

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)
) ISBE CASE NO. 2010-0415
)
) W. David Utley
) Impartial Due Process
) Hearing Officer

NOV 29 2010

DECISION and ORDER

The Hearing in the above captioned matter took place September 20 through September 23, 2010 at [REDACTED] School and on November 16, 2010 at [REDACTED] campus. The parties were advised of their rights under Section 14.08.02 (a) of the School Code, 34 CFR 300.512 and 23 Illinois Administrative Code 226.625. The undersigned Hearing Officer has jurisdiction to hear and decide this case under 105 ILCS 5/14-8.02 (a) of Illinois School Code, 23 Illinois Administrative Code 226.600 et seq. and the Individuals with Disabilities Education Act, 20 USC 1415. The Student was represented by [REDACTED] of the [REDACTED] and the School District was represented by [REDACTED] of [REDACTED]

A. Procedural Background

The Parents' Request for an Impartial Due Process Hearing was dated April 28, 2010 and was submitted on the Student's behalf by [REDACTED] of the [REDACTED]. The Due Process Request was received by the School District on April 30, 2010. The District retained [REDACTED] of the firm of [REDACTED] to represent its interests. [REDACTED] responded to the Impartial Due Process on May 10, 2010. The parties conducted a Resolution Session on May 10, 2010 which was not successful although offer(s) and counter-offer(s) were made. An initial status call was held on May 24, 2010 and a Pre-Hearing Conference was scheduled for June 3, 2010. The Pre-Hearing Conference was held on June 3, 2010 and, due to scheduling problems with district staff, by agreement, an initial hearing date of August 11, 2010 was set. During that Pre-Hearing Conference, an issue as to admissibility of certain evidence pursuant to 23 Illinois Administrative Code Part 226.731(a) was raised. The parties were given an opportunity to brief this issue and the Hearing Officer entered an Interim Order relative to this section on June 30, 2010. Due to a personal issue as to one of the attorneys and with no objection from the opposing attorney, the hearing date(s) were vacated and this matter was re-set to September 20, 2010.

Procedurally, the attorneys on behalf of the parties agreed and stipulated to admission of the parent document book [PD 000001 - 000133] and the School District document book [SD 000001 - SD 000550] and for admission of all the documents contained therein. Objections were sustained to certain proffered exhibits during the hearing as not being submitted within the appropriate time frame. Parent Exhibit 16 is included if necessary for any reviewing agency/court but objection to this Exhibit was sustained.

The Parents called the following witnesses: the Student's mother and father, [REDACTED]

The School

District called [REDACTED]

B. Issues Presented

1. Whether the district violated the student's rights to a FAPE by violating State standards of class composition (i.e., by having a high percentage of special education students in a mainstream classroom than is permitted under state rules and regulations);
2. Whether the district failed to give proper deference to the substance of [REDACTED] neuropsychological evaluation of January 2010;
3. Whether the district's 2008-2009 IEP was appropriate to meet the Student's educational needs;
4. Whether the district's proposed 2009-2010 IEP was appropriate to meet the Student's educational needs;
5. Whether the district's proposed IEP and class schedule for 2010-2011 is appropriate to meet the Student's educational needs;
6. Whether the parents' proposed residential placement is appropriate to meet the Student's educational needs;
7. Whether the district should be obligated to pay for the Student's residential educational placement under the U.S. Supreme Court's decision in [REDACTED]

C. Relief Requested

1. An order finding the district failed to provide the student with a FAPE;
2. A declaration that the IEP in existence in 2008-2009 was inappropriate to meet the student's needs;
3. A declaration that the IEP in existence in 2009 - 2010 was inappropriate to meet the student's needs
4. An order declaring that the district's proposed placement/IEP for 2010 - 2011 does not provide the student with a FAPE;
4. An order compelling the district to pay for a residential educational placement for the student;
5. A declaration that the district violated the student's rights under the IDEA as well as section 5/14 (5/14.8.01 and 8.02) of the Illinois School Code.

D. Findings of Fact

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.

1. The student has been diagnosed with a specific learning disability going back to his grade school years [REDACTED] Exhibit 6/000077].
2. By age 5, the student was determined to have difficulty learning to read and write. During his elementary program, he participated in numerous interventions including the Kurzweil program, the [REDACTED] Reading Program and the [REDACTED] Visualization and Verbalization [Parent Document Book [REDACTED] Parent Exhibit 6/000077].
3. Prior to his high school career, the student attended [REDACTED] which provided a highly specialized curriculum including LiPS and [REDACTED] Reading Programs [Parent Document Book - [REDACTED] Report Parent Exhibit 6/000077].
4. The Student's mother noted that the Student had struggled with completing homework assignments independently at [REDACTED] School [School District Document Book, Exhibit 29/SD000287].
5. At [REDACTED] School, the Student was able to read cursive writing and could write in cursive but this was very difficult for him [REDACTED] Hearing Testimony].
6. He was involved with the IEP meeting for the Student for his transition. He assisted in the development of the IEP. He felt that it was appropriate to the Student [REDACTED] Hearing Testimony].
7. The student transitioned from [REDACTED] School to the [REDACTED] high school program for the academic year 2007 - 2008 [Student's Father Hearing Testimony, School District Document Book, Exhibit 29/SD000284 - 302].
8. [REDACTED] in conjunction with a representative from the [REDACTED] School as well from [REDACTED] District created an individualized education program (IEP) for the student to assist his transition to high school. [School District Document Book, Exhibit 31/SD 000342 - 000357].
9. The student seemed to be eager and apparently did reasonably well at the [REDACTED] [Parent Hearing Testimony].
10. For the academic year 2008 - 2009, the student attended [REDACTED] High School - [REDACTED] campus for his freshman year [REDACTED] Hearing Testimony].

11. A February 20, 2008 IEP was developed for the student. As part of this IEP, the student was noted to have disabilities in executive functioning and visual processing as well as reading. He had difficulty with organization, decoding, encoding, math, English, anxiety and homework completion. He was determined eligible for Special Education services under a specific learning disability (SLD). His placement was general education (mainstream) with resource room [Parent Document Book - Exhibit 3/000005 - 000018; 000007; Parent Hearing Testimony].

12. As part of the February 20, 2008 IEP, goals and objectives as well as benchmarks were established for the student. These included goals in math - concepts, reading, self-advocacy and social/emotional -- anxiety [Parent Document Book - Exhibit 3/000009 - 000012].

13. The IEP team felt that the student would benefit from various accommodations to include a four function calculator, extra set of textbooks, computer access for essays/essay test, assistive technology to include keyboard for the classroom, reading software, text-to-speech software, speech to text software, and books in auditory format. In addition, he was to take tests in a small group with no Scantron type testing. He was to be provided a reader for the tests. He was to be provided class notes, extended testing time to include double time, and preferential seating in close proximity to the teacher [Parent Document Book - Exhibit 3/000015].

14. A further part of the February 20, 2008 IEP, educational services for the student consisted of 280 minutes per week of resource room and 40 minutes per week of social services [Parent Document Book - Exhibit 3/000013 - 000014].

15. Also, it was determined that he needed assistive technology devices and services as well of supplementary aids/accommodations [Parent Document Book - Exhibit 3/000015].

16. The parents expressed their concern about the Student's attendance at ██████████ High School based upon the work load. In addition, they wanted to make sure that he was getting the appropriate accommodations. [School District Document Book - Exhibit 31/SD 000347]. The Student's father met with each of the Student's teachers to make sure that they were familiar with his IEP and the accommodations [Parent Hearing Testimony].

17. Given this student's superior intellect, the parents were concerned that his placement at ██████████ high school in freshman year in level II courses was insufficient to appropriately challenge him [Parents Hearing Testimony].

18. From his initial time as a freshman at ██████████ High School - ██████████ campus, the student was advised by various faculty that he had to ask for his accommodations [Parent Hearing Testimony].

19. This case manager for his freshman year at the ██████████ - ██████████ campus for freshman was ██████████ [Hearing Testimony].

- a. She met with the student on his first day and read through his IEP. She did tell the student's teachers about his IEP and the accommodations that were set out in that IEP for the student. She gave a binder to each teacher as to his disability and accommodations and also sent out an e-mail to reflect this.
 - b. She would check with the general education teachers as well as his other teachers as to his classroom performance.
 - c. Initially, she noted that the student would not seek her out for assistance but did improve over the course of the year. He was provided with his various accommodations including extended time, a laptop with Kurzweil, access to the computer for essays and lengthy questions and essays, etc..
 - d. As to the student's issues with homework, she would check assignments at the beginning of resource period. Like many students, by the end of the day, it was a struggle to get the student to work on his homework as he would rather chat with his peers.
 - e. The Student did know how to use a Kurzweil program which takes reading materials and converts text to speech so that the student can listen and does not have to read independently. The student became very proficient with the use of this program within the first week or so of the school year.
20. The various assistive technology materials supplied to the Student were often difficult to use. The provided computer was old and its size made it difficult to transport. In addition, the Student had difficulty with the programs, the flash drive(s) and accessing the school materials that were on-line [Student's Father Hearing Testimony].
21. The parents were also concerned as they understood that the Student had to request his accommodations instead of being provided. [Parent Hearing Testimony].
22. Homework was a major issue for the Student. The Student's father did not recall this being a problem at [REDACTED] School. It was very sporadic that the Student would do homework at home. In this regard, the Student's father felt that their role in regard to the Student was to be parents, not teachers [Parent Hearing Testimony].
23. They did not see any evidence that the School District was assisting the Student's reading. Although the Student had been successful with Wilson and Orton - Gillingham in prior years, he did not believe that the School District was using either of these systems with the Student [Parent Hearing Testimony].
24. The Student was not being a successful as he wanted [Parent Hearing Testimony].
25. [REDACTED] was the Student's math teacher. The Student's IEP was provided to him at the beginning of the school year. The Student did not have to ask for his accommodations. The Student was achieving and participating in math. He was a good student and participated

appropriately. His issues with homework adversely affected his grade. His grade would have been a "C" but for his homework. [REDACTED] Hearing Testimony].

26. [REDACTED] was the Student's case manager for his sophomore year. He has trained in the Wilson reading system [REDACTED] Hearing Testimony].

a. He met with the parents the first day of school and understood that the parents wanted the Student's schedule and classes changed.

b. Most of the concerns voice by the teachers was as to the Student's homework completion.

c. He would work with the Student after school as to his homework and other issues.

27. On July 2, 2009, the IEP was reviewed [Parent Document Book - Exhibit 4/000013 - 000032]. Although no benchmark assessments were provided from this document, measurement had been through report cards and progress reports on a quarterly basis [Parent Document Book - Exhibit 3/000009].

28. The IEP team consisted of the parents, [REDACTED], regular education teacher; [REDACTED] school psychologist; and [REDACTED] LEA representative [School District Document Book, Exhibit 37/ SD 000371] [REDACTED] was there as the LEA representative and special education teacher [REDACTED] Hearing Testimony; [REDACTED] Hearing Testimony].

29. As to academic performance, the student earned an "A" in Technology - Lab; a "C" in English 1E; an "A" in Kinetic Wellness; a "D+" in Algebra 1; and a "B - " in Environmental Geoscience [Parent Document Book - Exhibit 4/000020].

30. On this date, he was noted to have difficulties with phonetic awareness, decoding, reading comprehension, math, and written language/spelling. The team noted that previous testing indicated a superior verbal reasoning and nonverbal problem solving skills but with significant weaknesses noted in his working memory and processing speed skills. Academic testing indicated average skills in reading and math with weakness found in the area spelling and writing. These identified weaknesses continued to adversely affect his academic performance in all areas. Of note, this also affected his homework completion which increased his anxiety. The team found that he needed continued special education support to address learning needs in reading, writing and math [Parent Document Book, Exhibit 4/000023].

31. His goals and objectives remained essentially the same as the prior IEP [Parent Document Book, Exhibit 4/000025 - 000028].

32. His supplementary aids and accommodations included extended testing time : double time; preferential seating: in close proximity to teacher; computer access for essays and essay test; assistive technology keyboard for classroom; assistive technology text-to-speech software required; small-group testing; no Scantron as the student is unable to transfer answer; four

function calculator for computation; extra set of textbooks/physical limitation; reader for tests – all subjects; class notes provided; assistive technology: books in auditory format required; and assistive technology; writing software required for word prediction [Parent Document Book, Exhibit 4/000029].

33. His Educational Services and Placements at this time included 160 minutes per week of resource room support, 120 minutes per week of reading 2 support and 40 minutes per week of social work services [Parent Document Book, Exhibit 4/000030].

34. The school district does provide for a one level change of any of the students coursework, whether up or down, upon request from the parents. [Parent Hearing Testimony]. This is dependent upon the time when the request is made and the availability of appropriate courses [redacted] Hearing Testimony; [redacted] Hearing Testimony].

35. In order to challenge the Student, the parent's requested course changes in World History and English at the beginning of his sophomore year. He was in a reading support class also which was dropped at the parent's request. As the Student wanted to stay in the World History class, this was not changed. [Parent Hearing Testimony]

36. In the student's case, it was ultimately agreed between the parents and the school district to change one of his courses and leaving the other (World History) course [Parent Hearing Testimony].

37. The Student was involved in extra-curricular activities including the Sci Fi club, an A/V group associated with the Sci Fi club and a robotics club [Parent's Hearing Testimony].

38. [redacted] was the Assistant Director of Assistive Technology. In addition, she was a Special Education teacher in the District for 7 years. She attended the July 2, 2009 IEP meeting as the LEA representative and the Special Education teacher. She met the Student for the first time in the Spring, 2010 relative to his Assistive Technology needs. He was provided with a Gateway computer which might have been no more than 2 years old. He was also provided with the then most current software for Kurzweil, Dragon, Co-Writer, etc. [redacted] Hearing Testimony]

39. On September 11, 2009, his IEP was reviewed by the [redacted] team. The team consisted of [redacted] special education personnel; [redacted], case manager and the parents. [Parent Document Book, Exhibit 4/000049]

40. The purpose of this meeting was to just reflect the changes that had been discussed based upon the parents' request and to document the appropriate minutes per week of Special Education Services [redacted] Hearing Testimony].

41. His grades at that point remained essentially the same, an "A" in Technology Lab; a "C" in English 1E; an "A -" in Kinetic Wellness; a "D +" in Algebra 1 and a "B -" in Environmental Geoscience [Parent Document Book, Exhibit 4/000030].

42. His goals and objectives/benchmarks again mimic those of the prior year including math concepts, reading, self-advocacy, and social emotional/anxiety. The supplementary aids accommodations and modifications were little different than in the prior IEP although it did provide for the use of a large graph paper for math due to reversal of numbers [Parent Document Book, Exhibit 4/000378 - 000381].

43. He was provided 40 mpw of social work, 160 mpw of resource seminar and 120 mpw of Reading 2 Support [Parent Document Book, Exhibit 4/000378 - 000381].

44. [REDACTED] him with an e-mail and binder regarding the Student as to his disabilities and accommodations. He never received a full IEP He made accommodations in his class for the Student. The Student's main problem in his class was turning in homework [REDACTED] Hearing Testimony].

45. In December 2009 and January 2010, the student was seen by [REDACTED] for a neuropsychological evaluation report [Parent Document Book, Exhibit 6/000077 - 0000104].

46. [REDACTED] noted the background information relative to the student indicating in detailed fashion his prior educational development [REDACTED] Hearing Testimony; Parent Document Book, Exhibit 6/000077 - 0000104].

a. In his 2004 – 2005 Iowa Test of Basic Skills, the student exhibited 82 percentile achievement in vocabulary and 83 percentile achievement in reading comprehension. These tests were administered with accommodations including oral administration and extended time.

b. In 2005 – 2006, the student exhibited an 82 percentile achievement in vocabulary and 66 percentile achievement in reading comprehension.

c. On the 2008 Iowa test, the student displayed 78th percentile achievement in vocabulary and 81 percentile performance in reading comprehension.

d. [REDACTED] administered a series of intelligence and neuropsychological tests as noted in page 10 of her report [Parent Document Book, Exhibit 6/000086].

e. On a test of his Intellectual Achievement, Processing Speed and Cognitive Flexibility, the student demonstrated overall intellectual functioning within the superior range. Subsets of the test showed significant variability such that he had overall superior nonverbal reasoning but exhibited relative weakness in working memory. In terms of his processing speed, he performed overall within the average range. On memory, his immediate visual memory for shapes fell into the average range, a decline from his previous high average performance. Additional tests were at the low end of the average range and in cases overall borderline. This had not changed from a previous evaluations.

- f. As to phonological awareness, he scored in the low average range. In rapid naming, the student exhibited discrepant performance – performing at a high average range when asked to retrieve rote information like letters and numbers but in the borderline range when he had to retrieve information with a linguistic demand.
- g. In terms of language, he displayed a high average receptive word bank and performed in the middle of the average range. He was severely impaired in verbal phonemic fluency and his ability to rapidly generate a set of words corresponding to specific letters of the alphabet.
- h. Language delays further contributed to word recognition skills, phonological awareness, and retrieval skills. Although he has made improvements in his language skills, he continued to struggle when demands for expressive language were lengthy.
- i. He struggles to process auditory information and has significantly weak auditory comprehension and working memory skills which lead to superficial encoding of material and subsequent failure to retrieve the information presented.
- j. The student meets the criteria for a specific learning disability in reading and decoding with associated weaknesses in spelling and written expression development.
- k. In addition, based upon other testing, the student has a diagnosis of attention deficit hyperactivity disorder, primarily inattentive type as well as a reading disorder diagnosis.
- l. The student demonstrated superior intellectual skills yet demonstrated a highly resistant learning disability profile affecting his performance across all areas of academics. Working memory and processing speed skills were additional weaknesses in his cognitive profile. Significant impairments in processing speed, working memory, and sustained attention skills affected his learning.

47(a). [REDACTED] felt, that in terms of educational placement, the student required an educational program that addresses his academic needs in light of his intellectual strength. It is likely that the student required an alternate setting that specializes in working with and supporting the needs of gifted children with significant learning disabilities. It should provide a high level of support and correct intervention through small class instruction, multi-sensory approaches, and individualized attention in the context of learning environment comprised of his peers. [Parent Document Book, Exhibit 6/000077 - 0000104].

47(b). She did feel that the team was willing to implement some, if not all, of her suggested accommodations and modifications. The meeting seemed rushed in that key staff members needed to leave and not all were present during the entire time. She did believe though that the staff was going to implement her recommendations. In her opinion, the meeting ended on a satisfactory basis with consideration of her recommendations and the accommodations and modifications suggested. It was her general feeling that [REDACTED] was willing to implement whatever was necessary.

48. [REDACTED] the school psychologist, reviewed [REDACTED] report in preparation for the February IEP meeting. She felt that this report was consistent with what they knew. She did believe that the test data from [REDACTED] showed that the student made progress [REDACTED] hearing Testimony].

49. Based upon the report, test data and presentation, [REDACTED] understood [REDACTED] to opine that the Student had plateaued in terms of remediation. During the meeting, [REDACTED] did not suggest an alternate placement for the Student [REDACTED] hearing Testimony].

50. [REDACTED] felt that the Student's disability is in the mild to moderate range [REDACTED] hearing Testimony].

51. On March 3, 2010, the [REDACTED] IEP team met relative to developing an IEP and determining placement for the student. On this date, a number of school personnel were in attendance including four regular education teachers, two special education teachers, the school social worker, the school psychologist and the LEA representative. The parents as well as [REDACTED] attended this meeting. [See Parent's documents Exhibit 5/000050 - 000076].

- a. The team further noted that the student was progressing at a slower rate than expected in the areas of basic reading skills, reading fluency, math problem solving/computation and written expression. They noted that per the current private evaluation, the student's reading skills were in the low average range as compared to grade level peers and his math skills were in the mildly impaired range.
- b. In terms of supplementary aids, accommodations and accommodations, although many of the same accommodations proposed in prior IEP's are continued, there are additional accommodations as suggested by [REDACTED]
- c. The IEP team considered and incorporated many of [REDACTED] recommendations into this IEP.
- d. The student was provided with 200 minutes per week of resource seminar and 40 minutes per week of social work services.
- e. The parents did not sign off on this document at this time preferring to review and consider it.

52. [REDACTED] presented her report and opinions [REDACTED] Hearing Testimony].

53. Placement for the Student at [REDACTED] High School with the IEP in place was an appropriate placement for the Student [REDACTED] Hearing Testimony; [REDACTED] Hearing Testimony; [REDACTED] Hearing Testimony; [REDACTED] Hearing Testimony; [REDACTED] Hearing Testimony]

54. On June 30, 2010, [REDACTED] provided the parents with a June 30, 2010 report showing the student's quarterly progress. This report includes the revised goals as developed cooperatively between the parents and [REDACTED] [See School District documents, Exhibit 58/SD000504 et seq].

55. The Student was provided with multi-sensory approaches, particularly in his co-taught classes [REDACTED] Hearing Testimony].

56. The parent's felt that their Student was failing and not being successful [Parent's Hearing Testimony].

57. Although the parents had been advocating for their student over the prior two years including requests for course changes, additional supports and particularly for his accommodations in the field of assistive technology, they felt that their efforts on behalf of their student had accomplished little [Hearing testimony - Parents].

58. The parents were extremely disappointed with the efforts of the [REDACTED] School District on behalf of their student. They felt that for the prior two years, the school district had not adequately and effectively met the needs of the student. At this time, they began a search for appropriate educational placement for the student. [Hearing testimony - Parents]

59. At no time did the parent's ask for a more restrictive environment/setting for the Student [Parent's Hearing Testimony].

60. The student's father had explored, to the extent he was able, all of the educational institutions listed on the Illinois State Board of Education's approved list. As he was focusing particularly on the student's learning disability, any program that also provided support for an emotional disturbance /disability was not considered. After considerable investigation, the parents focused on two particular schools, [REDACTED] and [REDACTED]. They selected [REDACTED] for its educational program as it focused on the Student's dyslexia. He found no school on the ISBE's list of approved schools as all had multiple disabilities which were addressed [Parent's Hearing Testimony].

61. The learning environment at [REDACTED] is based upon Orton - Gillingham [Parent Hearing Testimony].

62. On or about July 7, 2010, the parents, through their attorney, notified the school district of their intent to place the student at the [REDACTED] school [School District Exhibit 59/ SD000513].

63. The [REDACTED] School was founded in the 1930s for students who did not learn in a traditional manner. It was established for bright kids who struggled. Its initial focus was on dyslexia. In the early 1990s, they broadened their program to include students with Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder [[Parent Exhibit 11/000122 - 000123; Telephonic Hearing Testimony - [REDACTED]

- a. The students that attend ██████ exhibit average and above average ability who intend to go to college. Typically, 97 to 100% of their students go to college and 99% went last year.
- b. The ratio is roughly one teacher to every eight students.
- c. He has just recently met this Student. The Student was taking one of his classes – Perceptive in Learning. From his observations, he felt that the student was adapting to ██████ and was integrating well into their program.
- d. At the time of the hearing, the student did not yet have a computer. He was unfamiliar with whether Kurzweil would be used or not and which version they had. He also did not know what version of Dragon they had. At this point, he had not seen the student listening to any of the audio textbooks.
- e. In his class, there are no test or long-term papers or essays but there is homework. Homework is addressed in the evening with a specific home work time being from 7:30 to 9 PM, six nights a week.
- f. Based upon his knowledge of both the student and the school, he feels that ██████ is appropriate to meet the student's needs.
- g. Although all staff are highly qualified with the majority having either a Bachelor or a Master degree, not all teachers are state certified and not all are certified in special education.

64. ██████ School does not have the array of course offering that ██████ does. ██████ services are more comprehensive and it has a better assistive technology program. The ratio of students in a co-taught classes are better. At ██████, all teachers addressing the Student's IEP are certified and licensed teachers. ██████ has a more extensive support program for students. ██████ has a larger extra-curricular course offerings. She suggested two (2) alternate placements for the Student in a compromise of the Due Process Complaint ██████ Hearing Testimony].

65. The parents initiated a state complaint pursuant to 23 Illinois Administrative Code section 226.730 (a) and 226.731 (a) as they learned that at least two, if not more, of their student's classes in the 2009 – 2010 academic year were out of compliance with the 70/30 mandate. The school district responded to this and it was determined that two of the classes that the student was in (English and World History) were, in fact, out of compliance with this section. In addition, for the student's classes in the academic year 2007 – 2008 and 2008 – 2009, Algebra 1, English 1 - E, Environmental Geoscience and Technology lab were found to be out of compliance. Although no action was taken by the Illinois State Board of Education particularly as to this student, the ISBE required the school district to address the enrollment for each of the student's current general education courses and to develop a plan to maintain compliance with a 70/30 ratio of general education students to special education students within the general

education classes [Parent Document Book Exhibit 7/000105 - 000112; School District Document Book Exhibits 16, 17, 18, 19, 20 and 21].

66. The State, through State Superintendent, Christopher Koch, has agreed that the compliance with 23 Illinois Administrative Code section 226.730 (a) and 226.731 (a) can be problematic for school districts and has provided a waiver process for a school district to request relieve from this [REDACTED] Hearing Testimony; School District Document Book Exhibit 22/SD000119].

67. To date though, [REDACTED] has not requested such a waiver [REDACTED] Hearing Testimony].

E. 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 it wishes, put the burden on the school district.

In Illinois, "the IDEA framework ... 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 (FAPE) and such other relief as they are seeking.

F. Conclusions of Law

1. Whether the district violated the student's rights to a FAPE by violating State standards of class composition (i.e., by having a high percentage of special education students in a mainstream classroom than is permitted under state rules and regulations).

In my interim Order relative to any claim for violation of 23 Illinois Administrative Code Part 226.731(a), I noted that I will neither take judicial notice of the state complaint decision nor will I apply the doctrine of *res judicata* to the state complaint as requested by the parties. At most, the State Complaint would only furnish evidence as to the alleged violation. Rather, I allowed the parent the opportunity to present evidence that there was (1) a procedural violation and (2)

that this procedural violation amounted to a denial of FAPE. *Heather S. v. State of Wisconsin*, 125 F. 3d 1045, 1059 (7th Circuit, 1997).

The Student's placement at [REDACTED] was "mainstream with resource". [Findings of Fact # 11] In November, 2009, the student's parents submitted a state complaint to the Illinois State Board of Education (ISBE) relative to the number of students with IEP's in the student's classes. The parents alleged/complained that the school district failed "to comply with ISBE regulations with respect to the percentage of students with IEP's in the general education classrooms". The ISBE investigated this complaint and made findings relative to it. Thereafter, ISBE and the school district agreed to certain corrective action but with no change in enrollment as to the student's two general education courses for the remainder of the school year (School District's Response - Statement of Facts). The parents have alleged that their Student "regressed under the then current IEP and the then current educational placement" in part because of the school district's violation of 23 Illinois Administrative Code Part 226.731(a) relative to the composition of the ratio of students with and without IEP's. [Findings of Fact # 65]

Pursuant to the ISBE investigation, it was determined that the Student's English and World History classes in the academic year 2009 - 2010 were, in fact, out of compliance with this section. [In addition, for the student's classes in the academic year 2008 - 2009, Algebra 1, English 1 - E, Environmental Geoscience and Technology Lab were all found to be out of compliance.] In English 2, 42 % or 8 out of 19 students had IEP's and in World History, 62% or 10 out of 16 students had IEP's. Therefore, there was a procedural violation committed by [REDACTED] [Findings of Fact #65/Parent Document Book, Exhibit 7/000105 - 000112]

The school district, in the testimony of [REDACTED] attempted to suggest that the ISBE was concerned about the effect that this particular section was having on school districts and, as such, the ISBE was establishing a waiver system upon application to the state. [Findings of Fact # 66] Whether this is, in fact, sufficient to negate this statutory section, it is of no avail to the school district in this case as no waiver was proposed and, in fact, this suggested waiver system post-dated the dates of the student's class attendance. As such, hearing officer gives no weight to this argument of the school district.

However not all procedural violations amount to a deprivation of FAPE. In the case of *Lesesne v. District of Columbia and Elfreda Massie, D.C. Public Schools*, 447 F.3d 828, (D.C. Dist. Ct, 2006) [45 IDELR 208], the District Court stated that:

"Even assuming that DCPS violated its procedural obligations, an IDEA claim is viable only if those procedural violations affected the student's substantive rights. See, e.g., *Kruvant v. District of Columbia*, 99 Fed. App. 232, 233 (D.C. Cir. 2004) (denying relief under IDEA because "although DCPS admits that it failed to satisfy its responsibility to assess [the student] for IDEA eligibility within 120 days of her parents' request, the [parents] have not shown that any harm resulted from that error"); *C.M. v. Bd. of Educ.*, 128 Fed. Appx. 876, 881 (3d Cir. 2005) (per curiam) ("[O]nly those procedural violations of the IDEA which result in loss of educational opportunity or seriously deprive parents of their participation rights

are actionable."); *M.M. ex rel. D.M. v. Sch. Dist.*, 303 F.3d 523, 533-34 (4th Cir. 2002) ("If a disabled child received (or was offered) a FAPE in spite of a technical violation of the IDEA, the school district has fulfilled its statutory obligations."); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990) (en banc) ("[P]rocedural flaws do not automatically render an IEP legally defective. Before an IEP is set aside, there must be some rational basis to believe that procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of education benefits." (citations omitted)); *W.G. v. Bd. of Trustees*, 960 F.2d 1479, 1484 (9th Cir. 1992) (rejecting the proposition that procedural flaws "automatically require a finding of a denial of a FAPE"); *Thomas v. Cincinnati Bd. of Educ.*, 918 F.2d 618, 625 (6th Cir. 1990) (rejecting an IDEA claim for technical noncompliance with procedural requirements where the alleged violations did not result in a "substantive deprivation" of the student's rights); *Burke County Bd. of Educ. v. Denton*, 95 F.2d 973, 982 (4th Cir. 1990) (refusing to award compensatory education where procedural faults committed by Board did not cause the child to lose any educational opportunity).

In the instant case, although the parents were concerned as to the number of students with IEP's in their student's classes, their concern was that their student was not receiving the attention required as several of these other students with IEP's or other problem were acting out in class. This was not necessarily disruptive but that was considered distracting and detrimental to their student's academic progress. However, as the student liked his World History teacher, it was decided that no change would be made in this course. As to the English 2 class, due to scheduling issues etc., no change was able to be made. [Findings of Fact # 34, 34 36] The student's grades in his first semester sophomore year in English 2 class was a C- and in his second semester sophomore year, he also received a C-; in World History - E, in his first semester sophomore year, he received a C and in second semester a B-. [School District Document Book, Exhibit 57/SD 000502 - 000504] In the instant classes, it does not appear that the student lost any educational opportunity any more than any other class in which there might be disruptive students.

Although the hearing officer finds that [REDACTED] School District committed a procedural violation, there was no substantive deprivation of any educational opportunity for this particular student. As such, this issue is found in favor of the school district

2. Whether the district failed to give proper deference to the substance of [REDACTED] neuropsychological evaluation of January 2010.

Section 300.503 dealing with independent educational evaluations provides at subsection (c) that "if the parent obtains an independent educational evaluation ... or shares with the public agency an evaluation obtained at private expense, the results of the evaluation - (1) must be considered by the public agency, if it meets agency criteria, and any decision made with respect to the

provision of FAPE to the child; and (2) may be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child”.

The question would be what weight should be given to the term “considered”. The IDEA does not define the term “considered” nor does it require any specific weight to be given to the evaluation presented for consideration. There is unfortunately no significant body of case law dealing with this term. As noted in *T.S. ex rel. S.S. v Board of Education*, 10 F. 3d 87 (2nd Circuit, 1993) [IDELR 889],

“[t]he plain meaning of the word ‘consider’ is ‘to reflect on: think about with a degree of care or caution.’ Webster’s Third New International Dictionary 483 (1986). Nothing in this definition suggests that every member of a body must read a document in order for the body collectively to ‘consider’ it Other circuits have given a limited reading to the term ‘considered’ in this context. The First Circuit stated in *G.D. v. Westmoreland School District*, 930 F.2d 942, 947 (1st Cir. 1991), that the regulatory requirement for an IEE to be ‘considered’ by a public agency does not mandate ‘that there be substantive discussion’ of the IEE. And the Eighth Circuit indicated in *Evans v. District No. 17*, 841 F.2d 824, 830 (8th Cir.1988), that an IEE had been adequately ‘considered’ when it was read by the public school’s director of special education.”

As the parents were becoming frustrated with what they perceived as the inability of the [REDACTED] School District to adequately provide for their student [Findings of Fact # 56, 57, 58], they engaged the services of [REDACTED] [Findings of Fact # 45]. She met with the student in December of 2009 and conducted an extensive cognitive and neuropsychological battery of tests to try to determine his current functioning and ability. [REDACTED] conducted the series of tests with the Student. Intellectually, she found the student to have a superior range of cognitive ability with a well-developed ability to problem solve when presented in a verbal format. In her opinion, the student can learn commensurate with his peers and his overall functioning is within the 91% ranking. The scores are consistent with those in 2006 on the Wechsler Intelligence Scale for Children – 4th edition. [Findings of Fact # 46]

[REDACTED], the school psychologist, did review [REDACTED] report. [Findings of Fact #48] After reviewing it, she and the Student’s case manager, [REDACTED] sat down and talked about the report and reviewed the recommendations in light of the current IEP. It was her impression that this report from [REDACTED] was consistent with the evaluation already on file. [Findings of Fact #48] At the March IEP meeting [REDACTED] shared that she believed that the student had achieved a plateau in the Student’s remediation and that any further remediation was not going to help him overcome any phoneme or grapheme difficulties. [Findings of Fact # 49]

[REDACTED] presented her findings to the IEP team in March, 2010. Although the IEP team’s response was favorable to what she had to share, particularly as to the accommodations and modifications, she walked away not fully sure that they understood the student’s needs. However, she did feel that the team was willing to implement some, if not all, of her suggested

accommodations and modifications. At this meeting, she did though feel that there was a very limited response from the staff members and, in fact, the meeting seemed rushed in that key staff members needed to leave and not all were present during the entire time. As such, her presentation was somewhat abbreviated. She also had the impression that not all of the team had read her report ahead of time. She did believe though that the staff was going to implement her recommendations. In her opinion, the meeting ended on a satisfactory basis with consideration of her recommendations and the accommodations and modifications suggested. It was her general feeling that [REDACTED] was willing to implement whatever was necessary. [Findings of Fact # 47 (b)]

Per [REDACTED], during this meeting, there was no suggestion from [REDACTED] that the student be placed in an alternate setting and there was no objection from [REDACTED] that the student's placement was resource setting. [Findings of Fact # 49]

The March 3, 2010 IEP incorporated a substantial number of [REDACTED] accommodations and modifications. For example, [at page 000052 - 000054] the students IEP, under recommendations, # "2 a)" and "2b)" were both referenced in this IEP (other than math problem-solving was not checked). Under his IEP goals, subparagraphs "a", "b" and "e" were all addressed in the new IEP. In addition, goals "c" and "d" were still addressed but not in the fashion as presented in [REDACTED] report. Under accommodations, subparagraphs "a", "b", "c", "g", "i", "k" and "n" were all addressed. Additionally, it appears to a limited extent that subparagraph "m" also was incorporated in the IEP. Under Word Retrieval, the only accommodation provided was the fourth allowing for preferential seating which he previously been provided. [Findings of Fact # 52]

Although there has been no definitive case law and the statute has not been clarified even though given the 2004 Amendments and revisions, [REDACTED] School District did give deference to the independent educational evaluation conducted by [REDACTED] [REDACTED] was present and presented her opinions. The school district IEP team took those suggested accommodations and recommendations and incorporated them within the March 3, 2010 IEP. Although not all of the accommodations and recommendations were included, a substantial number of them were.

As such, the school district did not fail to give due deference to [REDACTED] opinions and this issue is found in favor of the school district.

3. Whether the district's 2008-2009 IEP was appropriate to meet the Student's educational needs

The starting point for any analysis of whether an IEP is reasonably calculated to provide a meaningful educational benefit is the Supreme Court's decision in *Bd. of Ed. v. Rowley*, 458 U.S. 176 (Rowley). *Rowley* presents a two prong test relative to F.A.P.E., the second of which implicates a meaningful educational benefit. This substantive prong requires the District to provide an IEP that is calculated to allow the student to benefit from his educational experience. It requires more than a nominal benefit for this instruction. *T. H. v. Bd of Ed of Palatine Comm Consol. Sch. Dist.* 55 F Supp. 830 (N.D., Ill. 1999). An IEP needs to contain goals and

objectives which are measurable *Independent Sch. Dist. No. 701, Hibbing Pub. Sch. v. J. T.*, 45 IDELR 92 (Minn., 2006). As noted therein,

“The instruction and services must meet the state's educational standards, must approximate the grade levels used in the state's regular education, and must comport with the child's IEP. Id. The objective of the criteria set out in federal law is ‘the achievement of effective results -- demonstrable improvement in the educational and personal skills identified as special needs -- as a consequence of implementing the proposed IEP.’ *Town of Burlington v. Dept. of Educ. for Com. of Mass.*, 736 F.2d 773, 788 (1st Cir. 1984) (citations omitted). In addition, states must provide special education in the “least restrictive alternative.” 20 U.S.C. 1412(5); 34 C.F.R. 300.552(d).”

Representatives of the [REDACTED] School, [REDACTED] School District and [REDACTED] School District were present to discuss [REDACTED] transition from [REDACTED] to the [REDACTED] School District and ultimately into the [REDACTED] High School program. [Findings of Fact # 55,6,7,8] The June 6, 2006 Comprehensive Team Assessment Report – Confidential prepared by the Student Services department of the [REDACTED] Public Schools – [REDACTED] addressed the student's disabilities and issues [School District Exhibit 29/SD 000284 - 000302]. The student was noted to be below average in reading, writing, math, social studies and science. As noted in the summary and conclusions sections, “the student's cognitive ability remains variable and difficult to summarize with a single score. [His] memory abilities are concerning due to his short-term and working memory abilities or reflective of relative processing deficits. Processing speed/automaticity was also noted to be a relative processing deficit. [Findings of Fact # 11]

His initial IEP for the academic year 2008 – 2009 [Findings of Fact # 14, 15; Parent Documents, Exhibit 3/000007 - 000018] determined that the student was eligible for special education services under an eligibility of a Specific Learning Disability. The team noted educational needs in the areas of math, English, anxiety and homework completion. His present level of educational performance noted an interest in social studies as well as trains and Legos. He was doing very well in science and social studies although he struggled in mathematics. He also had difficulty managing his anxiety and struggled with his workload and getting homework completed. [Findings of Fact # 14, 15] At that point in time, his parents were concerned about the workload at [REDACTED] and making sure that their student received appropriate accommodations. [Findings of Fact # 16]

Under his goals, in mathematics, it noted that the student had difficulty recognizing what parts of a problem are relevant to the solution and how to solve it. This would include such things as operations, order of operations, relevant information, checking work and reasonableness of the answer. To address this issue, a goal was established that the student will solve grade level multiple step math problems with 95% accuracy. This was to be evaluated with work samples. In reading, they noted that the student had difficulty with reading comprehension which inhibited his ability to consistently understand what was read. A goal was established that the student will use active reading skills (annotating, highlighting, notetaking, etc.) on his reading assignments to increase his comprehension. Evaluation was to be a document log. He also had a goal for self-advocacy as the student did not seek out resources within the school intended to provide

academic support in order to improve performance. To address this goal, the student was to utilize resources within the school such as the academic assistance center, his teachers, etc. in order to improve his academic performance. The last goal was in the area of social/emotional, anxiety and was for the student to identify the sources, causes and triggers of his anxiety. He was to do this by identifying the people, events, circumstances, and/or self-talk that precipitated feelings of anxiety. [Findings of Fact # 12; Parent Documents, Exhibit 3/000007 - 000018]

In order to work on these goals, the student was provided 280 minutes per week starting on August 21, 2008 of special education resource room as well as 40 minutes per week of social work. [Findings of Fact # 14] The only related service provided for the student was in the area of assistive technology. Supplementary aids included a four function calculator for computation, extra set of textbooks, computer access for essays and essay test, assistive technology for keyboard for classroom, reading software required, text-to-speech software required, speech to text software required and books in order to auditory format. In addition, testing was to be done in small groups with no Scantron tests being used by this student as he was unable to transfer answers. He also was to have a reader for tests and all subjects and was allowed double time/extended testing time. Class notes were to be provided and the student was to be given preferential seating in close proximity to the teacher. [Findings of Fact # 13]

Based upon the transition/ comprehensive assessment team report, the February 20, 2008 IEP seems to address the concerns raised from that team report and, on its face, appears adequate to address the student's needs.

His case manager for his freshman year at the [REDACTED] campus was [REDACTED]. She met with the student on his first day and read through his IEP. As part of her job, she was to be involved in communications with the student, the parents as well as the teachers to make sure that they were in compliance with this IEP. As part of this, she did tell the students teachers about his IEP and the accommodations that were set out in that IEP for the student and gave a binder to each teacher as to his disability and accommodations and also sent out an e-mail to reflect this. Early on, she would check with the general education and other teachers as to his classroom performance. Initially, she noted that the student would not seek her out for assistance but did improve over the course of the year. He was provided with his various accommodations including extended time, a laptop with Kurzweil, access to the computer for essays and lengthy questions and essays, etc.. As to the student's issues with homework, she would check assignments at the beginning of the period and would talk to the teachers throughout the day as to test and/or projects. During her resource period, she would check as to his homework. [As with many students, by the end of the day, it was a struggle for the student to work on his homework as he would rather chat with his peers.] The student did know how to use a Kurzweil program which takes reading materials that are scanned into and converted from text to speech so that the student can listen and does not have to read independently. Although it required training, the student became very proficient with the use of this program within the first week or so of the school year. She and the student did this on a frequent basis. She would also talk with the student about using the Kurzweil program at home and how to transfer information on it.[Findings of Fact # 19]

Homework was a big issue for the student particularly in the first part of the academic year and particularly the first quarter. [Findings of Fact # 22] This persisted throughout the school year and would come in waves – sometimes he would do it and sometimes he would not. For the following year, she would have made mention of this. [Findings of Fact # 19]

She felt that his placement was appropriate as he seemed to understand the materials with appropriate supports and did make gains in reading. As the year went on, he was more willing to ask questions and to seek out help. He was making friendships at school. As such, she felt that the same placement for the following year was appropriate. [Findings of Fact # 19]

There was an issue with his resource minutes in the beginning of the year. He was in her resource room for 200 minutes instead of the 280 minutes set by his IEP. However, he had an additional 80 minutes in study hall. The reason for this was that they had some scheduling difficulties. She did though give him a pass to come into resource when he was in study hall so that he could work on his projects as homework. She did consider this part of his IEP/resource minutes. During the second semester, this was actually changed on his class schedule to allow for 280 minutes per week. There was no IEP formalize this – only a schedule change. [REDACTED] Hearing Testimony]

This issue is found in favor of the School District.

4. Whether the district's proposed 2009-2010 IEP was appropriate to meet the Student's educational needs.

The first point made by the parents relative to the 2009 – 2010 IEP is that the IEP team itself does not meet the standards as set out relative to the requirements of 34 CFR 300.321. From a review of the July 2, 2009 conference summary report which shows the purpose of the conference as IEP review/revision, reevaluation, and initial evaluation, the only attendees were the parents, the regular education teacher, the school psychologist and the LEA representative. [Findings of Fact # 28] It did not include any of the Student's special education teachers. The district responded that even though no special education personnel signed on the form, [REDACTED] is a special education teacher. [Findings of Fact # 28] As such, even though not appropriately listed, the violation is only *de minimis* or harmless error.

At 34 CFR 300.321, (a) General. "The public agency must ensure that the IEP team for each child with a disability includes –

- (1) The parents of the child;
- (2) Not less than one regular education teacher of the child (if the child is, or maybe be participating in the regular education environment);
- (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- (4) A representative of the public agency who –
 - (i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

- (ii) is knowledgeable about the general education curriculum; and
 - (iii) is knowledgeable about the availability of resources of the public agency.
- (5) an individual who could interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a) (2) through (a) (6) of this section;”

In the case of [REDACTED] an administrative law judge determined that the districts failure to include an appropriate teacher in the IEP process significantly impeded the parents participation right, deprived the child of educational opportunities and impeded the child’s right to FAPE. The ALJ determined that the IEP team must include a general education teacher if there is a possibility that the child will be included in the general education curriculum – the presence of other individuals who have general education credentials did not fulfill this requirement.

The Ninth Circuit Court of Appeals also considered this issue in a thoughtful decision and dissent in the case of *M. L., et al., v Federal Way School District* (9th Cir. 2004), 394 F. 3d 634. In that case, dealing with the failure to have a general education teacher present that was familiar with the student, the majority of the court in concurrence held that “failure to ensure the participation of the regular education teacher on the IEP team when there was a possibility that M. L. would be placed in an integrated classroom was a significant violation of the structural requirements of the IDEA’s procedures. One of the issues in that case was whether or not the court could consider a “harmless error” standard relative to this procedural violation. Two judges, one in concurrence and the other in dissent, agreed that the appropriate standard relative to procedural errors was that the court could consider the issue of harmless error. The majority though determined that the procedural error in this case – the failure to include a regular education teacher – constituted a denial of FAPE as it resulted in a loss of educational opportunity for the child. Even the author, conceding the majority’s opinion of harmless error, agreed that if such a standard were appropriate that, in this case, the failure to include the regular education teacher had a material and inherently harmful impact on the ability to create an IEP and the IEP team was defective.

This issue of harmless error was recently reviewed in the Second Circuit Court of Appeals in the case of *A. H., et al. v. Department of Education of the City of New York*, 55 IDELR 36 (2nd Cir., 2010). In that case, even though not all required members of the IEP team were present and particularly that the child’s special education teacher was not present was insufficient to make a determination that the student’s right to FAPE was compromised. Since another special education teacher who served as the IEP coordinator was present at the meeting and that there was no showing that this special education teacher was unfamiliar with the student, there was no evidence that the IEP team as constituted was defective and/or illegal. The court determined that the IEP developed by the team was reasonably calculated to enable some progress and as such, it was substantially adequate.

From the record before this hearing officer [Exhibit 37/SD 000371], it appears that the regular education teachers, [REDACTED] and [REDACTED], the special education teacher, [REDACTED] the school psychologist [REDACTED] the student advisor, [REDACTED] and the LEA

representative, [REDACTED], were invited. For whatever reason, [REDACTED] and [REDACTED] did not attend. Although [REDACTED] had seven years' experience as a special education teacher, at the time of the IEP, she was the Assistant Director for the Assistive Technology Program. Her first knowledge of the student was in the spring of 2010. She denied being involved with the student prior to March of 2010. [Findings of Fact # 38] The thrust of her participation in that meeting was relative to assistive technology issues with the student including the issue with the size and weight of the computer and the various software programs available. As such, even though she has a special education background and testified that she was wearing two hats at this IEP meeting, that of the LEA representative as well as a special education teacher, she would not have sufficient familiarity with the student in July of 2009 to effectively present any information as to the student's special education needs to the IEP team as to fit within the ambit of *A. H., et al. v. Department of Education of the City of New York*, supra.

The IDEA does provide for issues relative to team attendance. At 20 USCS Section 1414 (d) (1) (C) (i) and (ii), a "member of an IEP team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree that the attendance of such member is not necessary because the members area of the curriculum or related services is not be modified or discussed in the meeting." Under Excusal, "a member of an IEP team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves the modification or discussion of the member's area of the curriculum or related services if – (I) the parent and the local education agency consent to the excusal; and (II) the member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting".

Based upon the cases as cited above, the inquiry here turns on whether or not the failure of the special education teacher to be present could be construed as harmless error or not, that is, was the student deprived of educational benefit by the failure of the school district in having present the special education teacher.

There has been no showing in the record presented at this hearing that any special education teacher was either not necessary for the IEP meeting or that the special education teacher provided any such report or was excused.

In this case, the parents were in attendance at this meeting. In the prior year, the parents were very vocal about their student's disability and needs. The father had approached each of the teachers at the beginning of his freshman year to make sure that they were aware of the student's disabilities and had the appropriate documentation to include his IEP as well as his accommodations and modifications. [Findings of Fact # 16] The parents had been active in advising the school district as to the disability and difficulties that their student had in terms of dyslexia, encoding and decoding and difficulty reading and writing any type of cursive work. They also advised the school district of his difficulties with homework. His freshman year teachers, as noted from the testimony of [REDACTED] were also concerned about the student's abilities and homework. [Findings of Fact # 19, 22,25] Given the acknowledged difficulties that the student had, it is reasonable to conclude that the special education teacher was a necessary

member of this team. The fact that an invitation was apparently extended to the special education teacher also bear support for the need for special education teacher to be present.

The student was in the general education curriculum with services designated as resource room and social work. [REDACTED] was aware of the difficulties that the student was having including his difficulties with the assistive technology provided to him and as well as his issues with homework.[Findings of Fact # 19] And yet the program developed for his upcoming sophomore year was generally a repeat of his freshman year.

Although the team updated his disability and the adverse effects of this disability on his educational performance, the goals that were developed for the student did not change substantially. [Findings of Fact # 31] For example, in 2008, in the area of math concepts, the student was to solve grade level multi-step math problems with 95 % accuracy. For his sophomore year, his math concepts goal was to accurately use the order of operation on 2 of 5 problems with 80% accuracy. As to his reading goal, the student was to use active reading skills (e.g. annotating, highlighting, notetaking, etc.) to increase his comprehension. Similarly for his sophomore year, his reading goal was again to use his active reading skills (e.g. annotating, highlighting, notetaking, etc.) during 80% of his assigned and unassigned situations. As to his self-advocacy goal, in his freshman year, he was to utilize resources within the school such as academic assistance center and teachers to improve his academic performance. In his sophomore year he was to meet with 1 of 4 teachers to improve his academic performance and understanding of concepts. As furtherance of that goal, “at the end of the first reporting period [freshman year], with direct assistance, the student would utilize school resources intended to provide student support 80% of the time”. In his sophomore year, at the end of the first reporting period, with four – five direct prompts, the Student will utilize school resources intended to provide student support when needed”. For his final goal, during his freshman year, he was to independently identify the sources, causes, and triggers of anxiety 80% of the time. During his sophomore year, for this same goal, he was to identify “the sources, causes, and triggers of anxiety 90% of the time” [Compare Parent Exhibit 3/000007 - 000012 and Parent Exhibit 4/00023 - 000028].

The only change between his freshman and sophomore year supplementary aids was the addition of “use of an enlarged graph paper for math due to reversal of numbers” and “assistive technology – writing software required for word prediction” and the deletion of “assistive technology – reading software required” in his sophomore year. Given the similarities in his educational plan and goals for the sophomore year as well as the almost identical supplementary aids provided to the student in both IEP’s, this IEP is not geared to meet the student unique needs as advocated by his parents and acknowledged by his teachers. [Compare Parent Exhibit 3/000007 - 000012 and Parent Exhibit 4/00023 - 000028].

This issue is found in favor of the parents in that the school district committed a procedural violation which resulted in a loss of educational opportunity for the Student.

5. Whether the district’s proposed IEP and class schedule for 2010-2011 is appropriate to meet the Student’s educational needs

In contradistinction to the 2009 - 2010 IEP attendance, the student's IEP team attendance for the year 2010 - 2011 increase dramatically. At this meeting, in addition to the parents were 4 regular education teachers, 2 special education teachers, the school social worker, the school psychologist, and the LEA representative. [Findings of Fact # 51] At the parent's request, [REDACTED] also attended [Parent Exhibit 5/000050 - 000076]. According to the conference summary report [Findings of Fact # 52; Parent Exhibit 5/000050], the purpose of this conference was for determining placement, developing an IEP and transition. It appears though that the main purpose of this meeting was a review and discussion of [REDACTED] neuropsychological report.

The student had academic difficulties which included ongoing difficulties with reading, written language, spelling, math and retention of learned material. He presented with a varied and complex neurocognitive profile. Even though the Student had various difficulties acknowledged in the IEP as well as from the teachers, no request for evaluations was ever performed.

[REDACTED] clinical impressions were that the student demonstrated superior intellectual skills yet demonstrated a highly resistant learning disability profile affecting his performance across all areas of academics. His working memory and processing speed skills were additional weaknesses in his cognitive profile. Significant impairments in processing speed, working memory, and sustained attention skills affected his learning. In addition to his learning disabilities, the student struggled significantly in the areas of executive functioning and to a lesser extent in his language retrieval skills. His presentation is complex and his needs are varied. These weaknesses contribute to his difficulties socially and academically. Specifically, significant impairments in processing speed, working memory, and sustained attention skills affect his learning. Language delays further contributed to word recognition skills, phonological awareness, and retrieval skills. Although he had made improvements in his language skills, he continued to struggle when demands for expressive language are lengthy which contributed to his difficulty demonstrating what he has learned.

He struggled to process auditory information and has significantly weak auditory comprehension and working memory skills which lead to superficial encoding of material and subsequent failure to retrieve the information presented. Although the student is at times somewhat able to retrieve learned information, his speed and doing so was slow and laborious. He did not employ strategies naturally to assist in his learning. Test data suggested that he performs better with repetition and corrective feedback as well as presentation of material within a structured meaningful format. Academically, the student exhibited severely impaired reading for passages. Although he made strong efforts to decode unfamiliar words, the process was slow and difficult. He also demonstrated severely impaired reading fluency and below average reading comprehension due to its limited decoding. His struggles with reading comprehension skills were expected.

In her opinion, the student met criteria for a specific learning disability in reading and decoding with associated weaknesses in spelling and written expression development. He has specific

weaknesses in rapid language retrieval and visual-discrimination of sounds. She also found that he met the diagnostic criteria for attention deficit hyperactivity disorder (ADHD).

As to his educational placement, [REDACTED] believed that he needed educational program that addressed his academic needs and recognizes intellectual strength. She felt it was likely that he would require an alternate setting that specializes in working with and supporting the needs of gifted children with significant learning disabilities. The educational setting should provide a high level of support and direct intervention through small class instruction, multi-sensory approaches, and individualized attention, within the context of a learning environment comprised of the student's peers. She also recommended that the IEP team meet at earliest convenience to modify his current IEP goals and to evaluate his placement. As part of her report, she made a number of recommendations to include that the school personnel more accurately reflect his gifted learning disabled diagnosis and addresses needs in both areas of exceptionality. She offered general recommendations as to his IEP, specific recommendations as to his IEP goals and accommodations as well as technology and word retrieval skills. [Findings of Fact # 52]

As noted above, the [REDACTED] school psychologist, [REDACTED] and the student's case manager, [REDACTED] reviewed the report and discussed it both among themselves as well as with the team members with [REDACTED] leading the discussion. The [REDACTED] staff from [REDACTED] perspective, listened to what she had to say and it was her impression that they generally understood what she was telling them – at least as to the accommodations if not the placement – and felt that they were open and amenable to her report. [Findings of Fact # 46]

In fact, as noted in section 2 above, the school district adopted many of her recommendations and accommodations and revised his goals and objectives to more adequately reflect what she was suggesting. [Findings of Fact # 52] Although the IEP itself was not completed at this meeting, the parents and [REDACTED] spent several months refining goals and objectives for the student [Findings of Fact # 54; School District Exhibit 52/000474 - 000489]. Although the IEP team could have included all of her goals, recommendations and accommodations in his IEP, the school district is not required to do this. See *T.S. ex rel. S.S. v Board of Education*, 10 F. 3d 87 (2nd Circuit, 1993) [IDELR 889], *G.D. v. Westmoreland School District*, 930 F.2d 942, 947 (1st Cir. 1991) and *Evans v. District No. 17*, 841 F.2d 824, 830 (8th Cir.1988). The school district is also not required to maximize the potential of students with disabilities (*Rowley*, 458 U.S. at 189, 199; *Grim*, 346 F.3d at 379; *Walczak*, 142 F. 3d at 132. A school district must provide “an IEP that is ‘likely to produce progress , not regression’, and ... affords the student with an opportunity greater than mere trivial advancement . The IEP must be “reasonably calculated to provide some ‘meaningful benefit’” *Mrs. B. V Milford Bd. of Educ.*, 103 F.3d 1114, 1120 (2nd Cir. 1997); also see *Rowley* at 192.

In a recent case, the 9th Circuit's District Court in *J. L, M.L. and K.L v. Mercer Island school District*, 55 IDELR 164, recently visited the issue of the level of benefit required to be conferred by an IDEA program. In citing to *Board of Education of Hendrick Hudson Central Sch. Dist. v. Rowley*, 102 S. Ct. 3034, 458 U.S. 176 (1982) that court referenced the language that addressed what is "the educational standard ... necessary to make such access [to public education] meaningful," (*Id.* at 192, emphasis added). It noted that *Rowley* did not define the term or made it

the sole measure of the adequacy of the educational benefit. There is also language in *Rowley* that states that it is "sufficient to confer *some educational benefit*" represented by a "basic floor of opportunity" composed of access to specialized instruction and related services designed to provide the benefit. *Id.* at 200 (emphasis added). The terms "educational benefit," "some educational benefit" or a "meaningful" education benefit all seem to refer to the same standard. School districts must, to "make such access meaningful," confer at least "some educational benefit" on disabled students. *J. L., et al v Mercer Island School District*, 592 F.3d 938, 951 n. 10 [Prior decision]. As noted in *John Doe v. The Board of Education of Tullahoma City Schools*, 9 F.3d 455 [20 IDELR 617], "[t]he Act requires ... the educational equivalent of a serviceable Chevrolet to every handicapped student". Although the parent requested a Cadillac, the court concluded and held that the board was "not required to provide a Cadillac and that the proposed IEP is reasonably calculated to provide educational benefits ... and, is therefore, in compliance with the requirements of the IDEA".

Even if one could conclude that the 2009 – 2010 IEP was a valid IEP, it did not appear that it was directed to the unique needs of this particular student. As the parent complained, it appeared to be more of a cookie cutter type of approach without any particularized goals and objectives. However, as to the 2010 – 2011 IEP, even though it did not incorporate all of [REDACTED] recommendations, it did address many of those. The district seem to appreciate [REDACTED] report and appeared to try to present an educational program for the student that was addressed to his particular needs. [Findings of Fact # 52]

There is no suggestion as to this IEP that there was any procedural violation and, substantively, it did what it was supposed to do under the act. Through a combination of accommodations, modifications and aids, the school district is providing a benefit to the student. As is clear from the records, the student was progressing in his academic program, was making friends and was participating in extracurricular activities. Although the district had not conducted any evaluations itself, [REDACTED] evaluation and report spurred the district to action in the student's case.

As such, this issue is found in favor of the school district and that the IEP for the academic year 2010 – 2011 was appropriate for the student and was intended to confer an educational benefit.

6. Whether the parents' proposed residential placement is appropriate to meet the Student's educational needs.

As I have concluded that the student's IEP for the school year 2010 – 2011 is appropriate to confer a meaningful benefit upon the student, there is no need to determine whether the proposed residential placement is appropriate to meet the student's educational needs.

However, even if I had determined that the proposed IEP for the 2010 – 2011 school year was inappropriate for the student's unique needs, I would still be forced to conclude that placement at the Forman school was too restrictive and not the least restrictive environment for this student.

Here, no one has requested a more restrictive environment for the Student. [Findings of Fact # 53, 59] The Student's father conceded this in his testimony. In fact, the parents have only proposed and placed the Student at the [REDACTED] school for its educational program. [Findings of Fact # 60] As the parents are unable to move there due to job responsibilities, the residential component becomes a necessary by-product of the educational environment.

The IDEIA is the appropriate starting point for this analysis. IDEIA (34 CFR Section § 300.114, 2006) instructs that:

- (2) Each public agency must ensure that –
 - (i) To the maximum extent appropriate, children with disabilities including children in public or private institutions or other care facilities are educated with children who are nondisabled; and
 - (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature of the severity is such that education in a regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily.

In Letter to Wessels, 16 IDELR 735 (OSEP 1990), OSEP stated,

“ In making placement decisions, the placement team must “[d]raw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior” and ensure that such information “is documented and carefully considered.” 34 CFR § 300.533(a)(1)-(2). In addition, under 34 CFR § 300.533(a)(4), the placement decision must be “made in conformity with the least restrictive environment rules in §§ 300.550-300.554.” These least restrictive environment (LRE) provisions require, among other factors, that a child's placement be determined at least annually, based on his or her IEP, and made in the school or facility “as close as possible to the child's home.” 34 CFR § 300.552(a)(1)-(3). EHA-B's LRE requirements also mandate that public agencies make available a continuum of alternative placements, or a range of placement options---including “instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions”---to meet the needs of children with handicaps for special education and related services. 34 CFR § 300.551(a) and (b)(1). Further, under 34 CFR § 300.552(b), public agencies must ensure that these placement options are made available to the extent necessary to implement each child's IEP.

“The above requirements indicate that the placement team must determine the specific option from the options on the continuum of alternative placements in which a child's IEP can be implemented. Based on that specific placement option, the placement team must then select the appropriate school or facility “as close as possible to the child's home” in which the child's IEP can be implemented. 34 CFR § 300.552(a)(3) and comment 2. Thus, the reference in the EHA-B

regulations to "placement decisions" that must be made by "a group of persons" encompasses a determination as to the specific placement option and school or facility in which a child's IEP can be implemented."

More recently, the Department of Education via the 2006 regulations "strongly encouraged public agencies to place a child with a disability in the school and classroom the child would attend if the child did not have a disability". Analysis of Comments and Changes to 006 IDEA Part B regulations, 71 Fed. Reg. 46576 (August 14, 2006). If there are two or more locations that could provide the appropriate services for the unique needs of the student, that Analysis indicated that the administrators should have the flexibility to assign a student to a particular school.

The Second Circuit addressed this same issue in *In P by his parent/next friend, Mr. And Mrs. P v. Newington School District*, 546 F.3d 111 (2nd District, 2008). That Court of Appeals stated that IDEA mandates that:

"[t]o the maximum extent appropriate, children with disabilities ... are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 20 U.S.C. § 1412(a)(5)(A); *Walczak*, 142 F.3d at 122. "Educating a handicapped child in a regular education classroom ... is familiarly known as 'mainstreaming.'" *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1039 (5th Cir. 1989). We have underscored the IDEA's "strong preference for children with disabilities to be educated, 'to the maximum extent appropriate,' together with their non-disabled peers." *Walczak*, 142 F.3d at 122. Nevertheless, we have also acknowledged that, "[w]hile mainstreaming is an important objective, we are mindful that the presumption in favor of mainstreaming must be weighed against the importance of providing an appropriate education to handicapped students. Under the [IDEA], where the nature or severity of the handicap is such that education in regular classes cannot be achieved satisfactorily, mainstreaming is inappropriate." *Briggs v. Bd. of Educ. of Conn.*, 882 F.2d 688, 692 (2d Cir. 1989) (citations omitted); *see also Lachman v. Ill. State Bd. of Educ.*, 852 F.2d 290, 295 (7th Cir. 1988). Understandably, courts have recognized some tension between the IDEA's goal of providing an education suited to a student's particular needs and its goal of educating that student with his non-disabled peers as much as circumstances allow. *Daniel R.R.*, 874 F.2d at 1044. As such, courts have used a case-by-case analysis in reviewing whether both of those goals have been optimally accommodated under particular circumstances. *Id.* at 1048.

In a different [REDACTED] an Administrative Law Judge determined that a special day class was not the least restrictive environment for a student with a speech-language impairment. The child was able to make

progress in the general education environment. The purpose of the LRE analysis is not to identify the placement that will offer a child the greatest educational benefit but to determine if the student can be educated in the general education environment with the use of supplementary aids and services. When a student makes slow but-steady progress, a more restrictive setting was not the appropriate least restrictive environment. Even though the student might receive a greater educational benefit in a special day class, as long as he was making adequate progress, the general education classroom would be the appropriate placement.

In the case of [REDACTED] supra, in denying the parents' private placement and tuition reimbursement, the U.S. District Court, Western District of Washington found that it was sufficient under the IDEA that the student's IEP conferred some educational benefit and, as such, there was no need for a private setting. In that case, the student's parents had placed the student in a private school that focused on remediating her learning disability and sought tuition reimbursement from the district. The District Court found that the district was not required to bring the student up to reading level commensurate with her peers and, as a district offered accommodations such as notetakers and readers rather than trying to remediate her learning disabilities, did not mean that it violated the IDEA. Even though the student did not achieve all of her IEP goals, that did not demonstrate that she was denied a FAPE. IDEA does not guarantee any particular outcome. Rather, "what is required is an ongoing, adaptive effort to set beneficial objectives that will challenge and improve the student, combined with periodic review and revision to ensure those goals are being met or, if met, are being modified to take the student to the next level".

As in [REDACTED] the student here is making progress. The 2010 - 2011 IEP, by adopting many of the recommendations of the outside evaluator, [REDACTED] looked to make progress in meeting the Student's unique needs.

The parent has explored various placement options for the Student but, due to the self - limited search parameters (only L/D), has been only able to find two (2) placements which they believe to be optimal. [Findings of Fact # 60] They have rejected all 400 + approved placements from the ISBE list. In fact, [REDACTED] may be optimal (although not on the ISBE approved list - not that it needs to be under various Supreme Court decisions) but IDEA does not require this. Under a continuum of placement, the school district has suggested in compromise two (2) options which its experienced Director of Special Education felt would be appropriate for the Student. [Findings of Fact # 64] Although the testimony is disputed as to whether either of these suggested school district placement were, in fact, appropriate, even the majority of school personnel that commented on these placements felt that they were too restrictive for this Student. [Findings of Fact # 53, 64] As such, placement at the [REDACTED] school is too restrictive an environment to meet this Student's needs.

In addition, the evidence produced as to the [REDACTED] school was insufficient to demonstrate that it was capable of meeting the unique needs of the student herein. [REDACTED] who testify by telephone was the director of student funding and the teacher of the college transition center. He advised that the school was founded in the 1930s for students who did not learn in traditional ways. Initially the school focused particularly on dyslexia and most recently in the early 90s

began accepting ADD and ADHD students. The student population is all college-bound and the school itself was considered a college prep school. Although [REDACTED] was unique in terms of what they do, that is helping the average to above average learning disabled students move to college, there was no showing that this placement was appropriate for this student. [REDACTED] was just getting to know the student who was an 11th grader. Although he provided substantial information about the school program, and although he gave his opinion that [REDACTED] is an appropriate school to meet the student's needs, his testimony did not speak to this particular student. Although [REDACTED] might provide the student more structure as it was a residential setting, the educational plan or program itself provided many of the same accommodations in assistive technology. In fact, [REDACTED] did not know if the student had a computer, did not know if he was using Kurzweil, did not you know if he was using Dragon or other software, did not know if he was using digital textbooks, did not know if he was using his assistive technology resources in class, had not seen the student listening to audio text or audio books. He was uncertain as to what other accommodations and modifications were needed by the student [Findings of Fact # 63]

In the case of *R. C. And M. BX rel N. C. v. Board of Educ. of the Hyde Park Central Sch. Dist.* 50 IDELR 225 (S. D. N. Y., 2008), the New York District Court found that although the IEP goals did not include an appropriate reading goals, the private placement suggested by the parents was not tailored to meet the student unique needs. In that case, the parent seeking placement and reimbursement for private services needed to demonstrate that those services of the private placement address the student's specific needs. The curriculum and teaching methods used by the private school provided a generalized benefits to students with dyslexia and other learning disabilities. As the student did not receive individually tailored services, the placement was not appropriate. It was incumbent upon the parents to show that the private placement was appropriate. In this case, "the advantage offered by the [specialized school] were generally rather than specific and not tailored particularly to the students demonstrated areas of need". As such, the parents were not entitled to tuition reimbursement.

Similarly here, the testimony adduced was as to the general nature of the curriculum and the benefits appear to be generalized benefits to students with dyslexia and similar learning disabilities and was not tailored particularly to this student's needs. Even though the parents spent a great deal of time in searching for what they believed was an appropriate placement on behalf of their student, the parents eliminated many appropriate placements because they rejected any school which had any type of an emotional disability component to it. Interestingly enough, the [REDACTED] school with the acceptance of students with ADD and ADHD is now also accepting students with disabilities other than a learning disability. In fact their own student was recently diagnosed by [REDACTED] with diagnosis of ADHD.

Accordingly, even though I do not need to reach this issue, if I had needed to, this issue would have been found in favor of the school district.

7. Whether the district should be obligated to pay for the Student's residential educational placement under the U.S. Supreme Court's decision in *Forest Grove*

Having reached the decision that the student's residential placement is not supported in the record, there is no need to reach any issue as to payment for the residential placement. As such, I decline to do so. This issue is found in favor of the school district and the School District need not take any action relative to this as to this Student.

G. ORDER

1. The School District committed a procedural violation relative to 23 Illinois Administrative Code Part 226.731(a) but there was no substantive deprivation of any educational opportunity for this particular student. This issue is found in favor of the School District and the School District need not take any action relative to this as to this Student.

2. The school district did not fail to give due deference to [REDACTED] opinions. This issue is found in favor of the school district and the School District need not take any action relative to this as to this Student.

3. The School District's 2008-2009 IEP was appropriate to meet the Student's educational needs. This issue is found in favor of the School District and the School District need not take any action relative to this as to this Student.

4. The School District committed a procedural violation which resulted in a loss of educational opportunity for the Student in the 2009 - 2010 IEP. This issue is found in favor of the parents.

A. The School District is ordered to pay the costs of the Independent Evaluation of [REDACTED] within twenty-one days of receipt of the parent's cost; and

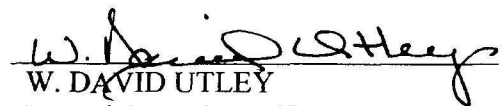
B. If the Student does re-enroll at the [REDACTED] School District, the School District shall re-convene an IEP meeting within fourteen (14) days of said re-enrollment to implement all of the recommendations of [REDACTED] as well as the goals, accommodations, technology and word retrieval suggested in her report.

5. The School District's proposed IEP and class schedule for 2010-2011 is appropriate to meet the Student's educational needs. This issue is found in favor of the School District and the School District need not take any action relative to this as to this Student.

6. As the 2010 - 2011 School District IEP is appropriate to meet the Student's educational needs and the parents' proposed residential placement is too restrictive, this issue is found in favor of the School District. The School District need not take any action relative to this as to this Student.

7. The School District is not obligated to pay for the Student's residential educational placement. This issue is found in favor of the School District and the School District need not take any action relative to this as to this Student.

8. The School District shall provide proof of compliance with this Order to the Illinois State Board of Education, Compliance Division, no later than January 1, 2011.


W. DAVID UTLEY
Impartial Hearing Officer
Dated this 27th day of November, 2010

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

FINALITY OF DECISION

This Decision and Order shall be binding upon all parties.

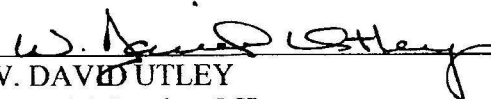
RIGHT TO REQUEST CLARIFICATION

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 UTLEY
Impartial Hearing Officer

Dated this 27th day of November, 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 November 27, 2010.

[REDACTED]

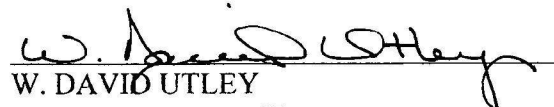
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