

scheduled for telephonic testimony from Madison, Connecticut, it was imperative to have access to a speaker phone. After the conclusion of evidence, the parties stipulated to the admission of those documents in the Parent's Document Book [PD 1 - 382] and the School District Document Book [SD 1 - 220] that were identified during the Hearing.

The Parent called as witnesses: [REDACTED] psychologist; [REDACTED] psychiatrist/therapist; [REDACTED] Principal; and [REDACTED] advisor. Also called in the Parent's case were [REDACTED] administrator and [REDACTED] case manager. The school district called [REDACTED] social worker; and [REDACTED] school psychologist.

2. Issues Presented

- a. The [REDACTED] violated IDEA's Child Find requirements pursuant to which school districts are obligated to identify, locate and evaluate all children with disabilities residing in their district.
- b. The [REDACTED] failed to evaluate the student in a timely manner in all areas of suspected disability.
- c. The [REDACTED] failed to identify the student eligible for special education which results in a denial of a free, appropriate public education.
- d. The [REDACTED] failure to identify the Student for special education and provide him with an IEP entitles the student to compensatory education.
- e. The parents are entitled to reimbursement for the costs of the [REDACTED] for the years 2008 - 2009 and 2009 - 2010 and extended school years and related services.

3. Relief Requested

- a. Reimbursement for the Student's tuition for the past two (2) school years at the [REDACTED]
- b. Compensatory education in the form of transition services; and
- c. Reimbursement for the costs of travel to and from the [REDACTED] for family visits as required by the therapeutic school and his treatment plan;

4. Findings of Fact

Testimony - [REDACTED]

[REDACTED] is the Student's mother. She holds a Bachelor's degree in Actuarial Science from [REDACTED]. She has three other sons. She is a concerned parent and was a very creditable witness.

1. The Student always attended non-public schools. When the family moved back to [REDACTED] in summer, 2004, the Student was entering 8th grade in a private school. In junior high, he had some defiance issues that were impacting his academics. He started seeing a school therapist in 6th or 7th grade. In 8th grade, he attended a private day school. He was initially successful but then began to decline. He had difficulty attending class, would walk

out of class and wouldn't do some or all of his school work. In spite of this, he did finish and graduated on time but with a lot of assistance from the school.

2 He started a more classical school program for his sophomore year at a private school in [REDACTED]. For the 1st quarter, he was doing okay. But by the middle to end of October, things started going downhill. Social issues again got in the way of academics - he didn't attend class, caused a disruptions in the dorm, was acting out in class, threw a desk out of window, etc. There were a constant cycle of short term suspensions.

3. She contacted the [REDACTED] in the Spring 2006. She attempted to enroll the Student as non-attending student to see what his needs were. She advised that the Student already had two hospitalizations and provided all of his records including his high school transcript and medical records. Her hope was that the [REDACTED] would conduct an evaluation of what his needs were and what services they could provide. He was enrolled but summarily denied any evaluations or eligibility. [Even assuming the accuracy of this, the parties agree that this pre-dates any limitations period and no relief is available for this time period.]

4. The parents looked to a private school in Rockland (NY) which was specifically for boys that had difficulties in a school setting. There were 8 students and 4 or 5 teachers, a psychologist for therapy and a psychiatrist for medication. The Student had success for short period but then again his social issues and non-verbal learning disorder started getting in way of class attendance, etc.

5. Around November or December, 2007, the parents arranged for the Student to go to the [REDACTED] program. He was there for 12 weeks. This program was very beneficial as he needed a therapeutic setting to get him on right track. Based on psychological testing and the recommendations of a therapist at [REDACTED] they contacted an educational consultant to make recommendations for placement. They had no predisposition where he should go but rather elected to rely on professional educational consultant. This professional stated that the Student needed a residential setting. On this basis, they chose the [REDACTED]

6. The Student started at [REDACTED] on January 31, 2008. Since then, he has earned his high school credits and is graduating in August, 2010. In her opinion, he has made immense progress there. Due to the "24/7" environment, the Student's attendance has been very consistent.

7. In the Spring of 2009, she attempted to contact the [REDACTED] relative to the Student. She was told that she needed to re-enroll him. She advised that they had never dis-enrolled him. She was told that due to new computer system, any prior enrollment no longer existed. She had difficulty getting paper work. [REDACTED] at [REDACTED] told her that she wasn't going to do anything with it. It was very difficult in Spring, 09, almost impossible, to get anyone to return calls.

8. During the current school year - 2009 - 2010, she attempted to register the Student at [REDACTED]. In September 2009, she was told that she couldn't enroll the Student. She was not successful in enrolling the Student until she contacted her attorney's office. In November 2009, the Student was permitted to register at [REDACTED]. There was a discussion about doing evaluations for the student. She gave information including all the hospital records, [REDACTED] records, comprehensive program from [REDACTED] (similar to IEP); medical records from the various doctors, testing from [REDACTED] shot records, etc. to the School District.

9. The evaluations were conducted in December 2009 and January 2010. In December, she provided background information. The Student was evaluated on January 4, 2010. The latter date was convenient for everyone and luckily when the Student was in [REDACTED].

10. The eligibility determination meeting was held the same day as the evaluations. The eligibility team found no eligibility and no specials services were necessary for the Student. She was not provided anything to suggest that they could provide any services for Student. Even though he was a Senior, she would have explored what was being offered and would have evaluated if a switch during senior year was appropriate. No one ever discussed what a regular education program at [REDACTED] would be like and she was not provided with any information as to programs or what an actual program for the Student would be like. If the [REDACTED] would have supplied all services, she would have had to make a judgment call if this was best for the Student.

11. In her opinion, her Student could not have been successful at [REDACTED] in a general education setting without supports. This was based on his lack of success at other schools which were smaller. [REDACTED] was a large school and would not have been able to provide for the Student in the general education population.

12. Her Student was above or at grade level at [REDACTED]. As to the general education program at [REDACTED] since all professionals that were dealing with the Student (at [REDACTED] felt that he required special services, she would have checked with these professionals as to attendance at [REDACTED]. She assumed that [REDACTED] would have been a typical high school. Since school attendance had been a problem for him, she was concerned as to who would see that he was compliant.

Testimony - [REDACTED]

[REDACTED] saw the Student on December 18, 2007 and January 1, 2008 with the evaluation being completed on January 6, 2008. These dates just barely pre-date the appropriate limitations period for this Due Process Hearing. Although his only purpose was to conduct a psychological profile and suggest potential academic and life placement for the Student, he was a credible witness (testimony was taken over the phone). As such, appropriate weight is given to his testimony both in a historical context and for his professional opinions as to the Student.

13. The Student's academic testing was generally within an expected range. His verbal scores were in the high range. His math scores were in the average to low average although less than expected from his IQ. His writing was high average to superior. Overall, his scores were in the high average range.

14. Personality testing revealed: (a) oppositional issues which is a common pattern with a student struggling with processing issues; (a) difficulty in internalizing expectations of society; (c) impulsiveness with a low frustration level; and (d) some indications of lacking in confidence in social situations [see SD 171]

15. The Student was diagnosed with (1) Attention Deficit HyperActivity Disorder (ADHD); (2) Oppositional Defiant Disorder (ODD); (3) Parent - Child Relationship Disorder and (4) Depressive Disorder - not other wise specified. The latter was not considered a major problem at the time.

16. The Student's disabilities had a very striking and profound his impact on ability to participate and benefit from schooling. Although he was seen as bright and precocious early on into his early middle school years, he will struggle in high school due to changes in academic demands. He had a high vocabulary but the ability to abstract and understand was compromised. Compared to his peers, his verbal comprehension was 121 (92 %) but his processing speed was only 88 (21 % - low average) which was indicative of processing deficits. Commonly, due to his high verbal ability, others will expect the Student to perform to his oral abilities which sets up a significant pattern of high expectations. Due to difficulties with abstraction and processing speed which are essential for learning new materials, these expectations set up a pervasive pattern of academic difficulty. In addition to his academic difficulties, the Student was having a difficult time in regulating his emotions and social relationships. This pattern of disparate cognitive scores and associated difficulties are really very classic for a learning disability.

17. The Student will need educational supports including (1) considerable one-on-one teaching; (2) flexible academic program including an academic program that focuses on his strengths and accommodates his weakness; (3) tutoring in math with accommodation; (4) behavioral and emotional support as the Student will "melt down" very quickly. Without this support, the Student would have a difficult time finishing high school in a more traditional academic environment.

18. The Student would not be serviced by a traditional academic environment. He saw the Student's disabilities and difficulties as pervasive through many different aspects of his life including his social/emotional interactions. A typical academic environment might address some academic issues but the Student needed help in addressing family and life issues.

19. ████████ did not believe that the Student would be successful outside of a residential program. This type of program would be the best program for him due to his pervasive issues. The Student needed a holistic approach to address all of his difficulties.

20. He agreed that he did not consult with staff at prior schools, did not know what high school(s) the Student was in prior to [REDACTED] and did not know if received special education services prior to going to [REDACTED]. He further agreed that he was not a teacher and had never worked for public school system other than mentoring and performing several evaluations.

Testimony - [REDACTED]

[REDACTED] has been the Principal at [REDACTED] for the past 5 years. He holds a Bachelor and Master degrees. He also has a General Education (1 - 8) certificate and a Special Education K through 12 certificate, a Principal certificate and a Superintendent certificate. Although he knows the student, he has only limited interaction with him. He will talk to him when he sees him on the campus. [REDACTED] had only limited information to provide. As his testimony did not really impact the student significantly, his testimony was given only minimal weight as to the Student but is given significant weight for his overview of the school and its programs.

21. The [REDACTED] is accredited by the [REDACTED]. There are 115 students at [REDACTED]. It is a year round school - from September through August. Its funding is approximately somewhere between 40/60 to 50/50 (public/private). The typical student at [REDACTED] has an average to above average IQ but is having difficulty in school - typically an emotional or mental health issue. Many have a learning disability. Based on a student needs, a student is assigned through the decision of the medical director, a practicing psychiatrist. The Student's school team meets at least weekly to review the Student's academic and clinical progress.

22. He agreed that residential placement is very restrictive. As a general rule, residential placement is an extreme placement and is generally tried as a last resort. Many students are on the edge of a crisis and, therefore, placed at [REDACTED]. Oftentimes, it is a safety issue with the student coming to a complete dysfunction within a public school placement.

23. The academic program provides accommodation by design. The staff to student ratio is high - 1 to 4. In essence, it's a small village where everyone knows everyone. The academic program is a rigorous program. They provide a Wilson reading program for students who really need help up to AP courses. They "mine" the curriculum to meet the state standards.

24. The student's advisor is the liaison for student. There are many supports in place in the context of program including on staff four (4) psychiatrists and nine (9) licensed therapists. It provides therapeutic services to all students, two (2) individual sessions a week with licensed therapist/psychiatrist plus a group session one (1) time a week.

Testimony - [REDACTED]

██████████ is employed by the ██████████ - ██████████ as the director of the day program, the activities director and is responsible for crisis intervention. He has worked there since June, 2005. He denied any certificates and/or licenses from ██████████. He does hold a Bachelor's degree in Psychology and English and is currently working on his Masters degree in Residential Administration. He has had daily interaction with the Student as the residential case manager/advisor and was very knowledgeable about the Student. He is a very credible witness.

25. In January, 2008, the Student came to ██████████ from the ██████████ Program. The Student had significant social issues with a low frustration tolerance. He met adversity with aggression. He was a bright young man but his social/emotional deficits were very clear. [Hearing Testimony - ██████████]

26. Supports that had been provided for the Student include intermittent check in during the day, i.e., stopping by classroom, dorm, etc. The Student would also meet with a therapist on site for counseling. His day would have an activity plan which would provide structure throughout the day - from the time that he woke up to the end of day. In his opinion, the student does not need emotional supports any longer other than dealing with stress. He is still limited in this respect.

27. As to other school programs, even being in a class with 20 kids would have been a disaster for him. Relations were a key ingredient - having the same people in the dorm, the same people teaching him, etc. The largest classes at ██████████'s 12 students but this is very rare, i.e. seminar course. Most courses are a 1 to 6 or 1 to 4 ration. The supports provided at ██████████ were necessary for the Student's success. He believes that it would have been tough for him to be successful in a public school setting or anywhere other than at ██████████. He can't imagine a better place for him than the ██████████.

28. The Student made a tremendous amount of progress in the 11th grade and into the 12th grade. He did have a set-back when he turned 18 as he felt that he was "entitled to all freedoms of the world and none of the responsibilities". The Student had a significant regression - so significant that they questioned placement at ██████████. They stuck with him which was the right decision. After this short regression, he was able to turn things around and resume the progress that he was making.

29. He did not know if the Student ever attended public school, was not aware of any services that the ██████████ offer and is not well versed in public school systems in general. He did not know if the Student had ever received Special Education services. His understanding as to why ██████████ became involved was so the family could receive funding for time the Student was there.

30. The Student has experienced significant growth since he has been at ██████████. By all accounts, he is a success story. He plans on spending a year in ██████████ and then will be going on to college ██████████ and living independently. He has the ability to be successful post ██████████. His coping skill has improved immensely. He is

now president of his class. Academically, he is in honors to high honors classes including AP courses. He is able to meet problems and is dealing with difficulties in appropriate ways. He is a positive and strong member of the community.

Testimony - [REDACTED]

[REDACTED] has her medical degree in psychiatry from [REDACTED] and did her psychiatric residency at [REDACTED] in 2005. She has been employed at the [REDACTED] since the summer 2005. Her testimony also was taken over the phone.

There seemed to be some disconnect between the testimony of [REDACTED] and [REDACTED] in some significant ways. Both agree that he had some significant issues when he arrived - primarily in the areas of social/emotional development. Where [REDACTED] sees him as still struggling with significant regressions, [REDACTED] although acknowledging several periods of regressions when turning age 18 and after returning from home on one occasion, sees a young adult capable of making his way in the world, living independently, going to Israel and college. [REDACTED]'s testimony seemed more clinical and textbook while [REDACTED] seemed more individual and personal. Accordingly, I ascribe more weight and credibility to [REDACTED] observations although this should not be construed to mean that I give little or no weight and/or credibility to [REDACTED].

31. The Student has diagnoses of Non-Verbal Learning Disorder and ADHD, both of which impact every aspect of his life.

32. The Student is on Concerta, a medication for his ADHD, which he takes one time a day in the morning. He is not on any other medication. The Student is by and large medication compliant. Medication is important for success.

33. She meets with the Student two (2) times a week in individual therapy and one (1) time a week in group therapy. She feels that this therapy is essential for him to make academic progress.

34. She believes that he suffers from a non-verbal learning disorder. The Student is an intellectually bright kid but his processing speed gets in the way of his learning. He does not fully comprehend things and tends to simplify. He continues to struggle with these issues and will for his entire life on some level. He has learned coping strategies to deal with these issues.

35. The Student needed a small class size and support to become successful. Academically, he still needs some support throughout school day. He is dependent upon a small class size and most likely will need some level of support when he goes to college. He would not be successful in a large general education class without supports and does not believe that he would even be successful in private therapeutic day school classes of 15 or so students.

36. The Student has made significant progress at [REDACTED]. He struggled with social/emotional issues but has learned coping skills and strategies. He can accept that he has a psychiatric diagnosis and is willing to take his medication and own up to problems. In the past, he could be threatening and bullying but now has learned to deal with impulsiveness. If he makes a poor choice, he is quick to correct. [REDACTED] - Hearing Testimony]

Testimony - [REDACTED]

[REDACTED] is employed with the [REDACTED] in the office of specialized services - administration since August 2009. She holds a Bachelor degree in Elementary Education and a Master degree in Special Education and Education Leadership. She holds Illinois certificates in Special Education and Educational Leadership – Type 75. She has prior experience as a Special Education teacher to include the [REDACTED] and the [REDACTED] through a contract with [REDACTED] for a private therapeutic day school. She deferred to the clinicians (psychologist and social worker) in the determination of any disability and also had difficulty recalling the general basis for eligibility or the criteria for an emotional disturbance or other disability. As such, little weight was given to her testimony

37. At the request of the school case manager, she served as the [REDACTED] district representative to facilitate the eligibility meeting. It was her understanding that the parents wanted the Student evaluated for the purpose of being re-imbursed for tuition costs at the [REDACTED]

38. She understood that the Student had been diagnosed with a learning disorder: a mood disorder. She did not recall if he was diagnosed with ADHD or OHI.

39. As to eligibility, the team determination was that he wasn't eligible for services. The bases for this decision were the clinicians determination based on their report/assessment and the medical reports provided by parents. In her opinion, the records tendered by the parent didn't warrant a disability on an emotional basis. In her opinion, the Student could have been served at [REDACTED] without any services. She found no education impact from his disability on his academic ability. To be considered for a disability, typically, there has to be some impact on his educational or academic work. As the Student was getting "A's" and "B's" and taking AP courses, she would assume that he would be successful at the general education classes at [REDACTED]. She did acknowledge that some student's can receive "A's" and "B's" and still have a disability under emotional disturbance.

40. His academic functioning was not affected. He was doing well academically and was performing fine. His behaviors at the time of the evaluations did not rise to level of emotional disturbance diagnosis/eligibility.

41. The Student was present during the meeting. He was very vocal and assertive. He made corrections to details given. If he wasn't sure about a date, he would stop the meeting.

She found him to be charming. He laughed appropriately. His behaviors weren't affecting his academic abilities and didn't indicate an emotional disturbance.

42. The Parent did not agree with the eligibility determination but did have opportunity to express her opinion.

Testimony [REDACTED]

[REDACTED] is employed by the [REDACTED] as a case manager for special education. She has done this for three (3) years. Before this, she was special education teacher and a LRE representative at [REDACTED] for about 11 years. She has a Bachelor degree in Special Education and a Master's degree in teacher leadership and is working on an Administrative Leadership certificate. She currently holds an LES - 1. She seemed knowledgeable about the processes and procedures and easily agreed that there were things that she didn't know. She readily agreed that she would defer to those clinicians in psychology and social work and also readily admitted that she didn't have a lot of experience dealing with non-attending student enrollment. As to that information that was within her knowledge, she was a very credible witness. Significant weight is given to her factual testimony.

43. She did not recall any contact with the mother in the Spring 2009.

44. She met with the Student's mother in September 2009 and November 2009. The Student's mother requested enrollment status as a non-attending student for her son who was in a private school out of state. It was her understanding that the private school in Connecticut was requesting this. She told mom that she was not familiar with this where the student goes out of state. It was not clear to her why she wanted to do this. She informed the mother that she had to contact District office regarding this request. At this initial time, the mother did not request an evaluation. There was no indication that the Student would come back to attend school. Based upon her understanding and the advise of the central office, she did not enroll the Student as a non-attending Student in September, 2009 as the mother had just requested enrollment as a non-attending student and had not requested any services.

45. A series of e-mails were exchanged. An e-mail from the Student's mother to her on November 23, 2009 referenced three (3) things for the Student: 1) registration for the Student per enrollment papers to include the basic information such as name, etc. which the mother wanted to be retroactive to 2006 as her prior request was deleted from system, 2) the files from [REDACTED] to be reviewed and a 3) a formal request for a case study [see SD 219],

46. Mom brought in "huge ream of paper" on December 10, 2009 which included a [SD220] cover sheet for parent documents. She went through all of them and matched each piece of paper with listing - to make sure they were all there. The records were received on December 10, 2009.

47. The mother never stated that she wanted services from [REDACTED] [REDACTED] didn't feel that the Student would be enrolled in [REDACTED]. This was especially true as the transition would be unusual as he was in senior year and doing well and might be unhappy with a transfer.

48. Evaluations and Eligibility Meeting was held on January 4, 2010. This was unusual as typically they wouldn't do all of this within one day but they did it this way as the mom stated that this would be most convenient day for the Student as he had to go back to school directly.

49. She was present at the eligibility meeting as the case manager, Special Education teacher and Transitional representative. The Student was 18 at the time of meeting. As such, she provided the Student with a notice of rights re: transfer of rights [see SD36]. He did not [SD 33] delegate his rights.

50. She did provide the parent's documents to the other team members and they considered this information. [see SD 122] She reviewed the documents prior to the meeting and noted that the Student had, as of September, 2009, made significant progress in all phases of his program.

51. She did listen to the information and evaluations presented and read through the documents provided by parent. The parent and Student were given the opportunity to participate in the eligibility meeting. During the meeting, the Student was more vocal about information on the forms, i.e. a discussion between the mother and Student about not agreeing to dates of attendance for different schools.

52. She did have input regarding the eligibility determination and agreed with decision. Each of the team presented information and/or reports and she didn't see anything to disagree.

53. The Student stated that he was happy at [REDACTED]. He was co-class president, had unlimited freedom and few infractions. As to the infractions, they didn't see them as strenuous, rather just typical teenager activity. He was living independently in a transition dorm, doing all activities of daily living, had received the highest degree of independent living and responsibility possible for a [REDACTED] student. He had demonstrated success and consistency in classroom. He was focusing on applying to college. Based on all of this, they felt that he could move into college without problem.

54. His progress report for the 12th grade showed that he was taking classes in Journalism, English 12, AP Biology, Video Production, Algebra II, AP History and Art Around the World. He was getting 5 "A's", 1 "B" and 1 "C". He seemed to be doing very well based on the comments, i.e., student is hard working and diligent, made up missed work, works well both in and out of class, homework complete and living on own in the dormitory. [See SD138] Based upon this, they felt that the Student could perform and receive educational benefit at [REDACTED] in the general education environment.

55. She wouldn't know if a small or large class would be appropriate for the Student. At [REDACTED], AP classes are smaller than the general education classes - typically 20 to 26 for AP and 28 to 30 for general education. She understood that the classes at [REDACTED] were less than 10 students. The Student would be able to take AP courses at Mather. [REDACTED] has 1600 students of which the Special Education population equals 230 students. She agreed that the transition to [REDACTED] would be difficult as he's a senior and being taken out of environment that he wants to be in.

56. The Student's mother never sent notice that the Student was going to be attending [REDACTED] School.

57. At the end of the meeting, the team decided that the Student did not qualify for eligibility [SD28]

Testimony - [REDACTED]

[REDACTED] has been employed as a Social Worker with the [REDACTED] for a total of 21 years. She holds a Bachelor's degree in government and a Master of Social Work degree. She has a Type 73 certification with an endorsement for Social Work and a Type 75 for school administration. She is licensed as a clinical social worker by the State of Illinois.

She has been a Social Worker at [REDACTED] for 11 years. Prior to that, she was a school social worker at an elementary school in [REDACTED] and also on the south side for 10 years. [REDACTED] presented as very knowledgeable about her area of expertise. Given the constraints of time in dealing with this evaluation, she seems to have done a good job of reviewing the substantial records and interviewing all. She was a very credible witness.

58. She became familiar with the Student when she met him in January 2010 when he came for an evaluation for Special Education. She did a social work assessment in stages - the parents came in December 2009 for a parent interview, she reviewed the voluminous records and then interviewed the Student after winter break. She then authored a report of her findings.

59. Per the Parent report, the Student had a long history of school adjustment, environmental disruption (dad's job, moving back and forth; attended parochial schools with a dual curriculum - academic and religious. He never attended a public school. He has three siblings, none of whom attended [REDACTED]. There were reports of hospitalizations at [REDACTED] in July 2005 and then later that same month, at [REDACTED]. These were unrelated to activities at school. He started at [REDACTED] in late January 2008. There was a family constellation of stressors regarding family dynamics. The Student told her that when he was younger, the situation was more stressful. His dad's travels and moving back to [REDACTED] from [REDACTED] were all hard on him. Even now, coming back on break presents certain stressors as he's used to certain life style away from home. His performance at school seemed pretty good. [REDACTED] noted that problems solely at home would not qualify for Special Education.

60. The Student was articulate, charming and well spoken. He easily volunteered information including that he was president of his student class; was proud of his grades and was thinking ahead. He felt pretty good about himself. His grades were good - he was getting A's and B's with one C in biology. Two of the courses were AP. He also has had various jobs. At break, he worked for kosher caterer and at other times, he worked in accounts payable for nursing home. She felt that this was pretty sophisticated for someone in high school. His behavior in the school setting showed that he was making good adjustments, liked school; had more freedom than other places; and knew lots and lots of kids and teachers. He could observe his family culture and traditions. He showed initiative and independence. His adaptive behaviors were age appropriate - at the least.

61. She was aware of his psychological diagnosis of a learning disorder; ADHD; NOS; parent child relationship disorder and depression. She found no signs of depression and both the mom and Student said that he was not depressed. By looking at progress reports from the [REDACTED] he seems to be going in the direction of improvement. Per [REDACTED], he is academically motivated, has good attending skills; and continues to make progress. His teachers report he was doing well in class and was an attentive, active class participant.

62. Her concern is how his emotional issues affect his current ability to perform in academic tasks. She found that he had a good strong ego. She thought that transposing him into their setting would be successful.

Testimony - [REDACTED]

[REDACTED] has been a school psychologist at [REDACTED] for three (3) years. She holds a Bachelor's degree in Psychology and Spanish and a Master's degree in School Psychology. She has a Type 73 Specialist Certificate. She came across as very credible and knowledgeable.

63. She conducted a psychological evaluation of the Student on January 4, 2010. She was also part of the IEP team which held an eligibility meeting on January 4, 2010. This was an unusual procedure to have the testing and the eligibility meeting on the same day but she understood that the Student was returning to Connecticut the following day.

64. Her general impression of the Student was that he was cooperative, a pleasure to work with and he enjoyed doing the test. She enjoyed working with him. Her understanding of why he was there was to get an ideal of where he's at educationally and that parent's wanted re-imburement for the tuition for [REDACTED]

65. His previous academic assessments done in January, 2008 indicated average to above average performance in reading, math and writing. She noted his diagnoses of learning disorder - not otherwise specified, non-verbal learning disorder, attention deficit hyperactive disorder, oppositional defiant disorder, parent -child relationship disorder; and depressive disorder - not otherwise specified.

66. A learning disorder is different from learning disability for educational purposes. To be labeled as a "learning disability, there needs to be a significant discrepancy between the student's intelligence and his academic performance. Just because a student has a diagnosis does not mean that he may qualify for special education services. If he is doing well in school, there may be no need to provide special education services. She administered the Reynolds Intellectual Assessment Scales which has both verbal and non-verbal assessments/scales. The Student's results indicated average on both the verbal and non-verbal components although the memory scales were in the slightly below average range. The results suggested that the Student would be more successful if information was presented to him verbally [See SD13]. She was cognizant of the 20 point spread in the January, 2008 evaluation per the WISC - IV. She did her report 2 years later which was a long amount of time and, dependent upon mood, etc., the test results may be different. She did take both scores into account. She didn't administer the WISC - IV as she felt that the Reynolds would be as appropriate.

67. She also administered the Kaufman Test of Educational Achievement, Second Edition (K-TEA - II). This was to determine his current level of educational attainment. All of his skills were in the average to above average range. There was no evidence of a learning disability as all achievement scores were in the average range and his IQ scores were in average range. Since there were no discrepancies, there was no learning disability. From her review of 2008 testing and in comparison with her testing, the results were similar. His achievement test in 2008 was also in the average to above average range. She did agree that his IQ scores improved somewhat on the non-verbal scales that she gave although she attributed that to test differences. [See SD 9 - 14]

68. His SAT scores before his senior year of high school were average to above average. [SD46]

69. On the Behavior Assessment System for Children, 2nd Edition, Self-Report, Adolescent (BASC - II), the Student had a few items considered "at risk" in terms of "locus of control; anxiety and somatization" and "attention and hyperactivity". His scores on mania fell within the clinically significant range, i.e., feeling that he can't slow down his thoughts/ideas racing through his head, problems sitting still and trouble relaxing. Her interpretation was that this was not something significantly affecting his education. She found nothing that suggested he currently was emotionally disturbed. [See SD 9 - 14] A diagnosis of ADHD can be an educational disability per the school code. An educational diagnosis of ADHD does not require a medical diagnosis but her training and education strongly suggest that they have this. The School cannot treat this but it can provide interventions to help the symptoms.

70. In her interview with the Student, he stated that he was doing well in school, passing all of his classes, understood the material, was taking AP courses and felt that he was doing well. In terms of his past behaviors, he agreed that he had made poor life choices. As to the future, he was going to travel to Israel and/or go to college to study law or politics.

71. She did consider his prior hospitalizations in coming to a decision. His behaviors seemed improved from that in 2006. His goals from Grove in September 2009 were social emotional goals with no academic component. [SD126-127] Although these goals in addressing learning to communicate with others and choosing a role model may be beneficial for the Student, she would not request an IEP on these as these are good skills for any student to have and are not specific to special education.

72. The IEP team did consider the Student's eligibility for an emotional disability based upon the Student's (1) inability to learn that cannot be explained by intellectual, sensory or health factors; (2) inability to build or maintain satisfactory interpersonal relations with peers and teacher; (3) inappropriate types of behaviors or feelings under normal circumstances; (4) general pervasive mood of unhappiness or depression; and (5) a tendency to develop physical symptoms or fears associated with personal or school problems, all of these being exhibited over a long period of time and to a marked degree which adversely affect the Student's educational performance. Although these criteria were not presented as a check list, they did go through them in their reports and discussion.

73. Based upon all of the discussions, documents, prior records and their testing and evaluation, the IEP team concluded that the Student did not qualify for Special Education Services. She was in agreement with this decision.

5. Burden of Proof

The Supreme Court in *Schaffer v West*, 546 U.S.49 (2005) has held that the party filing the request for due process bears the burden of persuasion. "The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief" *Id.* at 537. However, per *Schaffer*, the states may, if they wish, put the burden on the school district.

"[T]he IDEA framework in Illinois provides that 'the school district shall present evidence that the special education needs of the child have been appropriately identified and that the special education program and related services proposed to meet the needs of the child are adequate, appropriate and available'. 105 ILCS 5/14 - 8.02 (h) states only that a district's obligation is to present evidence, it does not place a burden of proof on the district. See *Schaffer*, *Id.* at 533-534 (distinguishing burden of production from burden of persuasion). As such, section 8.02(h) does not contain the explicit burden of proof language necessary to override the default rule the plaintiff, as a party challenging the IEP, bore the burden of proof." *Kerry M & Kristine M v Manhattan Sch. Dist. # 114*, 106 LRP 58547, 46 IDELR 194 (7th Circuit, No. Dist. IL, 2006).

Putting it in different fashion, it is the parent's burden to present sufficient evidence to support their allegations that the school district failed in its obligation to provide the student with a free appropriate public education and such other relief as they are seeking (FAPE).

6. Conclusions of Law based upon the Findings of Fact

- A. Whether the [REDACTED] violated IDEA's Child Find requirements pursuant to which school districts are obligated to identify, locate and evaluate all children with disabilities residing in their district.

This question raises an interesting issue in this matter as to which Local Education Agency (hereinafter LEA) is primary relative to the child find obligation. Pursuant to the 2006 IDEA, Part B. Regulations at 34 CFR 300.131, the act provides that the LEA where the private elementary school and/or secondary school is located has the primary responsibility for conducting the child find process to determine the number of parentally placed children with disabilities attending a private school located within that LEA's boundaries. Subsection (f) of 34 CFR 300.131 provides the following: "each LEA in which private ... elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally placed private school children who reside in a state other than the state in which the private schools that they attend are located". The Education Department has echoed that this child find responsibility remains with the local LEA rather than with the LEA in the site of the student's residence. See 71 Fed. Reg. 46591 (2006). Without more, and in this case, this would place the child find responsibilities on the LEA in the [REDACTED] area.

However, in this case, the parent has requested the [REDACTED] perform a case study and evaluate the student. A recent OSEP letter, *Letter to Eig*, 52 IDELR 136 (OSEP 2009), weighed in on this topic and noted that the student's home district is responsible for evaluating a student's IDEA eligibility upon the parents request. In that letter, authored by acting director [REDACTED] a student's home district is responsible for evaluation of a student who attends a private placement in another state. OSEP noted that this creates a competing issue requiring two separate LEA's to be responsible for child find and discouraged this practice. Where a parent requests that it's own local LEA evaluate the child for the purpose of providing FAPE, that LEA does not have the option to defer to the LEA in the area where the private school is located. As noted in the OSEP letter, the resident district, based upon this request, is responsible for ensuring the availability of FAPE to the child.

This was further reinforced in *District of Columbia v. Abramson*, 48 IDELR 96 (2007) wherein the District of Columbia had presumed that the private school located in Connecticut (also the Grove school) was responsible for evaluating the students IDEA eligibility. The school district in that case relied upon the statutory sections referenced above for support that both (A) the location of the private school and (B) the child's attendance at that school obligated that local LEA as to the child find obligations. The hearing officer and district court therein noted that the "IDEA 2004 did not eliminate the need or [sic] an LEA to offer FAPE to all children who reside in the LEA's educational district, even if the child is privately placed by the parents [sic] in another jurisdiction". The district court went on to comment that the "child find process does not prevent a parent from initiating a request for an initial evaluation from the LEA of residence or relieved the LEA where the child resides from the obligation to

provide an evaluation". Merely because the other LEA where the student attended may have child find obligations did not however insulate the LEA of the student's residence from having an obligation to fulfill its own responsibilities to evaluate the student and if appropriate, provide FAPE.

Turning then to the case here, at first blush, the LEA where the student's private placement is located (██████████) may have had the initial obligation regarding child find. Even if the ██████████ did not have corresponding obligations regarding child find, under the holdings of *Letter to Eig, id.* and *District of Columbia v Abramson, id.* once the parent requested enrollment and/or a case study, the ██████████ child find obligation begins. In the instant case, there is nothing that suggests that the ██████████ were ever aware of the student's need for special education services prior to at least 2006. The Student never attended the ██████████ - rather he was privately placed in various parochial schools, local and boarding [Findings of Fact #1,2,4, 5, 6]. However, as the 2006 enrollment predates any limitations involved in this current due process hearing, this issue is not relevant for consideration.

The clearest record as to any request for enrollment in this case is the request from the mother in the fall 2009 requesting enrollment as a non-attending student [Findings of Fact #8, 43, 44, 45]. Even at that point, enrollment would be insufficient to implicate the school district child find obligations as the student was not present and initially there were no records or other documentation as to any needs for this student. Per the documents presented by both the parent and the school district, the first request for a case study was on November 23, 2009 by the mother [Findings of Fact #45,45, 47]. Thereafter, the school district promptly began its evaluation process by having appropriate staff review the various documents provided by the parents (supplied on December 10, 2009) and requested evaluations in various areas [Findings of Fact #58, 62]. As a convenience for the student who was only in the ██████████ area during the ██████████ school's winter recess [Findings of Fact #9] and in conjunction with its own winter recess, the District's Psychologist and Social Worker conducted their evaluations of the Student on January 4, 2010 [Findings of Fact #9, 10]. The Social Worker had previously completed the parent interview process. Each had previously reviewed the various records from the ██████████. Although unusual, the district also conducted the eligibility meeting on January 4, 2010 due to the request of the parent and student and given his availability to be present for the testing as well as the eligibility meeting [Findings of Fact #10]. To the District's credit, it was able to complete its evaluation well within the 60 school days allowed - particularly considering the Thanksgiving and Winter Break holidays.

As such, I decline to find that there was any child find violations by the ██████████ relative to this particular student. This issue is found in favor of the school district

- B. Whether the ██████████ failed to evaluate the student in a timely manner in all areas of suspected disability.**

The parent and/or student further submit that the [REDACTED] failed to timely evaluate the student in all areas of suspected disability. As to the timeliness issue, I reference and incorporate that portion of my decision in Issue A (above) dealing with the time frame from request for a case study to eligibility meeting as if fully set forth herein that the [REDACTED] [REDACTED] timely evaluated the student. However this question asks more – did the school district evaluate the student in all areas of suspected disability as it is required to do.

The responsibility to conduct an evaluation is set forth in the IDEA at 34 C.F.R. Sections 300.301 (a) and 300.303 (a) and implemented in Illinois at 23 Illinois Administrative Code, Section 226.110 evaluation procedures. Under the IDEA, a school district is required to assess a student in all areas of suspected disability. The district “shall use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent that may assist in determining (i) whether the child is a child with a disability; and (ii) the content of the child’s individualized education program....” 20 U.S.C. 1414 (b) (2) (A). Further, the local educational agency shall (B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child” 20 U.S.C. 1414 (b) (2) (B). To this end, a district must ensure that it completes a full and individualized evaluation. *Kevin T. v. Elmhurst Comm. Sch. Dist. No. 205*, 36 IDELR 153 (N.D. IL 2002).

The mother’s and Student’s comments to the clinicians and the records from the [REDACTED] [REDACTED] should have focused the School District on potentially either an “emotional disturbance” or “other health impairment” as potential disabilities for the student [Findings of Fact #8; SD 48 - 146]. Those disabilities are defined in 34 CFR section 300.8 are:

“(4)(I) emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

- (A) an inability to learn that cannot be explained by intellectual, sensory or health factors.
- (B) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (C) inappropriate types of behavior or feelings under normal circumstances.
- (D) a general pervasive mood of unhappiness or depression.
- (E) a tendency to develop physical symptoms or fears associated with personal or school problems.”

“(9) other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that – (i) is due to chronic or acute health problems such as asthma, **attention deficit disorder or attention deficit hyperactivity disorder...** and (ii) adversely affects a child’s educational performance”. (emphasis added)

The testimony here is a unequivocal that the school district, as part of its evaluation process, requested evaluations from the school psychologist as well as the school social worker [Findings of Fact #59, 63]. Each of these individuals testified that they had reviewed the records submitted by the parents in addition to performing their own interviews and evaluations. Both the school psychologist and a school social worker reference that they considered the students records at [REDACTED] and any other records submitted by the mother [Findings of Fact #58, 65]. The Social Work assessment was in conjunction with interviews of both the parents [Findings of Fact #58]. These records reflect the student's emotional issues in dealing with other people, students, parents, teachers etc. as well as his learning achievement [Findings of Fact #59].

Particularly instructive are the [REDACTED] records relative to the student and the reasons for referral diagnosis. These records reflected that the reason for the referral was "need for structure and support of residential placement to increase maturity; decrease impulsivity; decrease interpersonal hypersensitivity; increase self-esteem; improves social skills; gain emotional regulation; improves decision making skills; decrease frustration; improved academic functioning; decrease anxiety and insecurity; decrease defensiveness; improved family relationships". [SD 51].

Both the Social Worker and the Psychologist acknowledged the diagnosis of ADHD as well as several other diagnosis as set forth in the record to include non-verbal learning disorder, interpersonal and family relationship disorder, etc. [Findings of Fact #61, 65] The social worker focused her interview on the student's interpersonal relationships noting that he was a "outgoing, articulate and engaging young man ... at this point in time, the student presents as an articulate, outgoing young man who has a good sense of humor. Adaptive behavior was well within the normal range. Neither the student nor his mother feel that he is depressed. Opposition behaviors continue but appear to be within the normal acceptable range for 18-year-old male. On the plus side, the student credits his experience with [REDACTED] expedition and his time at [REDACTED] for helping get on track. He anticipates working independently in college. He may attend school in [REDACTED] ... student appears to be performing at the level of the same age peers and she referred him to the school psychologist relative to any learning disability." [Findings of Fact #60; SD 15 - 17]

Based upon her review of the records and her interview with the student, she did not feel that the student currently had a emotional disturbance. Even if he did have an emotional disturbance, it was not affecting his academic performance as he was receiving essentially A's and B's [Findings of Fact #60; SD132 - 144]. In determining a emotional disturbance, there must be an academic aspect to it – it must affect his academic performance [Findings of Fact #62]. Per the Social Worker, as any emotional issues that the student may have had were not affecting his academic performance, he did not have an acceptable educational diagnosis of the emotional disturbance [SD 15 -17].

In terms of the psychological evaluation, the school psychologist was aware from the documents presented that the student had several claimed learning disorder: Non- Verbal Learning Disorder; Attention Deficit/Hyperactivity Disorder - NOS; Oppositional Defiant

Disorder; Parent-Child Relation Problems; and Depressive Disorder- NOS. [Findings of Fact #65; SD 9]. Grades from her review of the [REDACTED] records indicated that he was passing all classes with A's and B's with the exception of AP Biology where he was earning a C [Findings of Fact #70; SD 132 - 146].

She reviewed the outside evaluations conducted in November 2005 and January 2008 and then conducted her own psychological evaluations including the Kauffman Test of Educational Achievement - Comprehensive Form, Second Edition, (KTEA - II); Reynolds Intellectual Assessment Scales; Behavior Assessment System for Children, Second Edition (BASC-2), Self Report, Adolescent; and interviews with the student, the mother as well as teacher reports from [REDACTED]. Her findings indicated that his current cognitive assessment indicated verbal and nonverbal abilities that fell within the average range; relative strength and verbal reasoning skills that fell within the average to high average range and nonverbal reasoning and recall for details/long-term memory which fell in the average range. [REDACTED] thought that it was questionable whether the student was entitled to receive special education services. She acknowledged his previous diagnosis of nonverbal learning disorder but thought it did not appear to negatively affect his educational performance. A review of his records from the [REDACTED] indicated that he had not had any major incidents in the past year that would indicate the presence of an emotional disturbance. Even the difficulties that were referenced relative to poor decisions and relationship issues would be to his home and parents and were perceived as normal as between a teenager and the parent. Teacher reports from his current school documents indicate few incidents of speaking out in class but otherwise his behavior was not a concern. The student also denied any symptoms of depression and denied any antidepressant medication. All in all, she did not find any need for special education with the student [Findings of Fact # 65, 66, 67, 68, 69, 70, 71; SD9 -14].

In addition to the items noted above, the school district also conducted an examination by the nurse [SD25]. All of the team members received and reviewed the voluminous records supplied by the parent [Findings of Fact # 50; SD 220].

Under the IDEA's charge to evaluate the student using a variety of assessment tools and strategies to gather relevant functional developmental, the school district has utilized a variety of assessments and evaluations to include the social assessment, the psychological assessment, the academic achievement assessment, the health assessment, a review of the numerous records provided by the parent as to the students progress at the [REDACTED] as well as the various social and psychological assessment performed for the student over a period of time in reaching their decision. The parent, who was represented by an attorney at this point, did not request further evaluations. See *Ford v Long Beach Unified Sch. Dist.* (2002, CA 9 Cal) 291 F 3d 1086; *Park v Anaheim Union High Sch. Dist.* (2006, CA9 Cal) 464 F 3d 1025.

Given the Student's academic performance, and that his emotional behaviors did not adversely impact or affect his academic performance, the team determined that the Student did not have an educational disability and therefore there was no need for Special Education services.

Based upon the breath of the testing and review done by the [REDACTED] I find that the [REDACTED] evaluated the student in all suspected areas of disability. I therefore find in favor of the school district as to this issue.

C. Whether the [REDACTED] failed to identify the student eligible for special education which resulted in a denial of a free, appropriate public education.

In *Forest Grove School District v. T. A.*, 129 S. Ct. 2484 (2009), in a similar fact pattern as here, the student suffered from ADHD and was determined not eligible for special education services based upon the school psychologist evaluation that his ADHD did not substantially impact on his school experience. The student was found not eligible for Special Education services and no IEP was established for the student. As such, the parents elected to place him privately. The Supreme Court noted that “a school district’s failure to propose an IEP of any kind is at least as serious a violation of its responsibilities under IDEA as a failure to provide an adequate IEP”.

Here, as well, the student suffers from ADHD and was determined by the school district to be ineligible for Special Education services [Findings of Fact #39]. In order to determine whether the [REDACTED] failed to identify the student as eligible for special education services, the starting point for this analysis is the eligibility criterion pursuant to the IDEA. At 20 USCS section 1414 (b) (4)

“upon completion of the administration of assessments and other evaluation measures – (A) the determination of whether the child is a child with a disability as defined in 20 USCS section 1401 (3) and the educational needs of the child shall be made by a team of qualified professionals and the parent of a child in accordance with paragraph (5)” thereof.

Section 1401(3) defines a Child with a disability:

“(A) In general. The term “child with a disability” means a child – (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance ... (referred to in this title as ‘emotional disturbance’), orthopedic impairments, autism, traumatic brain injury, other health impairment, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services.”

In the instant case, the school district has determined that the student does not qualify for special education services as the relevant testing, evaluations, and review of his current educational placement and the records thereto show the student as functioning at a relatively high level. There does not seem to be any impact from these emotional behaviors on his educational functioning and his academic performance. The IDEA and regulations thereto require proof of an adverse impact on academic performance as opposed to social development or integration. *Maus v. Wappingers Central Sch. Dist.*, 54 IDELR 10 (So Dist. N.Y. - 2010).

The [REDACTED] records [SD 48 - 146] which are pertinent to this Student show the following:

Comprehensive Service Plan

In March, 2008, the reason for referral/diagnosis was as follows: "need for structure and support of residential placement to increase maturity; decrease impulsivity; decrease interpersonal hypersensitivity; increase self-esteem; improves social skills; gain emotional regulation; improves decision making skills; decrease frustration; improved academic functioning; decrease anxiety and insecurity; decrease defensiveness; improved family relationships". [SD 51]

Summary of Services

Psychological services to be provided to the student included two 45 minute individual sessions per week; clinical consultation as needed; weekly group meetings with dormitory, group and residential administrator and counseling with adviser as needed. No special services were needed at present [SD 51]

Services Provided

Special Services - There is no indication of any accommodations or modifications for the student. Again, special services are listed as "none". [SD 51]

Classes

The student was assigned classes in Sociology, Physical Education, Biology, Algebra 1, English 9 and Current Social Issues. None were listed as remedial in nature. [SD51]

Strategies

In terms of strategies for the student, of the 16 items listed, only 3 of the 16 were referenced in terms of his academic performance: #3. Verbal cueing or prompting; #6. "Buddy system, peer instruction or tutoring" and #7. Supportive and nurturing teacher/student relationships". The remainder of the strategies including 1. Defined expectations, limits and consequences; 2. Daily feedback about performance to student; 4. Provision of successful experiences; 5. Positive role models; 8. Positive peer pressure; 9. Criticism or correction given one-on-one when possible, and prefaced with affirming comment; 10. Role-playing; 11. Values clarification activities; 12. Structured and supervised peer group activities; 13. Group counseling sessions; 14. Individualized psychotherapy sessions; 15. Family therapy sessions; 16. Administrative/clerical meetings and interventions. [See SD 52].

Clinical Review

The student's presenting problems included (1) Marked problems in delay of gratification; Identity issues and identification with poor role models; (2) Projection of blame, denial of responsibility for emotionality, and acting out; (3) School avoidance; (4) Oppositionality, argumentativeness, rebelliousness, refusal of requests of authority figures; (5) Problems in communication, insight, understanding of peers, adults and parents; (6) Association with poor peer models; following poor peer models, Conflict, argumentativeness, refusal to accept rules in the family; and (7) A lack of understanding and/or appreciation of consequences of one's actions. [SD 54 - 58],

Goals

The goal developed to assist with these concerns was "The student will improve his social/emotional skills by meeting the objectives listed below. [They included] (1) To learn methods to cope with the intensity of affect and impulsivity and to increase capacity for delay of gratification; to resolve identity issues in a positive manner; to find positive adult role models, positive peer models and to form healthy peer relationships; (2) To gain insight into the dynamics of these defenses; to take responsibility for one's emotionality and behavioral acting out; (3) To understand the dynamics of school avoidance; to increase self-esteem as a student; to cope with school and become more productive; (4) To decrease oppositionality; to learn to negotiate, compromise, and accept reasonable requests of authority figures; (5) To increase social skills in communication, insight, and understanding of peers, adults and parents. To build friendships and form meaningful relationships with peers. To learn to trust adults and to use them appropriately as resources. To increase trust and caring for parents. To choose appropriate adults and peers for psychological support and problem solving; to use such support appropriately and intelligently. (6) To learn to discriminate poor peer models and choose better ones. To reduce conflict, find and use methods of conflict resolution in the family; (7) To understand and appreciate the consequences of one's actions. [SD 57 & 58]

Grades

The Student's grades for that first marking period that he attended the [REDACTED] dated April 14, 2008, showed that he received three A's, a B+ and a B. Moving forward in time to the report card directly before the school district evaluation, he had received final grades of four A's, one A- and one B+. [SD 146]

Progress Reports

The progress notes through October 8, 2009 showed that he was doing very well in his Journalism class, always participating, is current with his work both in and out of class. He was a hard-working and diligent student in his English 12 class and although he misses a lot of class, he'd been proactive about getting his missed work and consistent in his follow-through. In Video Production, he was an active participant and a vocal member of the class and demonstrated his desire to entertain others and show his skills and acting was a pleasure to

have in class. His AP Biology teacher found him to be a very bright student, having a magnificent attitude and very hard working. He apparently had been away from school which contributed to his missing a deadline for some assignments but that they were working to rectify that situation. In Algebra 2, the student was working very well both in and out of class with his homework assignments being always complete. For his AP History class, he was doing well and displayed an obvious grasp of the content and demonstrated positive leadership skills in the class. He'd been a very enthusiastic student thus far. Finally, the student seemed to enjoy his time in the Art Around the World class but was concerned about the work that he missed while gone for the holiday but was going to be able to make it up without penalty. [SD 138]

Learning Profile

The student's strengths were listed as academically motivated, intelligent and personable. The Student's concerns were organization, socially appropriate comments/behaviors, attending skills and social skills [SD 64].

Advisory report

Under comments dated September 2009, the [REDACTED] staff and his advisor, [REDACTED] noted that the student has "made significant strides in all of the various facets of his program. Currently he is living independently in one of the transition dorms on campus. There, he is managing all of his activities of daily living without direct support or prompts from staff. Additionally, the student has earned the highest level of freedom and responsibility possible for a [REDACTED] student. In conjunction with all of these positive gains, the student continues to demonstrate success and consistency in the classroom. He is currently focused on maintaining his gains, plan to go to college and improving his family dynamic." [SD122] On his learning profile, per [REDACTED], the student was continuing to make progress on his goals and objectives.... his teachers report that he is doing well in class. He is an attentive student, responsible with his assignments, and an active class participant. He has demonstrated a strong work ethic." [SD131]

The above shows several things. One, the student was functioning at a high level – receiving A's and B's both upon his entrance into the [REDACTED] and at the last marking period prior to the evaluation by the [REDACTED] [Findings of Fact # 54; SD 146]. The other is that the primary reason for attendance at the [REDACTED] were for emotional/behavioral items predominately outside of the classroom. The main concern and focus of the Grove School was/is on the Student's behaviors. His admitting profile, the reasons for his placement, the summary of his services, the strategies, clinical review and goals are predominately directed to his social and emotional issues. The academic commentary is seemingly incidental to these other concerns.

In *Maus v. Wappingers Central Sch. Dist.*, 54 IDELR 10 (So Dist. N.Y. - 2010), a student who had social and emotional difficulties as a result of ADHD, Asperger syndrome and generalized anxiety disorder was not eligible for IDEA services. In that case, the record

showed that the student suffered a variety of disorders and learning disabilities including psychological disorders. However, she did well in all of her academic subjects. In discussing the eligibility requirements for the student, the court noted that under the IDEA proof of an adverse impact upon 'educational performance' was required. The court went on to look at whether or not the student qualified under an emotional disturbance and determined that since the student's academic performance was not affected by any claim of an emotional disturbance, she was not entitled to special education services. In discussing adverse impact and eligibility, the court looked to the cases of *C.B. ex rel. Z. G. v. Dep't of Educ. Of the City of N.Y.*, 322 Fed App'x 20, 21 (2nd Cir. 2009) and *N.C. ex. Rel. M.C. v. Bedford Cent. Sch. Dist.*, 300 F. App'x 11, 13 (2nd Cir. 2008). Particularly in the *C.B.* case, which the *Maus* court thought was highly analogous, the record showed that the student suffered from ADHD as well as bipolar disorder and was found by the hearing officer to qualify for special education. The state reviewing officer reversed the decision since the student was performing well. The Second Circuit found that the student continuously performed well above grade level and that her educational performance had not suffered and therefore there was insufficient evidence to show that there was an adverse educational impact and that accordingly the student had not established eligibility for services under IDEA.

More recently, in *Loch v. Edwardsville Sch. Dist. # 7*, 327 F. App'x 647, the Seventh Circuit similarly opined that there was insufficient evidence to support the student's claim that she should be eligible for special education services based upon her difficulties in school predicated upon her diabetes as well as anxiety disorder. The court found that although the student did not do well in a public high school, her placement by her parents at the local community college where she received A's and B's did not support her claims for special education. As such, the Seventh Circuit found in favor of the school district. See also *Hood v. Encinitas Union Sch. Dist.*, 486 F. 3d 1099, 1106-1109 (9th Cir. 2007) and *Rodriguez v Waukegan Sch. Dist. # 60*, 90 F. 3d 249, 254 (7th Cir., 2996).

The Student here was not having any significant academic problems. His academic assessments, his current psychological testing, his grade reports and this future academic plans all attest to his academic progress and performance [Findings of Fact #40, 41, 54]. It appears that he will have completed a high school program in less than 3 years. He started in January, 2008 with only minimal credits and will graduate in August, 2010 [Findings of Fact #6]. If there is no issue as to his academic abilities and performance and this Hearing Officer finds that the Student is currently functioning at a relatively high level, the inquiry then shifts to whether the strategies and goals directed to his social/emotional disorder at the [REDACTED] have played a significant role in his academic progress and success. If it does, then the School District should have determined the Student eligible for Special Education Services. If it does not, then the Student is not eligible for Special Education Services.

It is interesting to note that the student has never been enrolled in any public school. Neither have any of his siblings. The student has never attended a public school. During his elementary and middle school years, he attended a private parochial school [Findings of Fact #1]. He started having problems in his middle school years with attendance and with oppositional defiance to teachers and authority figures. He stopped going to class, would

leave school and generally was not motivated to pursue his academic career. His parents sent him to various private boarding schools with low student teacher ratios some being as low as 1 to 4 [Findings of Fact #4]. Regardless of the class size or the supports that were given, the student had continuing difficulties and was suspended multiple times [Findings of Fact #2, 3]. Ultimately, the parents enrolled the student in the ██████████ project in ██████████ which is a residential wilderness therapy program [Findings of Fact #5]. It was at this junction that the student was evaluated by ██████████ [Findings of Fact #13 - 20]. As a result of this placement at and participation in the ██████████ facility, the student seemed, in some respects, to turn his life around [Findings of Fact #5]. He became more motivated and more goal directed. His parents then looked at various placement options suggested by the ██████████ program and/or their educational consultant (and there is some discrepancy concerning this) and chose the ██████████ [Findings of Fact #5].

The ██████████ program is a residential school program which provides a structured setting 24 hours a day/seven days a week. It provides almost unlimited opportunities to see a counselor, an advisor, a psychologist, or a psychiatrist. The class sizes themselves are relatively low – four students for every one teacher [Findings of Fact # 21, 23, 24]. Per its promotional materials [PD 77 - 84], it is unquestionably a Cadillac -or more properly in this day and age, a Mercedes or Lexus education.

The question is – are these supports necessary for the student's educational progress? Admittedly, the student has progressed. It is difficult to parse out how much of an influence the ██████████ program had on this particular Student versus how much influence the ██████████ had/has. Was the ██████████ program the one that got him back on track and motivated to be successful or is it the supports of small class size, almost instantaneous access to counseling, peer feedback and advisor feedback program and where the teachers remain with the student's around-the-clock at the ██████████ that did? Certainly, all of those supports have provided an environment for this student to be successful. But they have allowed him to be successful in all phases of his life including his relations with his peers, adults and his family. As we must under the IDEA, have the supports at the ██████████ actually provided a framework for the Student's success academically or are they merely the type of program that every parent would want for their child.

As the court noted in *Gagliardo v. Arlington Cent. Sch. Dist.*, 489 F. 3d 105 (2nd Cir. 2007), "such progress [referring to academic progress] does not itself demonstrate that a private placement was appropriate. *Berger v. Medina City Sch. Dist.* 348 F 3d 513, 522 (6th Cir. 2003) ("[E]vidence of academic progress at a private school does not itself establish that the private placement offers adequate and appropriate education under the IDEA."); *Rafferty v. Cranston Pub Sch Com.*, 315 F. 3d 21, 26 – 27 (1st Cir. 2002). Indeed even where there is evidence of success, courts should not disturb the state's denial of IDEA reimbursement where, as here, the chief benefits of the chosen school are the kind of educational and environmental advantages and amenities that might be preferred by parents of any child, disabled or not. A unilateral private placement is only appropriate if it provides 'education instruction specifically designed to meet the unique needs of the handicapped child". *Frank G. v. Board of Education.* 459 F 3d 365 (2nd Cir. 2006) The student is receiving every conceivable benefit at ██████████. As ██████████

suggested in his testimony, this is the best school for the student. He can't imagine a "better place" [Findings of Fact #27]. (Emphasis added)

The [REDACTED] program philosophy incorporates the following: "relationships are the cornerstone of the [REDACTED] treatment process ... our Educateur model also more closely represents the typical family structure. Just as the parents are not typically absent from their children during the evening or week-ends, nor are our teachers. This allows us to create more of a family-style atmosphere and also helps our students to develop the necessary skills to function as part of a healthy family." The [REDACTED] program is much more than providing a "floor of educational opportunities" for the Student. It is a program designed to be embedded in his whole life - not just his academic life. [SD 21, 24]

Here, the Student has done exceedingly well at [REDACTED]. There is no doubt about that. But he has done exceedingly well in all facets of his life. The testimony of [REDACTED] is instructive in this regard. The Student made a tremendous amount of progress in the 11th grade and into the 12th grade. Although he had a short regression, he was able to turn things around and resume the progress that he was making. In his opinion, the student does not need emotional supports any longer other than dealing with stress. The Student has experienced significant growth since he has been at [REDACTED]. By all accounts, he is a success story. He plans on spending a year in [REDACTED] and then will be going on to college [REDACTED] and living independently. He has the ability to be successful post [REDACTED]. His coping skill has improved immensely. He is now president of his class. Academically, he is in honors to high honors classes including AP courses. He is able to meet problems and is dealing with difficulties in appropriate ways. He is a positive and strong member of the community.

If the Student can be successful this coming fall in college and living independently, it seems reasonable that he will be able to participate in a general education curriculum. Based on all of the above, the significant out of school component to the [REDACTED] program, the student's progress as assessed by [REDACTED] and his substantial school progress and performance, the School District was correct in determining that the Student did not qualify for special education services.

The education professionals are to be given deference as to education placement and methodologies. *School Dist. Of Wisconsin v Littlepage*, 295 F. 3d 671 (7th Cir., 2002) so long as those school professionals were not unreasonable in their determinations as to appropriate services and placement (See also *Hearther S. v. State of Wisconsin*, 125 F. 3d 1045 (7th Cir., 1997)). Here there is sufficient assessments, reviews and evidence to support the School Districts determination regarding eligibility as to the Student - finding him not eligible for special education services.

As such, this issue has found in favor of the School District.

- D. Whether the [REDACTED] failure to identify the Student for special education and provide him with an IEP entitles the student to compensatory education.


Based upon the finding as to issue C, there is no need to make a determination if the Student is entitled to Compensatory Education services. Based upon the conclusion found in Issue C, this issue is found in favor of the school district.

- E. Whether the parents are entitled to reimbursement for the costs of the [REDACTED] for the years 2008 - 2009 and 2009 - 2010 and extended school years and related services.

Based upon the finding as to issue C, there is no need to make a determination if the Student is entitled to Tuition Reimbursement and related expenses or extended school year and related services. Based upon the conclusion found in Issue C, this issue is found in favor of the school district.

ORDER

1. The School District is not liable for any Tuition Reimbursement.
2. The School District is not liable for any incidental expenses.
3. The School District is not liable for any transportation expenses for the Student.
4. The School District is not liable for any transportation expenses for the parents.
5. Parent's request for reimbursement for extended school year and related services is denied.
6. Parent's request for Compensatory Education is denied.


W. DAVID UTLEY
Impartial Hearing Officer
Dated this 24th day of May, 2010

FINALITY OF DECISION

This Decision and Order shall be binding upon all parties.

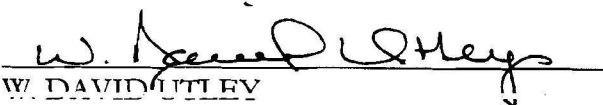
RIGHT TO REQUEST CLARIFICATION

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 party and to the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, Illinois 62777. **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 decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14.8.01 (I), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision was mailed to a party.

THE EFFECTIVE DATE OF THIS DECISION IS THE DATE OF RECEIPT OF ANY CLARIFICATION OF THIS DECISION. THE REQUEST SHALL OPERATE TO STAY IMPLEMENTATION OF THOSE PORTIONS OF THE DECISION FOR WHICH CLARIFICATION IS SOUGHT, PENDING ACTION ON THE REQUEST BY THE HEARING OFFICER, UNLESS THE PARTIES OTHERWISE AGREE. (105 ILCS 5/14-8.02)


W. DAVID TUTLEY
Impartial Hearing Officer

Dated this 24th day of May, 2010

Post Office Box 681487
Schaumburg, IL 60168
(847) 321-1044

CERTIFICATE AND AFFIDAVIT OF DELIVERY BY MAIL


Under penalties as provided by law, pursuant to 735 ILCS 5/1-109, the undersigned certifies that he/she served the foregoing document by mailing a copy certified to the above named attorney(s) at the address(es) indicated above and to the Illinois State Board of Education, 100 N. First Street, Springfield, IL 62777-0001 by depositing the same in the U.S. Mail at the United States Postal facility at Schaumburg, IL on May 24, 2010.

[REDACTED]

Illinois State Board of Education

[REDACTED]
Office of the Due Process Coordinator
100 N. First Street
Springfield, IL 62777-0001

Via First Class Mail – Certified Only


W. DAVID UTLEY
Impartial Hearing Officer

Post Office Box 681487
Schaumburg, IL 60168
(847) 321-1044