459-460) To paraphrase the Court in *Metropolitan Nashville and Davidson County School System v. Guest* (U.S. District Court, MD Tenn. 231 DELR 232) The question in this case is whether the placement at a District High School in sophomore year, after a freshman year in a private Catholic High School with no special education services and with a questionable IEP developed at the annual review in 7th grade, with an intervening suicide attempt and 3 psychiatric hospitalizations, is a "serviceable Chevrolet" for this learning disabled, emotionally troubled teen-ager. It begins to appear more like a bicycle with flat tires when we note that even the minimal services and accommodations provided in the December 2007 IEP were only provided for 1 semester because when the Student started school for her senior year in September 2008 she had no special education minutes or provider and not even access to a resource room.

The Attorney for the district has supplied five cases to support the District view that the student should not be placed at Acacia and that the District has provided appropriate services and adequate education. None of the cases appears to be relevant to the facts of this hearing. In *Derek B. v. Donegal*, 2007WL136670 (E.D. Pa.) (2007) The court found a very detailed and specific IEP for an LD student to be appropriate, and found the Student made educational progress, albeit not on a year by year basis, but adequate. In *Garcia v. Bd of Ed. of Albuquerque* 520 F.3rd 1116 (10th Cir. 2008) a delinquent student who had dropped out and whom the District offered to educate if she returned was denied relief. The case of *Blake B., etal v. Council Rock S.D.* 2008WL 4489793 (E.D.Pa.)(2008) involved an argument over the adequacy of assessment tools used to evaluate a potential Asperger's Disorder student. *Daniel R.R. v. St. Bd. of Ed. and El Paso* 874 F.2d 1036(5thCir. 1989) is a case regarding mainstreaming vs. self-contained programming. Last, *Gregory-Rivas v. Dist. of Columbia* 577 F.Supp.2d 4 (USDCt. DC) (2008) found no procedural violations per se and no entitlement to compensatory education in a case where there was a dispute about a settlement agreement where a 19 year old student had decided to take general education courses rather than available special education courses in order to fulfill his graduation requirements.

Two of the cases sent by the Student were helpful, *Knable v. Bexley* 238 F.3rd755 (6thCir.2001) where the Court found that the procedural violation of failure of a district to convene an IEP meeting for nearly a year caused substantive harm resulting in loss of educational opportunity for Student and imposed liability on the district to pay for private placement for 2 years, and *Independent Sch. Dist. #701, Hibbing P.S.v. J.T.* 106 LRP 12718 (U. S. D.Ct. Minn, 2006) where the district was liable when only

trivial or de minimus educational progress by the student was demonstrable.

The District has failed to recommend any thing approaching a viable alternative to the education and training available at [REDACTED]. It has offered instead an inappropriate, mostly unimplemented IEP from which this particular Student received little or no educational benefit. The District is attempting to fit the Student into one of their fits-all-sizes programs rather than individualizing according to this Student's needs. Their history with the Student up to this point supports this. The only appropriate option in the record before the Hearing Officer is the private placement at [REDACTED]. For this Student it is the LRE where she can be appropriately educated. Mainstreaming is not required in cases where it would be detrimental to the Student as it would here. Board of Education of Murphysboro v. Illinois State Board of Education 41 F.3rd 1162 (7th Cir.1994) is instructive here and applies to this hearing. IDEA does not mandate an optimal education, or one, which will allow a Student to reach maximum or full potential, only an appropriate one, from which the Student derives educational value. The IEP and services provided by the District do not meet even this minimum test. The Hearing Officer finds on the issues as follows:

1. [REDACTED] did not create and implement an IEP for the Student that provided FAPE during the 2006-2007, 2007-2008 and 2008-2009 School Years so that the Student could make adequate educational progress.
2. Adequate and appropriate assessments were not conducted to address the Student's needs.
3. Appropriate and adequate related services were never provided to the student to assist her in benefiting from her education.
4. The Student had no adequate and appropriate transition plan.
5. The District should not be ordered to pay for independent evaluations to determine Student's potential unassessed disabilities unless the [REDACTED] determines that such evaluations and testing may be necessary for them to appropriately develop a program and educate the Student, in which event the District shall pay for it.
6. The District should pay to place the Student at [REDACTED] for the remainder of the 2008-2009 school year including any ESY services offered [REDACTED] in summer 2009 and for an additional compensatory fifth year of high school for the 2009-2010 school year without regard to possible graduation from [REDACTED] because of credits accrued to date.
7. The District should provide additional tutoring and social work during her time at [REDACTED] [REDACTED] from March 2009 through June 2010 as compensatory services. Payment by the District after June 2010 is not required.

ORDER

1. The Student shall be placed [REDACTED] beginning the week of March 2, 2009 and shall receive education and related services there through Summer 2009 and through the 2009-2010 School Year to June 2010.
2. The District upon presentation of appropriate invoices shall make all payments on behalf of the

Student directly to [REDACTED], for the aforesaid time period, pursuant to a contract entered into after placement approval by the ISBE, which approval shall not be delayed beyond 10 days after proper application by the District.

3. The District is to be reimbursed as set forth in the School Code by ISBE for any payments made to [REDACTED] on the Student's behalf.
4. The District is to provide transportation to the Student to and from [REDACTED] for the period previously set forth, or if both Parties agree, the District shall reimburse the Mother at an agreed upon rate for providing transportation for the Student.
5. The Student is required to attend [REDACTED] for the entire day each day it is in session. All absences shall be verified by medical persons or shall be excused if [REDACTED] determines the absence had a valid cause. If the Student misses more than 2 days, per month without a valid excuse, [REDACTED] shall notify [REDACTED] and the [REDACTED] obligations under this order are removed upon such notification.
6. The District shall convene an IEP meeting to place the Student at [REDACTED] and to modify her IEP in accordance with the findings of this order. Further modifications shall be made at a reconvened meeting after any testing that [REDACTED] does or deems appropriate to be done and with input from [REDACTED] staff who shall be invited to all IEP meetings.
7. The Student is to receive additional weekly social services of 60 minutes per week and tutoring for 120 minutes per week to be arranged between [REDACTED] Student, Mother and the District. It may be contracted for at [REDACTED] or provided at the Student's home by certified District staff.

The district shall submit proof of compliance with this order to the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, Illinois 62777 within 30 days from the receipt of this decision.

RIGHT TO REQUEST CLARIFICATION

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

RIGHT TO FILE A CIVIL ACTION

This decision shall be binding upon the parties unless a civil action is commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-8.01(i), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision is mailed to the parties.

CERTIFICATE OF SERVICE

The undersigned hearing officer certifies that she served copies of the aforesaid Decision and Order upon Parent, their counsel, District and its counsel, and the Illinois State Board of Education at their stated addresses by depositing same with the United States Postal Service with postage prepaid on February 23, 2009, and by e-mail on February 22, 2009 to the Attorneys for both Parties and the ISBE.

JUDGE JULIA QUINN DEMPSEY
IMPARTIAL DUE PROCESS HEARING OFFICER

ENTER: February 22, 2009

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER [REDACTED]
[REDACTED]

v.

[REDACTED]
)
) **ISBE CASE NO. 2009-0133**
)
) **Julia Quinn Dempsey**
) Impartial Due Process
) Hearing Officer