

being out of town and unavailable on Friday, July 16, 2010, he deferred hearing the Motion to Withdraw to the day of Hearing so that both sides could present argument.

The Hearing lasted one (1) day. At the conclusion of the evidence, the parties stipulated to the admission of all documents in the Parent's Document Book [hereinafter PD 1 - 121] and the School District Document Book [hereinafter SD 1 - 333].

As this matter involved the School District's Request for Due Process to defend its evaluation in response to the Guardian's Request for an Independent Educational Evaluation, the school district had the burden of persuasion and proof. As such, the School District proceeded first. The School District called the following as witnesses: [REDACTED] Case Manager; [REDACTED] School Nurse; [REDACTED] School Psychologist; [REDACTED] School Nurse; [REDACTED] Assistant Principal; and [REDACTED] the Student's grandmother and guardian. The Guardian called as its only witness, [REDACTED] Ph. D.

2. Issues Presented

Per the prior Hearing Officers Pre-Hearing Summary, the following issues were identified:

- A. Whether the School District's evaluation was appropriate in light of the Guardian's Request for an Independent Educational Evaluation;
- B. If the School District's evaluation was not appropriate, whether or not the Guardian for the student is entitled to an independent educational evaluation at public expense as follows:
 1. Whether the School District appropriately evaluated the Student and conducted an appropriate psychological evaluation;
 2. Whether the School District appropriately evaluated the Student in the area of Occupational Therapy;
 3. Whether the School District appropriately evaluated the Student in the area of Speech/Language;
 4. Whether the School District appropriately evaluated the Student in the area of Assistive Technology;
 5. Whether the School District appropriately evaluated the Student in the area of social-emotional behaviors;
 - a. Whether the School District appropriately determined whether or not the Student needed a Functional Behavioral Evaluation.

3. Relief Requested

- A, The Guardian is seeking an Order to allow for an independent educational evaluation at public expense in the following areas:

1. Psychological Evaluation which includes academic and cognitive assessments;
2. Occupational Therapy;
3. Speech/Language;
4. Assistive Technology;
5. Social Work Evaluation; and
6. A Functional Behavioral Evaluation.

4. Findings of Fact - Documents

1. The Student was initially seen and evaluated in 2003 when he was three years of age to determine an appropriate program in school for him. At that point, he was noted to be independent with all mobility on level surfaces and was walking up and down stairs [See SD 10 - 11]. The district used the Stanford-Binet Intelligence Scale - 4th Ed. as well as the Developmental Test of Visual Motor Integration - 4R and the Vineland Adaptive Behavior Scales [See SD 14]. His disabilities were determined to be Developmental Delay (Ages 3 - 5 only), Physical Impairment, Speech/Language Impairment and Other Health Impairment [See SD 23].

2. The district then reviewed his status in its annual meeting in June, 2004. They did a speech/language evaluation and reviewed his progress [See SD 45 - 76].

3. The Student was then re-evaluated in May of 2005. He was again assessed in the areas of physical therapy and speech/language. The speech/language therapist was to continue to monitor his speech and language development and the physical therapist was to consult with the physical education teacher about possible adaptation in gym activities. The staff was concerned relative to the Student's transition to his next school placement which it considered might be difficult for him [See SD 77 - 95].

4. A triennial reevaluation was done on March 20, 2006. During that evaluation, the Student was again evaluated in physical therapy [See SD 101 - 102]. The triennial psychological evaluation was also performed at that time. The psychologist noted that the Student knew all of his letters and numbers, had good phonetic skills and counting skills. He knew colors and does well with patterns, time on the hour and the value of a penny. He was highly distractible and needed constant redirection. His handwriting skills were poor. The psychologist noted that overall his cognitive functioning was well within average limits but that his fluid reasoning was a mild deficit [See SD 104]. A speech/language assessment summary was also done for the Student. The therapist noted that the Student was performing at grade level. He had articulation errors with substitutions and difficulties with certain phonemes. The therapist findings were that his language skills are within normal limits and his articulation errors are mild. She did believe that the Student might have a communication disorder that adversely affected his educational performance [See SD 107 - 108]. His disabilities continue to be Other Health Impairment, Physical Disability and Speech Language Impairment [See SD 113]. At this point, he was to receive 30 minutes per week of articulation therapy from the speech language therapist, 60 minutes a quarter relative to independent functioning from the physical therapist and 150 minutes per week from nursing [See SD 119].

5. On March 9, 2007, the school district proposed to conduct a Full and Individualized Evaluation (FIE) relative to the Student. The school nurse provided a re-evaluation for the Student as did the physical therapist [See SD130 - 132]. The guardian/grandmother noted that the Student had an attention problem and that she was trying to get him to a behavioral specialist. [See SD 133]. The Student continued to be eligible for a paraprofessional support to accompany the Student to the nurses station twice daily [See SD 136]. He was to be given 30 minutes per week of articulation services from the speech/language therapist, 225 minutes per week from the nursing for direct services and 60 minutes per quarter by the physical therapist in independent functioning. He was included in the general education classroom more than 90% of the day [See SD 139].

6. There was a subsequent meeting on October 15, 2007 to discuss new medical reports and to amend the existing IEP, if necessary [See SD 150]. A report from [REDACTED] was considered by the team. That report noted that the Student's diagnosis would best be described as a learning disability with inattention and hyperactivity [See SD146 - 147]. Based upon this report, revisions to the Student's IEP were made [See SD 152 - 154].

7. At the March 11, 2008 Annual Review - IEP meeting, the team noted that he could read slowly. He was being instructed in the regular education classroom for the second grade. The team noted a diagnosis of ADHD. His comprehension in reading and language arts was weak although his writing skills were okay. His math skills were weak and he needed constant reinforcement to maintain his focus [See PD 70]. The Student's disabilities were listed as Physical Impairment, Speech/Language Impairments and Other Health Impairment [See PD 71]. Areas in which the Student required specialized instruction and/or related services included language arts and mathematics. In addition, the Student needed accommodations and modifications in language arts, mathematics, biological and physical sciences, social sciences and physical education [See PD 72]. He was provided with a paraprofessional for 460 minutes to accompany the Student to the nurse's station, to change his pull up, to monitor him every 15 minutes for focus and to make sure that he packs his homework in his book bag and is writing down his homework daily [See PD 73]. He was to receive direct/consultative services in a separate class by a special education teacher for 300 minutes per week in language arts and 300 minutes per week for mathematics and 30 minutes per week for articulation by the speech/language therapist. He was also to receive consultative services by a physical therapist for 60 minutes per quarter and direct services by the school nurse for 150 minutes per week. He was to be removed from his regular education classroom between 21 and 60% (300 - 900 mpw) [See PD 78]. Regular education class with supplements was considered and rejected due to the Student's ADHD. It was felt that he would benefit from a smaller class for language arts and math as he was unable to be successful in the regular education class [See PD 81]. [See also SD 159 - 174]

8. At the February 18, 2009 Special Evaluation IEP Meeting, under general considerations relative to the Student, they note that his grade average in language arts was F and his grade average in math was F. He also had weakness in vocabulary and spelling [See PD 35]. The Student was considered eligible under Other Health Impaired as well as Physical Disability [See PD 37]. In terms of assistive technology, the team felt that a calculator for math, flash cards and

homework binder were reasonable accommodations [See PD 40]. In addition, he had a shared paraprofessional support for 250 minutes per week daily in the classroom [See PD 40]. He needed to go to nursing services due to his colostomy. He was also to be seen for physical therapy for 60 minutes per quarter to address positioning and accessibility issues [See PD 41]. Additional academic modifications were made [See PD 40 - 41]. At this point, the IEP team found removal from the regular education classroom for 0 to 20% was considered appropriate [See PD 44]. The school psychologist noted no behavior problems that warranted services [See PD 48]. A speech language assessment summary found that his reading skills and comprehension were at grade level with problems in math as noted. His previous speech/language evaluation was within normal limits with mild articulation errors. The therapist observed the Student in his home with the Student answering all questions in complete sentences. The Student's spontaneous speech was greater than 90% intelligible although he intermittently distorted the /sh/ phoneme. The therapist conclusion was that the Student did not have a speech language deficit that would impact his academic performance any longer. His language scores fell within the average limits for his age. He comprehended spoken language and liked the way he spoke [See PD 59 - 60]. The [REDACTED] Psychological Evaluation Report dated January 29, 2009 noted that the Student was doing fairly well in reading but struggling in math. However that psychologist noted the Student received F's in both math and reading in his last report card due in some part to his attendance issues. The Student was absent every Monday for therapy and at least one other day each week. He also missed several months due to illness. The therapist out that his cognitive functioning continued to be well within average limits with working memory being a strength and fluid reasoning being a mild deficit. The recommendation was continuation of regular grade placement with other services as needed [See PD 64 - 66].

9. The March 27, 2009 Report of Student Achievement and Effort – Description of Current Progress noted that the Student's teacher had been working with him 45 minutes a day relative to his math. Although he was slowly learning mathematics concepts, the teacher was concerned relative to the Student's self-esteem as well as his absences. Even with the modifications being made, she did not feel that anything was going to change for the Student until his learning was more consistent. [See PD 33]

10. The August 31, 2009 [REDACTED] – Confidential noted that the Student is a nine-year-old male who was referred for a focused evaluation and assessment regarding his mood, affect, poor school performance and poor medical compliance following reconstructive urological surgery. Their assessment noted Post Traumatic Stress Disorder (PTSD), Major Depressive Disorder (MDD) and Attention Deficit Hyperactivity Disorder (ADHD). The psychiatric diagnosis appeared to center around his post surgical care following his Mitrofanoff procedure. The Student required nursing staff and/or his grandmother to restrain him in order to clean his suprapubic area which was necessary to prevent infection. A treatment plan was formulated that the Student would receive pediatric psychological prevention services one time per week focusing on reducing his anxiety around the medical procedure. The Student has made progress in all areas of treatment and significantly had made significant progress towards the end goal of using the Mitrofanoff stoma. He has also made progress related to his symptoms so that he is able to tolerate discussion of his medical

condition and procedures. It was their concern though that the Student's symptoms had the potential to impact his ability to learn and attend. The Treatment Summary recommended utilization of a regular and consistent schedule for the Student's medical care at school such as performing them during natural breaks in the school schedule, receiving silencing signals when it is time to engage in his medical care, allowing him transition time following any medical care to calm his anxiety and use of an incentive program which were adopted by the School District [See PD 31 - 32].

11. At the February 5, 2010 IEP meeting, the IEP team found the Student to be friendly and sociable. Reading was his strength - particularly in his ability re: word recall, fluency and writing. His word knowledge was very strong. He did have a weakness in math skills and was placed in a smaller setting for this instruction. His past absences and hospital stays impacted his mastery so he needs instruction at a slower pace and more one-on-one basis. His assessment results in math indicated performance level at the 24th percentile. He had difficulty with collecting, organizing, and analyzing data using statistical methods, predict results and interpret uncertainty using concepts of probability. Although the general considerations for the Student listed these math issues, the specialized instruction identified his need in mathematics to include identifying groups of 10, identifying greater than and less than, telling time by the hour and counting to 20. The team noted that there was a definite discrepancy between his reading and math performances. He has fine motor skills. His cognitive abilities are in the average range but because of his medical issues he does quite often miss out on class instruction which has impacted his progress as has his hospital stays. He was noted to be independent in accessing and negotiating the school. What difficulties he has can be met through modification. Physical therapy services were discontinued at this time but were to be evaluated later if necessary. The Student spoke and understood the English language and had no communication needs for oral or written expression. The parent noted her concern as the Student's failure to bring papers and homework home. He also was using the nurse station as a safe haven and to get out of work. [See PD 11 - 12] Various modifications and accommodations are noted to assist the Student. [See PD 15 - 17]. Included within these accommodations and modifications was a shared paraprofessional support for 250 minutes weekly to keep the Student focused on task and to have his work completed an allotted time as well as to help with organizational *skills* and writing down homework on a daily basis [See PD 14]. He was to be provided 225 minutes per week of direct services in a separate class to address his mathematics issues and was to have consultation or collaborative services for health and medical [See PD 20].

5. Findings of Fact – Testimony

Disclaimer: Hearing Officer was not provided the transcript in this case and had no access to it as it has not yet been transcribed. The recitations of the facts of this case were gleaned from a review of the documents and the Hearing Officer's notes as to the facts elicited or facts that could have been inferred from the testimony of the witnesses herein.

A. [REDACTED] - Case Manager

12. The Student came with an IEP from [REDACTED] School that had his LRE setting as the general education program with Speech/Language and Nursing to be outside of the general classroom. [REDACTED] Hearing Testimony]

13. For the November 14, 2008 Domain meeting and the February 18, 2009 IEP, she presented the outside evaluation from the hospital. She initially presented it to the psychologist before the meeting. Physical Disability and Other Health Impairment were his eligibility determinations. [REDACTED] Hearing Testimony]

14. She did determine that there was a need from some social work services and brought it to their attention immediately. They discussed social - emotional issues and she asked the social worker if social work was relevant to this Student. The Social Worker told her that she did an initial evaluation and the Student didn't need services. As to the Student's social - emotional status, social work services were not relevant per the school social worker. [See PS67] [REDACTED] Hearing Testimony]

15. The occupational therapy teacher did not feel that anything was needed. The Student's fine motor ability was okay in the classroom. [See SD21] [REDACTED] Hearing Testimony]

16. Although the grandparent had concerns about his behaviors and particularly the Student's use of the nursing station as a "safe haven", this did not arise to the level of the need for a Functional Behavior Analysis or a Behavior Intervention Plan. With his medical issues, she didn't think that he was trying to get out of class. One can't deprive a Student from seeing the nurse. If he says he's in pain, he goes to the nurse. Pain is his number one issue in life. The nurse would contact [REDACTED] and she would make determination of what to do. [REDACTED] Hearing Testimony]

17. The Physical Therapist shared her evaluation. The Student can take off and put on prosthesis. [See SD 187]. The Student's motor control was normal and no fine motor difficulties were brought to her attention. There was no concern by the occupational therapist that the Student needed occupational therapy. [See SD 186 - 195] [REDACTED] Hearing Testimony]

18. No Assistive Technology evaluation was needed as the Student only needed "low tech" devices, i.e. calculator, etc. There was no need or discussion about computers, etc. [REDACTED] Hearing Testimony]

19. The Student's cognitive function was well within average. He was diagnosed with ADHD. [See PD 65]. Math is an issue for Student and one of the reasons for his struggles. [REDACTED] Hearing Testimony]

20. Issues with "bullying" were brought to her attention by the classroom teacher. She went to the teacher, nurse and social worker and told them that this needs to be addressed

immediately. The school nurse and social worker told her that they would go to class and deal with it. [REDACTED] Hearing Testimony]

21. [REDACTED] told her that his behavior does not impede his learning or that of or that of others. He didn't feel the need for behavior analysis. He told her that the Student was doing fine. However, he did have problems with the Student staying on task. He was working on this. [See PD14] [REDACTED] Hearing Testimony]

22. The regular education teacher saw progress and was pleased with his progress. He also noticed that the trigger with going to the nurse was improving. He was doing much better. However, the Student didn't want to leave the general education classroom to go for pull out math instruction. [See PD31] [REDACTED] Hearing Testimony]

B. [REDACTED] School Nurse 2006 - 2009

23. She did a re-evaluation and nurse assessment for the Student. He had multiple issues i.e., colostomy, suprapubic catheter, seizure disorder and Mintranfanoff procedure. This Mintranfanoff was a relatively new procedure wherein the doctor will use part of the intestine up to the abdomen to create a stoma to the bladder which allows for the catheter to be introduced thru the abdomen. She did not think that this was ever done on a male for someone as young as the Student. [See SD 196] [REDACTED] Hearing Testimony]

24. She was in constant contact with the nurse at the hospital relative to the Student. The Student wanted to use the suprapubic location instead of the abdomen area. They were attempting to get him to use the abdomen areas instead of the supra pubic areas due to the high incident of infection. [REDACTED] Hearing Testimony]

25. He had to drain his colostomy bag at least two times a day. He had not had any seizures for nine (9) months. She did not recall any conversations about the Student needing occupational or social work services. The parent never asked her about these services. [See SD 200] [REDACTED] Hearing Testimony]

26. The Student had a lot to do medically. She would supervise with his colostomy bag, drain the suprapubic area and make sure that his clothes were dry. Generally, he could take care of his own needs but if something leaked out, he would come to her to change or for help. She would help him get dressed as she could do it faster. It took a lot out of the Student's day to walk to the nurse station and to have these issues addressed. They wanted to get him back in class as quickly as possible as he was missing school time doing all of this. [REDACTED] Hearing Testimony]

C. [REDACTED] School Psychologist

27. She participated in evaluating the Student in general intelligence and academic performance. His cognitive skills were within average limits but he did need a current measure

of cognitive abilities. The Student's academic performance noted difficulties in all areas. [See SD 176]

28. The Student had prior psychological evaluations on 08-01-03 at age 3; 3-14-06 at age 5 years 8 months. He had been in regular classrooms since kindergarten. [See SD 177]

29. In terms of a learning disability, there was no indication that he had any deficits at that time. Typically, this would show up in 3rd grade. In her opinion, the deficits were more related to absences from school than a cognitive deficit.

30. The age equivalent scores from his psychological evaluation were: Math - below 1.0; reading- 2.8; spelling - 1.9; and battery composite - 2.1. She understood that he was determined eligible under OHI and Physical Disability. Although they probably discussed learning disability, there was no check for learning disability. The Student was a little lower in math and all skills than he should be. However, she did not suspect that he had a learning disability although it was considered. [See SD202]

31. She didn't recall if the Student was diagnosed with PTSD or depression. For an educational diagnosis of PTSD or depression disorder, it would depend on what affect it/they had in school. Many symptoms don't affect academic performance and if it is not affecting the Student's school performance, this would be referred to an outside source/provider.

32. She was unable to say why the Student was struggling in math and not other subjects. She can't say why the others were okay and math wasn't.

33. If the Student has frequent absences, one cannot diagnose a learning disability until such time as can show consistency of attendance and instruction. It is possible that life issues, absences and medications could have affected the Student's performance. These would be issues for the social worker. [See PD67]

D. [REDACTED] School Nurse - 2009 - 2010

34. She would provide direct service three (3) times a day to the Student. He would also come to see her for complaints of pain. If this is something that she can work through with him, she will let him stay or she will call home to see how he was that morning. [REDACTED] [Hearing Testimony]

35. She agrees that she has seen the Student use the nursing stations for other reasons when having emotional problems but this has happened on in limited instances. [REDACTED] [Hearing Testimony]

E. [REDACTED] Ph. D. Clinical Psychologist and Pediatric Neuropsychologist

36. She met the Student and his grandmother on July 16, 2010. The purpose was to get an informal view of the Student and to ask some questions including biographical, his feelings, his

reading (stories), ask him to write a few sentences, present math facts and simple addition. There were no formal tests done. [REDACTED] Hearing Testimony]

37. She reviewed the psychological report/evaluation of the Student from the school district. Her overall impression of the report was that it was quite brief and insufficient. An IQ test was not administered. The Student was last tested in March, 2006 at age 5. He is now 8 years old. This is important as a test at 5 years 8 months isn't a reliable indicator as the Student was too young. Also, in the Student's case, due to his multiple medical issues, there could be a change in IQ. Finally, cognitive function is broad based including working memory and processing speed. Presumably, these are stable but may vary due to external factors. [REDACTED] Hearing Testimony]

38. She was not familiar with the Kaufman Test of Educational Achievement - Brief. She would use or administer more standard tests such as the Woodcock Johnson Test of Achievement, the Gray Oral Reading Test and/or the Test of Written Language. [REDACTED] Hearing Testimony]

39. She would want to know his writing skills, his capacity to write sentences and a narrative story as well as his reading comprehension (ability to read words and paragraphs and ability to comprehend). In math, she would want to know if he did poorly on a standard math test (computational) or whether he would perform better on an applied problem. [REDACTED] Hearing Testimony]

40. During her interview, she had some difficulty understanding the Student's speech due to low volume. Although his language was clear, at times, it was non-sensical. [REDACTED] Hearing Testimony]

41. Although not trained or certified as a speech/language pathologist or therapist, she did opine that the Speech/Language tests given were not responsive to receptive/expressive vocabulary issues. [REDACTED] Hearing Testimony]

42. Post Traumatic Stress Disorder (PTSD) may be relevant to determining his performance if the symptoms are still present and affecting his performance. In addition, knowledge of a major depressive disorder is important for the same reasons. However, she further testified that his PTSD and Major Depressive Disorder are not directly related to his physical challenges/disabilities in contrast to the report from LaRabida Hospital and its Treatment Summary [PD 29]. [REDACTED] Hearing Testimony]

43. [REDACTED] testified that it is not customary to conduct an informal review such as here. [REDACTED] Hearing Testimony]

44. Based upon the three (3) year triennial evaluation and the psychological evaluation, she was not able to render opinion as to whether or not the Student had a learning disability due to the limited tests administered. She did have a concern that the Student does have a learning

disability based upon records provided and based upon his math skills. [REDACTED] Hearing Testimony]

45. In her opinion, it would seem social work would be relevant for the Student's catheterization process. [REDACTED] Hearing Testimony]

F. [REDACTED] Assistant Principal - [REDACTED] Elementary School

46. The purpose of the conference meeting on April 6, 2010 which she attended as did the grandparent/guardian was to identify problems and what the grandparent wanted with/for the Student. The Student was going to the nurse to be changed on regular basis. He has to leave classroom to go to nursing for this. As to medical issues, if the Student told the teacher that he was not feeling well, he was to get to the nurse immediately. [See SD 242] [REDACTED] Hearing Testimony]

47. Although the grandparent wanted an occupational assessment, the Student had good hand/motor skill. The Student was a talented drummer with good hand/motor skill. As such, she did not understand why he needed occupational therapy. This was not typical of someone needing occupational therapy. [REDACTED] Hearing Testimony]

48. They did talk about behavioral issues in the context that the Student needed to go to the nurse. This is not something that the School District can tie to a Functional Behavioral Analysis or Behavioral Intervention Plan. [REDACTED] Hearing Testimony]

G. [REDACTED] - Grandmother and Guardian

49. The Student's math is very low and it is a struggle for him. His spelling was never good and his handwriting was like a kindergartners. She has talked to the teacher about this. His 4th grade teacher, [REDACTED] and she were working together on this. [REDACTED] Hearing Testimony]

50. She has never requested that the School District perform evaluations for occupational therapy, social work, assistive technology, Functional Behavioral Analysis or Speech/Language. She has just recently learned what each of these is. [REDACTED] Hearing Testimony]

51. The nurse's office was a safe haven to get out of work he didn't want to do and became a haven from bullies. [REDACTED] Hearing Testimony]

52. The Student needs help getting ready for school. He can button but it will be the wrong button; he can zip his pants; he can't tie a shoe; he can't chose correct clothing; he can't take shower or bath by himself. He is getting better brushing his teeth. With his chores at home, he'll do it if someone stands with him and helps. He can't count money. For his catherization, he can't open packs, needs help inserting it all the way and cleaning afterwards. He is not good with irrigation. He still cries and says it hurts him. He is somewhat forgetful. [REDACTED] Hearing Testimony]

6. Burden of Proof

The Supreme Court in *Schaffer v Weast*, 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, as the School District has filed the Request for Due Process to defend its evaluation, it is the school district's burden to present sufficient evidence to support its conclusions that the its evaluations were appropriate and that the Guardian is not entitled to an Independent Educational Evaluation in the areas requested.

7. Conclusions of Law

A. Whether the School District's evaluation was appropriate in light of the Guardian's Request for an Independent Educational Evaluation

The District claims that it “must be first given the opportunity to conduct its own evaluations” (closing argument). And yet, the School District has filed for Due Process to defend its evaluation. The School District evaluated the Student in February, 2009 which is the subject of this Due Process Hearing. In addition, the District did conduct another evaluation in 2010. Although it has conducted certain evaluations during the various annual evaluations and triennial evaluations, it has not conducted all of the evaluations requested by the guardian. Therefore, it is somewhat specious to request to conduct an evaluation after the guardian has requested an Independent Educational Evaluation. Certainly, with consent, the School District could conduct this/these evaluations. But the District here is defending its evaluations as it has a right to do under the Act.

The School District has also cited to *Krista P v. Manhattan Sch. Dist.*, 255 F. Supp. 2d 873 for the proposition that where there is no evaluation to disagree with, the parent's right to an IEE is not triggered. Here, the district claims that it did consider appropriate domains and determined that certain evaluations were not necessary. Therefore, there is no evaluation to disagree. *Krista P.* does not support the school district's position - that is, the school district in *Krista P* did not conduct an/any evaluation and that therefore, this case is not the same as the instant case. Although the court in *Krista P.* upheld the hearing officers decision that there was no evaluation

to disagree, it did not hold that absent an evaluation, there can be no disagreement as to an evaluation and therefore, the parent is not entitled to an IEE at public expense.

Letter to Fisher 23 IDELR 565 (OSEP 1995) is instructive in this matter for the right to challenge the district's evaluation as incomplete, inappropriate and inconclusive. Although over a decade old and written prior to the current amendments to IDEA, it still has some validity. The *Letter to Fisher* suggests that an evaluation encompasses more than just one evaluation or test.

"If the public agency does not, as part of its evaluation of the child in all suspected areas of disability, assess the functional capabilities of the child as they relate to the need for [evaluations], the parents have a right to seek at public expense an independent educational evaluation if they believe the evaluation conducted by the agency fails to address appropriately the child's needs in this area ... Regardless of the terminology used, if warranted by the child's suspected disability, an appropriate Part B evaluation must include assessment that will enable the IEP team to determine whether the child needs [evaluations] in order to receive FAPE.

In the instant case, the School District has conducted numerous evaluations over the years including February, 2009. It is with this evaluation that the guardian disagrees. Whether the Student is being evaluated or reevaluated, a public agency such as a school district must ensure that the evaluation is conducted in accordance with the evaluation procedures set out at 34 CFR Section 300.304 through 300.311.

The IDEA, in its current form, provides for a comprehensive evaluation in all areas of suspected disability. It appears that the school district's position is that an evaluation is a narrow term. However, evaluation as defined at 34 CFR 300.15 "means procedures used in accordance with Sections 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs". The initial evaluation conducted pursuant to IDEA must be a full and individual initial evaluation. 34 CFR 300.301. Pursuant to 34 CFR 300.304, the evaluation "must use a variety of assessment tools and strategies to gather relevant ... information about the child"; it should "not use any single measure or assessment as the sole criterion ..."; it should "use technically sound instruments that may assess ... cognitive and behavioral factors in addition to physical or developmental factors"; the child is to be "assessed in all areas related to the suspected disability, including ... , health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities"; and "the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs ..." (emphasis added)

IDEA regulations, Sections 300.532 - 300.533 provide the minimum requirements for an evaluation, but it is clear that the evaluation process should continue until enough information is obtained to correctly identify the Student's problems. See [REDACTED] *Illinois State Educational Agency*, 44 IDELR 294 (Dec 2005)

A Student's re-evaluation needs to be as comprehensive as an initial evaluation but it need not be identical. (See *Letter to Shaver*, 17 IDELR (OSERS 1990). Additional requirements for evaluations and re-evaluations include the need to review existing evaluation data on the child including that information provided by the parent, current classroom-based, local or state assessments in classroom-based observations, observations by teachers and related service providers and any input from the parent to identify what additional data may be needed to determine the educational needs of the child. In the case of a re-evaluation, the IEP team needs to consider whether the child continues to have such a disability and the educational needs of the child including the present levels of academic achievement and related developments of the child and whether the child needs special education or related services. As to a reevaluation, the IEP team needs to consider also whether any additions or modifications to the special education and related service are needed so that the Student can meet his measurable annual goals and participate appropriately in the general education curriculum. (See 34 CFR Section 300.305 Additional Requirements for Evaluations and Re-evaluations)

Here, the IDEA as amended clearly requires the school district have a "sufficiently comprehensive evaluation to identify all of the child's special education and related services needs" [emphasis added].

These factors will be considered in determining whether or not the school district appropriately evaluated the Student and whether or not the Student is entitled to an independent educational evaluation premised upon the February 2009 IEP.

B. Whether or not the Guardian for the Student is entitled to an independent educational evaluation at public expense

A parent has a right to an IEE at public expense "if the parent disagrees with an evaluation obtained by the public agency ..." 34 CFR 300.502. There was an evaluation conducted of this Student in February, 2009. The Guardian has requested an independent educational evaluation at public expense in the areas of occupational therapy, speech language therapy, psychological evaluation, a functional behavioral analysis and a social emotional assessment [See SD 259].

An independent educational evaluation "means (i) an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question and (ii) public expense is that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent ..." 34 CFR Section 300.502 (a) (3). If a parent disagrees with an evaluation, a parent has the right to an independent educational evaluation. If a parent does request an independent educational valuation at public expense, the public agency without unnecessary delay must file a due process complaint to request a hearing to show that its evaluation is appropriate ... See 34 CFR section 300.502 (b) (2).

In the instant case, the school district has filed for due process to show that its evaluations are appropriate [See SD 260 - 261].

1. Whether the School District appropriately evaluated the Student and conducted an appropriate psychological evaluation.

The school district filed a motion to withdraw the area of psychological evaluation from the due process hearing based upon its agreement to fully fund a full psychological evaluation to include both cognitive and academic assessments [See SD 301 - 312]. The only condition that it placed upon this withdrawal was that the parents would be allowed to choose one of three suggested evaluators determined by the school district. On the day of hearing, argument was had relative to this withdrawal. The Guardian Student did not object to the withdrawal but rather only to the suggested procedure.

In *Letter to Parker*, 41 IDELR 155 (OSEP – 2004) the OSEP officer explained that “the parent has a final choice of the evaluator to conduct an independent educational evaluation, but public agency may publish a list of names and addresses of evaluators meeting its criteria, including reasonable cost factors. The parent, however, is not limited to the listed evaluators”. After argument, the hearing officer ruled that the school district would be allowed to withdraw its due process request relative to the psychological evaluation but that the Guardian, through her attorney, would be allowed to select three evaluators from the state approved list to submit to the school district and that the school district then would have the right to select one of those three. This procedure did follow the instruction in *Letter to Parker* allowing the parent, in essence, a reasonable final choice as to evaluators but also allowing the school district to have some input into which of the three evaluators would conduct the independent educational evaluation.

2. Whether the School District appropriately evaluated the Student in the area of Occupational Therapy

Occupational therapy is considered a related service to be provided to a Student if appropriate 34 CFR Section 300.34 (a). Occupational therapy is directed to “improving, developing or restoring functions impaired or lost through illness, injury or deprivation” or that improves a Student’s” ability to perform tasks for independent functioning if the functions are impaired or lost”. In this case, the Student suffers from a complex set of congenital illnesses and developmental difficulties. As noted in the various school and medical records, the Student has the following diagnoses: left congenital below knee limb reduction deformity; small intestine developmental abnormality necessitating colostomy; hypospadias/ambiguous genitalia; post status repair of the urinary bladder, July 22, 2000; post status right inguinal hernia repair, February 5, 2001, gastronomy tube with Nissen fundoplication, October 20, 2000. [See SD 1]. Per the February 18, 2009 IEP, he also has a left leg prosthesis, a suprapubic catheter, seizure disorder and has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). In addition, he had recently undergone a Mitranfanoff procedure to redirect the insertion point for the catheter [See SD 216 - 219; Findings of Fact 23]

Based upon the physical impairments noted above, the Student was determined eligible for special education services under a diagnoses of physical impairment [Findings of Fact 1]. From 2003 through 2010, as noted by [REDACTED] the Students main issues in life were his medical

issues [Findings of Fact 16]. The school district has addressed these issues consistently through its IEP's formulated for the Student [Findings of Fact 1, 2, 3, 4, 5]. Throughout, the Student received significant services from both a physical therapist as well as a nurse. During his 2003 IEP, the Student received 150 minutes per week direct consultative services from the nurse, 30 mpw in speech/language therapy as well as 30 minutes per month from the physical therapist [See SD 32].

In the Students 2004 annual evaluation, the Student was provided with specialized services regarding oral motor capabilities (See SD 64-65, 70). He again had 150 minutes per week of direct consultative services with nursing and health as well as 30 minutes per month of independent functioning with a physical therapist as well as 190 minutes per week of independent functioning with a special education teacher [See SD 71].

The following year, the IEP team continued to address his independent functioning through both physical therapy as well as nursing goals. He again was provided with 150 minutes of direct consultative services in a separate classroom for the nurse as well as independent functioning with a physical therapist for 60 minutes per semester [See SD 90]. In 2006, he continued to receive speech/language services and articulation services of 30 minutes per week, 150 minutes per week from nursing and 60 minutes per quarter with a physical therapist for independent function.[Findings of Fact 4].

On March 9, 2007, the school nurse, [REDACTED] conducted a re-evaluation relative to the Student and continued his direct consultative services in the nursing office at 150 minutes per week [See SD 130]. The physical therapist also continued to work with the Student particularly relative to his prosthesis. His nursing minutes were increased to 225 minutes per week and his articulation services for the speech/language therapist work continued at 30 minutes per week. [See SD 139].

Subsequently in October 2007, the school district IEP team again evaluated the Student and nursing again provided a report relative to modifications and accommodations provided to the Student (See SD 154). Physical therapy also continued their review of the Student noting the Student's ability to hop, jump, skip and gallop as well as the ability to kick a ball with both legs. He was able to maintain a single leg stance on both sides. Student was participating in regular gym and was able to maneuver in all settings including the lunchroom carrying his tray independently [See SD 158]. As of March 11, 2008, he continued to have goals in articulation and was seen by the speech/language therapist 30 minutes per week, continued to see the nurse 150 minutes per week and physical therapy for independent functioning 60 minutes per quarter.[See SD 168].

For the February 18, 2009 IEP, a physical therapist conducted a physical therapy evaluation summary which detailed the Students current abilities. This nine page summary well evaluated the Student [See SD 186 - 195]. In addition, [REDACTED] nursing assessment re-evaluation also detailed the efforts that were made relative to the Student (See SD 196). The Student was continued with 150 minutes per week of direct consultative services with the nurse

and 60 minutes per quarter for independent functioning with a physical therapist. [Findings of Fact 7].

Throughout, his fine motor skills were noted as fine [Findings of Fact 15, 17 and 47].

Although not specifically occupational therapy, the services provided by physical therapy and the nursing service for this Student certainly are providing the Student with services designed to improve, develop and restore functions that were impaired or lost through illness or injury and were designed to improve the Student's ability to perform tasks for independent functioning. The school district has taken a keen interest in the medical condition of the Student and with its attempt to minimize the disruption to his daily schedule. The nursing services and the physical therapy services are all designed and directed to those areas implicated in occupational therapy. As such, this issue is found in favor of the school district and against the Guardian

3. Whether the School District appropriately evaluated the Student in the area of Speech/Language

Speech or language impairments as defined in the IDEA "means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance" 34 CFR Section 300.8 (c) (11). The Guardian's expert, [REDACTED], in an informal interview within several weeks of the due process hearing, felt that the Student had speech/language problems. In her interview with the Student, [REDACTED] had some difficulty in understanding his speech due to both low volume and, at times, the words were nonsensical [Findings of Fact 40]. However, she had no specifics as to this area other than she thought that the nonsensical expression might raise questions about his expressive language skills. She further indicated that the test administered for the February 2009 IEP were not particularly responsive to a receptive or expressive vocabulary issue. She denied training in speech/language. [Findings of Fact 41].

In contradistinction, the Student has been evaluated since 2003 for speech/language issues. The Student was initially evaluated in 2003 and was found to have an eligibility determination in the area of speech/language impairment [Findings of Fact 1]. The speech/language assessment for this Student, consisting of five pages, evaluated very comprehensively the Student and proposed specific activities for him relative to not only his speech/language development but also his educational development [See SD 52 - 57]. At a subsequent re-evaluation in both June 2004 and May of 2005, the Student continued to have eligibility in the area of speech/language [Findings of Fact 2, 3]. The speech language therapist's evaluation of the Student on May of 2005 noted that they had worked on strengthening the muscles of his lip and tongue to improve intelligibility as well as working on his phonemes and blends. His articulation skills were judged to be within normal limits for his developmental age. The Student was receiving services relative to his speech/language deficit [See SD 81]. A triennial reevaluation in March 2006 noted that although the Student was performing at grade level, he was having articulation difficulties with substitutions and difficulties with certain phonemes. It was suggestive that the Student might have a communication disorder adversely affecting his educational performance. The Student

was to receive 30 minutes per week of articulation therapy from a speech language therapist [Findings of Fact 4]. In March, 2007, the school district conducted a Full and Individualized Evaluation (FIE) for the Student and continued his articulation services from the speech/language therapist for 30 minutes per week again [Findings of Fact 5]. His speech/language services were continued in March 2008 wherein he continued to receive 30 minutes per week for articulation services from the speech/language therapist. In February, 2009, at a special evaluation IEP meeting, the speech/language therapist again reported on the Student and noted that she had observed the Student in his home. The Student had answered all questions in complete sentences. His spontaneous speech was intelligible more than 90% of the time although he intermittently distorted certain phonemes. At this point, after having undergone and received speech/language services from 2000 through 2009 or for six years, the speech/language therapist felt that he no longer had a speech/language deficit that impacted his educational performance. As such, his services were discontinued [Findings of Fact 8]

It is certainly reasonable to conclude from the long history and interaction with the Student by the professionals at the school district in the area of speech and language as well as the classroom teachers' daily interaction with the Student and the dedicated speech language services received by the Student that they would have a good appreciation of any such deficits by the Student. That the speech language therapist's most current evaluation including a portion of it being conducted in the Student's home would support a finding that speech/language services are no longer needed for the Student.

Given the minimal contact by the guardian's expert and the extensive contact and evaluation by the school district as to his speech/language difficulties, this area is found in favor of the school district and against the Guardian.

4. Whether the School District appropriately evaluated the Student in the area of Assistive Technology

Assistive technology is not a specific domain as considered under 34 CFR Section 300.8 Child with a Disability (34 C.F.R. 300.34). Assistive Technology is referenced in Other FAPE Requirement at 34 C.F.R. 300.34 Section 300.105, which notes that "each public agency must ensure that assistive technology devices or assistive technology services, or both ... are made available to a child with a disability if required as part of a child's (1) Special Education under Section 300.36 or related services under Section 200.34 "[Related Services].

Under 34 CFR 300.6, assistive technology service means "any service that directly assists a child with a disability in the selection, acquisition, or use of assistive technology device. The term includes – (a) the evaluation of the needs of a child with a disability, including a functional evaluation of the child and the child's customary environment ...". As noted in *Kevin T v. Elmhurst Community School Dist. No. 205*, 36 IDELR 153, "'AT services' include 'evaluation of the AT needs of the child, obtaining, designing, and selecting appropriate AT devices, training personnel to provide AT services'" 34 C.F. R. Section 300.5 and 300.6.

The Guardian, in her own testimony, or from that of her expert, [REDACTED] did not address the issue of assistive technology as to the Student. The limited testimony relative to assistive technology for this Student came from the Student's case worker, [REDACTED]. In terms of assistive technology, [REDACTED] noted that the Student needed only "low tech" type of devices such as a calculator. There was no need for discussion about computers etc. By the February, 2009 IEP meeting, this was put into his IEP so that he would have use of a calculator for math, flash cards and a homework binder, all of which were considered reasonable accommodations for the Student [Findings of Fact 18].

As the school district had considered and suggested assistive technology for the Student that was written into his IEP which was designed to assist him particularly as to mathematics and based upon the limited evidence adduced at the hearing relative to this issue, this issue is found in favor of the school district and against the Guardian.

5. Whether the School District appropriately evaluated the Student in the area of social-emotional behaviors

Throughout the Student's initial IEP and subsequent annual evaluations as well as the Full and Individualized Evaluation conducted in March 2007, there was little addressed to the Student's social and emotional needs and their effect upon his academic performance. No functional behavior assessment or evaluation was done as to the Student nor was any behavioral intervention plan adopted for this Student. The grandmother testified that the Student was picked on and would often use the nurse's office as a safe haven to avoid Students or to get out of work that he didn't want to do [Findings of Fact 50, 51]. [REDACTED] testified that at or around the time of the February 2009 IEP, it was brought to her attention that the Student might benefit from social work services [Findings of Fact 16]. [REDACTED] brought this to the attention of the social worker who advised that she did an initial evaluation which determined that the Student did not need such services [Findings of Fact 14]. However, based on the school social workers review and comments, and her recommendation that no services be provided, the IEP team concurred and did not assign any social work services to the Student [See SD 176]. However, there is no record of or indication of any social-emotional assessment or functional behavioral assessment within the proffered records [See SD 1 – 333].

[REDACTED] was aware that the Student might be using the nurse's office for something more than his medical needs but felt that, given the Student's overriding concern relative to pain and problems associated with his various diagnoses that, regardless of the reason, the school was unable to restrict the Student's use of the nurse's station and nurse's services. [REDACTED] suspected that the Student was using the nurse's office to include issues with other Students and school work [Findings of Fact R]. [REDACTED] was also aware from the classroom teacher that there were issues of bullying associated with the Student. Upon learning of this, she approached the classroom teacher, the nurse and the social worker and advised that this needed to be addressed immediately. The only response given was that they would go to the class and deal with it [Findings of Fact 20]. In addition, his fourth grade teacher, [REDACTED] advised that he was experiencing some behavior issues with the Student but that these behaviors did not impede his learning or that of others. He advised that he did not feel a need for any behavioral

analysis at that point [Findings of Fact 21]. However, [REDACTED] testimony was that she did determine, in her opinion, that there was a need for some social work services for the Student [Findings of Fact 14]. The school psychologist, [REDACTED] noted a history of frequent absences for the Student. It was her understanding that these absences were due to medical issues and hospitalizations [Findings of Fact 29]. The current school nurse, [REDACTED] also concurred that she had seen the Student use the nursing station for reasons other than his medical issues, for example, when he was having emotional problems [Findings of Fact 35].

Given [REDACTED] knowledge as well as other staff members knowledge as to the issues raised in the [REDACTED] Children's Hospital report [Findings of Fact 6, 10; See SD 216 - 219] noting Attention Deficit Hyperactivity Disorder as well as Major Depressive Disorder coupled with the knowledge that the Student was possibly using the nurses station as a haven to escape his troubles as opposed to a facility for assisting in treating certain medical issues associated with his disability, it is not unreasonable to expect the school district to, at least, consider evaluation of the Student to determine if any of these behaviors are negatively impacting his academic achievement.

Per the Illinois school code, "school social worker services include, but are not limited to: (1) identifying Students in need of special education services by conducting a social developmental study in the case study evaluation; (2) developing and implementing comprehensive interventions with Students, parents and teachers that will enhance Student adjustment two, and performance in, the school setting ... "105 ILCS 5/14-1.09.2

Given the Student's significant and complex medical issues, and in the context of the [REDACTED] Children's Hospital report noting an assessment of ADHD, Major Depressive Disorder and Post Traumatic Stress Disorder, the school district should, at least, have conducted an evaluation in this area of suspected disability. At no point did the school district conduct either a social-emotional assessment or a functional behavioral assessment. If they would have done so, it is conceivable and even likely that they might have been able to already address the Students deficits in these areas. One technique for doing this is a functional behavior assessment of the Student. From the records adduced at the hearing, neither a social assessment or a functional behavioral assessment was done for this Student.

a. **Whether the School District appropriately determined whether or not the Student needed a Functional Behavioral Evaluation**

A behavior intervention is defined as an intervention based on the methods and empirical findings of behavioral science and designed to influence a child's actions or behaviors positively. 23 Ill Admin Code part 226.75. At least one court has held that a functional behavioral assessment, otherwise known as "FBA" qualifies as an educational evaluation and "is essential to addressing a child's behavioral difficulties, and, as such, it plays an integral role in the development of an IEP". *Harris v Dist. Of Columbia*, 50 IDELR 194 (U.S. Dist Ct, Dist of Columbia 2008). A school districts failure to perform the FAA (same as FBA) and related behavioral assessments meant that the district did not have sufficient information and guidance to develop an IEP with measurable behavior goals and interventions, which resulted in a loss of

educational opportunities. *Compton Unified School District v. A.F.*, 54 IELR 225 (Dist Ct., Central Dist of CA, 2010)

Here, as noted above, the school district had suggestions and notations that this Student might have been suffering from a social – emotional issue. If the district suspects that there is something that affects the Student that may not have been previously addressed, they are welcome to do several things including conducting a new evaluations or a re-evaluation of the Student. The IEP team needs to consider whether any additions or modifications to the special education and related service are needed so that the Student can meet his measurable annual goals and participate appropriately in the general education curriculum. (See 34 CFR Section 300.305 Additional Requirements for Evaluations and Re-evaluations). The fact that a Student does not act up, become violent, etc. does not end the need to determine if a functional behavioral assessment is necessary. Here, we have a Student who is exhibiting issues associated with classroom and/or subject matter (math) avoidance [Finding of Fact 22], is subject to various forms of “bullying” due to his disability and whose academic progress may be affected [Finding of Fact 9, 32, 33 & 42]. Even though he has a shared paraprofessional for 250 minutes per week [Findings of Fact 11], the Student has had difficulties focusing and staying on task. He has used the nurse’s station for more than his medical issues [Findings of Fact 16].

The School District’s decision not to conduct a social-emotional assessment and/or a functional behavioral assessment render the School District’s evaluation inappropriate as the District failed to determine the total extent of the Student’s disabilities and needs in this area. This/these areas are found against the School District.

8. ORDER

1. The School District’s Evaluations of the Student in the areas of Occupational Therapy, Assistive Technology and Speech/Language were appropriate and the School District need not take any further action in regard to those evaluations.
2. The Guardian’s Request for an Independent Educational Evaluation in the areas of Occupational Therapy, Assistive Technology and Speech/Language is denied.
3. As the School District’s Evaluation of the Student as to a social-emotional assessment was inappropriate, the School District is Ordered to fully fund, within the Illinois State Board of Education Guidelines, a social-emotional assessment, and, if appropriate as noted below in sub-section A, a functional behavioral assessment of the Student.
 - A. If appropriately determined by this individual conducting the social-emotional assessment that a functional behavioral assessment as to the Student is necessary, this individual may conduct, if qualified, or have a certified behavioral analyst conduct, a functional behavioral assessment as to the Student.
4. Per the Request for Partial Withdrawal of the Due Process Request as to the Independent Psychological Evaluation by counsel for the School District and by Order

of the Hearing Officer on the First Day of Hearing, this issue was withdrawn from consideration in the Due Process Hearing subject to the following:

- A. The Guardian is to furnish the name of three appropriate psychologists, from the list maintained by the Illinois State Board of Education, to conduct the independent psychological assessment of the Student within one (1) week from the Date of this Decision (August 6, 2010).
 - B. Within one (1) week thereafter (August 13, 2010), the School District will select one of these individuals and inform the Guardian of that individual in writing (including, but not limited to e-mail).
5. The above Independent Educational Evaluations (Psychology and Social - Emotional including, if appropriate, a functional behavioral assessment as to the Student) shall be completed and provided to the School District within sixty days from the Date of this Decision (September 28, 2010).
 6. [REDACTED] shall convene an IEP meeting no later than October 15, 2010 to review and implement the recommendations of the Independent Educational Evaluations.
 7. The School District shall provide proof of compliance with this Order including full payment of the Independent Educational Evaluations to the Illinois State Board of Education, Compliance Division, no later than October 22, 2010.



W. DAVID UTLEY

Impartial Hearing Officer

Dated this 30th day of July, 2010

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

FINALITY OF DECISION

This Decision and Order shall be binding upon all parties.

RECEIVED

AUG 04 2010

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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 UTLEY
Impartial Hearing Officer

Dated this 30th day of July, 2010

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

RECEIVED

AUG 04 2010

CERTIFICATE AND AFFIDAVIT OF DELIVERY BY MAIL

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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 July 30, 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

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