

Case Number: 2010-0112

vs. [REDACTED]  
Hearing Officer: Stacey Stutzman

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: 7735531000  
Superintendent [REDACTED]  
Address [REDACTED]  
Represented by [REDACTED]

Student Ed. Rep. [REDACTED] Phone: [REDACTED]  
Address [REDACTED]  
Represented by [REDACTED]

### Date and Timelines

Date of Written Request: 09/25/2009  
Date of Pre-hearing Conf: 11/04/2009

Date of Hearing: 04/19/2010 to 5/6/2010  
Date of Decision: 05/19/10

### Summary of Decision

Student, aged 19, previously identified as [REDACTED] and cognitively impaired/disabled was placed in a public high school for cognitively disabled students for 4 years. After a psychological assessment done as her triennial evaluation, her eligibility was changed to learning disabled and she was placed at her neighborhood public high school, which she failed to attend because she could not do the work. She requested due process hearing on multiple issues related to denial of FAPE on procedural and substantive grounds and was returned to her former placement during the course of these proceedings. A comprehensive IEE was completed in the meantime, which District declined to fund on the grounds that its evaluation was appropriate. At hearing, Student presented evidence of denial of FAPE, procedural and substantive, including the reports of IEE and testimony from the IEE assessors. She requested placement at Cove School at public expense, compensatory education, and payment for all IEE assessments.

HELD: For Student on all issues except denial of FAPE on the grounds of District's procedural failure to respond to request for IEE or file for due process hearing.

ORDER: Placement at [REDACTED] at District expense; District payment for all IEE assessment components; afterschool programming at [REDACTED] to compensate for denial of FAPE.

**RECEIVED**

MAY 21 2010

SPECIAL EDUCATION  
SERVICES

ILLINOIS STATE BOARD OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

) ISBE CASE NO. 2010-0112  
)  
) Stacey Stutzman  
) Impartial Due Process  
) Hearing Officer  
)

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MAY 21 2010

SPECIAL EDUCATION  
SERVICES

This matter is before the undersigned impartial hearing officer for a due process hearing concerning Student's request for Orders of District funded placement at [REDACTED] payment for IEE assessments, and compensatory education. The hearing officer has jurisdiction to hear and decide this matter under *105 ILCS 5/14-8.02a(g)(2008) and 34 CFR 300.512(2006)*. 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 was [REDACTED] years old at the time of submission of this hearing request and had not executed a transfer of her educational rights to her parents or other person at that time. She executed a *Delegation of Rights to Make Educational Decisions* to her Aunt on March 15, 2010, prior to hearing. Student's attorney submitted a request for due process hearing on behalf of Student and her parents to the Illinois State Board of Education on September 25, 2009. However, the parents have not been involved in these proceedings. District received the Student's hearing request on September 25 and forwarded it to ISBE on September 30, 2009. ISBE received the hearing request on October 5, 2009 and assigned it to the undersigned impartial hearing officer. District submitted a written response to the Student's hearing request on October 5, 2009 and emailed a copy to the hearing officer on October 6. District did not submit a written response to Student's request for IEE agreeing to fund the IEE, nor did it submit a request for due process hearing on the issue of its denial of same. In his Response to Student's hearing request, District counsel stated that the psychological evaluation performed by District psychologist (herein Dr. T.) on May 26 2009 formed the foundation upon which Student was determined eligible for special education under the categories of learning disability and traumatic brain injury and that Dr. T.'s evaluation was valid and reliable. As noted in the Pre-Hearing Conference Report, District counsel stated at Pre-Hearing that ISBE personnel advised him that he did not have to file a due process hearing request on the denial of Student's request for IEE dated 9/24/09 since it was raised as an issue in the Student's due process hearing request. A resolution session was convened on October 19, 2009 beyond the statutory 15 days.

The Pre-Hearing Conference was scheduled for October 26, 2009 by the ISBE Special Education Database System (SEDS). However, it was rescheduled to November 4, 2009 at the request of Student's attorney and proceeded as scheduled on that date. A copy of the Pre-Hearing Conference Report, dated November 5, 2009, is attached to the transcript of hearing and incorporated into the record as Hearing Officer Exhibit A. Student's attorney requests placement at [REDACTED] rather than [REDACTED] as set forth in the Pre-Hearing Conference Report, and as referenced in her hearing request, based on the independent assessments that were performed subsequent to the Pre-Hearing Conference and prior to the hearing in this case. Additionally, by email dated April 21, 2010, Student's attorney withdrew her Issues numbered 1(D) and 5 in the Pre-Hearing Conference Report. She also confirmed a change in her witness list regarding the Central Auditory Processing evaluator due to the lack of the originally identified

evaluator's availability to perform the evaluation, to which District counsel had not objected, and that she was not seeking reimbursement for social worker transition planning.

District counsel submitted *School District Request for Clarification of Issues Cited Within Pre-Hearing Conference Report* on November 19, 2009 and Student's counsel submitted a written response to same on November 24, 2009. Hearing Officer responded via email dated November 24, 2009.

On October 26, 2009, Student's attorney submitted her *Motion for Interim Order to Compel District to Produce All Student Records*, which records had been requested by her in writing on September 25, 2009. District responded to the motion on October 29, 2009, and an Order was entered on October 30, 2009, requiring District to submit all remaining records, including answers on assessment protocols and records from both public high schools attended by Student by November 3, 2009 and also requiring District counsel to submit a sworn affidavit stating that all of the requested student records in District's possession had been provided to Student's attorney. On November 3, 2009, District counsel submitted his sworn affidavit stating that he had consulted with the case managers at both high schools and had reviewed Student's file and that the aforesaid case managers were "not aware of any additional records" and that he himself "on information and belief was currently unaware of any other documents that might be tendered to Student's counsel at this time." Correspondence from Student's attorney dated October 30, 2009 sets forth the records that had not been provided, and Student's counsel again moved to compel production of all of Student's records in a motion dated November 3, 2009. An Order was entered on November 5, 2009, again requiring District to comply with the Order of October 30 and also ordering that an evidentiary presumption in favor of Student would be made at the hearing as to any documents relevant to the issues in the case that have not been produced and for which no reasonable explanation for the lack of possession or production has been made by sworn affidavit.

On December 11, 2009, District submitted an additional 33 documents and files of documents to Student's attorney, citing District counsel's "personal unfamiliarity with the underlying process" of procuring records and stating that he "inadvertently overlooked certain sources of information." He also stated that he possessed "the balance of the protocols" requested but had not included them in the production of December 11, 2009. District counsel subsequently submitted his *Supplemental Affidavit in Support of District's Tendering School Records* dated December 15, 2009 again citing his inexperience as a "new hire" in the procurement and production of documents and not any intention to withhold documents as the cause of the District's failure to produce the requested student records in a timely manner.

Student's attorney submitted *Student's Motion for Interim Order for an IEE or In the Alternative a Bifurcated Hearing* dated October 28, 2009. District did not submit a written response. Oral arguments were heard on the motion at the Pre-Hearing Conference, and an Order was entered on November 5, 2009 denying the motion.

Hearing in this matter was initially scheduled for November 9, 2010 by the ISBE SEDS, based upon the original SEDS date of October 26, 2009 for the Pre-Hearing Conference. At the Pre-Hearing Conference on November 4, 2009, Student's counsel requested that four days be allowed for the hearing due to the amount of evidence to be presented, and Hearing Officer offered available dates beginning on November 18, 2009. However, Student's counsel requested delay of the hearing to allow completion of IEE assessment components that had been scheduled in this case, and District counsel also requested continuance of the hearing to allow District to convene IEP conferences to consider the results of the IEE assessments once completed. Therefore, per Order dated November 5, 2009, the continuance was granted and the hearing was scheduled for February 2, 3, 4, and 5, 2010.

The hearing was continued to March 15, 16, and 17, 2010 at the request of Student's counsel per Order dated January 29, 2010 because the evaluations had not been completed. It was continued to April 19, May 4, May 6, and May 14, 2010 at the request of District counsel by Order dated March 15, 2010 for the reason that an IEP meeting convened on March 10, 2010 had not been completed and was to be reconvened on March 16, 2010. New dates were scheduled based on the availability of counsel and witnesses.

The hearing was convened as scheduled on April 19, May 4, and May 6, 2010 at the school of Student's attendance. The parties presented and completed their cases on those dates and did not request further hearing on May 14, 2010. Although this Decision was to be submitted by May 17, 2010, hearing officer requested and was granted an extension until May 19, 2010 to complete it due to the volume and complexity of the evidence. Therefore, the decision in this matter is not being issued within 10 days of completion of the hearing. Due to the postponements noted above, it is not being issued within 45 days of the initiation of the statutory 45 day timeline.

In attendance at the hearing of this matter were Student, her [REDACTED] as her designated educational representative, [REDACTED] attorney for Student and [REDACTED] and [REDACTED] attorney for District. Also in attendance on April 19, 2010 was [REDACTED] attorney for District. The hearing was reported by [REDACTED], CSR, CCVS of [REDACTED] Court Reporting Services (312 263-2881).

Hearing Officer heard testimony from 20 witnesses called to testify over 3 days of hearing. The following witnesses were called to testify on behalf of both parties: [REDACTED], District case manager; [REDACTED], independent speech/language pathology and assistive technology assessor; [REDACTED], District school psychologist; [REDACTED], District speech/language pathologist; [REDACTED], District culinary arts teacher; [REDACTED], independent occupational therapy assessor; [REDACTED], District school social worker; [REDACTED], District special ed. teacher/ Student's home room teacher; [REDACTED], District special ed. science teacher; [REDACTED], District school principal; [REDACTED], independent vocational assessor; [REDACTED], Director of [REDACTED], District occupational therapist; [REDACTED], independent audiologist/central auditory processing assessor; [REDACTED], neuropsychologist/independent psychological assessor; Student's [REDACTED], District school nurse; [REDACTED], District special ed. English teacher; [REDACTED], District special ed. humanities teacher; and Student. Additionally, [REDACTED], independent educational evaluator, testified on behalf of Student.

At the time of the Pre-Hearing Conference, hearing officer asked the parties to include only documents they intended to use at hearing in their disclosure packets. Student submitted 510 pages of documents for use at hearing at the disclosure deadline and added page 511 without objection from District counsel during the hearing.<sup>1</sup> District submitted 476 pages of documents for use at hearing, including copies of the hearing request and exhibits, District's response, and certain Pre-Hearing correspondence, motions, and Orders, at the disclosure deadline. In this Decision, documents relied upon in the determination of the facts of the case are referenced by the page number of the document preceded by a "P" for Student's documents and a "D" for District's documents.

Of the documents submitted by the parties for use at hearing in their respective document books, the following were used at hearing: P1-19, 24-42, 44-113, 116-170, 172-188, 193-205, 207-214, 217, 220-249, 252, 254, 257-260, 265-268, 277-280, 282, 284, 324-334, 360-363, 367, 401-429, 475, and 480; and D22-30, 35-63, 66, 75-128, 165-177, 180-183, 190-222, 256-260, 309, and 335.

As requested by hearing officer at the Pre-Hearing Conference, Student's attorney submitted an outline of law and copies of legal precedent relied upon in support of Student's position in her disclosure packet and also presented copies of additional legal precedent cited in her closing argument prior to closings. District's attorney did not provide copies of legal precedent in support of his position.

### **Issues Presented**

Whether District violated Student's right to a free appropriate public education as follows<sup>2</sup>:

<sup>1</sup> It is noted that pages numbered 20-23 were not included in the Student's document book.

<sup>2</sup> Relief in this cause is sought only for violations occurring within the 2 year period preceding submission of the DPHR dated 9/25/09 due to the 2 year IDEA statute of limitations.

1. Failure to adhere to procedural requirements under the IDEA and the Illinois School Code and their attendant regulations designed to allow Student and her Parents to participate meaningfully in the development of Student's educational plan, including
  - A. failure to respond in writing to Student's request for an IEE at District expense dated 9/24/09 and request a due process hearing on the issue of same;
  - B. failure to provide all Student records to Student's counsel in a timely manner pursuant to the request dated 9/25/09 and hearing officer Order dated 10/30/09; and
  - C. failure to have all appropriate teaching staff present for the IEP meeting of 5/29/09 and 6/10/09 at which Student's eligibility was changed from cognitive disability to specific learning disability and traumatic brain injury by the school psychologist?
  
2. Failure to evaluate Student in a timely and adequate manner and in the requisite domains, including:
  - A. psychological;
  - B. fine and gross motor skills;
  - C. communication skills;
  - D. assistive technology; and
  - E. vocational skills.
  
3. Failure to agree to an IEE at public expense pursuant to Student's request of 9/24/09?
  
4. Failure to develop and implement an IEP appropriate to Student's individual needs, including measurable goals and objectives and related services in sufficient intensity, and including assistive technology and training of Student, Parents, and staff therein, a transition plan, and addressing fine and gross motor and communication and written language skills?
  
5. Failure to place Student in an educational setting appropriate to her individual needs, specifically changing her placement from a high school for cognitively impaired students to her neighborhood high school at the IEP meetings of 5/29/09 and 6/10/09 due to the change in her eligibility identification from cognitively disabled to learning disabled?
  
6. Failure to provide Student with extended school year in the summer of 2009?

**Findings of Fact**

The material facts relevant to the issues in this cause, based upon the evidence presented are as follows: Student is a [REDACTED] year old female in her senior year at a District public high school for students who are eligible for special education due to mild to moderate cognitive disabilities and has a student population of 200 to 235 students. Students must also be identified as eligible to take the Illinois Alternative Assessment. The curriculum is modified and allows students to earn a regular high school diploma. (C.K.; C.B.; C.N.; Dr. T.; P277, P367)

Since initial evaluation in 1997, Student has been determined eligible for special education by District in the categories of TMH ([REDACTED]), EMH ([REDACTED]), mild ([REDACTED]), and CD ([REDACTED]). She was evaluated while living in another state and found eligible as OHI (other health impaired). (K.T., J.H.; P80-81, 91) On May 29, 2009, her eligibility was changed from cognitive disability to learning disability. (P50) On June 10, 2009, it was changed to learning disability and TBI ([REDACTED]) (P49) In her most recent District IEP documents dated March 10 and March 16, 2010, she was identified as learning disabled. (D180, 190)

Student was placed in the self-contained public high school for cognitively disabled students her freshman year, in the Fall of 2006, with an eligibility designation of mild cognitive

impairment. The eligibility determination, made on June 12, 2006, referenced an assessment consisting of Intelligence Testing, reported as a score of 66 on the *RIST Index*, 18 on the *Guess What*, and 35 on the *Odd Item Out*, and the *Woodcock-Johnson III Tests of Achievement*, the results of which were reported only as the following Grade Equivalents: Letter-Word Identification 4.6; Story Recall 1.3; Passage Comprehension 3.4; Applied Problems 3.1; Reading Fluency 4.8; Spelling 6.6; and Calculation 7.3. Health, Vision, Hearing, Social/Emotional, Communication, and Motor Abilities were checked as not relevant on the Eligibility Determination document. The eligibility determination documentation indicates that Student was suspected of having a learning disability and that a severe discrepancy existed between student's achievement commensurate with her age and ability in oral expression, written expression, basic reading skill, reading comprehension, and math reasoning and that the discrepancy was not due to visual, hearing, **cognitive**, or physical disability, emotional disturbance, or disadvantage. However, it was determined that student did not have a learning disability. Rather, she was identified as having a mild cognitive impairment. (P1-3) Although the IEP document identified Student as speaking only English at home and at school, she was enrolled in an ESL class for both semesters of her freshman year. (P6, 367)

The IEP developed for Student on June 12, 2006 noted transition services as "not applicable", and it did not include a transition plan for Student, who was over 15 years old when entering the high school. (P18) Four goals were developed in the areas of Language Arts, Math, Science, and Social Studies for implementation to begin in September 2006 and end in May and June of 2007. The Present levels of academic achievement provided in conjunction with those goals are reading comprehension at the 3.4 grade level for her Language Arts goal but at the 4.8 grade level in her Science and Social Studies goals, which, according to the eligibility determination document, was her fluency grade level, not her comprehension level. It cited her present level as math computation at 3.1 grade level for her math goal. No further specific objective findings were provided from which to measure progress on the goals, which were to perform certain tasks with 70% accuracy for all quarterly benchmarks. (P10-13) The IEP Summary Sheet notes Student's preferred learning style as visual, auditory, and tactile, and notes learning characteristics as "Processes information slowly" and "Has difficulty following multiple verbal directions." (P19) All goals were the responsibility of the special ed. teacher, and no related services were designated. (P14)

Student's case manager, [REDACTED] is responsible for keeping Student's records. He provided all of Student's records to District's attorney in this matter. He schedules and facilitates IEP meetings but has never taught Student. [REDACTED] Student has difficulty processing and does not understand things when she is spoken to. [REDACTED]

#### The 2007-08 School Year

The IEP dated June 12, 2006 identified its projected end date as June 12, 2007. Normally, an "end of year statement" would be completed by the teachers. Student's progress on the goals in her 2006 IEP, if any, was not documented, and no IEP or transition plan was developed for the 2007-08 school year, her sophomore year.<sup>3</sup> Had there been an IEP developed for the 2007-08 school year, the case manager would have provided it to District's attorneys in this case. (C.K.)

#### The 2008-09 School Year

An IEP meeting was convened on May 9, 2008, at the end of Student's sophomore year, designated as an annual review<sup>4</sup>. (P24) Four people attended, including the Case Manager, who was also designated as the District Representative, a regular education teacher<sup>5</sup>, Student's

<sup>3</sup> District did not produce a 2007-08 IEP or an explanation as to why it was not being produced or testimony as to when or whether an IEP was developed between June 12, 2006 and May 9, 2008.

<sup>4</sup> As noted above, there was no 2007-08 IEP and no goals and objectives upon which to review progress at the 5/9/08 annual review.

<sup>5</sup> This teacher was on both parties' witness list but did not testify at hearing because she was on maternity leave.

homeroom teacher, who was designated as a special education teacher, evaluation representative, and transition representative, and Student's Mother. An IEP was developed for implementation for Student's junior year. (P24-42) Mother expressed concerns about Student's behavior. It was noted that Student had no work experience. There was a reference to "some very high adaptive skills" without reference to a source. (P25) However, there was another statement that "low functioning in areas of adaptive behaviors may warrant supervision and/or intervention to promote successful living." (P29) The 2008 IEP included a one page document entitled *Transition Services Plan* identifying Student's course of study as a modified curriculum and comprised of brief one sentence statements as follows:

**Present Level of Performance:** Student is a bright young woman. She sometimes has difficulty responding appropriately to direction. She has indicated she would like to work in a retail store.

Parent's Post-School Vision: Parent is unsure and is worried that her daughter lacks motivation.

Student's Post-School Vision: Student has said she would like to work in a store.

### **Transition Goals**

Post-School Education: Upon identifying an area of vocational interest, post-secondary training programs will be identified.

Post-School Employment: Student will identify an area of vocational interest.

Community Integration: Student will continue to live at home and maintain appropriate social relationships with increased independence.

### **Coordinated Set of Activities**

Instruction: Highly modified academic curriculum. Sp.Ed. Staff.

Related Services: Counseling services to address appropriate responses to teacher direction. Sp.Ed. Staff.

Community Experiences: Parent will consider CTA travel training offered at the school. Sp.Ed. Staff and Parent.

Acquisition of Daily Living Skills: Through diverse academic/occupational experiences Student will be exposed to a number of programs designed to increase acquisition of daily living skills. Sp.Ed. Staff.

Functional Evaluation: Student's ability to maintain good standing in classes along with input from teachers, counselors, and parents. Sp.Ed. Staff and Parent.

End of Year Performance Statement developed by the teacher or transition specialist: (this is left blank and unsigned and undated) (P35)

The May 9, 2008 IEP included goals for Science, Other I, Mathematics, Computer, and Social/Emotional. The homeroom teacher believes that he "probably collected goals from the other teachers" but did not write them himself. The Present Levels of Performance did not include any objective data from assessments or evaluations of Student. No grades were referenced. There was no goal specifically directed to improvement of Student's reading, writing, or communication skills. (P30-34)

The Science goal included a statement that Student “has difficulty describing observed science concepts using words and sentences, collecting data using appropriate tools and following appropriate steps in a process related to her low cognitive functioning” as the Present Level of Educational Performance. The stated goal was for her to “use the processes of scientific inquiry and technological design to investigate questions, conduct experiments with multiple steps at an accuracy of six of ten projects with support after instruction.” The quarterly benchmarks related to measurement, data collection, and guided inquiry in six of ten to 8 of ten projects. There is no reference to Student’s then current level of achievement in regard to the stated goal or benchmarks. The science class for Student’s junior year, Biology III, was taught from a modified curriculum and text book at a 3<sup>rd</sup> Grade Level. Students were taught what was “live” and what animals, humans, and plants were and learned about human body parts and reproduction. They worked in the garden. The teacher of that Science class has not attended any IEP meetings for Student. (P.B.; P30)

The Other 1 goal cited Student’s enrollment in an Occupational Preparation I class and recited jobs she had done in the class or the school as her Present Level of Performance. The stated goal, with quarterly benchmarks, was for Student to “identify and describe values, skills, and interests verbal/written expression as it relates to obtaining work experience (75% with prompts)”. (P31)

The Present Level of Performance for Mathematics stated that Student “is currently working on making change. She is able to recognize coins and count up pennies, nickels, dimes, and quarters. She has been practicing using a cash register and adding up totals. She is easily distracted by everything going on around her which prevents her from completing work.” The annual goal was for her to “represent and solve mathematical problems using number facts, operations (addition, subtraction, multiplication, division), and word problems with 75% accuracy, and the quarterly benchmarks related to solving one and two step problems with 70% accuracy, including use of a calculator. No objective data relating to Student’s then current ability to solve math problems using number facts was provided. (P32) Student’s difficulty in math is related to her poor spatial skills. ( [REDACTED] )

The Present Level of Performance for Computer was Student “has been working in Microsoft PowerPoint. She has practiced inserting clip-art, background elements as well as reviewing capitalization, punctuation, and keyboarding skills. She has also reviewed saving her work.” The goal with quarterly benchmarks was for Student to create a 5-slide PowerPoint presentation and to insert clip-art and transition elements into the presentation. She was not enrolled in a computer class for the Fall of 2008. (P33; P367) The goal is inadequate to prepare Student for the world of work. It entails basic computer operations that a first grader should be doing. ( [REDACTED] )

Student’s social/emotional goal was directed to her difficulty focusing and being moody and generally restless and dissatisfied and called for her to use coping skills to be developed in a social work group. (P34)

The May 9, 2008 IEP noted that assistive technology was required for Student to access the curriculum and listed “computers, calculators, and highlighters” as the appropriate assistive technology. (P28) It noted Student’s Preferred Learning Styles as Visual and Auditory and cited Student’s difficulty following directions, processing information slowly, difficulty understanding concepts, and difficulty following multiple verbal requests. (P41)

The only related service to be provided to Student per the May 9, 2008 IEP was 90 minutes per week of counseling from the social worker. All of her education was to be provided by a special education teacher in a separate special education classroom with no participation with non-disabled peers. The social worker did not attend the May 9, 2008 IEP meeting. All of the school’s students receive counseling. The homeroom teacher who attended the IEP meeting has never taught Student in an academic or functional skills class. ( [REDACTED] [REDACTED] [REDACTED] P36)

Alternate assessment was called for in the form of school based assessments and portfolios. (P38) Student was to receive IEP Progress Reports, and grading was to be based on modified criteria in all academic areas because her “reading and math levels are below level.” She was noted to have “deficits in memory skills and comprehension”, which “interfere with the

acquisition of the required skills.”(P36-39) The IEP provided for extended school year (ESY) of six weeks to maintain current level of information, skills, and behavior necessary for self-sufficiency. (P27) As justification for the placement in a self-contained school, the case manager wrote “This student’s deficits and limited achievements in academic areas prevent him (sic) from being able to participate in the regular education classroom. Modifications do not adequately supplement with necessary individual instruction. This student requires a practical functional educational program with an emphasis on transition concerns and independence.” [REDACTED]; P37)

### The 2009-10 School Year

The case manager gave Student a *Consent for Evaluation* dated February 22, 2009, at which time Student was 17 years of age, which was signed by Student on some unknown date on or after February 22, 2009. He didn’t invite Student to a Domain meeting and doesn’t recall if he invited her parents. He doesn’t recall if he gave Student a copy of the Domain sheet. He doesn’t recall any discussions about communication or motor skills. The date of Student’s signature on the consent form is the date of her birthday, 5-14-91.(C.K.; P78)

On a Domain sheet dated 4/2009, completed by the school social worker and the school nurse, only updates of cognitive functioning and academic achievement by a psychologist and update of social assessment are checked as relevant to Student’s re-evaluation. Health, Hearing, and Vision are checked as not relevant, and Communication and Motor Skills are not checked either way. [REDACTED]; P79; D22)

On May 26, 2009, shortly after Student’s 18<sup>th</sup> birthday, Student was assessed by [REDACTED] the school psychologist, for her triennial re-evaluation. Student did not wear her glasses for the evaluation, which caused [REDACTED] to caution that her “results should be interpreted with caution and as a minimal estimate of her potential.” [REDACTED] did not conduct a classroom observation of Student as part of her assessment. Although her teacher said that Student was distractible, she did not assess Student’s attention, for no particular reason. Student presented to her with higher functional skills than a person with a cognitive impairment, and she had concerns as to her being higher functioning than her current classmates at the self-contained school in a lot of areas after she tested her, but she did not administer the *Vineland Scales* or perform any other assessment of Student’s adaptive behavior or independent living skills. She did not assess for traumatic brain injury, but relied on Mother and Student records in including TBI in the eligibility determination notes. Although Student was shown to be deficient, below the 1<sup>st</sup> percentile in listening comprehension, she did not do more in depth testing or refer Student for a speech/language assessment. She does not refer a child for testing of a central auditory processing deficit (CAP). That referral would be made by a speech pathologist. She only refers students to a speech therapist for speech/language assessment if she can’t understand them during her assessment and there is an issue as to articulation. She did not administer tests to measure Student’s fluency or receptive-expressive language or written expression. Student’s hand-eye coordination functioning on the test for visual motor integration was below the 1<sup>st</sup> percentile at .8, but she did not refer Student for an occupational therapy evaluation. She does not refer students for occupational therapy evaluations unless they have difficulty holding a pencil, writing their names, or forming shapes. (Dr. T., P80-85) Dr. T.’s written report was not completed in time for presentation to the IEP team at the May 29, 2009 eligibility IEP meeting. [REDACTED]; [REDACTED];P46)

Student’s results on [REDACTED]’s assessments were included in her report as follows:

### *Kaufman Brief Intelligence Test, Second Edition (KBIT2)*

KBIT IQ SCORES	Standard Score	90% CI	PR
VERBAL	68	(62-77)	2
NONVERBAL	76	(69-86)	5
KBIT 2 IQ COMPOSITE	68	(62-76)	2

### Visual-Motor Integration-5<sup>th</sup> Edition

Standard Score	60
Percentile	.8
Age Equivalent	9 years 0 months

*Stanford Binet Scales-5<sup>th</sup> Edition:*

	Nonverbal Domain Scaled Score	Verbal Domain Scaled Score
Fluid Reasoning	8	6
Knowledge	2	10
Quantitative Reasoning	2	5
Visual Spatial	7	1
Working Memory	7	6

COMPOSITE PROFILE	Standard Score	95% CI
NONVERBAL IQ	69	(65-77)
VERBAL IQ	72	(67-79)
FULL SCALE IQ	69	(66-74)
Fluid Reasoning	82	(76-92)
Knowledge	77	(71-87)
Quantitative Reasoning	64	(59-75)
Visual Spatial	65	(60-76)
Working Memory	80	(74-90)

*Wechsler Individual Achievement Test-Second Edition-WIAT-II:*

SUBTESTS	SS	PR
Word Reading	79	8
Reading Comprehension	70	2
Pseudoword Decoding	116	86
Reading Composite	86	18
Numerical Operations	66	1
Math Reasoning	48	<0.1
Math Composite	50	<0.1
Spelling	94	34
Listening Comprehension	57	0.2

(P81-82)

The school social worker issued a report of Social Assessment dated May 27, 2009 for the triennial evaluation. She did not administer the *Vineland Scales of Adaptive Behavior* or any other scales or assessments of independent functioning or adaptive behavior, although she would have preferred that a *Vineland* be administered. However, in this school system, the *Vineland* is administered by the psychologist if it is done. The social assessment was based upon a review of records and information obtained from Student regarding home and school. It referenced Student's educational placement history, family relationships, including difficulties with her Mother and brothers and closeness to Aunt and Grandmother, a head injury at age 4 resulting in the loss of consciousness and medical treatment rendered for same, a previous diagnosis of ADHD and the prescription drugs taken by Student in the past. It further referenced Student's desire to be more challenged in school, her propensity to overly socialize, and her mood swings and anxiety. It was noted that social work services would continue "to assist Student with managing her stresses and making good choices." The information provided at the May 29 eligibility meeting was then put into the psychologist's written report. (P86-87)

An IEP meeting was convened on May 29, 2009 for the stated purposes of reviewing the results of the triennial evaluation and for Transition Planning. (P50) In attendance were [REDACTED] as Case Manager and as District Representative, a special education teacher who also signed in as the transition representative,<sup>6</sup> the school psychologist who evaluated Student, Student's Mother, Student, the school nurse, and the school social worker. [REDACTED], [REDACTED] T., [REDACTED], [REDACTED]; P50)

The documentation of academic performance on the eligibility determination document noted the score of 86 on the WIAT-II subtest for Pseudoword Decoding, mastery of addition, subtraction, multiplication math facts, and difficulty with division and fractions. The documentation of General Intelligence was as follows: "Overall cognitive functioning was significantly scattered on the SBS. Student exhibited low average to average functioning in areas of fluid reasoning and working memory. Knowledge was in the low range. Quantitative reasoning and visual spatial were in the deficient range; and consistent with mathematics functioning."(P52) At the IEP meeting, [REDACTED] stated that Student was not cognitively impaired. She does not feel that a cognitively impaired student would seek out a dictionary to look up a word's meaning as Student did when she did not know the meaning of a word during the assessment. [REDACTED]

Student's eligibility was changed from cognitive impairment to learning disability and it was noted to be the consensus of the team. ([REDACTED] [REDACTED] P50) Although all five of the staff in attendance signed a form acknowledging agreement with the determination of eligibility for a learning disability, the social worker signed it only because it was part of the process but does not consider it "part of her expertise." The special education teacher left the meeting while the psychologist was reporting on her assessment and was not present for the determination of eligibility." [REDACTED]; P46, P74)

At the insistence of the special education teacher and the social worker, a second IEP meeting was convened on June 10, 2009 for the stated purposes of 3-Year Evaluation, Transition Planning, and "Other: REVIEW-Reconvene". The attendees were the same as the previous meeting, except for the nurse who was excused, plus an additional person identified as a District Speech and Language Coach. The nurse's report dated 6/1/09 was read at the meeting. It reported that Student had a history of ADHD, that she had previously been on medication but was not currently on medication, that she had sustained a TBI when thrown down the stairs when very young, and that her last physical exam in 2005 appeared to be normal. ([REDACTED] [REDACTED]; P46, P88-89) That meeting resulted in determination of Student's primary disability as learning disability and traumatic brain injury. (P49) However, only the case manager and the psychologist signed a form acknowledging their agreement with the learning disability eligibility determination. The special ed. teacher, Student and her mother, and the social worker signed the form as disagreeing with the determination. The aforesaid speech/language coach noted on the form that she did not have enough information to agree or disagree. (K.N.;P54)

The *Transition Services Plan*, like the previous year's plan, consisted of one page of brief statements as follows:

**Present Level of Performance:** Student is currently functioning significantly below academic grade level. She has had limited work experience in the school building working in the library and with the custodial staff.

**Parent's Post-School Vision:** Student's mother would like her to find a good job and work hard as an adult.

**Student's Post-School Vision:** Student would like to work and attend a college after high school. She is not certain what she would like to study or work at and Changes her mind frequently.

<sup>6</sup> This teacher was on both parties' witness lists but did not testify at hearing as District counsel advised that she was out of town on a field trip.

### **Transition Goals**

Post-School Education: Student will continue to explore post-secondary educational options and will begin to narrow down her areas of interest.

Post-School Employment: Student will continue to learn about job requirements and expectations in various employment industries.

Community Integration: Student lives at home with her parents and two brothers. When she has free time she likes to visit her friends and family.

### **Coordinated Set of Activities**

Instruction: Instruction will continue to be delivered through a modified curriculum. Sp.Ed. Staff.

Related Services: Student will continue to be delivered through a modified curriculum. Sp.Ed. Staff.

Community Experiences: Instruction will continue to be delivered through a modified curriculum. Sp.Ed. Staff

Acquisition of Daily Living Skills: Daily living skills will continue to be acquired both in the school setting and in the home.. Sp.Ed. Staff.

Functional Evaluation: Evaluation will be ongoing and will include both standardized and curriculum based assessment. Sp.Ed. Staff.

There is no reference to or documentation of progress, if any, on the previous year's transition goals. (P66)

Five goals were included in Student's 6/10/09 IEP. One goal written for the area of Language/English/Reading. The present level of educational performance for that goal stated that Student is "currently reading at about the fourth grade level" and "is able to write simple paragraphs." There is no reference to the recent WIAT-II test results from the triennial evaluation. Rather, it goes on to state that "due to her cognitive disabilities Student has difficulty staying focused." The goal is written as "Student will improve her language skills in reading and writing with 75% accuracy", although, again, there is nothing to advise at what percentage of accuracy she is currently performing, and "She will participate in the Illinois Alternate Assessment (IAA) this year." The consecutive quarterly benchmarks are for her to read a story and answer literal questions with 75% accuracy; retell the events of a story with 75% accuracy; and write a paragraph about a given topic stating details and a conclusion with 75% accuracy. (P62)

One goal was written for Mathematics. The present level of educational performance noted that Student was enrolled in a third year functional math course and that she was able to add and subtract with regrouping and multiply numbers in a 2 digit by 2 digit. It then goes on to advise that Student "has difficulty in applying basic math skills to situational story problems" and "she often appears unmotivated in class and requires frequent redirections in order to complete work." Again, the WIAT-II test results were not referenced. The stated goal was to "apply the basic operations of addition, subtraction and multiplication to single step situational story problems and "correctly solve single step story problems with 75% accuracy" with a calculator available for use. Her beginning percentage of accuracy was not noted. The consecutive quarterly benchmarks are for Student to categorize math terms with 75% accuracy, determine necessary operation for problem solving with 75% accuracy, and solve single step story problems with 70% accuracy.(P64)

The remaining three goals are in the areas of Science, to identify 9 lab safety rules and directions for completing an experiment with 70% accuracy, Social/Emotional, to practice her stress relief techniques and report progress to the counselor, and Independent Functioning, to ask clarifying questions 80% of the time. (P61, 63, 65) There is no reference to review of Student's progress on the previous year's goals at the 5/29 or 6/10/09 meetings, and the annual review box is not checked as a purpose of either meeting. (P49-50)

Assistive technology required for Student is listed as "highlighters, colored overlays, organizational tools, calculator in math, student agenda, and computer and software applications in all academic classes." Speech/language was initially included on Student's IEP as a related services due to "a glitch in the system", but was later removed. (P68) The only other related service noted is 15 minutes per week of direct/consultative services from the social worker relating to "Physical/Sensory". (P67)

The placement determination documentation on the June 10, 2009 IEP states that Student is to be removed from the regular education classroom **both** 21-60% (301-900mpw) **and** 61-100%(901-1500 mpw)(P67) The Justification of placement in the least restrictive environment includes the following "educational settings" that were considered:

*Gen. ed with supp. Aides/services was considered by the team and rejected because academic, and adaptive skills are delayed to the point that the student cannot be successful/support.*

*Removal from general ed. for up to 20% of the day was considered by the team and rejected because it was not able to provide the structure and individualized instruction necessary for success.*

*Removal from general ed. from 20% to 60% of the day was considered by the team and accepted.*

*Removal from general ed. for over 60% of the day was considered by the team and rejected would be too restrictive for her present needs.*

There is no further description of what Student's placement for the Fall 2009 school year is to be. There was no discussion at the IEP meeting about any placements other than the current and the neighborhood high school. The remainder of the placement justification is incomplete, except it notes that there are no potentially harmful effects of the placement known by the IEP team. No transition strategies for changing Student from the self-contained to the neighborhood high school are provided in the IEP.(P68) In September, 2009, Student's placement was changed from the high school for the cognitively impaired to the public high school in her neighborhood. (P68)

On June 12, 2009, the school nurse submitted a written dissent to the TBI eligibility determination stating that there was no medical documentation of same in Student's school health file. (P48) Student's homeroom teacher also prepared a letter dated June 12, 2009 dissenting to the change in Student's eligibility and placement, citing procedural violations and asserting that the determination had been made by the psychologist without assessing Student's adaptive skills and without consulting her teachers. He opined that the change in identification was made to disqualify Student from her current placement and force her into an inclusive school setting. It was signed by the homeroom teacher and six other teachers as well. (P44-45) The social worker also submitted a dissenting letter dated June 12, 2009, objecting to the change in eligibility and placement, also citing, *inter alia*, the psychologist's failure to do a Vineland or other assessment of independent functioning. (P46-47)

Student was not provided ESY services in the summer of 2009 because she was leaving the self-contained high school for the neighborhood school. There was no discussion of regression and recoupage regarding Student at the May 2009 IEP meeting. She had received ESY in past summers and she would have benefited from ESY. (P46-47) The IEP developed for her on May 29 and June 10, 2009 did not include any supports or aides for assisting Student in

the transition and adjustment to placement in a regular high school, even though it noted that modifications/accommodations were needed due to participation in a wide array of assignments with non-disabled peers and community and work-based activities and settings. (P58-60)

Student was enrolled in the neighborhood high school in the Fall of 2009. She was unhappy and the work was too hard for her. She was placed in Algebra, American History, and Spanish with non-disabled peers. She could not do the algebra, and essays were hard for her. She did not go to school because the work was too hard for her. She wanted to go back to her former school. (Student; P324-334) She went to her former high school and complained to the social worker there. She complained to her Aunt. The social worker provided Aunt with the phone number for an advocate to help Student in regard to the placement change. (█████; Aunt) As a result, Student retained counsel, and counsel requested an Independent Educational Evaluation of Student in correspondence submitted to the District CEO dated September 24, 2009. (IEE request attached to DPHR) She also submitted a request for due process hearing and a request accompanied by her signed authorization for Student's records to District CEO on September 25, 2009. Following the resolution session in this cause, on October 19, 2009, Student was returned to the self-contained high school for students with cognitive impairments. (Student; PHC Report at page 2)

Thereafter, Student and her counsel secured an independent educational evaluation of Student, consisting of psycho-educational, central auditory processing, occupational therapy, speech/language, assistive technology, and vocational assessments. All assessments were conducted by experienced, well-qualified examiners. The examiners took time to observe Student in various academic and community settings, and they issued detailed reports of their findings and recommendations. The IEE assessments included observations of Student in school and community settings and assessed her transitional and vocational needs, due to her age and grade level, as well as her academic needs. The fees charged for the aforesaid independent assessments are usual and customary for independent assessments in the area, and they are reasonable considering the Student's age, the lack of prior assessments, and the need for intensive academic and transitional programming. (█████, █████, █████, █████, █████, P90-247, 248-249, 252, 254, 257, 258, 511)

The reports of the IEE evaluation were provided to District as they became available, and the District convened an IEP meeting for the stated purpose of considering the IEE on March 10, 2010. The IEE assessors were not invited. In attendance were the case manager who also signed in as district representative and general education teacher, the nurse, the psychologist, the social worker, a District speech therapist, Student, Student's Humanities teacher who signed in as special ed. teacher, evaluation representative, and transition representative, Aunt, and lawyers for both parties. There is no documentation of the discussion that took place at that meeting. (D180)

█████ and █████ reviewed the report of independent psycho-educational evaluation performed by █████ and █████. She did not find it to contradict her findings. However, Student did wear her glasses for the independent assessments and the assessment did address areas of concern and make findings that her assessment did not address, including written language, adaptive skills, attention issues, auditory processing, and language. It also included recommendations for services and placement. (Dr. T.; P190-194)

█████'s assessment was consistent with █████ Stanford-Binet scores putting Student in the borderline range of intellectual functioning between the very beginning of the L.D. range and the very top of the C.I. range. However, her assessment of Student's adaptive skills, which were not assessed by █████, yielded low scores from scales completed by Student's Grandmother and 2 of her teachers. Only the scores from the P.E. teacher put Student in the average range of adaptive skills. These findings refuted █████'s assumption that Student had average adaptive skills. █████ found no evidence of ADHD. She also identified processing weaknesses and strengths that █████ did not. She could not conclude that the impairments she found in many areas were due to a traumatic brain injury without medical evidence. Student fits within the definition of the former DSM category of EMH. D.R.'s educational assessment of Student revealed that Student has not made educational progress in her current program in reading or math, and that her skills in Math have regressed to a 1.5 grade level. She requires intensive remedial programming to

improve her skills in math, reading comprehension, and written expression. She can receive only very minimal benefit from the program currently proposed by District. (██████████; P90-113)

The District speech therapist assigned to Student's high school reviewed ██████████'s report of speech/language and assistive technology evaluation at the March 10, 2010 and accepted it. She found many of the points and concerns therein to be valid and the instruments used in the assessment to be valid and reliable, and advised that she would recognize the outside evaluation and start working with Student. She also attended an IEP meeting of March 16, 2010, at which a new IEP was developed, wrote two goals—to improve understanding and use of language of classroom material, and to produce oral language in accordance with the rules of conversation--and she recommended 60 minutes per week of direct speech/language therapy for Student as well as 15 minutes per week consultation and collaboration services to the special education teacher. J.M.'s recommendations of the *Earobics* and *Fast ForWord* programs were not included in the 3/16/10 IEP. (██████████, ██████████; P172-188, D180, 190, 210-212)

Student needs assistive technology support on a daily basis to allow her to make academic progress due to significant language and processing deficits. Recommended A.T. includes a lap top computer with Windows and internet capabilities, screen reading software, talking word processor, word prediction software, organizer or mapping software, and books for curriculum and leisure reading that she can access independently via screen-reading technology. (██████████; P180) No one from the District's assistive technology department attended either March 2010 IEP meeting, and the software programs recommended by ██████████ to assist Student were not included in the IEP. The IEP instead noted that an A.T. evaluation had not been performed and provides no response to the question of whether or not A.T. is needed. (██████████; P172-188, D180, 190, 196, 210-212)

Student was referred by the independent psycho-educational evaluators to ██████████, licensed audiologist with a PhD in Audiology, for a central auditory processing (CAP) evaluation. That evaluation revealed Student's auditory decoding deficit. Such a deficit results in the difficulty to make fine acoustic discriminations in speech efficiently and to achieve auditory closure when portions of the speech signal are distorted or missing. The deficit has been present for awhile, as it does not appear overnight without a head injury or a stroke. Student is not processing speech correctly due to the deficit, and ██████████'s recommendations are necessary for implementation in school to help Student hear correctly. She has recommended a number of direct interventions to improve Student's auditory discrimination, including *Fast ForWord* and *Lindamood-Bell* therapies. Based on her research and personal and clinical experience Student's prognosis is good with the implementation of her recommendations. Student's IEP of March 16, 2010 does not address Student's auditory processing deficit. (██████████; P193-205)

The District occupational therapist, who is at Student's high school once every two weeks, reviewed ██████████'s report of independent occupational therapy evaluation, which was given to her on March 10, 2010. She did not attend the March 10, 2010 IEP meeting. She did attend the March 16, 2010 IEP meeting and was excused early because her contract hours end at 1:45 p.m. She did not make any recommendations for occupational therapy because she understood that she was not allowed to make recommendations without a prescription from a physician. (██████████)

██████████ identified "distressingly low" visual motor integration and visual perception skills impacting Student's math abilities, community mobility, and time and money management skills. The Student's school records revealed problems that should have been addressed with occupational therapy services early in Student's education in the District. She recommended 60 minutes per week direct occupational therapy services for Student and 60 minutes per week of consult. However, occupational therapy was not included in Student's IEP services. The IEP of March 16, 2010 does not include ██████████'s recommendations. ██████████'s observation of Student at school was of adults stepping in to do things for her, not teaching her skills that will allow her to become independent. (██████████, ██████████; P117-170, D180, 190-222) Student does not wear her glasses at school. (██████████, ██████████) Her IEP should provide a strategy to correct her failure to do so. (██████████)

Student has not had an appropriate transition plan with goals to move her forward in the areas of the post high school domains of education, employment, community access, and

independent living since entering her current program. Transition counselors from the Illinois Department of Rehabilitation Services should have been involved in Student's transition planning by age 17 to educate Student and her family. Student had not received a vocational assessment prior to the independent assessment performed by [REDACTED] in January, 2010. Therefore, J.B. administered several batteries of tests to establish baseline skills and aptitude. ([REDACTED] P207-214) The 2 page Transition Service Plan attached to the March 16, 2010 IEP prepared by District for Student references the tests [REDACTED] administered by listing them as transition assessments, but does not attach the report of evaluation to the plan. Further, there is a "disconnect" between [REDACTED]'s findings and the plan that was written, and the plan is not based on the results of the assessments. It includes unfounded statements unsupported by assessment or performance. It fails to provide a course of study for the 2010-11 school year. It does not link Student to any community agencies. There has been no progression of growth in Student's skills. Student is motivated and interested in the world of work. [REDACTED] has a transition staff and could implement J.B.'s recommendations. ([REDACTED] 428-29)

Student missed 31 days of school during the Fall term of the 2009-10 school year. She had a cumulative weighted grade point average of 2.1 out of 4.0 and ranked 59 out of 97 students in her class at the end of the Fall term. She has taken only one of the Occupational Preparation Classes offered at the school. Her Fall 2009 classes included a literature class, a local history class, and culinary arts, art, and P.E. classes. (P367)

The Student's eligibility was not reconsidered at the IEP meetings of March 10, 2010 or March 16, 2010 with the new IEE findings to determine whether Student should be properly identified with a specific learning disability in accordance to the state and federal regulations, with a cognitive disability, and/or any other disability. Other than the provision of speech/language therapy it does not include related services, assistive technology, or programming to address Student's needs as recommended by the IEE assessors, such as the use of *Lindamood-Bell*, *FastForWord* or *Earobics*. The goals are not based upon the findings of the IEE, and they do not contain present levels from which progress can be measured. [REDACTED] [REDACTED] [REDACTED], [REDACTED], [REDACTED]; D180,190-222)

The placement determination documentation in the March 16, 2010 IEP requires Student to be removed from general education 86% of the school day. The document states as follows in regard to the educational settings that were considered at the IEP meeting:

*General education setting full time with supplementary aides and services: Rejected/Option was determined not appropriate to meet academic needs*

*General education with special education support 20% or less of the school day outside the general education setting: Rejected/Option was determined no appropriate to meet academic needs.*

*General education with special education support 21-60% of the school day outside of the general education setting: Rejected/Option was determined not appropriate to meet academic needs.*

***General education with special education support over 60% of the school day outside the general education setting in a general education school: Accepted/Option was determined appropriate to meet student needs. (emphasis added)***

*Potential harmful effects of this placement: Diminished access to the full range of the curriculum. Lack of opportunities for appropriate role models.*

There is no further information provided relating the placement options that were discussed for Student at the meeting.  
(D212-213)

Student needs exposure to higher level discussion and more normalized behavior than her current placement offers. She needs scientific research based instruction and intensive programming that her current placement does not offer her and which she needs to compensate for the skills she has lost and the instruction and services that have not been provided to her in the past. She reads at a 2<sup>nd</sup> to 3<sup>rd</sup> grade level and her math skills are at or below that level. With intensive intervention, Student can increase her reading skills to 6<sup>th</sup> grade level, making her employable. ( )

( ) is approved by the Illinois State Board of Education and offers the intensive individual and small group instruction and the related services, assistive technology, transition services, and trained personnel that Student requires in order to increase her skills in the short period of time left for receipt of special education and related services. The staff to student ratio is 4:1 with 64 high school students, including Students from District. The staff includes 5 social workers, 6 speech/language therapists, 4 reading specialists, 2 occupational therapists, an additional assistive technology therapist, who is an occupational therapist, and a transition team to focus on transition plans, including a coordinator and 2 job coaches. The classes are small and include 8-10 students, an LD teacher, and an assistant. It would provide a peer group for Student while exposing her to more normalized behavioral and higher level academic role models than her current placement. ( ) Student has visited, applied, and been accepted at ( ) and she wants to attend. She feels that ( ) offers her more classes than her current placement and she felt comfortable there when visiting. (Student; S.S.)

Student currently takes public transportation to school, she gets up at 6:00 a.m., and it takes her 1 hour and 20 minutes to get to school. (Student) It took Student and Aunt 30 minutes to drive to ( ) from Student's home when they visited. (Aunt)

### 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, at all times relevant to the issues in the case, it properly evaluated and identified Student's needs and either provided or offered to provide her with a free appropriate public education in the least restrictive environment. 105 ILCS 5/14 8.02a (g-55)(2008) The burden of persuasion is on the party seeking relief. *Schaffer v. West*, 546 U.S. 49 (2005) In this case, the Student bears the burden of persuasion on all issues except the issue of the appropriateness of District's 2009 triennial re-evaluation of Student, for which the District bears the burden, as it would be unfair to permit District to shift the burden of proving the appropriateness of its evaluation to Student by its failure to adhere to the procedures for denial of a student's request for IEE as discussed further below.

An appropriate education, commonly referred to as *FAPE*, is an education that is reasonably calculated to provide the student with meaningful educational benefit, as based upon an individual education plan, or *IEP*, developed by an *IEP* team, including the student and her 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). 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' and/or student's 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 300.513(a)(2006)

Each special education student is to be placed in the least restrictive environment in which she can receive a satisfactory education, meaning that to the maximum extent appropriate, the placement shall provide the student with the opportunity to be educated with her nondisabled peers. 20 U.S.C. 1412(a)(5)(2005); 105 ILCS 5/14-8.02(d)(2008)

The preponderance of the evidence in this case supports Student's position that District denied Student a free appropriate public education by failing to adhere to procedural requirements that resulted in the denial of FAPE and also substantively by failing to perform a full and

individual evaluation of Student, failing to identify Student's unique educational needs, failing to develop and implement IEPs appropriate to Student's unique needs, and failing to place Student in the least restrictive environment in which she could receive a satisfactory education. The evidence presented at hearing overwhelmingly favors Student's position. Student's attorney presented a number of credible, qualified witnesses who have evaluated and identified the nature and the extent of Student's disability and who have determined Student's educational needs. The evidence regarding the intensive interventions required to remedy the lack of appropriate education provided by the District, which is evident in the District's documents and the lack of necessary documentation, to Student in academic and vocational areas and in transition planning was particularly compelling.

Regarding the specific issues, it is further concluded as follows:

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

1. *Failure to adhere to procedural requirements* under the IDEA and the Illinois School Code and their attendant regulations designed to allow parents and Student to participate meaningfully in the development of Student's educational plan, including

A. *Failure to respond in writing to Student's request for an IEE at District expense dated 9/24/09 and to request a due process hearing on its denial of same?*

At the conference convened to review an evaluation conducted by the school district, the school district must advise parents, or, as here, the student, of the right to seek an independent educational evaluation, *IEE*, by a qualified examiner not employed by the school district if they disagree with the district's evaluation. If the parents/student, disagree with the district's evaluation and wish to obtain an independent educational evaluation at district expense, they must submit a request for same in writing to the school district superintendent. Although the district may inquire as to the reason for the request, parents are not required to provide the district with an explanation for their objection to the district's evaluation. Within 5 days of its receipt of the request for IEE, the District must provide the parent/student with information about where an independent educational evaluation may be obtained and the agency criteria applicable for independent educational evaluation, and it must either file a due process complaint to request a hearing, in which it has the burden of proving to the hearing officer that its evaluation is appropriate, or ensure that an IEE is provided at public expense. If it agrees to provide the IEE, the IEE must be completed within 30 days of the written request. *20 USC 1414(a)(2004); 105 ILCS 5/14-8.02(b)(2008); 34 CFR 300.502(2006); 23 ILAC 226.180(2007)*

Student's attorney submitted a request for independent educational evaluation of Student in writing on September 24, 2009. District did not respond to the request within 5 days. It did not agree to fund the IEE. It did not request a due process hearing to prove that its evaluation was appropriate. Clearly, District failed to adhere to procedure. Fortunately for Student in this particular case, her attorney anticipated District's breach, included it as an issue in her due process hearing request submitted on September 25, 2009, was ultimately able to secure qualified individuals to perform the necessary IEE assessment components without requiring timely payment from Student, and Student received the IEE to which she was entitled. Furthermore, this hearing officer is not permitting the District to escape its burden of proof on the issue of the appropriateness of its evaluation, which it attempted to avoid by failing to request a due process hearing on the issue as it should have done. Therefore, Student was not denied FAPE by District's failure to adhere to the required procedures. Had Student's attorney not taken the proactive steps she did, a denial of FAPE most certainly would have resulted from District's failure to follow procedure.

B. *Failure to provide all Student records to Student's counsel in a timely manner pursuant to the request dated 9/25/09 and hearing officer Order dated 10/30/09?*

The parents of a child with a disability, or, as in this case, the student herself, must be afforded an opportunity to inspect and review all of her education records with respect to

identification, evaluation, and educational placement and the provision of FAPE. 34 CFR 300.501(a)(2006) When copies of a student's school records are requested by the parent, student, or authorized representative, they must be produced by the District no later than 15 school days after the date of the receipt of such request by the official records custodian. 105 ILCS 10/5(2008) Further, the records must be provided before any meeting regarding an IEP, or any special education due process hearing or resolution session. 34 CFR 300.613(2006)

Here, as set forth in Student's Motions to Compel District to Produce Student's Records, Student's attorney submitted a request for Student's records on September 25, 2009. The resolution session was convened on October 19, 2009. The undersigned hearing officer entered an Order compelling production of all requested records on October 30, 2009 requiring District to submit all requested records by November 3, 2009 along with an affidavit stating that all requested records in the possession of District had been provided to Student's attorney. District did not comply with the Order. The Pre-Hearing Conference was held on November 4, 2009. Student's attorney submitted another Motion, and hearing officer entered another Order on November 5, 2009 compelling compliance with the previous Order and entering an evidentiary presumption in favor of Student for hearing as to relevant documents not produced. On December 15, 2009, District's counsel submitted an affidavit stating that all records had been produced. However, District still failed to comply with the October 30, 2009 Order. At no time did District object to the documents being requested by Student's counsel. Rather, District counsel attempted to excuse the failure to produce documents by stating that he was new at his job and unfamiliar with the records process. Clearly, District did not adhere to the requisite procedures for record production in this case.

As set forth in the motions submitted by Student's attorney and in the evidence at hearing, records important to the issues in this case that were delayed in their production or not produced at all included Student's answers on test protocols, her high school transcript, IEP progress reports, annual reviews of progress on goals and objectives, and most significantly, an IEP for Student for the 2007-08 school year. Furthermore, the failure to provide the records within 15 school days of Student's request and continued failure to produce them upon hearing officer's Orders frustrated and hindered Student's counsel's efforts to participate in the resolution session and Pre-Hearing Conference, with which she proceeded in an effort to obtain as timely a conclusion as possible to her client's hearing request in spite of the impediment presented by the District's behavior, and also prevented the IEE assessors access to documents relevant to the evaluation. Therefore, the preponderance of the evidence supports Student's position that she was denied FAPE by District's failure to provide copies of Student's records in a timely manner, effectively impeding counsel and the IEE assessors from ascertaining relevant information concerning Student's educational history, status, and programming.

C. *Failure to have all appropriate teaching staff present for the IEP meeting of 5/29/09 and 6/10/09 at which Student's eligibility was changed from cognitive disability to specific learning disability and traumatic brain injury by the school psychologist?*

The composition of the IEP Team for a particular child, and the participation, attendance, and excusal of the team members and other individuals in the IEP meeting must conform to the requirements of 34 CFR 300.321, .322, .324, and .325. In addition to the student and parents, the team must include a regular education teacher if the student is or may be placed in any regular education classes, a special education teacher or a special education provider, a district representative who is knowledgeable about district curriculum and resources, someone to interpret the instructional implications of evaluation results, and other knowledgeable persons at the discretion of parents/student. Additionally, the general education teacher who serves as a member of the IEP Team shall be a teacher who is, or may be, responsible for implementing a portion of the IEP, so that the teacher can participate in discussions about how best to instruct the child. Additional IEP team members are necessary in the case of a student with transition needs and may include a representative from the state's Department of Human Services, a case coordinator, or other community agencies or services. 105 ILCS 5/14-8.03(2008) The district

must invite appropriate transition services participants to the IEP meeting of a student who has reached the age of majority. *34 CFR 300.321(2006)*

The preponderance of the evidence in this case supports Student's position that the change in Student's eligibility and the subsequent change in placement, driven by the change in eligibility from cognitive disability to learning disability, made at meetings on May 29 and June 10, 2009, was determined by the school psychologist and the case manager based upon an insufficient assessment of Student. The special education teacher had left the meeting when eligibility was determined. No regular education teacher who had or would be implementing the IEP from either high school attended the meetings, even though Student's placement was changed to the neighborhood high school and she was placed in classes with regular education students. No vocational assessments were included in the re-evaluation, and no appropriate transition services participants were invited to either IEP. The District "speech coach" who was invited did not participate in the eligibility determination. No speech/language or occupational therapy assessments were performed, as they should have been, as discussed below, and therefore those professional service providers were not invited to attend and participate in the eligibility and placement determinations.

The school district is obligated to bring a variety of persons familiar with a child's needs to an IEP meeting. *Heather S. v. Wisconsin*, 125 F.3d 1045 (1997) The process by which Student's IEPs have been developed in the current placement, however, follows a distinct pattern: a meeting is held with the case manager and a teacher, each wearing multiple hats, and the case manager writes an IEP that is not based on Student's individual needs. There is no documentation of progress on the previous year's goals. So Student has received ESY and social work services as a matter of course when enrolled at the school, but she has not received appropriate scientific research-based instruction in her areas of need, assistive technology, speech or occupational therapy, or transition services in accordance with an appropriately developed IEP.

The failure to convene IEP meetings with participants who could identify the nature and extent of Student's disabilities and address Student's individual needs, write appropriate measurable goals and benchmarks based on those needs, review the annual progress on those goals and benchmarks, and develop and implement a meaningful individualized transition plan is a procedural violation which in this case has deprived Student of a free appropriate public education.

2. *Failure to evaluate Student in a timely and adequate manner and in the requisite domains, including:*

- A. psychological;
- B. fine and gross motor skills;
- C. communication skills;
- D. assistive technology; and
- E. vocational skills

No child shall be eligible for special education without a carefully completed case study, currently defined as a full and individual evaluation (FIE), fully reviewed by professional personnel in a multidisciplinary staff conference and only upon the recommendation of qualified specialists. *105 ILCS 5/14-8.02a(b)(2008)* Children who are already receiving special education must be reevaluated by the District at least once every 3 years unless the parents and the district agree that a reevaluation is unnecessary. *23 ILAC 226.120(2007); 34 CFR 300.303(2006)* The school district must inform parent of the domains in which assessment is needed and obtain parents' consent for evaluation, after which the evaluation is to be conducted and an eligibility meeting convened within 60 days of the signed consent. *105 ILCS 5/14-8.02(b)(2008), 23 ILAC 226.110(2007)*

A full and individual evaluation is one that provides for the assessment of a child in all areas of suspected disability and which uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child. Assessments must be selected to ensure that the results accurately reflect the child's aptitude or achievement,

and the evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. 23 ILAC 226.110(2007), 34 CFR 300.304(2006) Additionally, an evaluation of a child suspected of having a specific learning disability must include a formal observation of the child in her school classroom during classroom instruction. 34 CFR 300.310(2006)

Illinois law requires the development and implementation of a transition plan, updated annually, as part of any IEP implemented for a special education student beginning at the age of 14 ½. The measurable postsecondary goals included in the student's transition plan must be **based upon age-appropriate assessments related to employment, education or training, and, as needed, independent living.** 23 ILAC 226.230(2007)(emphasis added)

The preponderance of the evidence does not support District's position that its reevaluation of Student was sufficiently comprehensive to identify all of Student's special education and related services needs nor that the assessments used gathered sufficient relevant functional, developmental, and academic information about Student. The evidence does support Student's position that the District's reevaluation of Student, which consisted primarily of the school psychologist's limited I.Q. and achievement testing, the validity of which the psychologist herself questioned due to the Student's failure to wear her glasses, with some input from the nurse and social worker, failed to sufficiently identify the nature and extent of Student's disability or Student's special education programming needs, especially considering that she was 18 years old, was reading and doing math at a severely deficient level, and had no vocational skills or training. The fact that school staff felt that adaptive skills should have been part of the assessment and disagreed with the eligibility determination made by the psychologist and the case manager supports Student's position that the assessment was insufficient.

Student should not have been assessed without her glasses. Student's reevaluation should have included a much more comprehensive psycho-educational assessment, with an assessment of her adaptive skills, assessments by an occupational therapist and a speech/language therapist, including a CAP assessment, an assessment of Student's need for assistive technology, and an assessment of Student's skills in regard to the transitional domains of post-high school education or training, employment, and independent living. It should have been performed in the Spring of 2009 based on a properly signed consent for re-evaluation after providing Student's parents with an explanation of the domains in which it wished to assess Student and within 60 days of parents' signature on the consent form. It was not. The failure to do so denied Student FAPE.

### 3. Failure to agree to an IEE at public expense pursuant to Student's request of 9/24/09?

When an IEE at public expense is requested and the school district does not agree to fund it, a parent has the right to secure the IEE at her own expense to determine the nature and extent of a student's educational needs, not just for the purpose of eligibility determination, and present it to the District for consideration. She can present the IEE findings to a due process hearing officer, and, if the District's evaluation is found to be inappropriate, the District shall be ordered to pay for the IEE. 105 ILCS 5/14-8.02(b)(2009) and see *Hibbing v. J.T.*, 45 IDELR 92 (D. Minn. 2006)

The preponderance of the evidence supports Student's position that District's failure to fund an IEE violated Student's right to FAPE. As discussed under *Issue 3.A.* above, Student's attorney requested an IEE, and, when District did not respond to the request, she and Student proceeded to secure the IEE for Student without District's assistance or cooperation. District has not proven that its May 2009 re-evaluation was appropriate. Student has successfully proven to the undersigned hearing officer by a preponderance of the evidence that not only was District's evaluation insufficiently comprehensive, but that the IEE secured by Student from the evaluators who testified on her behalf at hearing were necessary and appropriate in identifying Student's unique needs and the programming and placement she requires based upon those needs.

District counsel argued that the IEE was somehow excessive. However, District chose not to address the request for IEE or become involved in planning the IEE, standing by its

psychologist's brief assessment of Student as sufficient when it responded to the Student's hearing request, even when District's own personnel questioned its efficacy. District's psychologist did not provide a reasonable explanation as to why she failed to assess Student comprehensively or refer Student to other professionals who could provide comprehensive assessment. Each of the IEE assessors provided significant information which can and should be put to use in Student's programming. The assessors were qualified, knowledgeable, and credible, and their testimony was compelling. District did not introduce evidence refuting their testimony or their assessments. Fortunately, the IEE can now be used as a basis for determining Student's eligibility properly in accordance with the law, and for the development and implementation of an IEP that will provide Student with meaningful educational benefit. Unfortunately, a year has passed since the District developed Student's IEP for the 2009-10 school year based on an insufficient evaluation, and it did not develop an IEP appropriately based on the findings and recommendations of the IEE assessors in its recent March 16, 2010 IEP, so that the denial of FAPE continues until an IEP meeting can be convened, with the IEE assessors and other participants who can write an IEP based on Student's needs.

4. *Failure to develop and implement an IEP appropriate to Student's individual needs, including measurable goals and objectives and related services in sufficient intensity, and including assistive technology and training of Student, Parents, and staff therein, a transition plan, and addressing fine and gross motor and communication and written language skills?*

An IEP must be developed based upon comprehensive assessment of a student's needs, including her transition needs if she has reached age 14 ½. Goals must be written to address a student's individual needs based on present levels of performance. They must be written so that progress can be measured from the level at which the student begins when the goal is written to the level she has attained on the goal one year later. The type and amount of related services and assistive technology necessary to help a student make progress on her IEP goals, including transition goals, must be stated in the IEP. 23 ILAC 226.220, .230(2007), 34 CFR 300.320, .324(2006)

The preponderance of the evidence in this case, including the testimony of District personnel and the documents prepared by District relating to Student's IEPs, in conjunction with the testimony and reports of evaluation by the IEE assessors, supports Student's position that District denied her a free appropriate public education between September 25, 2007 and the present time by failure to provide her with an IEP for the 2007-08 school year and by failing to prepare and implement IEPs and transition service plans that were reasonably calculated to provide her with meaningful educational benefit, as required by *Rowley*, for the 2008-09 and 2009-10 school years.

Although the program in which Student has been enrolled at the self-contained high school for children with mild and moderate cognitive disabilities may have kept her safe and comfortable and given her emotional support in relation to her various stressors for the past 4 years, the evidence at hearing has shown that she has not received meaningful educational benefit in the program. As Student's attorney has properly asserted, the vague and nonspecific testimony of a few staff members that Student "has made progress" or "can make progress" does not overcome the fact that recent assessments and comparison of assessment data from Student's prior evaluations show no progress, and even some regression in skills. *Henrico v. Z.P.*, 399 F.3d 298, 307(4<sup>th</sup> Cir. 2005) And, although the program is allegedly geared toward post high school independence and vocation, Student has not been provided with an appropriate transition plan or meaningful vocational assessment or experiences to prepare her for the world of work, even though she is now 19 years old and has been in the program for 4 years. The observations of the IEE assessors and Student's teachers and social worker reflect that Student has not been actively engaged in listening or learning in the classroom, which is largely attributable to her processing deficits and the failure to identify and address them. Student herself has stated that she has not been challenged by the work. This lack of learning is rooted in IEPs that were not thoughtfully

developed to address her individual needs, or, in the case of the 2007-08 not developed at all. *See Oak Park v. Kelly E.*, 21 F. Supp.2d 862(N.D. Ill. 1998)

5. *Failure to place Student in an educational setting appropriate to her individual needs, specifically changing her placement from a high school for cognitively impaired students to her neighborhood high school at the IEP meetings of 5/29/09 and 6/10/09 due to the change in her eligibility identification from cognitively disabled to learning disabled?*

The educational placement of a child must be driven by the student's unique individual needs as designated by the goals to be addressed and the accommodations and related services required to assist her in reaching those goals in her IEP. The district must make a continuum of placement options available, ranging from a regular classroom in the student's neighborhood school to private residential facilities, and must place each student in the least restrictive environment in which her IEP goals can be implemented with the designated supports and services, including scientific research-based special education instruction, assistive technology, speech/language and occupational therapy, and transition services. 23 ILAC 226.240(2007), 34 CFR 300.114-116(2006) and see *Heather S. v. Wisconsin*, 125 F.3d 1045 (7<sup>th</sup> Cir.1997)

The preponderance of the evidence in this case supports Student's position that she was placed in a self-contained high school for students with mild and moderate cognitive disabilities based on a label of mild cognitive impairment and later a cognitive disability and remained in that placement for 3 years, after which an insufficient triennial re-evaluation was performed. In order to change Student's placement from the self-contained school to her neighborhood high school, the case manager, in conjunction with the psychologist, changed Student's label to learning disabled. At no time relevant to issues in this case has Student's IEP been based on her actual needs with placement driven by a properly developed IEP.

Where the educational program proposed by a school district is inadequate, and District does not present evidence of any appropriate alternatives, the only option is the placement proposed by parents, if evidence proves that their proposed placement can meet the child's needs, even when it does not provide mainstreaming with typically developing peers. *Murphysboro v. G.S.*, 41 F.3d 1162(7<sup>th</sup> Cir. 1994) and see *Oak Park v. Kelly E.*, id. Insofar as the most current IEP is concerned, it is difficult to determine from the document what placement was recommended by the IEP team. From the testimony of District personnel at hearing, it appears that District is seeking to keep Student in her current placement in the self-contained school for the cognitively impaired. No evidence was introduced by District regarding any other placement. As discussed above, it is clear that Student has not been receiving an appropriate education in the current public program for the past 4 years. She now requires targeted intensive instruction, assistive technology, and related services to move her forward in any meaningful way. The only placement urged at hearing and supported by evidence as having the staff and resources to meet Student's needs, as reflected in the IEE, is Cove School, which has accepted Student's application and is prepared to develop and implement an appropriate IEP for her.

7. *Failure to provide Student with extended school year in the summer of 2009?*

A statement as to whether a child requires the provision of services beyond the district's normal school year, or extended school year (ESY) services in order to receive FAPE and a description of the amount, frequency, duration and location of the services to be provided must be included in the child's IEP. 23 ILAC 226.230(2007)

The preponderance of the evidence in this case supports Student's position that although she needed it to receive FAPE, she was wrongfully deprived of ESY during the summer of 2009 for the reason that she was being transferred out of the self-contained school where ESY had been provided to her in previous years.

Student's attorney has cited and provided copies of ample legal precedent supporting her position in this cause, which are included in the record, all of which have been reviewed, and to

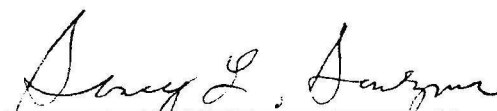
the extent possible, considering the time constraints in preparing and submitting this Decision, cited in the text of the Decision where applicable.

The relief requested by Student includes, inter alia, a prayer for compensatory education for the denial of FAPE from September 25, 2007 to the present time, which is supported by the evidence, and the Order below is crafted in accordance with the evidence presented at hearing. See *Reid v. Dist. of Columbia*, 401 F.3d 516 (D.C. Cir. 2005)

IT IS THEREFORE ORDERED:

1. That Student shall be placed at [REDACTED] at public expense beginning in June, 2010 for the summer term and to continue for the 2010-2011 school year for the purposes of implementing the IEP to be developed pursuant to Order number 3 below.
2. That, in compensation for the failure of District to develop and implement an IEP for Student for the 2007-2008 school year, and the further failure to provide FAPE in the 2008-09 and 2009-10 school years, District shall fund Student's enrollment in an afterschool educational program with tutoring, therapy, and use of assistive technology tailored to Student's needs at [REDACTED] for the 2010-2011 school year.
3. That an IEP meeting shall be convened at [REDACTED] include the participation of the IEE assessors and all necessary outside agency representatives, for the purpose of developing an IEP and transition plan, **based upon Student's individual needs as determined by the recently completed IEE assessments**, to include:
  - A. identification of Student's eligibility under the IDEA;
  - B. Student's present levels of performance;
  - C. goals and benchmarks to address all current areas of educational need based on Student's present levels of performance and written so that progress from her current levels can be measured;
  - D. specialized instruction and the related services, assistive technology, and accommodations needed to allow Student to benefit from special education, including use of and training in the use of the computer and recommended software, speech/language therapy, occupational therapy, and vocational and community services and linkages, and including instruction and services beyond the regular school day pursuant to Order 2 above.
  - E. Transportation at public expense between Student's residence and [REDACTED] as well as to any other vocational/transition-related sites as required by Student's educational program at [REDACTED]
4. That District shall issue to the individual providers payment in full of all invoices submitted for the independent educational evaluation of Student in the total amount of \$8,972 on or before June 11, 2010.
5. 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 June 21, 2010.

DATED: May 19, 2010

  
Stacey L. Stutzman  
Impartial Hearing Officer

### **RIGHT TO REQUEST CLARIFICATION**

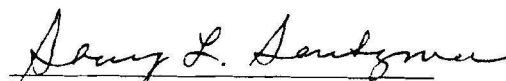
Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, 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), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of the decision of the impartial due process hearing officer is mailed to the parties.

### **CERTIFICATE OF SERVICE**

The undersigned due process hearing officer certifies that she served copies of the aforesaid Decision and Order upon Parent and Parent's counsel, District and its counsel, and the Illinois State Board of Education at their respective addresses by depositing same with the United States Postal Service at Libertyville, IL, certified mail postage prepaid, on May 19, 2010 before 5:00 p.m.

  
Stacey L. Stutzman  
Impartial Hearing Officer