



2010. The parties decided they would meet at a resolution session on June 24, 2010. After this effort was unsuccessful, the Hearing Officer issued a Preliminary Scheduling Order on July 7, 2010. In addition, the Hearing Officer granted the Parents' Attorneys' Motion to Appear Pro Hac Vice on July 7, 2010. It was agreed by both sides that a Pre-Hearing Conference would be held on July 29, 2010. This session was resumed on August 12 and 26, 2010. The Pre-Hearing Conference was held on those dates, and the Hearing Officer sent the parties a Pre-Hearing Conference Report. By request of the parties, the Hearing was scheduled for September 14 and 15 and October 25, 2010. Both parties submitted educational histories, trial stipulations, brief written opening statements and a Joint Exhibit Book. In addition, the parties submitted lists of documents and witnesses for each party. Upon agreement of the parties, the evidentiary hearing was conducted on the above dates in ██████████ Illinois. At the hearing, the Parents were represented by attorneys ██████████ and ██████████ and the District was represented by attorney ██████████ and ██████████. Both parties submitted post-hearing statements, and the Hearing Officer received the last brief with exhibits on December 21, 2010. The parties agreed this decision would be issued on or by January 10, 2011.

### **BACKGROUND FACTS**

After ██████ was born on October 25, 2006, she was diagnosed with a moderate-to-severe sensorineural hearing loss in both ears. At about two months of age, she was fitted with hearing aids in both ears. Her older sister, ██████ had also been hearing impaired since birth.

█████ soon began receiving Early Intervention Services from ██████████ through ██████████ (██████████), a private special education facility that provides services for children who are deaf and hard of hearing. ██████ mother also received training on how to assist her daughter with her hearing problem. At about eighteen months, ██████ began

attending the toddler program at [REDACTED] two mornings a week where she continued to receive services including individual and group speech therapy in a small group setting.

The Parents' chosen method of communication for [REDACTED] is for her to be able to listen and speak in a hearing world and not be dependent on sign language. [REDACTED] has made good progress in detecting sounds through the use of her hearing aids. Her Parents acknowledge, "except to the extent impacted by her hearing loss, she does not have any deficits in her abilities related to the following areas: academic achievement, functional performance, cognitive functioning, health, vision, motor abilities (fine and gross), and social/emotional functioning." (Parent Brief, p. 2; IHO Ex. 2) However, they believe her continued attendance at [REDACTED] would be in her best interest.

On September 10, 2009 [REDACTED] and her Parents attended a conference with District staff and personnel from the [REDACTED] Agreement. [REDACTED]. The Parents provided consents for evaluations and expressed their preference to keep [REDACTED] at [REDACTED]. At this time, [REDACTED] was two years and eleven months old.

Subsequently, an Individualized Education Program ("IEP") eligibility meeting was held on October 16, 2009. The IEP team reviewed background information, evaluation results and other data pertaining to [REDACTED]. She was found eligible for special education due to a hearing impairment. The team recommended placement at the [REDACTED] Early Childhood School ([REDACTED]). The Parents objected to this placement, and they stated their preference was that [REDACTED] continue to attend [REDACTED]. The IEP team reconvened on October 19, 2009, and the team reaffirmed its recommended placement at [REDACTED]. The Parents again expressed their preference for a placement at [REDACTED]. Shortly thereafter on October 22, 2009, District psychologist [REDACTED] and [REDACTED] program supervisor [REDACTED] visited [REDACTED] to

conduct an observation. The Parents discussed [REDACTED] placement with the District's superintendent, but no change was made to the IEP team's recommendation. On October 27, 2009 the Parents sent the District a letter to give notice that they rejected the IEP team's recommended placement at [REDACTED] and were unilaterally placing [REDACTED] at [REDACTED] and that they would seek reimbursement for this expense from the District.

When the Parents filed their request for a due process hearing on June 16, 2010, [REDACTED] was a three-year, eight-month old child with a moderate-to-severe bi-lateral hearing loss. She is considered hard of hearing, and she has worn hearing aids since the age of two months. During the course of the due process hearing period, [REDACTED] has continued to attend [REDACTED]

The IEP listed the following goals for [REDACTED]

1. In a structured activity, while relying on listening alone, [REDACTED] will follow single step directions containing 3 critical elements using a picture with 80% accuracy by October, 2010. (SPICE Connected Speech Goal C) (Emphasis shows hand-written addition at parents' suggestion.)
2. [REDACTED] will demonstrate correct production of targeted speech sounds and incorporate their use into frequently used words and sentences in at least 3 settings with at least 80% accuracy by October 2010. (Emphasis shows hand-written addition at parents' suggestion.)
3. In unstructured activities, in at least 3 settings, [REDACTED] will produce morphological markers to express possession, verb tense and plurality with 80% accuracy by October 2010. (Emphasis shows hand-written additions at parents' suggestion.)
4. [REDACTED] will correctly produce plosive speech sounds by demonstrating correct lip placement in sentences with 80% accuracy by October 2010. (Goal was restated on 10/19/09.)

The IEP also listed the following "Supplementary Aids, Accommodations and Modifications":

Preferential/flexible seating in any group setting, gain attention prior to conversing and/or providing oral directives, face-to-face communication whenever possible. Visual/contextual cues to support auditory information.

Consideration of assistance listening device, dependent upon classroom environment and evaluation in the learning environment.

### **POSITIONS OF THE PARTIES**

#### **PARENTS:**

The Parents presented expert testimony on the education of children with hearing loss. [REDACTED] explained that a child who uses hearing aids will always remain a child with hearing loss. This child will have difficulty learning incidentally and in noisy environments. The testimony shows children with hearing loss need about three times the exposure to sound as children with typical hearing, and the greatest opportunity to develop auditory pathways starts at infancy and continues to about the age of six. She maintains [REDACTED] needs a great deal of structure and redundancy to develop her ability to listen and attend. In addition, if intensive services are decreased, an oral-deaf child is likely to experience slippage in hearing skills and academic achievement.

The Parents claim the eleven and a quarter hours per week provided by [REDACTED] IEP is insufficient for listening and spoken language development. They contend the District's classroom teacher and teaching assistant lack the necessary background, training and experience to instruct [REDACTED]. They also contend three of her goals focus on articulation and only one goal focuses on audition. They claim the focus on articulation is more appropriate for a speech impaired child.

They also argue the classroom at [REDACTED] with teacher [REDACTED] will consist of students who will not serve as appropriate language models. This class can have English language learners, students exposed to a language other than English, students with IEPs and

at-risk students. Also, the classroom does not have acoustical treatments beside ceiling tiles. The Parents believe [REDACTED] will not be able to keep pace with typical hearing peers in this setting and that her IEP will not allow her to be mainstreamed by kindergarten.

The Parents believe the program at [REDACTED] is more appropriate for [REDACTED]. One-half of her day would be in a classroom taught by [REDACTED] and the other half of the day she would be in the [REDACTED] Ms. [REDACTED] is assigned five children with whom she regularly performs equipment checks. These children are not typically hearing peers. The classroom is acoustically treated and the school has an audiologist on staff and has sound amplification equipment available. The school's staff has training and experience in oral-deaf education. The program at [REDACTED] is an auditory program that focuses on spoken language. The Parents argue [REDACTED] is a better placement for [REDACTED] than [REDACTED] school.

DISTRICT:

The District acknowledges that [REDACTED] needs a program that responds to her hearing loss, but it points out she does not have any cognitive, academic, functional behavior, motor or social/emotional deficits as compared to non-disabled hearing peers. (Stipulated Facts, No. 3). It also notes that her speech articulation, expressive language skills and receptive communication skills are measured at the average range when compared to her hearing peers. In this situation, the District believes [REDACTED] will receive educational benefit in a class with non-disabled peers and that this placement would give her an education in the least restrictive environment ("LRE").

The District also maintains it has given the Parents procedural safeguards and an opportunity for meaningful participation in the IEP process as required by IDEA. The District believes it has met its obligation to give [REDACTED] a free appropriate public education ("FAPE").

The District maintains it has complied with procedural and substantive FAPE requirements, and it claims placement at [REDACTED] provides an LRE. The District believes the Parents' unilateral placement of [REDACTED] at [REDACTED] was not justified, and it asks that the Parents' request for reimbursement of placement expenses be denied.

### **ISSUES AND REMEDIES**

The Parents have presented the following list of issues for this proceeding:

1. The IEP Team failed to recommend an appropriate, coordinated aural/oral program and placement specifically designed to meet [REDACTED] needs as an oral-deaf child with bilateral hearing aids;
2. The IEP Team failed to recommend appropriate, intensive, and coordinated aural/oral services specifically designed to meet [REDACTED] needs as an oral-deaf child with bilateral hearing aids;
3. The IEP Team failed to ensure that the providers needed to implement an appropriate aural-oral program for [REDACTED] have the necessary background, training and experience to properly implement or deliver such a program for her;
4. The IEP Team failed to adequately consider [REDACTED] language and mode of communication;
5. The Present Level of Academic Achievement and Functional Performance section of proposed IEP does not adequately and appropriately reflect [REDACTED] needs as an oral-deaf child with bilateral hearing aids, including her needs for intensive and coordinated aural/oral special education and related services;
6. The Present Level of Academic Achievement and Functional Performance section of the proposed IEP does not accurately describe how [REDACTED] hearing loss affects academic, communication and social development;
7. The IEP Team failed to consider and make available a continuum of services and placements designed to meet [REDACTED] needs as an oral-deaf child with bilateral hearing aids, including placement at [REDACTED];
8. The parents will show that IEP recommended by the District is not appropriate, that their unilateral placement at [REDACTED] is appropriate and that equitable considerations support their request for reimbursement.

The relief proposed by the Parents consists of the following items:

- 1) The District reimbursing the parents for any and all expenses associated with [REDACTED] placement at [REDACTED] including transportation;
- 2) The District placing [REDACTED] at [REDACTED] going forward, under a 12 month IEP and providing, or paying for, transportation;
- 3) The District paying the parents' reasonable attorneys' fees associated with this matter.

### **DISCUSSION, CONCLUSIONS OF LAW AND DECISION**

Under Illinois law, the burden of proof is on the school district in a due process hearing to show by a preponderance of the evidence that it provided or offered the student a free appropriate public education ("FAPE") in the least restrictive environment, consistent with procedural safeguards and in accordance with an individualized education program. 105 ILCS 5/14-8.02a. However, as the party filing the due process hearing request the Parents bear the burden of persuasion on the issues in the proceeding. Schaeffer v. Weast, 546 U.S. 49, 57-58 (2005).

Resolution of this dispute begins with consideration of the two-part inquiry for determining FAPE that is set forth in Board of Education v. Rowley, 458 U.S. 176, 206-07 (1982): "First, has the District complied with the procedures set forth in the Act? And second, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" The District must identify [REDACTED] needs in light of her disabilities and utilize instruction and related services in an appropriate environment to meet those needs. Sch. Committee of the Town of Burlington, MA. v. Department of Educ. of Mass., 471 U.S. 359, 368, 105 Sup. Ct. 1996, 2002 (1985).

The parents contend deficiencies occurred in the IEP process, and they claim these inadequacies denied [REDACTED] the opportunity to obtain FAPE. The parents' claims are listed in the above-stated issues for this hearing. In addition, the parents maintain in this type of unilateral

placement case, the decision in this case should follow the analysis set forth in the Burlington case and in Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 (1993). Specifically, the issues to be addressed are if (1) the District provided the student with a FAPE, (2) and, if not, are the services selected by the parents proper under IDEA and (3) do equitable considerations support the parents' claim.

In resolving this matter, several factors must be considered. First, were there procedural violations committed by the District? Second, did [REDACTED] IEP follow Rowley's requirement that it be reasonably calculated to confer educational benefit to the student? 458 U.S. 176, 206-207 (1982). Third, does [REDACTED] placement consider the student's least restrictive environment? Fourth, have the parents shown that unilateral placement is proper in this case?

1) Procedural Requirements

The parents do not claim timelines were not met, and the evidence does not show they were denied an opportunity for meaningful participation in the development of [REDACTED] IEP. Parents are to be "afforded the opportunity to participate in meetings regarding the identification, evaluation, eligibility, reevaluation, and educational placement of their child." 34 C.F.R. § 501(b)(i-ii). The parents in this case participated in the IEP meetings with assistance from representatives from [REDACTED]. The IEP reflects changes requested by the parents and their representatives. The [REDACTED] representatives shared reports and comments with the IEP team. The evidence does not show the District committed procedural violations.

2) Substantive IEP

In developing a student's IEP, the IEP team is to consider the academic, developmental, and functional needs of a student. 20 U.S.C. § 1401(14); 34 C.F.R. § 300.324. To determine these needs, the team is to review the student's present levels of academic and functional

performance, conduct necessary evaluations, and use these findings to determine the student's IEP goals. 20 U.S.C. § 1414(d).

The record shows the IEP team considered [REDACTED] present level of performance through the following records:

1. [REDACTED] area evaluation (Jt. Ex. 6)
2. [REDACTED] exit evaluation (Jt. Ex. 8)
3. [REDACTED] speech-language and aural rehab. six month eval. (Jt. Ex. 9)
4. [REDACTED] speech-language annual eval. (Jt. Ex. 10)
5. [REDACTED] annual review/aural rehabilitation assessment (Jt. Ex. 11)
6. Aural rehabilitation discharge report by [REDACTED] audiology Corp. (Jt. Ex. 12)
7. [REDACTED] speech-language six month eval. (Jt. Ex. 13)
8. Aural rehabilitation six month review summary by [REDACTED] (Jt. Ex. 14)
9. Physical therapy evaluation/assessment by [REDACTED] Pediatric [REDACTED] Services (Jt. Ex. 15)
10. Occupational therapy evaluation by [REDACTED] Services (Jt. Ex. 16)

The IEP team also considered reports that described the following evaluations:

1. Audiological Evaluation by [REDACTED]  
[REDACTED] was evaluated to determine her ability to access sound using her hearing aids in a classroom environment. Ms. [REDACTED] found that it was adequate for [REDACTED] to be in a general education classroom. In addition, she recommended an auditory discrimination goal and objectives. It was noted [REDACTED] auditory management occurs through [REDACTED] Memorial Hospital.
2. Speech Language evaluation by [REDACTED]  
Her evaluation showed [REDACTED] abilities with speech were age appropriate with peers that do not have a hearing loss. However, she noted [REDACTED] made substitution errors of certain sounds and had difficulty with her "sss" sound production. Goals and objectives were developed for sound production. In addition, it was found that [REDACTED] had difficulty with certain morphological markers. Goals and objectives were developed to address this concern.
3. Psychological Evaluation by Dr. [REDACTED]  
It was found [REDACTED] attention level was developmentally appropriate and her "pre-academic skills were found to be consistent with same-age peers without hearing loss." (Tr. 588)

The IEP team used the information from the reports and evaluations to develop individualized goals and objectives that related to [REDACTED] needs. The team developed four functional goals for [REDACTED] that are listed above. Goal No. 1 relates to auditory skills. Goal No. 2

relates to certain targeted speech sounds. Goal No. 3 relates to her use of morphological markers. Goal No. 4 relates to speech production, lip closure and "m" speech sounds. These goals relate to the findings of her evaluations on her present levels of performance and her identified needs.

The IEP team proceeded to recommend the following related services for [REDACTED] IEP:

1. 30 minutes/week of itinerant services for deaf and hard of hearing students (specific instruction for implementing goals)
2. 30 minutes/week of speech/language therapy inside the general education classroom
3. 30 minutes/week of speech/language therapy outside the general education classroom (on a pull-out basis)
4. 60 minutes per year of audiology services (for evaluation purposes)

The supplementary aids and services for [REDACTED] in her early childhood program are also listed above. In addition, audiologist [REDACTED] testified she would observe [REDACTED] in the classroom to determine if she would need an assistive listening device. (Tr. 519-520).

These services, aids and accommodations are to be provided in [REDACTED] class at [REDACTED] Ms. [REDACTED] has over 20 years of experience as a teacher of children with disabilities and she has an endorsement in early childhood education. Her classroom is a general education early childhood program. She uses the High Scope curriculum that is centered around children's interests. Her program focuses on promoting school readiness for its students. She would be able to give [REDACTED] instruction based on standards of the Speech Perception Instructional Curriculum and Evaluation [REDACTED] that is included in [REDACTED] IEP. [REDACTED] is used to develop better audition skills and listing skills. (Tr. 593-594).

Ms. [REDACTED] proposed class would include five students, like [REDACTED] with IEPs and up to ten students who are enrolled in the Early Childhood Developmental Enrichment Center ("ECDEC"). Students enrolled in ECDEC have identified "at-risk" characteristics that qualify them for the program. These characteristics are not connected to disability. These students are

the general education students in the classroom. Some students may have exposure to another language, but they do not require bilingual support (English Language Learners). They would have English language proficiency.

Based on the above discussion of what occurred in the development [REDACTED] IEP, it must be concluded that her IEP has been designed to give her a substantive FAPE program. The evidence leads to the conclusion that [REDACTED] IEP is reasonably calculated to confer educational benefit to her.

3) Least Restrictive Environment ("LRE")

The IDEA creates a statutory presumption in favor of "mainstreaming" and provides that a school district must ensure that students with disabilities are educated with their non-disabled peers to the maximum extent appropriate. 20 U.S.C. § 1412(a)(5). In [REDACTED] case, her IEP gives her a placement in an appropriate general education classroom where she can interact with non-disabled peers. If her placement were at [REDACTED] she would be attending school only with disabled students who are deaf or hard of hearing. The evidentiary record reflects that a general education placement at Hawthorne is [REDACTED] LRE. [REDACTED] language and communication skills are at the average range when compared to her hearing peers and she does not have any cognitive, academic, functional behavior, motor, or social/emotional deficits as compared to non-disabled, typically hearing peers.

4) Unilateral Placement

In the above discussion, it was determined that the District's IEP provided [REDACTED] with a FAPE. The parents have not met their burden of proving the first element of the Burlington standard. Under these circumstances, it is not necessary to proceed to consider the merits of the

parents' placement of [REDACTED] at [REDACTED] and any equitable considerations involved in this case.

As an additional matter, consideration must be given to the specific issues presented by the parents that are recited above. The findings on these issues is as follows:

1. The IEP team recommended an appropriate program and placement to meet [REDACTED] needs.
2. The IEP team recommended an appropriate level of services and accommodations to respond to [REDACTED] needs.
3. The teachers and providers in [REDACTED] program (particularly, [REDACTED] and [REDACTED] have the necessary background, training and experience to properly implement her IEP.
4. The IEP team properly considered [REDACTED] language and mode of communication.
5. The IEP and related records and reports adequately and appropriately reflect [REDACTED] needs for special education and related services.
6. The IEP and related records and reports describes how [REDACTED] hearing loss affects her development.
7. The record shows the IEP team considered a continuum of services and placements designed to meet [REDACTED] needs, including placement at [REDACTED] (See, IEP's Placement Considerations)
8. The parents failed to show the District's IEP is not appropriate.

Also, the parents raised other concerns that need to be addressed. The parents introduced evidence to suggest [REDACTED] needs to stay at [REDACTED] in order to receive intensive services to be better prepared to keep pace with hearing peers and be ready to be mainstreamed in a kindergarten class. They believe this type of educational approach would have also been helpful to their older daughter. The evidence shows the parents are very concerned about their daughters' futures. However, the District's obligation is to base [REDACTED] IEP on findings related to her demonstrated needs and performance levels. Her evaluations showed in part that she needed certain articulation goals, and the record shows the parents and [REDACTED] representatives

helped develop those goals and objectives. These goals respond to her needs and are not deficient. Likewise, the IEP's related services and accommodations are designed to meet her needs as a hearing impaired student who utilizes two hearing aids.

Furthermore, the parents claim [REDACTED] early childhood program would not be an appropriate least restrictive environment for [REDACTED]. The parents support their argument by referring to a U.S. Department of Education 1992 Policy Guidance (19 IDELR 463A) and a 2005 ISBE Memorandum No. 05-3 that discuss services and placement decisions for students who are deaf or hard of hearing. However, these documents state these decisions should be based on a student's demonstrated needs. Not every deaf or hard of hearing student requires a private, more restrictive placement. In [REDACTED] case, her language and communication needs were explored and determined through the IEP process. The evidenced developed in this process supports a decision that gives her a general education placement for her IEP in the [REDACTED] early childhood program with English speaking children who are not hearing impaired. Her IEP evaluations determined she had skill and behavior levels that were consistent with same age peers without a hearing loss.

### **ORDERS**

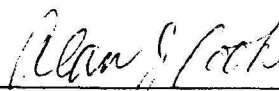
1. The above-described issues that were raised by the Parents are dismissed for the reasons stated in this Decision.
2. The Parents' request for private placement and reimbursement of costs and expenses is denied.
3. The District shall submit proof of compliance with these orders to the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, Illinois 62777 within 35 days from the receipt of this decision.

**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 who is aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 Ill. Comp. Stat. 5/14-8.02a(i), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision is mailed to the parties.

**Certificate of Service**

The undersigned Hearing Officer certifies that he served copies of the aforesaid Decision and Order upon parent/student and District/Director of Special Education, through their counsel or representative, and the Illinois State Board of Education at their submitted addresses by certified mail by depositing same with the United States Postal Service at Chicago, Illinois with postage prepaid before 5:00 p.m. on January 8, 2011.



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ALAN J. COOK  
Impartial Due Process Hearing Officer