Case Number: 2011-0063
[redacted] **vs.** [redacted]
Hearing Officer: [redacted]

APR 06 2011

Illinois State Board of Education
Special Education Services
100 North First Street
Springfield, Illinois 62777

Impartial Due Process Hearing Decision
Cover Page

Instructions: Complete this form and return it along with the decision. The information collected on this form will be used for the purpose of indexing the decision by subject matter as required by 23 Illinois Administrative Code 226-695

District Name [redacted] **Phone: 217-864-2366**
Superintendent
Address
Represented by

Parent Name [redacted] **Phone:** [redacted]
Address
Represented by

Date and Timelines
Date of Written Request: 08/18/2010
Date of Pre-hearing Conf: 10/29/2010

2-10
Date of Hearing: ~~03/25~~/2011 to 3/25/2011 12:00:00 AM
Date of Decision: 4-4-11

Summary of Decision

Student and his Parent had a dispute with the School District over whether Student should be educated at home or whether at Student needed to be educated at a school placement. The undersigned found that the only reasonable placement was a homebound placement given the nature of Student's disabilitities.

IN THE MATTER OF [redacted]	)	
	)	**ISBE CASE NO. 2011-0063**
	)	
v.	)	**Joseph P. Selbka**
	)	Impartial Due Process
[redacted]	)	Hearing Officer

I. Introduction and Procedural History

1. [redacted] ("Student"), lives in the [redacted] Unit School District [redacted] ("District"). Student designated his Parent, [redacted] ("Parent") to make educational decisions for him. Parent filed the present due process complaint. Mediation occurred on August 26, 2010, and no issues were resolved. A prehearing conference occurred on October 29, 2010. The hearing occurred on February 10 and 11, 2011. The undersigned also issued an order regarding Student's stayput placement while these proceedings were pending. After the evidentiary portion of the hearing was completed, the parties requested time to file closing briefs. The Parent requested and was granted two extensions to file her brief. By March 25, 2011, both parties had filed their closing briefs, and Parent filed a short reply on April 1, 2011.

II. Issues to Be Decided

2. The sole issue to be decided is whether Student's special education placement should be located at Student's home or at an alternative classroom in the District's high school. The parties have stipulated that the time period for Student's instruction will begin at one hour per day. Moreover, although the District could arguably have presented a defense that medical information first introduced at the hearing should have been presented to the IEP team prior to a due process hearing, the District specifically waived this defense (Tr. 249-251). Therefore, the undersigned will consider all evidence necessary to determine whether Student should have a homebound placement or a placement at school.

3. Second, there were several issues which were raised during the hearing (regarding techniques used to best educate Student) and other minor issues. The undersigned will not address those issues as they were not set forth in the complaint or at the statutory prehearing conference. Under the School Code, a hearing officer is only permitted to address issues properly raised in a complaint. 105 ILCS 5/14-8.02a(g-50).

III. Findings of Fact

4. Student is an eighteen year old who has completely delegated his right to make educational decisions to his mother (SD Ex. #28, pg. 134). Student could not participate extensively in his own due process hearing due to his disabilities (P. Ex. #2).

5. Student has been eligible for special education from the District since 2008 (Tr. 10, SD Ex #1, pg. 17). He was classified under the disability term, specific learning disability (Tr. 317, SD Ex #1, pg. 17).

6. On or about August 19, 2009, Student fell at [redacted] Hospital while submitting to a blood test and hit his head repeatedly (Tr. 10, 67, P Ex #1, January 20, 2011, referral letter from Dr. [redacted].

7. As a result of the fall, Student has post-concussion syndrome[1] ("PCS") (Tr. 67, 71-72, 280).

8. PCS is an extremely rare condition wherein Student has the symptoms of a concussion for a very long time (Tr. 40-41). Whereas most people who are diagnosed with a concussion recover relatively quickly after the trauma with quiet and rest, people with PCS have concussion symptoms which continue for an extended period of time (Tr. 49-53).

9. With a typical patient who has a concussion, the neurochemicals in the brain are knocked out of place by the trauma (Tr. 60-62). If those who have a concussion don't have complete rest to recover, PCS can result (Tr. 52).

10. Dr. [redacted] ([redacted]) testified on behalf of Student. [redacted] also relayed opinions of two doctors at the University of [redacted] Medical Center who are also treating Student, Doctors [redacted] and [redacted] ([redacted] and [redacted] respectively) (Tr. 43).

11. [redacted] a medical doctor who is certified in family practice and sports medicine (Tr. 37). [redacted] has been practicing in Decatur for 13 years and is a sports concussion specialist (Tr. 37).

12. Student experiences the following symptoms as a result of his PCS: memory issues, visual disabilities; visual motor problems; reaction times and headaches (Tr. 94, 402-407). Memory issues generally lead to processing problems for Student while he is being taught (Tr. 94). [redacted] used an accepted test known as an "impact test" to determine whether Student had [redacted] and Student's symptoms from [redacted] (Tr. 46-48).

13. [redacted] also testified that certain stimuli, both physical and cognitive, can make [redacted] worse (Tr. 77, 92-93). Said stimuli can make a patient's headache, visual problems, memory problems, and concentration problems worse (Tr. 77).

14. [redacted] testified that the stimuli of a regular classroom and school setting would almost certainly cause a deterioration of Student's physical condition given the stimuli of a normal school environment (Tr. 80-81). [redacted] also opined to a reasonable degree of

[1] The District is not challenging Student's diagnosis of [redacted] (Tr. 280), and the Parent presented limited evidence regarding the diagnoses of Student's prior neurologists (primarily to show the previous diagnoses were mistaken). Neither the Parent nor the District used evidence of prior diagnoses in support of their respective claims as to what Student's current placement should be. The undersigned therefore makes no findings as to whether previous diagnoses by Dr. [redacted] or Dr. [redacted] were correct, mistaken, complete or incomplete.

medical certainty that a classroom environment with a few other students (like the contained special education classroom proposed by the District) posed a substantial risk to Student (Tr. 82). Specifically, [redacted] opined that there was a substantial risk that Student's symptoms would worsen and Student's condition would deteriorate in the District's proposed placement (Tr. 82-83, 182-185).

15. [redacted] testified that Student should be provided a stimulus-free environment to the extent possible, which in his opinion, is a homebound placement (Tr. 185, 190). One of the possible stimuli is social interaction with other students (Tr. 186). Another possible stimulus is adapting to a school environment (Tr. 186-188).

16. [redacted] testified that Student should not be subjected to the greater stimuli of a school building until Student could tolerate three to four hours of homebound instruction (Tr. 80, 200).

17. Student also has social anxiety arising from the PCS (Tr. 281, 407). Interaction with other students makes Student's [redacted] problems worse (Tr. 281).

18. Student has vision problems in that sometimes Student's brain does not process what his eyes are seeing (Tr. 280).

19. While working at home during an agreed upon ESY class in the summer of 2010, Student would often become too ill due to headache to work for a complete hour (Tr. 25-26). Student's teacher and District witness, [redacted] ("KB") corroborated that Student has symptoms associated with PCS, including concentration problems and headaches.

20. [redacted] and [redacted] did not testify at the hearing. [redacted] did prescribe a homebound placement as medically necessary to Student (SD #56, pg. 356). [redacted] did not provide reasons in her written report as to why Student needs a homebound placement. [redacted] did provide some hearsay evidence as to why [redacted] believes Student needs a homebound placement.

21. The principal of the District high school, [redacted] ([redacted]) and the District's assistant special education director, [redacted] ([redacted]) testified on behalf of the District. Both District witnesses testified regarding the District's ability to accommodate some of the symptoms and manifestations of Student's PCS. Both witnesses testified that they believed Student could be accommodated in the contained special education resource classroom (Tr. 264, 370-371).

22. [redacted] has been a principal at the District's high school or another Illinois High School for 25 years (Tr. 260). Prior to that, he was a teacher at the District's high school (Tr. 260). [redacted] has also been a coach and has had with experience with concussions from his work as a coach (Tr. 229, 260). [redacted] has also participated in many IEP meetings in accommodating students who are eligible for special education (Tr. 261). RN has been working in the area of special education since 1978 beginning as a special education

teacher. She has been a special education administrator since 1993. RN has been a special education assistant director or a school district or special education cooperative since 2000. See Tr. 308-309.

23. [redacted] testified that any homebound instruction is inferior to a classroom experience (even a contained classroom like the one the District is proposing as Student's placement) (Tr. 264). RN testified that it is helpful in reducing social anxiety to keep students at school so that students can learn to cope with their anxieties in a social environment (Tr. 315-316). Moreover, students gain from academically and socially from interactions with other students and multiple teachers (Tr. 334-335, 370-371).

24. The District also received notifications from Dr. [redacted], Doctor [redacted] and Dr. [redacted], and Doctor [redacted] that Student could return to school on various dates certain. None of these doctors testified at the hearing. Nor did any of these doctors relay the basis for their opinions that Student could return to school.

25. The District's proposed placement is a normal classroom with three to four students taught by a teacher who is multi-certified in several areas as well as a special ed certification (Tr. 265). In the District's proposed placement, Student would be with several other students, including students who are not eligible for special education (Tr. 265-266).

26. The District proposed to accommodate Student's disabilities, including his needs related to vision (Tr. 267); Student's ability to concentrate for long periods of time (Tr. 267); any social-emotional issues associated with Student's social anxiety (Tr. 310, 314-315); Student's processing deficits (Tr. 310-311); and Student's concentration issues (Tr. 311-312).

27. The District also has the ability and often does accommodate students who are sensitive to light and sound by modifying schedules and classrooms and by providing assistive technology like specialized computer screens and specialized lighting (Tr. 266-267, 313).

28. The District also accommodates students with persistent headaches by allowing rest breaks and by changing school environments to accommodate the student (Tr. 314).

29. RN testified that the District could put together a one-to-one instructional setting which completely eliminates the social stressors, but which keeps students in a school environment (Tr. 372-373).

30. The District's proposed placement does not insulate Student from all stimuli (Tr. 274), as the contained classroom is adjacent to the main hallway through which all regular education students pass.

31. Prior to this hearing, the District did not have sufficient information about the effects and manifestations of PCS to an extent necessary for the District's IEP Team to properly accommodate Student's PCS in a school setting (Tr. 337-350, 353-354, 360-361. 364-365, 374-375, 377, 383).

Inferences and Credibility Findings

32. To the extent necessary, the undersigned makes a credibility finding in favor of DWB, Student, and Student's mother and against any other witness regarding Student's symptoms stemming from PCS. The undersigned bases this credibility finding on: the testimony of [redacted] Parent, and Student; the fact that the District is not challenging Student's diagnosis; the District has not challenged any of Student's symptoms; and District witness, [redacted] has partially corroborated descriptions of Student's symptoms.

33. The undersigned makes a credibility finding in favor of [redacted] and [redacted] hat all of Student's symptoms and manifestations of his PCS (except for the possibility of stimuli making Student's PCS symptoms worse and/or permanent) can be accommodated in an alternative classroom. Student's social anxiety, vision and visual motor disabilities, memory related disabilities, processing disabilities, and Student's headaches can all be accommodated in the classroom. Techniques testified to by RN and [redacted] including teaching Student to cope with his anxiety, changing environments and classroom configurations, providing Student with specialized technology, and providing rest breaks, can clearly accommodate Student's current PCS symptoms. Moreover, commonly used techniques such as redirection can accommodate Student's processing and concentration issues. In making this credibility finding, the undersigned relies upon the unrebutted testimony of [redacted] and [redacted] as well as the undersigned's expertise in special education and special education law that disabilities similar to Student's are accommodated in classrooms all the time.

34. The undersigned makes a credibility finding in favor of [redacted] that the stimuli which Student will encounter in a classroom (even an empty classroom) carries a substantial risk of causing Student's PCS symptoms to become significantly worse. In support of this credibility finding, the undersigned relies upon the extensive testimony and expertise of [redacted] in regard to his knowledge of PCS, as well as the testimony of [redacted] egarding the characteristics of the proposed classroom, and the expertise of the undersigned in regard to special education classrooms.

35. Moreover, the undersigned believes, and draws an inference that there is simply no way for the District to limit Student's exposure to dangerous levels of stimuli (as testified to by [redacted] in any kind of classroom with or without other students present. The undersigned bases this inference on the testimony of [redacted] as to the level of stimuli which would be dangerous to Student and the expertise of the undersigned as to stimuli which Student would encounter in any school experience.

36. The undersigned draws the inference that the risk to Student of worsening symptoms as a result of the stimuli of any school experience outweighs the (admitted) benefits of

Student interacting and being educated alongside his fellow students based upon the testimony of [redacted] as to the possible ramifications to Student of worsening symptoms of PCS.

37. The undersigned draws the inference that it would be unreasonable to place Student in a classroom placement because the risks to Student's health as testified to by [redacted] constitute such a substantial risk to Student so as to outweigh any proposed benefit of the District's proposed placement.

38. The undersigned makes a credibility finding against [redacted] and [redacted]s testimony in regard to their claim that they can accommodate Student's PCS based on the fact that nearly any stimuli associated with attending school is extremely likely to make Student's PCS symptoms substantially worse (as found through the inferences and credibility findings set forth above). The undersigned also bases the credibility finding on the fact that no District person was properly informed of all of Student's PCS symptoms (including the fact that stimuli could make Student's PCS symptoms much worse).

39. The undersigned makes no inferences for the findings of any medical expert other than [redacted] because no party presented the inferential processes used by said medical experts in making their opinions or the facts upon which said experts based their opinions. As such, the undersigned assigns no weight to the opinions of all medical experts other than [redacted]

IV. Conclusions of Law

Burden of Proof and The Authority of The Hearing Officer

40. The Federal and State Special Education Laws are set out in the Individual with Disabilities Education Act, 20 U.S.C.A. 1400 *et seq.* ("IDEA") and Article 14 of the Illinois School Code, 105 ILCS 5/14-8.02a. In enacting IDEA, Congress intended to establish a "cooperative federalism." *Evans v. Evans*, 818 F.Supp.1215, 1223 (N.D. Ind. 1993). Compliance with minimum standards set out by the federal act is necessary, but IDEA does not impose a nationally uniform approach to the education of children with a given disability. *Id.* Thus IDEA does not preempt state law if the state standards are more stringent than the federal minimums set by IDEA. *Id.*

41. In regard to the burden of proof in a special education proceeding, the Supreme Court has held that the ultimate burden of persuasion lies with the party filing the due process complaint. *Schaffer v. Weast* 546 U.S. 49 (2005). However, the Illinois School Code has placed a heightened burden on school districts. 105 ILCS 5/14-8.02a (g-55). In a due process proceeding, the school district has the initial burden of production to show that the special education needs of the student are identified and that the special education program and related services proposed are adequate, appropriate and available. *Id.* After the District meets its initial burden of production, the ultimate burden of persuasion then shifts to the parent as the filing party to prove her case. The parent must prove her case by a preponderance of the evidence.

42. In determining whether a placement is proper under IDEA and the School Code, the hearing officer does not need to defer to the school district witnesses. *School District of the Wisconsin Dells v. Z.S.*, 295 F.3d 671, 676 (7th Cir. 2002)(like Wisconsin ALJ's, Illinois Impartial Due Process Hearing Officers are presumed to be experts on special education and special education law, see 105 ILCS 5/14-8.02c); *Board of Education of Murphysboro Community Unit School District No. 186 v. Illinois State Board of Education*, 41 F.3d 1162, 1167 (7th Cir. 1994)(hearing officer characterized as expert witness in determining whether placement is proper).

Therefore, even though a medical expert witness cannot prescribe educational placements (*See e.g. Marshall Joint School District No. 2. v. C.D. ex rel Brian D.*, 616 F.3d 632, 638-642 (7th Cir. 2010), a hearing officer can override a school district's proposed placement after hearing pertinent medical testimony. Specifically, a hearing officer can use his/her special expertise regarding special education and special education law to draw inferences as to the appropriate placement under the law—after taking into account the physical and psychological manifestations and symptoms of any given disability as testified to by a medical expert. *School District of the Wisconsin Dells v. Z.S, supra; Board of Education of Murphysboro Community Unit School District No. 186 v. Illinois State Board of Education, supra. See also Heather S. v. State of Wisconsin*, 125 F.3d 1045, 1053-1054 (7th Cir. 1997)(hearing officer characterized as having special expertise in special education law). *See also Marshall Joint School District No. 2. v. C.D. ex rel Brian D.*, 616 F.3d 632, 640 (7th Cir. 2010) (a medical expert's diagnosis is important evidence and should be considered by the IEP Team and, by extension, hearing officers, in determining a student's special education placement).

43. Under federal administrative law, hearsay is admissible as long as it is relevant and material. *Otto v. Securities and Exchange Commission*, 253 F.3d 960, 966 (7th Cir. 2001). Expert opinions are admissible if the experts are considered qualified under a relaxed standard similar to the *Daubert* standard used in the federal courts. *Pasha v. Gonzalez*, 433 F.3d 530, 535 (7th Cir. 2005).

Moreover, hearing officers can make reasonable inferences from the evidence adduced at trial. However, like in all administrative adjudications, the inferences must be supported by facts proved or admitted. *National Labor Relations Board v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 814-815 (1990)(Scalia, j. dissenting). The inferences must be drawn from facts through a process of logical reasoning. *Id.* Thus, the hearing officer must draw an accurate and logical bridge between the evidence and result. *Frobes v. Barnhart*, 467 F.Supp.2d 808, 817 (N.D. Ill. 2006). Moreover, any inference a hearing officer makes must be supported by substantial evidence. Substantial evidence means relevant evidence that a reasonable mind might accept as adequate to support his/her conclusions. *Frobes v. Barnhart*, 467 F.Supp.2d 808, 817 (N.D. Ill. 2006).

Similarly, to the extent the hearing officer relies upon expert opinions, the expert opinions must be inferred ultimately from facts in the record, and the inferential process by which an expert reaches his/her conclusions must be fully explained. *Zamecnik v. Indian Prairie School District No. 204*, ___F.3d____, 2011 WL 692059 (2011) (expert testimony must be grounded by material facts in the record and the inferential process by

which an expert reaches his/her conclusions must be fully explained in the record); *Mid-State Fertilizer Co. v. Exchange National Bank of Chicago*, 833 F.2d 1333, 1339-1340 (7th Cir. 1989)(in litigation, expert opinions must be grounded in facts and inferred from a process of logical reasoning).

44. Illinois law imposes an even more stringent standard on administrative hearings. In addition to the substantial evidence standard, Illinois law requires that administrative decisions be supported by "competent evidence." Competent evidence is either: (1) evidence which would be admissible in a trial; or (2) inadmissible evidence of such a character which responsible persons are accustomed to rely upon said evidence in serious affairs (which we can only rely upon if admissible evidence is unavailable). *Starkey v. Civil Service Commission of the State of Illinois,* 105 Ill.App.3d 904, 910 (1st Dist. 1983) *rev'd on other grounds* 97 Ill.2d 91(1983).

45. Hearing officers are entitled to and often need to make credibility findings. However, in such cases, hearing officers should provide reasons for why they found testimony credible or not credible. *Marshall Joint School District No. 2. v. C.D. ex rel Brian D.*, 616 F.3d 632, 638 (7th Cir. 2010)

46. Illinois law also imposes upon all administrative hearing officers the obligation to properly make an administrative record when parties present their cases *pro se. Meneweather v. Board of Review,* 249 Ill.App.3d 980, 984-985 (1992). As in most state administrative proceedings, Illinois administrative hearing officers have an obligation not only to listen to evidence presented by the parties, but to affirmatively find facts necessary to properly to determine which party should prevail under the law. *Meneweather, supra;, See also,* Frank Cooper, State Administrative Law, Vol. 1, Bobbs-Merrill Company, Inc. (1965), pg. 336.

In administrative litigation, the hearing officer must be concerned with not only ensuring a fair process wherein the parties can present evidence, but also a proper result under the law because there is a significant public interest in properly having the law carried out. Landis, John, "*The Administrative Process*," Yale University Press (1938) excerpted in Foundations of Administrative Law, Schuck, Peter (ed.) Foundation Press (2004), pp. 13-14. For this reason, administrative hearing officers are constitutionally permitted to depart from the adversarial model and independently obtain evidence and develop an administrative record while remaining a neutral and impartial decision maker. *Sims v. Apfel,* 530 U.S. 103, 110-11 (2000); *Richardson v. Perales,* 402 U.S. 389, 400-401 (1971) (social security administrative law judges constitutionally permitted to develop the record to determine all facts necessary whether benefits should be granted under law).

For this reason, the General Assembly provided impartial due process hearing officers with significant powers to independently compel the production of evidence necessary to reach a correct determination. Specifically, impartial due process hearing officers in Illinois are empowered to: (1) compel production of any evidence prior to the close of the administrative evidentiary record, 105 ILCS 5/14-8.02a(g-55); (2) order independent evaluations at school district expense, 105 ILCS 5/14-8.02a(g-55); and (3) question party witnesses during due process hearings, 23 IL ADC 226.660(b). In the

present case, the Student's Parent proceeded *pro se* necessitating an active role for the hearing officer in developing the record.

Standards for Deciding Whether the Student is Being Educated in the Least Restrictive Appropriate Environment

47. Under IDEA, the School District has an obligation to educate Student to the greatest extent appropriate with his nondisabled peers. 20 U.S.C.A. 1412(a)(5)(A); *Board of Education of Township District No. 211 v. Ross*, 486 F.3d 267, 277 (7th Cir. 2007). Placements which require "special classes, separate schooling, or other removal of children with disabilities from the regular educational environment may occur 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." *Id.*

48. The Seventh Circuit has declined to adopt any sort of multi-factor test for assessing whether a child must have a placement in a school environment. *Ross, supra. See also Beth B. v. Van Clay,* 282 F.3d 493, 499 (7th Cir. 2002). The ultimate question is whether the education in the school iss satisfactory, and, if not, whether reasonable measures would make it so. *Id.*

In the present case, the School District's proposed placement would not violate IDEA: (1) if the placement for Student at the District's main school in the District's contained, alternative classroom can safely provide Student with a satisfactory education; or (2) if reasonable accommodations can be implemented to safely provide Student with a satisfactory education at the District's proposed placement. *Id.* Otherwise, a homebound placement is the least restrictive placement under IDEA.

49. In determining whether Student is receiving a satisfactory education, some factors which the undersigned uses to evaluate the placement are: (1) whether a segregated placement is superior, and if so, whether the services which make the segregated placement superior can be replicated in the classroom, *Board of Education of Township No. 211 v. Michael R.* , 2005 WL 2008919 (N.D. Ill. 2005) citing *Roncker v. Walter*, 700 F.2d 1058 (6th Cir. 1983) *affirmed* 486 F.3d 267 (7th Cir. 2007); (2) whether there are educational benefits to mainstreaming, *Michael R. supra,* citing *Sacramento v. Rachel H. by Holland,* 14 F.3d 1398 (9th Cir. 1994); (3) whether there are non-academic benefits to mainstreaming, *Id.*; (4) whether there is an effect of mainstreaming on the regular classroom, *Id.*; (5) whether there is a risk that the student is in danger of being physically harmed in the proposed classroom placement, 23 Ill.Admin.Code. 226.330; (7) whether the student is disruptive to his classmates in a classroom. *Z.S., supra,* 295 F.3d at 672; *MR by RR v. Lincolnwood Board of Education District 74,* 843 F.Supp. 1236, 1238 (N.D. Ill. 1994) citing numerous cases.

50. The School District's obligation to educate a student to the greatest extent possible with his/her nondisabled peers is often referred to as "mainstreaming." However, When: (1) a student cannot be educated in a regular classroom because his/her disabilities are too severe; and (2) a student cannot benefit from the social contact that a school setting

provides, then the concept of "mainstreaming" is inapplicable. *Emily Thomas v. Cincinnati Board of Education,* 17 IDELR 113, 918 F.2d 618 (6th Cir. 1990).

V. Application of Law to Fact

51. The undersigned finds that: (1) there is no safe way to educate Student in any classroom with other students[2]; (2) no accommodations can reduce the risk of educating Student in a classroom with his peers; (3) in light of the fact that Student cannot safely interact socially with other students or be taught with other students, there is no social or academic benefit to mainstreaming; (4) any accommodations to any type of classroom which would reduce stimuli to an acceptable level would require all other students not to be in the classroom and thus disrupt other students' educations; and (5) the stimuli of being in a classroom (even alone) may cause Student's PCS symptoms to worsen.

52. In light of the above stated findings, the undersigned finds that any school placement would be unreasonable, and that the only reasonable placement at this point in time is a homebound placement.

53. As such, the Parent has met her burden of persuasion that a homebound placement is the only placement reasonably calculated to provide Student with an educational benefit. The District has not met its burden of production that the Student has been provided a placement reasonably designed to provide him with an educational benefit.

54. The undersigned makes no determination as to any issue unrelated to whether Student should be instructed in a homebound placement or the length of the homebound placement—as those issues are the only issues included in the due process complaint or necessary to effectuate a remedy as to the issues in the due process complaint.

VI. Order

55. The IEP Team shall meet within fourteen days of receiving this order. The IEP Team shall draft an IEP which has the following provisions. First, the IEP will mandate a homebound placement. Second, the IEP shall initially specify that Student shall be provided one hour of instruction per day. Third, the IEP shall allow for the increase of instructional time at home as Student is able to tolerate longer periods of instructional time. The method in the IEP of determining whether Student is able to tolerate additional instructional time daily shall be acceptable to Student (or his Parent if she continues to have the right to make educational decisions for Student) and his treating medical physicians. Fourth, the IEP shall state that no IEP Team will change Student's homebound placement to a school placement until Student can tolerate four hours of homebound instruction per day. The District shall provide proof of compliance with this order to the Illinois State Board of Education, Compliance Division, by April 30, 2011.

---

[2] While admittedly teaching Student at home carries risks, no party has requested that the undersigned order that Student have no education at all. Therefore, the undersigned will not make any determination whether Student should not receive any education.

VII. Right to Request Clarification

56. Section 14-8.02a(h) of the School Code, allows the hearing officer to retain jurisdiction after the issuance of the decision for the sole purpose of considering a request for clarification. A request for clarification shall specify the portions of the decision for which clarification is sought and a copy of the request shall be mailed to the other parties and to the Illinois State Board of Education. The request shall operate to stay the implementation of those portions of the decision for which clarification is sought. I shall issue a clarification of the specific portion of the decision or issue a partial or full denial of the request in writing within ten days of receipt of the request and mail copies to all parties to whom the decision was mailed.

VIII. Finality of Decision

57. This decision shall be binding upon all parties.

IX. Right to File Civil Action

58. Any party to this hearing aggrieved by the final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 ILCS 5/14-8.02a(i) that civil action shall be brought in any court of competent jurisdiction within 120 days after this decision was mailed.

/S Joseph P. Selbka
Joseph P. Selbka
Impartial Due Process Hearing Officer

Date:4/4/2011

Joseph P. Selbka
53 W. Jackson, 956
Chicago, IL 60604
312-788-3310
Fax 312-788-3311
jselbka@sbcglobal.net

CERTIFICATE OF SERVICE

Joseph P. Selbka certifies under oath that on April 4, 2011, he served the following parties via certified mail, return receipt requested, the attached Impartial Due Process Hearing Decision, to the following parties at the following addressess:

1) [redacted]

2) Colette McCarty
Robbins, Schwartz, Nicholas & Taylor, Ltd.
132 South Water Street, Suite 420
Decatur, IL 62523

3) Mary Long
Illinois State Board of Education
100 North First Street
Springfield, IL 62777-0001

4) [redacted]

5) [redacted] School District [redacted]

Joseph P. Selbka
The Hearing Officer