

Case Number: 2011-0123  
[REDACTED] vs. [REDACTED]  
Hearing Officer: Harry A. Blackburn

JAN 20 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]  
Superintendent [REDACTED]  
Address [REDACTED]

Phone: [REDACTED]

Represented by [REDACTED]  
[REDACTED]

Parent Name [REDACTED]  
Address [REDACTED]

Phone: [REDACTED]

Represented by Pro-Se

Parent Name [REDACTED]  
Address [REDACTED]  
60353

### Date and Timelines

Date of Written Request: 10/18/2010  
Date of Pre-Hearing Conf: 12/20/2010

Date of Hearing: 01/06/2011 to 1/7/2011  
9:00 AM  
Date of Decision: January 17, 2011

### Summary of Decision

The Parents were unable to sustain their Burden of Proof in challenging the School District's recommended placement of the Student in a Public Day School Operated by the Special Education Cooperative of which the School District is a member. The Parent preferred the Student remain in the regular High School where he would attend had he not been disabled (Emotional/Behavioral Disability).

ILLINOIS STATE BOARD OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING

JAN 20 2011

IN THE MATTER OF

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v.

Brown County CUSD 1,

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ISBE CASE NO. 2011-0123

Harry A. Blackburn

Impartial Due Process

Hearing Officer

**DECISION AND ORDER**

**Jurisdiction and Procedural Matters**

This matter is before the undersigned Hearing Officer for a due process Hearing pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA 2004"). 20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)-(D), 34 CFR 300.511(c), Section 14-8.02(b) of the Illinois School Code [105 ILCS 5/14-8.02c(b)], and 23 Illinois Administrative Code 226.630(a).

**BACKGROUND**

The Parents, the Student's natural mother and the step-father (with the Student since age 3), filed a due process complaint notice ("DPCN") on October 18, 2010. The undersigned was appointed as Hearing Officer by the Illinois State Board of Education ("ISBE") on October 20, 2010. The School District ("District") filed its response to the Parents' DPCN on or about October 27, 2010. After several attempts to contact the Parents to arrange an initial status teleconference call between the School District Parents and the Hearing Officer, the Hearing Officer was successful in convening an initial status teleconference call on October 27, 2010 for the purpose of discussing resolution or mediation efforts and establishing Pre-Hearing conference and Hearing date(s). The parties and Hearing Officer participated in a telephone Pre-Hearing Conference held on December 20, 2010. The Hearing took place on January 6 & 7, 2011 at the ██████████ ██████████ Administrative Offices. The Parents represented themselves and attended each day of the Hearing. The Mother, occasionally excused herself for health reasons, but the step-father attended both days and was actively involved in posing questions to all witnesses testifying at the Hearing. The School District was represented by Counsel and the Superintendent of the School District and the Director of the Special Education Cooperative, attended each day of the Hearing. The Hearing was officially closed until January 7, 2011.

**Issues Presented and Remedies Sought**

**Matters In Dispute**

**Parent Issue(s)**

The Parents' filed their Due Process Complaint Notice ("DPCN") with the School District on or about October 18, 2010. The Parents' alleged that the outcome of the

October 15, 2010 IEP meeting for the Student was to send him to [REDACTED] School within 10 days of the meeting. The Parent feels that the current IEP dated October 6, 2010 was in effect for only five days and had limited if no time to see its effectiveness. Even if the plan had been in effect for a longer period of time the Parents' feel that all avenues to make the Student successful at [REDACTED] have not been explored. The Parents allege that the District has taken the approach that it does not have the resources to make the Student successful at [REDACTED] High School. The Parents' thought the purpose of an IEP was to keep their son at [REDACTED] instead of sending them on to the next school.

### **Relief Sought By the Parents**

The Parents' want their child to remain at [REDACTED] the home school where the Student would attend with non-disabled peers with proper support provided to their son, and not at the proposed placement by the School District at a public day school administered by the special education co-operative.

### **The District's Response to Parents' identified issues and relief:**

The District disputes the allegations contained in the DPCN. The District filed a response to the allegations in the DPCN to explain the actions it took, the options it considered and why it rejected certain options, a description of the evaluations, assessments, and records used in making the decisions, and a list of factors the District considered relevant to its actions. The Parents' DPCN alleges that the District has failed to provide a free appropriate public education ("FAPE") to the Student in violation of the IDEA because the District recommended a placement for the Student at [REDACTED] School. The District disputes this allegation, as the placement was appropriate based upon the recommendation of the IEP team, and was reasonably calculated to provide the Student with FAPE in the least restrictive environment ("LRE").

Prior to the start of the 2010-2011 school year, the Student's Parents revoked consent for special education services. Prior to this revocation of consent, the Student had attended [REDACTED] School, a special public day school operated by [REDACTED] Special Education District, the special education joint agreement to which the District is a member. The last individualized education program ("IEP") written for the Student prior to the revocation of consent was developed on March 12, 2010.

The March 12, 2010 IEP placed the Student at [REDACTED] School for approximately 1,675 minutes per week, spending 100% of his time in special education, including special transportation, social work services, a classroom aide, and a behavior intervention plan ("BIP"). The [REDACTED] School placement was a continuation from an initial placement at [REDACTED] School pursuant to a February 24, 2009 IEP. The IEP team first recommended the placement at [REDACTED] following the significant struggles exhibited by the Student following his entry into the District after attending a unilateral parochial placement for some period of time. The Student's special education eligibility prior to revocation was under the category of an emotional disturbance.

According to the Student's most recent evaluation, completed in December, 2008, his academic and cognitive functioning were in the average range, but educational

performance suffered because of work refusal and lack of motivation. IEP team reports since that time continue to support the notion that the Student's educational difficulties are not due to cognitive or learning deficits, but due to the emotional and behavioral factors.

During the beginning of the 2010-2011 school year, following the revocation of consent for special education services, the Student attended ██████████ High School as a regular education Student. To put it mildly, the District avers, "he struggled." From the very beginning of the year, the Student had difficulty following school rules, getting to class on time, and getting to school on time. He consistently used profane language and exhibited disrespect to teachers. After he accumulated eighteen (18) disciplinary referrals, the Student was suspended for five (5) days beginning September 17, 2010. Following that suspension, the District contends that the Student refused to attend school.

On October 6, 2010, the Student was again determined eligible for special education. Based on existing evaluation data, the Student's eligibility remained in the category of an emotional disturbance. The IEP team created an IEP dated October 6, 2010 to attempt to address the Student's struggles at ██████████ High School. The IEP services included, *inter alia*, approximately 235 minutes per week in a special education classroom, a BIP and social work services. Under the October 6, 2010 IEP, the Student would spend a majority of his time at school in regular education. The IEP team agreed to reconvene in about a week's time to review the progress under this IEP.

On October 15, 2010, the IEP team met again to review the impact of the Student's IEP on his performance at school. The report of the IEP team and the school personnel who work with the Student indicates that the services included in the 10/6/10 IEP had no impact on the Student's behavioral compliance, work completion, and class attendance. The Student continued to refuse to comply with school staff and the plan that was outlined for him. He continued to be late to school, to be tardy to class, use profane and disrespectful language, and "hang out" in the in-school suspension room (where he was not to be). He only showed up for the special education resource period three (3) days. The Student also exhibited deficits in organization and focus.

The Student's academic performance was also of significant concern. Due to his refusal to complete work, the Student is currently failing each of his classes (other than resource), and it is mathematically impossible for him to recover any credit for the first semester at ██████████ High School. Accordingly, there are few motivators available for the District to attempt success at ██████████ High School for, at very least, the rest of this semester.

For these reasons, and because of the relative success in the past at ██████████ School, the IEP team recommended a change of placement to ██████████ School, where the Student could have significant behavioral supports in order to function, work on his academics and earn credits toward graduation. At ██████████ the Student would be able to recover credits on a quarterly basis, which would provide a better opportunity for attaining needed credits and shorter-term goals for academic motivation. When the Student had attended ██████████ School, he responded to the structure in that educational environment and developed a good relationship with the Principal at ██████████. He would often seek her out and speak with her about problems he was having at school. He only

left school once while at [REDACTED] previously. When the Student attended [REDACTED] School in the past, he was able to advance from grade to grade, and he is currently unable to do so at [REDACTED] High School. Furthermore, the Student has recently telephoned staff at [REDACTED] School to indicate his desire to return, according to [REDACTED] the School's Principal.

The October 15, 2010 IEP recommends placement at [REDACTED] school for approximately 1,675 minutes per week, spending 100% of his time in special education, including special transportation, social work services, a classroom aide, and a BIP. The IEP team decided to change the Student's placement to [REDACTED] School because the team believed the Student would benefit from the structure and services a more therapeutic setting such as a public day school could provide, and in this setting, the Student could make academic progress that has been absent during his time at [REDACTED] High School.

### Findings of Fact

The Student, presently is 14 years, 6 months old, was first referred for an initial Comprehensive Case Study Evaluation ("CSE") on September 22, 2004 when he was 8 years old in the 3<sup>rd</sup> grade. The "Summary and Analysis of Academic History" section of the CSE, dated 10/21/04, as written by the Student's teacher, Pat Henry, states the following: " the Student is a third grade Student who has always attended [REDACTED] Schools and has never been retained. The Student is struggling with third grade work. He appears to be working at a frustration level. He is unable to follow oral directions and stay with the class. He is unable to respond to directions unless the teacher is right beside him. If the teacher is not right beside him he is either far behind or far ahead of the class. Organizational skills are poor. Language and spelling skills are below normal and the Student reverses letters and numbers. He does receive Title I support for language. The Student is very distractible and not motivated. He appears to have strong feelings of inadequacy. The Student says that he feels stupid and doesn't measure up to his siblings. He avoids Work prefers to talk about guns, four-wheelers, and ramps." (SD B-4) The concern indicated on the referral form was: "reversal of letters and numbers, unable to follow oral directions and stay with the class-seems at frustration level-organizational skills below ave." (SD B-1)<sup>1</sup>.

A School Psychological Report was completed by [REDACTED]. The exam dates were 10/18/04 and 11/17/04. The interview date was 10/18/04. The learning environment date was 10/18/04. The adaptive behavior date was 10/18/04. In the "Background Information" section of the Report, the following information is listed: " the Student currently lives with natural mother, stepfather, two siblings and three stepsiblings. Biological father reportedly lives in town; however, he does not visit with his son. Stepfather is employed full-time at the [REDACTED] Illinois Department of [REDACTED]. Mother is a homemaker. A review of medical records indicates that the Student was born premature and labor was induced due to insufficient placenta. Developmental milestones occurred within normal limits. During his kindergarten year, tubes were placed in both years. The Student was recently diagnosed with Attention Deficit Hyperactivity Disorder and takes 25 mg of Concerta. He also suffers asthma and uses an Albuterol inhaler when

<sup>1</sup> Evidence is referenced by School District (SD) and Evidence Binder lettering. The Parent offered no direct evidence but referenced and relied upon the evidence binder submitted by the School District throughout the Hearing.

needed. The Student's records indicates that he has always attended [REDACTED] schools. He receives support services through the Title I program. The Student meets with the social worker weekly. He has never been retained. Attendance is reported to be typically consistent." (SD B-19) In the " Psychological Examination" section two tests are indicated as being administered to the Student. The Wechsler Intelligence Scale for Children-Third Edition ("WISC-III"), 10/18/04 and Wechsler Individual Achievement Test-Second Edition ("WIAT-II"), 11/17/04. On the WISC-III, the following scores were recorded: Verbal IQ: 106; Performance IQ: 104; Full Scale IQ: 106. On the WIAT-II, the following scores were recorded: Word Reading-3.2 grade equivalent ("GE"); Reading Comprehension-3.0 GE; Mathematics Reasoning-3.5 GE; Numerical Operations-2.8 GE; Spelling-2.3 GE and Written Expression 2.6 GE." [REDACTED] summarized her findings as follows: "the Student is currently a third grade Student at [REDACTED] Elementary School. He has never been retained. The Student has been diagnosed with Attention Deficit Hyperactivity Disorder and takes 25 mg of Concerta daily in the mornings. Results of this evaluation suggest that the Student is currently functioning within the average range of ability. Processing deficits were found to be in attention/concentration and memory skills. Although a person with his average ability, academic achievement in spelling and written expression fell below expected performance levels. Strengths emerged in reading decoding and map story problems. (SD B-21)

On 12/13 2004 an Eligibility Determination Conference was held. The Student's mother attended. This Student was found eligible for special education in the area of Specific Learning Disability. (SD B-27)

On 1/24/07 a "Services Plan for Private/Homeschooled Students" was developed when the Student was attending [REDACTED] School in [REDACTED] Illinois as a 5<sup>th</sup> grade Student. (SD B-67)

An IEP developed on 11/6/07, when the Student was in 6<sup>th</sup> grade, indicated "the Student is passing all of his classes; that he is of average intelligence with no processing deficits according to the WISC-III with an IQ of 106; he was diagnosed with ADHD and taking medication.; and no behavior that significantly impacts his educational performance. The Domain review stated the reason for meeting as "Exiting Special Education." The Psychological Report "File Review" (emphasis added) (SD B-79) conducted on 11/6/07 by [REDACTED] SSP, stated the reason for referral as being for a "case study reevaluation to determine eligibility for special services. The Student has been receiving special education services on a monitor basis for nearly one year. A file review was conducted to review previous testing." As background, the Psychological Report indicated that "the Student is a 6th grade Student who attended [REDACTED] Elementary School until 5th grade, when he began attending [REDACTED]. The Student has never been retained. During third grade the Student became eligible for special education services with a specific learning disability in written expression. The Student takes medication and receives counseling for these conditions. His behavior is appropriate at school. He has shown success receiving all instruction in the regular education environment for nearly one year." At the time of File Review, the Student's last Psychological Examination was performed on 10/18/2004 and 11/17/2004 respectively. The Student was administered the WISC-III. The Student's standard scores were as follows: Verbal IQ: 106; Performance IQ: 104; Full-Scale IQ: 106. On the

WIAT-II the Student scored as follows: Word Reading-106; Reading Comprehension-99; Numerical Operations-93; Math Reasoning- 105; Spelling-94; Written Expression-87. The Student's previous testing 'yielded average intelligence.' The Student demonstrated no processing deficits and an area of strength emerged in short-term auditory memory. His achievement in reading, math, and written language were within the low average to average range. His academic skills are comparable to others his same age. The Student has shown progress in his written expression skills and only receives special education services on a monitor basis." (SD B-79)

The School Psychologist's " Summary & Interpretation" stated that the Student "was referred for a special education re-evaluation to determine continued eligibility for special education services. A 'File Review' (emphasis added) was conducted to review previous test results to assist in determining appropriate placement. His intellectual functioning is within the average range with no processing deficits. His academic skills are within the low average to average range. The Student receives all instruction in regular education classes and only receives special education services on a monitor basis. The Student has shown success in regular education classes." (SD B-80)

The Student was found "not eligible" for special education and related services by the Multi Disciplinary Conference ("MDC") team, a result not inconsistent with the Parent's wishes not to have the Student participate, since the Student was attending a private parochial school and placed in a regular education classroom within that school.

A request for a case study evaluation was initiated by the regular education teacher, [REDACTED], on September 25, 2008. The reason for the referral was the Student's "emotional difficulties, poor academic performance (failing all classes) and disrespecting authority." The Summary and Analysis of Academic History and Current Educational Functioning provided by the Special Education Teacher, [REDACTED] dated 10/17/08 stated the following: "The Student is currently a 7<sup>th</sup> grade Student at [REDACTED] Middle School in Mt. Sterling, IL he attended [REDACTED] Elementary School until 5<sup>th</sup> grade. He attended 5<sup>th</sup>, 6<sup>th</sup> 7<sup>th</sup> at [REDACTED] school in [REDACTED] IL, then he returned to the [REDACTED] School District. The Student has never been retained. The Student received special education services with a specific learning disability in written expression from 3<sup>rd</sup> grade until the dismissal of special education services during his 6<sup>th</sup> grade year. Ability and achievement were commensurate and he was progressing academically in all regular education classes. Previous testing indicated average intelligence with no processing deficits. Achievement was within the average range within reading and mathematics while in the low average range in written expression. The Student has been diagnosed with ADHD and depression. He used to take medication for his ADHD. He received counseling services and neurobiofeedback, but these services have been discontinued. The Student is currently receiving social work services at school. The Student exhibits work refusal, defiance towards authority figures, anger, sadness and defensiveness. He is frequently removed from his classroom environment." (SD B-97)

A Domain Meeting was held on September 28, 2008, the reason indicated as "behavioral difficulties-motivation, work refusal." (SD B-100) The Parent granted consent for re-evaluation. A School Psychological Report was conducted. The exam dates were 9/25/08 and 11/3/08. The Interview Date was 10/30/08. The Learning

Environment observation dates were 10/7/08 and 11/3/08. The reason for the referral was "for a full and individual initial evaluation to assist in determining current special education eligibility, functioning levels and educational needs. The learning environment Student observations, one in History class and another in Literature class, described the Student as being not working on the tasks at hand and exhibiting behavior that was distracting to the learning environment. He was observed engaging in task avoidance activities such as sharpening his pencil for an excessive period of time, not opening his book or opening his book and flipping pages for an excessive amount of time and blurting out statements that were not on task and disruptive to the classroom lesson. The Student has also been observed "in hallways, office, area outside of the office, and study hall. The Student frequents the office. Typically he is angry, but sometime upset... The Student's behavior is typically argumentative. It appears as though he gets along peers. However the Student talks to them while they are trying to complete homework."

The Student's Emotional/Social Functioning was described. The Student attended ██████████ one month prior to attending the ██████████ Middle School. The middle school is departmentalized, unlike ██████████ where the Student had much more direct contact with the teacher. Four teachers, Literature, Science, English and History shared their observations of the Student. One teacher rated the Student as being happy as same-age peers but the other three teachers rated him as being much less happy than peers. All four teachers rated the Student's "Total Problems and Externalizing Problems" being within the clinical range as determined by the "Treatment Request Form ("TRF") Form" for Ages 6-18 and completed by the teachers. ██████████ teachers rated the Student's ability relating to "internalizing problems" as being within the clinical range. All teachers rated the Student in the clinical range on the "Aggressive Behavior Syndrome Scale." The Student was described as follows: "He argues a lot, is mean to others, is unusually loud, disobedient at school, demands a lot of attention, is stubborn, has sudden changes in mood, throws temper tantrums, threatens people and seems suspicious." All teachers rated the Student in either the borderline clinical range or the clinical range on the "Rule-Breaking Behavior Syndrome Scale." The Student was further described as follows: "does not seem to feel guilty after misbehaving, breaks school rules, hangs around with others who get in trouble, lies or cheats, prefers being around older children, sometimes sears, and sometimes chews tobacco." All teachers, except his Literature teacher, rated him Borderline clinical or clinical range on the "Attention Problems Syndrome Scale." The Student is described as follows: "he cannot concentrate, daydreams, talks out of turn, is impulsive, fails to finish things, is inattentive, and has produces school work .(SIC)" The ██████████ teacher and Science teacher rated him in the clinical range on the "Thought Problems Syndrome Scale" and noted that "he engages in nervous movements or twitches and has strange ideas." The Science teacher rated him in the borderline clinical range on the "Somatic Complaints Syndrome Scale" because "he complains about headaches, stomachaches and vomits without a known medical cause." ██████████ teacher also rated the Student in the borderline clinical range on the "Social Problems and Withdrawn/Depressed Scales" as well within the clinical range on the "Anxious/Depressed Syndrome Scale." The teacher's described the Student as having difficulty "getting with peers, seemed nervous, fearful withdrawn and sad." On the "Diagnostic Statistics Manual (DSM)-Oriented Scales," all four teachers rated the Student in the clinical range on the "Oppositional Defiant Problems Scale." They rated the Student in the borderline clinical range or clinical range on the "Conduct Problems and Attention Deficit Hyperactivity Problems Syndrome Scales." On the "ADHD

Subscales”, the Student’s scores for both Inattention and Hyperactivity/Impulsivity were high enough to warrant concern. The [REDACTED] teachers rated him in the clinical and borderline clinical ranges on the “Affective Problems Scale.” The [REDACTED] teacher also rated him in the borderline clinical range on the “Anxiety Problems Scale.” The School Psychologist concluded that the above referenced results suggest that the DSM should be consulted to determine whether the Student meets the criteria for “conduct problems, ADHD, affective disorders, anxiety disorders and somatic disorders.” (SD B-119-120)

The School Psychological Report reported cognitive functioning of the Student dating back to October 18, 2004 and November 17, 2004. The report lists several scores using the WISC– III . The Student’s verbal IQ score is 106; the Student’s Reading Comprehension score is 99; the Student’s Numerical Operations score is 93; the Student’s Math Reasoning score is 105; the Student’s Spelling score is 94 and the Student’s Written Expression score is 87. Previous achievement testing yielded low average to average results. The School Psychologist describes the Student as “performing below expectations due to work refusal and missing assignments.” “The Student does not appear motivated to perform well academically. Previously, he earned above-average grades.” (SD B120-21)

The School Psychologist's Summary and Recommendations written by School Psychologist, [REDACTED] indicate that “the Student was referred for a full and individual evaluation due to behavioral concerns. The Student’s behavior is negatively impacting his educational formats. He refuses to complete work, his defiant toward authority, seems angry, sad, it does not seem motivated to learn. Teacher rating scales indicate the Student has problems with being oppositional, aggressive, breaking rules, inattentiveness, hyperactivity, depression, anxiety, and having somatic complaints. The Student was also diagnosed with depression. The Student has received counseling services and bionefeedback, but no longer receives the services. Currently the Student receives social work services through the school. The School Psychologist believes that the Student would benefit to have a behavioral intervention plan and receive anger management skills. [REDACTED] also believes the Student would “benefit from a highly structured setting with a behavior management plan and positive behavior supports.” (SD B-121)

On November 17, 2008 a Domain meeting was held. The reason for the meeting listed on the form was for “psychiatric evaluation.” Included in the evidence binder presented by the School District’s attorney, are several pages listing dates and specific behaviors the Student was observed as doing . (SD 124-139) The dates indicating Student observation begin in October of 2008 and go through November of 2008. There is no name associated with who observed these behaviors nor is there an explanation for what purpose the behaviors were recorded. The Student was found eligible on November 17, 2008 for special education and related services in the category of “emotional disability.” (SD B-140) An individualized Education Program Conference Summary Report (SD B-141) lists the following dates: annual review date November 17, 2008, next annual review date before November 16, 2009, date of the most recent evaluation October 20, 2008, date of next re-evaluation October 19, 2011. Although the IEP lists October 20, 2008 as the most recent evaluation date an evaluation bearing that date was not located in the evidence documents provided the Hearing Officer. The IEP indicates in the box

labeled "disability" the term "emotional disability." In the same IEP in the "Additional Notes/Information" section, it is noted that "the Student will begin receiving special education instruction in the resource class for English starting November 24, 2008. The Student will also be moved to an inclusive math class to get special education services by the special education teacher. The Student will also be dismissed by the school social worker since the Student refuses to open up to the social worker and causes his behavior to escalate after seeing him." There is an additional notation that the Student will be evaluated by a psychiatrist on December 1, 2008. The 2008 IEP indicates the Student's current grades as a "B+" in Literature, an "F" in English, an "F" in Geography, an "F" in Math, an "F" in Science, and an "F" in P. E.. Also, it is noted that the Student's Functional Performance is that he has difficulty with work completion. Additionally, when teachers ask the Student to begin working the Student can be noncompliant and at times very argumentative. The Student does not bring needed materials to class and will often be sent to the hall to get his materials. The IEP, (SD B-146) lists the academic achievement, and references the date of 11/3/2008 conducted by Valerie Neisen the School Psychologist. [REDACTED] test scores were derived from the WIAT II, showing the date of 11/17/2004. The scores reflect tests in Word Reading with a score of 106, Reading Comprehension with a score of 99, Numerical Operations with a score of 93, Math Reasoning with a score of 105, Spelling with a score of 94, and Written Expression with a score of 87. Under cognitive functioning listing the date of November 3, 2008 the school psychologist listed several scores derived from the Wechsler intelligence scale for children – third edition on the dates of October 18, 2004 and November 17, 2004 and listed the Student as having a verbal IQ of 106, a performance IQ of 104 and a full scale IQ of 106. It is noted that the scores given are "identical" to the scores the Student achieved in a School Psychological Report performed by Joyce P. Gronewold, School Psychologist, on October 18, 2004 and November 17, 2004. (SD B-19-21) There does not appear to be an explanation in the record, nor was testimony at Hearing presented, as to why the scores are the same even though allegedly performed four years apart from one another. (Compare SD B-19 - 21 with SD 118-121 and B-146) The IEP developed on November 17, 2008 included a behavioral intervention plan (BIP).

On December 12, 2008 a child psychiatric examination and consultation, recommended by [REDACTED] staff, occurred between the Student and child psychiatrist, [REDACTED]. The Doctor's diagnostic impressions are as follows:

“Axis I: Attention Deficit Hyperactivity Disorder Combined Mood Disorder, and Not Otherwise Specified (“NOS”) with suicidal ideation in sleep disturbance and post traumatic stress disorder.

Axis II: Average intelligence without known LD.

Axis III: Could use help with nocturnal enuresis, tics and compulsive spitting.

Axis IV: Stressed family and years of hating school.

Axis 5/GAF: 40 current, 42 best past years.” (SD B-174)

The Doctor's recommendations are as follows:

1). The Student should be involved in individual and family therapy on an outpatient basis.

2). In the school setting, the Student should have social skills training, could help with younger children, should have anger management training, 121 supportive counseling would be helpful, a mentor such as an older Student would be helpful and the use of a reinforcement list might be worth trying.

3). Regarding medication, a trial basis using a mood stabilizer and an antidepressant medication.

4). Being involved in positive groups such as youth groups scouts and 4H.

5). Equine therapy.” (SD B-175)

On December 1, 2008 an IEP conference was held. Both Parents were in attendance. The purpose of the conference was to consider the recommendations made by [REDACTED] In the IEP section labeled “Additional Evaluation Results, [REDACTED] summary of his evaluation of the Student appears. The summary states as follows:

“The Student was diagnosed with Attention Deficit Hyperactivity Disorder commonly known as ADHD since kindergarten. He has an active imagination. There is genetic loading for ADHD, mood disorder, tics and Asperger's. During the evaluation, the Student displayed facial tics. The Student said that he pops his back frequently. The Student said that he feels that people are unfair to. The Student stays up late at night watching television. On the house, tree and person drawing he did not try his best. On the Kinetic family drawing, he left himself and his Parents' out of the picture. The Student attends church and the youth group. The Student says that he hates sports but names many that he performs well, in his judgmental and is slow to forgive. At birth, there was stress with the failing placenta. He could breathe but could not suck. There are some possible effects of fetal alcohol syndrome before an mother knew she was pregnant. He never received speech therapy. He did not head bang but held his breath when upset. He enjoyed cuddling. He has not been cruel to animals. He has played some with fire. There has been stress in the family, including a house fire, custody battles, divorce etc. He is mad at his biological father for no visiting him. He was hospitalized in 2006 for suicidal tendencies and cutting and burning his arm. He does not like school homework.

Diagnosis: depression with suicidal ideation, ADHD, post traumatic stress disorder, sleep disturbance, generational boring, mild paranoia, and tics.

Recommendations: outpatient counseling, horse therapy, continue with youth group, scouts, 4 – H, social skills and a your management skills at school, helping with younger children, mood stabilizer for one week then to assist with ADHD and depression and anti-depressant.” (SD B-184)

On December 15, 2008 an IEP conference was reconvened. The IEP team determined that the replacement for the Student would be in special education classes for all subjects with the exception of an inclusive math class. The Student was to begin placement after the school's winter break on January 5, 2009 with an individual aide. (SD B-189)

On January 20, 2009 an IEP conference was convened, at the Parents' request, to consider the placement recommendation of the MDC team on December 15, 2008. At the January 20, 2009 meeting the Student's mother stated that she wanted her child to be enrolled in "regular education" classes including physical education with the support of the individual aide. It is noted in the "additional notes/information" section of the January 20, 2009 IEP that all members of the MDC agreed that the Student has made significant gains emotionally and behaviorally. It is also noted that the Student has been seen smiling, discussing content, engage in his learning, and completing assignments. The Student was allowed to attend the January 20, 2009 meeting to explain how much he did not like the new placement as per his mother's request. The Student commented that "not having physical education with his regular education peers did not bother him." Everyone at the meeting assured the Student that they were there for him but the Student again commented that "it did not bother him," and was then allowed to leave the meeting. His mother and stepfather stated that the Student was not telling the team what he was saying at home. Discussion continued with respect to the Student's current placement in the successes he is having. The majority of the team members agreed that his current placement has been beneficial for the overall progress. The child advocate was present and commented that the Student would need to begin working on some objectives that required him to complete homework assignments at home. The Student's mother voiced concern that her son was not being given a chance to be in the regular education classroom with the medication and the instructional aide used in isolation. Other team members felt that to put the Student back into a similar situation would be detrimental to his overall progress and would be seeing the same behaviors that he exhibited before winter break. The team discussed the fact that eight days was little time for the Student to get adjusted and that this was the first plan/program that he was showing success in all year. It was decided by the team that the Student continue in his current placement but to update his objectives to where he will complete more assignments. The team agreed to reconvene at the end of the third quarter to reassess the Student's progress and possibly place him back into the regular physical education or other regular education classes based on his progress. The majority of the team members, with the exception of the Student's mother and stepfather, were in agreement to keep the Student's current placement and to reconvene at the end of the third quarter to discuss progress and possible integration back into the regular classroom. (SD B-212-13) The MDC team concluded that the Student be placed in special education classes because the nature or severity of the Student's disability is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily. It was further explained that due to the Student's behavior impeding his learning the Student will receive instruction with the special education teacher for all classes with the exception of inclusion math class. It was noted that at the beginning of the year, the Student was not receiving services and attended a private school. He was not completing assignments, so a Domain meeting was conducted to have him tested for special education services. His Parents' decided to transfer him to ██████████ Middle School. The Student began

experiencing problems with work completion, respecting authority, and non-compliance. After the MDC in December 2008 he began receiving instruction in special education classroom for English, studying and compensatory skills, and was placed in an inclusive math classroom. He continued to show problems in other subjects in regular education even in physical education but showed some improvement in English. It was decided by the MDC team to place the Student in a self-contained classroom with the exception of an inclusive math class and lunch. The Student began the services on January 5, 2009 and has proven successful. The smaller group setting and more focused attention has given the Student an opportunity to succeed. It was noted that the Student will be attending his home school which is the placement that he would have attended if not identified as eligible for special education services. (SD B-224) A BIP was also created for the Student.

On February 24, 2009 an IEP meeting was convened for the purpose of discussing the Student's placement. Both Parents were in attendance at the meeting. In the "Additional Notes/Information" section of the IEP, it is noted that the team discussed programming for the Student. It was decided by the MDC team that the Student attend [REDACTED] School for the structure and smaller environment along with the social work support he will receive. [REDACTED] Principal at [REDACTED] School, explained the [REDACTED] School program to the Parents and talked about the rules, expectations and policies. The Parents' asked many questions of which answers were given. The Student attended the meeting. [REDACTED] a teacher at [REDACTED] School, explained her classroom and some of the things that are done within the room regarding instruction, free time and computer lab. The Student was to begin the [REDACTED] program on February 25, 2009. (SD B-235) In the Student's "Present Level of Academic Achievement" section of the IEP the following was noted: "since the last meeting on January 20, 2009, the Student's overall performance has been an area of concern. The Student's attendance has been a problem in the past few weeks. During class, the Student will begin to show problematic behaviors. When the teacher addresses these behaviors and tries to redirect the Student's attention, the Student becomes very angry to the point where he cannot be near others. The teachers have given him opportunities to calm down in the classroom by leaving him alone for a few minutes or going outside the classroom. The Student will begin to interrupt other students learning by making comments loudly in the hall. When the teacher asked him to come into the classroom he would walk away from her, completely ignoring the teacher and making comments loudly towards her. Due to this behavior, it is been difficult to have the Student complete assignments. Grades are not completely accurate due to not giving 'zeros' for all assignments given since the last meeting. He was given a list of assignments to complete and told he had a week to complete these assignments or they would become zeros. The Student agreed. The Student then commented that he only comes to school once a week so the assignments weren't going to get done anyway. The Student has been given zeros for these assignments. The assignments were to be completed by February 23, 2009. The Student's current placement is a special-education classroom for all classes with the exception of an inclusive math class. The Student's current grades are: Literature-"F"; English-"F"; Geography-"F"; Math-"F"; Science-"F"; PE-"C-"; Art-"F". (SD B-236) Due to the MDC determination that the Student requires special placement at [REDACTED] School and that his behavior impedes his ability to learn, a BIP was created by the MDC team." (SD B-253-55)

On March 12, 2010 an IEP conference was convened to review the Student's current IEP. The Parents' were in attendance at this meeting. (SD B-258) In the "Additional Notes/Information" section of the IEP the notation appears that "the team will reconvene in May 2010 to discuss the Student's progress." Nothing more was noted.

On October 6, 2010 an IEP conference was convened. The Student's step-father was in attendance. In the "Academic Achievement" section of the IEP it is noted by the School Psychologist, [REDACTED] that "the Student is a freshman at [REDACTED] High School and has never been retained." He attended [REDACTED] Elementary School until 5<sup>th</sup> grade. He received special education services with a special learning disability in written expression from third grade until the dismissal of special education services during his sixth-grade year. Ability and achievement were commensurate and he was progressing academically in all regular education classes. He attended 5<sup>th</sup> grade, 6<sup>th</sup> grade and the beginning of 7<sup>th</sup> grade at [REDACTED] school in [REDACTED], Illinois. During 7<sup>th</sup> grade, he returned to the [REDACTED] School District area at that time. A case study was conducted and he qualified for special education services with an eligibility of 'emotional disability.' To meet his emotional needs, the Student began attending at [REDACTED] School, an emotional disabled facility. He attended [REDACTED] School through eighth grade. Prior to enrolling in High School, the Student's Parents' revoked special-education services. The Student is enrolled at [REDACTED] High School. He has difficulty with truancy and insubordination, which has resulted in suspensions. In the last three weeks of school, the Student has not been in attendance. The Parents' and school staff are concerned with his educational performance." (SD B-287) In the "cognitive function" section of the IEP, dated 10/ 6/2010, conducted by [REDACTED] the School Psychologist, previous results are indicated as to the Student's performance on the WISC-III. The dates listed are 10/18/2004 and 11/17/2004. The Hearing Officer notes that the test scores reported are identical to the test scores that have been referenced in previous IEP's going back to when the Student was in 3<sup>rd</sup> Grade. (Emphasis added) A BIP was created based on the determination that the Student's behavior impedes his learning or that of others. (SD B-300)

In the "Placement Options Considered" section of the IEP it is noted that the MDC team recommend "placement in a regular education program with special educational instruction and or related services provided for 20% or less of the Student's school day outside the general education classroom or Student that is inside the general education classroom for 80 % or more of the school day." (SD B-299) The BIP provides that "the Student will attend school and be responsible for his own behaviors; that the Student is trying to gain control and attention, he is escaping the academic a setting; the Student will be taught organizational skills to aid in homework completion by the special-education teacher; the Student will be taught social skills by the special-education teacher and social worker." (SD B-302) The BIP also provides that "the Student needs to sit near positive role models and have a structured setting with clear expectations in place." (SD B-303) With regards to "instruction and/or curriculum" the BIP provides for "verbal cues to begin working on assignments and to limit the number of assignments." The BIP also provides for "suggested positive supports to include positive verbal praise, visual cues, time to check in with personnel to gain control, rewards for good behavior with motivators specific to the Student; The Student likes to read when stories that are interesting, the Student will learn what is socially acceptable behavior, the Student will learn to use cues for frustration and how to communicate that to others to avoid

problematic situations, and time to use the quiet room.” (SD B-303) Finally, the BIP describes restrictive disciplinary measures to be taken. These include “calling law enforcement if the Student’s behavior is a danger to himself or others; and office/in school suspension will be used once the Student needs to be removed from the classroom for no more than 10 min.; self timeout will be monitored to determine when he is using it, whether to miss certain classes and if using too much; if the suicidal or homicidal threat is made, the Student will be referred immediately to the social worker for an evaluation plan as needed.” (SD B-303)

On October 15, 2010 an IEP conference was convened to discuss placement of the Student. (SD B-308) In the “additional notes/information” section of the October 15, 2010 IEP, the following narrative appears:

“ At the beginning of the school year, the Student’s Parents’ revoked consent for special education services. He previously attended [REDACTED] Alternative School prior to services being revoked as school began. The Student was having difficulty following school rules, getting to class on time as well as getting to school on time. He was using profane language and being disrespectful to the teacher’s, but he put himself into in – school suspension. After an accumulation of 18 referrals and losing control and cussing at the Principal and Dean of Students, he was suspended for five days and when the suspension was over, he decided not to come to school. On October 6, 2010, the Student was put back into special education to try and give him more support. It was decided that we would re-meet (SIC) after a week of being back in special-education. The Student and his step-dad came in on October 8, 2010 to me with the special-education teacher and the Student was told that he was to go to her classroom if he was having difficulty in the general education classroom. He was to go to her room, stay for no more than 10 minutes, regroup and then go back to class. He was also to go to her room for a research bias to help with homework and catching up on missed work.” (SD B-309)

“On 10/15/2010 it was reported that the Student was not following the plan that was set forth the previous week. The Student was continually late to school and class. The Student used profane language with school staff and was repeatedly disrespectful. He was heading out in the hallways after the bell had rung and was, again, going to the in-school suspension, which he was not supposed to do. He did show up to the resource class three out of five days. The Student’s step-dad reported that it was hard to get the Student to come to school. Sheriff talked to him on Tuesday extensively then dropped him off at school at 11:00. The guidance counselor reported that the Student brought in some of his missing work from when he has chosen not to come to school. She said the teachers told her that he did not complete much work and did not turn anything in. The math teacher reported that he came in and worked for 10–15 minutes and began socializing. The guidance counselor reported that the Student was passing his resource class, but was failing all of the classes at this time. She reported that the quarter had ended and he cannot recover any grades for this quarter and that it was mathematically impossible to recover any

credit in semester at ██████████ High School. It was noted that ██████████ school is able to give quarter credits. For this week, the Student received six referrals. The Principal, Mr. Wilson, stated that they had not acted on the referrals, pending the outcome of this meeting. If they were to act on the referrals, the Student would be looking at a possible detention that would lead to a suspension because of inappropriate language and behaviors with school staff. The team recommends the Student go to ██████████ where he can have more behavior supports to better help him function, work on his academics and earn the credits he needs to graduate.” (SD B-309)

In the Student’s “Present Levels of Academic Achievement” section of the IEP, the Student’s fourth-quarter grades from Garrison are listed: Reading- “C”; Spelling-“C”; English-“B”; Math-“C”; Science-“B”; Social Studies-“B”; Social Skills-“F”; PE-“F”. (SD b-310) In the Student’s “present levels of functional performance” the following is noted: “the Student has a difficult time staying on task and needs frequent prompts to get back to work. He has been truant and has had difficulty with homework completion. At ██████████ High School, the Student has difficulty getting to class on time, following school rules, being disrespectful to school authority – uses profane language and is disrespectful.” (SD B-310) In the section of the IEP asking to “describe the effect of the Student’s disability on involvement and progress in the general education curriculum and the functional implications of the Student’s skills” it states that “the Student has difficulty concentrating and needs prompting to get back to task in hand. At ██████████ High School, in the general education setting, the Student has difficulty getting to school on time, getting to class on time, staying in class, getting work completed and getting along with peers in school staff. It is impacting his education negatively and that he is failing all general education classes.” (SD B-310) The Student’s “Social/Emotional Status” is described as having a difficult time getting his work completed. The Student comes across as very disorganized. The Student can’t find a pencil, or the book, or his paper which leads to inappropriate behavior and interrupts the classroom setting. This takes away time for the other students to complete their tasks.” (SD B-310) It is further noted in the same section that “the Student has a difficult time staying on task. He has to be prompted several times before he actually get started on his daily tasks. He is easily distracted and cannot work at his own pace. The Student becomes argumentative with school staff in the High School. During the first quarter of school the Student had attended a 11 days.” (SD B-311) In the “placement considerations” section of the IEP it is noted that the MDC team recommended “placement in the special-education program for 100% of the day in a public day school” The rationale and reasons given was that “this placement is appropriate at this time. The Student needs a highly structured setting with a therapeutic atmosphere to meet his needs. He will have a longer bus ride and requires removal from his general education peers.” (SD B0320) A BIP was developed similar to the one developed in previous IEP’s. (SD B-323)

On the first day of Hearing the Parents and School District made opening statements. The Student’s mother began by stating that she didn’t believe that her son was being given the chance to succeed at ██████████ High School. She believes that from the very first day of school in August, 2010, her son has been antagonized by the Principal and Dean of Student’s amounting to what she believed to be “harassment.” The Student’s mother used examples of, the Principal and Dean of Students following her son

to the bathroom, issues regarding opening his locker, completion of work assignments, calling or talking to police about her son's behavior for no justifiable reason, sending him home from school every day around lunch hour, and the alleged constant reminder by the Principal that if her son didn't follow his rules, he would find himself suspended either in-school or out of school which may eventually lead to being expelled. The mother and step father believe that the Principal is "on a mission" to kick her son out of school, especially since he is coming from [REDACTED] school and therefore a problem. The mother testified to how excited her son was to start at the High School as a regular education Student, but alleged negative experiences on the part of the Principal discouraged her son shortly after beginning school at [REDACTED] High School. The Parents also alluded to unjust suspension administered to her son and not to other students that allegedly were involved in more serious behavior that would warrant severe punishment.

The School District's attorney, in opening statement, alleged that the Parent would be unable to sustain their burden of proof that the District is not providing a Free and Appropriate Public Education ("FAPE") in the Least Restrictive Environment ("LRE") by recommending placing the Student in a Public Day School Program, [REDACTED] School, a program run by the [REDACTED] Special Education Co-operative of which the [REDACTED] Community School District is a member. The District noted that the Parents' revoked consent for special education services prior to the beginning of the 2010-2011 school year, when the Student would be starting high school. Prior to attending the high school, the Student was enrolled at [REDACTED] School pursuant to a February, 2009 IEP. Although the Student has been functioning in the "average" range academically and cognitively, his educational performance has suffered because of "work refusal and a lack of motivation." The Student has been previously found eligible to receive special education services under the category of "emotionally disabled" and it is the District's position that he still continues to need services not for academic reasons, but for his "emotional and behavior problems." Since attending [REDACTED] High School, the Student has "struggled." He had trouble following the rules, getting to class and school on time. He consistently used profane language and showed extreme disrespect to teachers and other school staff. On October 6, 2010, an IEP was created to address the Student's emotional problems by providing daily time in the special education resource room, a behavioral intervention plan and social work services. On October 15, 2010 the IEP team convened again to determine the impact of the previous IEP on the Student's behavior. It was determined that the gains made were "negligible." The District pointed out that the Student showed up in the resource class only 3 days and was continuing to exhibit behaviors that disrupted the teacher and other students. His academic performance also became an issue because of his refusal to complete work, thereby leaving him failing for the 1<sup>st</sup> semester of school. Because of this, the IEP team recommended the Student return to [REDACTED] School where he could get the needed supports and experience academic success leading to the acquiring the necessary credits leading to graduation.

The Parents identified 4 school persons as witnesses they wished to call. The Witnesses are: [REDACTED] County High School Principal; [REDACTED] the Dean of Students at [REDACTED] High School; [REDACTED], the Math teacher and Ms. [REDACTED], Special Education teacher at [REDACTED]

The Parent called the Principal [REDACTED] Mr. [REDACTED] as their first witness. [REDACTED] testified as to the "staff" expectations of the Student while attending high school. The expectations were that "the Student be present, follow rules, and do the work assigned." He testified to not being involved in daily discipline matters except for major discipline infractions and repeat offenders. It was established that the Student attended school for approximately 14 days up to and including the day of Hearing on January 6, 2011. It was determined that during those days of attendance 38 disciplinary incident reports were completed. (SD I-1 through 77) The Parents questions were focused on why, in their opinion, he and the Dean of Student's [REDACTED] were so intent on making sure their son was "written up for disciplinary reasons." The Parents voiced their concern that both [REDACTED] and [REDACTED] wanted their son to fail so much so that it bordered on "harassment." The cited examples of frequent problems the Student had with opening his locker, frequent bathroom visits especially after lunch and not allowing the Student adequate time to complete assignments, most notably a science project. The Parents questioned [REDACTED] about resulting "in-school and out-of-school suspensions administered to their son including a "five day suspension" administered on September 16, 2010 for numerous incidences occurring on that day. They believe the actions taken were unjust and not consistent with other punishments given to other students for actions they considered too be much more severe than what their son was allegedly involved with. On cross-examination, the School District's attorney had the Principal refer to (SD I-31) to be read into the record. From the narrative portion of the document identified as [REDACTED] School's Incident Report/Referral # 17 dated 9/16/10," the following was read by Mr. Wilson:

"There were multiple incidents with the Student on Sept. 16, 2010. He refused to attend Earth Science and left school with his mother for about 20 minutes to look for a science packet which was due. He did not find it. After lunch, we went to the ENG. I room and had an altercation with Mrs. [REDACTED] (See Referral #15). He was clearly angry when he got to my office and said he wanted "out of the school." His Parents were then contacted and the Student was asked to stay in the office with Mrs. [REDACTED]. Instead, he left without permission and eventually went to the old cafeteria. (See referral #16). [REDACTED] and I tried to persuade the Student to leave the old cafeteria (where there were three students sitting with [REDACTED]). Instead, the Student cursed at us and refused to leave the area. During the passing period later, the Student left the old cafeteria and left the building without permission. At that time, I called the [REDACTED] Police Department because it was clear that the Student did not recognize either [REDACTED] or my authority and we did not know what he was going to do next. Fortunately, I was able to get (the Student's brother) to calm him down outside and [REDACTED] (step-father) arrived and we discussed the situation. When the police arrived, I was able to tell them that things appeared to be under control and that we did not need them. The Student left with his stepfather sometime around 1:00 PM. For serious disrespect/insubordination to faculty and administration, profanity/abusive language, truancy, and tardies, the Student is suspended out of school for five (5) days. (Sept. 17, 20, 21, 22, 23). The Student may return to school on Sept. 24. Future incidents such as this and a continuation of disobeying

school rules/defy authority will result in a lengthier out of school suspension." (SD I-31-32)

To the allegation that the Student was not being given time to complete a Science Project, the Principal stated that he was given 2-3 weeks to complete the assignment commensurate to the time given other students. The Principal stated that because the Parent had withdrawn their consent for Special Education, no modifications were being given the Student in completing his work since he was being treated as a Regular Education Student. To this point, the Parents believed their son was being singled out by the Principal because of his previous attendance at [REDACTED] School and the perception that students who attend [REDACTED] School our problems.

A review of the record indicates the following "Disciplinary" incident reports filed by School District Staff with regards the Student:

Referral #1 – 8/27/10 – Referred by Ms. [REDACTED] attendance secretary. Level I: Tardiness. Narrative: "three tardies-after verbal warning

8/26/10-3<sup>rd</sup> period

8/26/10-8<sup>th</sup> period

8/27/10-1<sup>st</sup> period in 8:36 a.m.

Detention for Monday-August 30-30 minutes." (SD I-11)

Referral #2 – 8/27/10 – Referred by Ms. [REDACTED], attendance secretary. Level I: Tardiness 2. Narrative: "4<sup>th</sup> tardy –3<sup>rd</sup> period." (SD I-12)

Referral #3 – 8/27/10 – Referred by Ms. [REDACTED] attendance secretary. Level II: Tardiness 3. Narrative: "5<sup>th</sup> tardy—late to 7<sup>th</sup> period- (told referring staff person that he wanted to go to In School Suspension (ISS) and stay because he could work better there." (SD I-13)

Referral #4 – 8/27/10 – Referred by [REDACTED] Math teacher. Level I: Classroom disturbance. Level II: Disrespect/insubordination (Simple)-temporary removal from class and verbal reprimand given. Narrative: "The Student was being very disruptive in class, talking out loud, repeatedly asking to go to ISS after another student was sent. He made one comment about" the room is trying to eat, I can't stay here." Also, was late for class and did not come in quietly when he returned with his pass." Action was taken by the Principal see referral # 5. (SD I-14)

Referral #5 – 8/31/10 – Level I: Disobeying school/classroom rules – Level II: Disrespect/insubordination (Simple); Truancy (partial); Level III: Off Campus/Out of Bounds Area (left without permission).—Action taken by Principal: Student /Staff conference; Parental contact by phone; Referral to Counselor/Social Worker; Saturday Detention. Narrative: "The Student was in my office to discuss his excessive tardies and being removed from class by a teacher. I asked the Student why he was being

late and disrupting class. He said he was not disrupting class. I explained to him that being tardy is disruptive. He told me not to raise my voice at him. I had not raised my voice and informed him of that. He said 'dude you're raising your voice.' I asked him not to call me dude and that I have treated respectfully (SIC), and I expect the same. He then referred to me as 'dude' again. I told him he would not refer to me as dude. He said 'do not point your finger at me.' He left without permission. Received a telephone call from [REDACTED] that the Student and another student had entered the middle school at around 1 PM. Mr. [REDACTED] sent them to me and I talked to the Student, who was upset and said he wanted to go to a different school. The Student was sent home again at about 1:45 PM and the mother was informed by phone. For referral # 4 and referral #5, the Student is assigned to Saturday morning detention on either September 4 or September 11 from 8 AM to 12 PM a [REDACTED]. The detention time will also serve to take care of the Student's tardies (referrals 1-3). Failure to serve will result in a three day out of school suspension." (SD I-15)

Referral #6 – 9/1/10—Referred by the Classroom Science Teacher—Level I: Classroom disturbance; Level II: Disrespect /insubordination (Simple); Failure to abide by corrective measures for misconduct; Tardiness. – Action Taken: Verbal reprimand. Narrative: "The Student arrived late to class without the proper materials. I asked him if he had materials specifically for science – he said 'no, that they couldn't afford it.' I reminded him that I had very inexpensive binders/notebooks to purchase for \$.11. I also reminded him that he should have brought his packet that he received last week. He said he lost that and needed another. I said barring any emergency I only gave out one copy per student. If he needed to make copies he would have to make them off someone else's and it would probably cost him to photocopy. His other option was to find his originals, or go without. He then asked to use the restroom which I granted. Upon return he said he needed to speak to Mr. [REDACTED] I asked if it was an emergency – he said no it was about something yesterday. I then told him that it could wait or he could see Mr. [REDACTED] after school. He said he was going now and I indicated I thought he should stay because we were doing a lesson. He walked out. I then called Mr. [REDACTED] informed him of his leaving." (SD I-17)

Referral #7 – 9/1/10—referred by attendance secretary—Level II Tardiness 3-- Narrative: "Fifth tardy on 9-1/10 to 3<sup>rd</sup> period." (SD I-19)

Referral #8 – 9/3/10—referred by attendance secretary-- Level II – Truancy. Narrative : "In at 8:43 AM – unexcused (truant); also tardy again to third period today – 9/3/10." (SD I-20)

Referral #9 – 9/7/10 - referred by attendance secretary-- Level II – Truancy. Narrative: "Absent 9/2/10 and 9/7/10 – no call no notes – phone always says they aren't available. Five tardies – 8/31/10 4<sup>th</sup> period-already turned in. New (9/1/10—3<sup>rd</sup> Period; 9/3/10 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Periods)." (SD I-21)

Referral #10 – 9/8/10 - referred by attendance secretary-- Level II – Truancy. Narrative: “Mom said he left for school on 9/7/10 but instead went to a friend’s house – truant.” (SD I-22)

Referral #11 – 9/9/10 - referred by attendance secretary—Level II—Tardiness. Narrative: “Since disciplinary for tardies on 8/27/10: Tardies, 9/3/10 3<sup>rd</sup> period & 5<sup>th</sup> period and 1<sup>st</sup> period; marked absent (tardy?) 9/8/10 8<sup>th</sup> period; marked absent (tardy?) 9/9/10 3<sup>rd</sup> period; tardy 9/9/10- 1<sup>st</sup> period and 3<sup>rd</sup> period.” (SD I-23)

Referral #12 – 9/13/10 - referred by attendance secretary—Level II- Tardiness -3-4; Narrative: “Another tardy on 9/13/10 in @ 8:20.” (SD I-24)

Referral #13 – 9/13/10 - referred by Earth Science teacher-Level II: Disrespect/insubordination (Simple); Profanity/abusive language. Action previously taken by teacher: verbal reprimand; detention. Narrative: “The Student caused a disturbance in class by stating that he would not be receiving an " F" on his packet. I said that was entirely up to him. He directly told me that I would not be giving him a failing grade. It was a thinly veiled threat. He then said" Fuck this, I'm leaving " and got up and left.” (SD I-25)

Referral #14 – 9/13/10 - referred by Principal (██████████) Level I: Disobeying school/classroom rules. Level II: disrespect/insubordination (Simple); Profanity/abusive language . Action taken by Principal: Student/staff conference; Parental contact; Referral to counselor/social worker. Narrative: “The Student came into my office 3rd hour extremely angry and agitated after an earlier incident that occurred in science class. He used profanity including the “F” word as he described his frustration with the science teacher over a packet of information that he had apparently lost. He refused to attend his next three classes and demanded to go home. After talking to his mother, eventually attended his last two classes. I gave the Student another packet that Mrs.██████████ had run off and gave him until Tuesday (1 day) (Emphasis Added by Hearing Officer) to complete it. It was understood that there would be a 10% reduction in his grade on the project. Mr. ██████████ (Dean of Students) and I are becoming increasingly concerned that the Student's outbursts and inability to get to class or school on time is negatively impacting his education. This lack of regular attendance has also been a factor.” (SD I-26)

Referral #15 – 9/16/10 - referred by classroom teacher, ██████████ Level II: Profanity/abusive language. Level III: Insubordination/disrespect (Serious). Action previously taken by teacher: Verbal reprimand. Narrative: "The Student began class disruptively by coming without any materials and demanding that is (SIC) questions be answered before I got class started or helped any other students. He continued to disrupt class by asking to leave to see Mr. ██████████ when I told him he would need to wait

until the end of class, repeatedly coughing loudly while saying "balls" under his breath, and reading aloud to himself in such a way as to distract other student's. I try to deal with these issues quietly so as to not further attract attention to the situation, but the Student did not make this possible. Ultimately, the Student walked out of class after I told him that he needed to use this time to work on his assignment. I told him he was not permitted to leave class simply because he wanted to, but this did not deter him." (SD I-28)

Referral #16 – 9/16/10 - referred by Cafeteria Supervisor. Level II: Profanity/abusive language. Level III: Insubordination/Disrespect (Serious). Narrative: "Came down to sit and wait for his Parents to pick him up. He got up to leave asked where he was going 'to the office, see if my Parents here'. I said no I'll call. Which I did and know they weren't there, office will call. Mr. [REDACTED] and [REDACTED] came and wanted to talk with the Student. They asked him to go to the office. He said no I'm not going to listen to you bitch at me. Called them douche bags, fuckin' assholes. They asked him to go again and the Student refused again. The Student got up and left. Was asked where he was going, to come back buddy went on out of Café. I had 2 peers that was in they seen and heard the Student. The Student went on how [REDACTED] School was better than [REDACTED] County." (SD I-30)

Referral #18 – 9/16/10 - referred by attendance secretary—Level I- Tardiness -1 2; Level II – truancy; Narrative: "since Last Disciplinary on 8/31/10: Tardies—9/1/10—3<sup>rd</sup> period; 9/3/10-1<sup>st</sup>, 3<sup>rd</sup> & 5<sup>th</sup> period; 9/8/10-8<sup>th</sup> period; 9/9/10-1<sup>st</sup> period; 9/13/10—1<sup>st</sup> & 8<sup>th</sup> period. Unexcused Absences: 9/2/10; 9/7/10. 9/16/10-left @ noon—suspended?" (SD I-33)

Referral #19-10/11/10 – referred by substitute teacher-- Level I: Classroom disturbance; Disobeying school/classroom rules; Level II: Disrespectful/insubordination (Simple). Narrative: "The Student came to math class for the first time. The current seating arrangement. The classroom teacher assigned him a seat which he refused to sit in. I gave him an alternate seating choice which he also refused. He then left the room without permission saying I'll go sit in ISS. He did go directly to ISS. Notation: a Post-it note references the following: referrals 19 – 30 are still active and have not been dealt with pending placement decision." (SB I-42)

Referral #20 – 10/11/10 - referred by Principal [REDACTED]. Level I: Disobeying school/classroom rules; Level II: Profanity/abusive language. Action taken by Principal: student/staff conference. Narrative: "I noticed just after 2 PM the Student was not in Industrial Orientation class. Instead, I saw him walking toward the in-school suspension area. Ms. [REDACTED], Ms. [REDACTED] and myself attempted to find out why the Student didn't go to class. He was agitated and said Mr. [REDACTED] wasn't going to let him do anything but read in class. He said this was going to be his 'last day in this

f...ing school.' We later found out that he did not even go to class or talk to Mr. Fullerton." (SD I-43)

Referral #21—10/11/10—referred by In School Suspension teacher. Level II: Profanity/abusive language. Level III: Insubordination/disrespect. (Serious). Narrative: "Came from [REDACTED] class to do assignment (read & to be notes) (SIC) done it. Then was supposed to go back to class and didn't want to go back so I called and he was to go back. I followed him down to the new water fountain and he turned around and said "you don't have to fuckin follow me down there I'm not going until you turn around. \*Got kicked out of math the cousins he didn't want to sit in his assigned seat. \*Came down from freshman art. Didn't have his own supplies and wasn't going to sit there and do nothing. Mr. [REDACTED], Ms. [REDACTED] Ms. [REDACTED] tried talking with him but he refused." (SD I-44)

Referral #26—10/12/10—referred by attendance secretary—Level II: Truancy. Narrative: "Tardy on 10/11/10 – 3<sup>rd</sup>, 4<sup>th</sup> & 8<sup>th</sup> period; gone on 10/12/10 – over 12 day limit – Truant." (SD I-45)

Referral #22 – 10/13/10—referred by [REDACTED] Dean of Students—Action Taken by Principal: Student/staff conference. Narrative: "The Student was sent to me from Mrs. [REDACTED] because he wanted to be searched to prove he did not have a cell phone on him. When the Student entered my office I asked him what was going (SIC). He said he was accused of being on his cell phone. I informed him that I wasn't going to search because by now he could have gotten rid of it. I told him of the consequences for a cell phone violation, if he violated that. He said he would not serve a detention for a lying teacher. I told if he had and didn't serve them we would continue to the next steps that ultimately lead to a suspension. The Student then got up stormed off and said "Fuck that." "I hate this fucking school and I won't serve a fucking detention." (SD I-46)

Referral #23—10/14/10—referred by attendance secretary—Level II: Truancy. Narrative: "Came in 10/13/10 @ 8:58 am -- no call or excuse-- Truant. 10/14/10 in at 9:08 AM – overslept – Truant. Also late for 4<sup>th</sup> period and 2<sup>nd</sup> period. He came and got a (word undetermined) pass for fourth. But then never went. Was late for 6th period." (SD I-47)

Referral #24 A&B—10/14/10—referred by Classroom Teacher—Level I: Disobeying school/classroom rules. Narrative: "The Student has not shown up for study hall three out of the last four days M,W, Th. He was in study Hall on Tuesday. I see the Student in lunch so I know he is here. Post-it note Notation: 10/17/10 – have received information that mother will not sign placement pages to [REDACTED] Will need to make discipline recommendation based on previous referrals not dealt with." (SD I-48)

Referral #25 – 10/15/10—referred by [REDACTED] administrators—Level III: Theft. Narrative: "After the Student had distributed his book/papers to his teachers and supposedly cleaned his

locker out and left the building, Mr. [REDACTED] and I checked his locker to see if it was clean and secure. The locker was 'set' and opened without the combination. We discovered a book bag and papers and folders still in the locker. There was also a calculator that belonged in room 11 and to our surprise a stack of 37 [REDACTED] High School 2010 – 11 parking stickers that we sell for five dollars apiece during the school year. The Student had been in in-school suspension earlier in the week and had been sitting in (word unrecognizable) Mrs. [REDACTED] (ISS supervisor) with other student parking information." (SD I-50-51)

Referral # 27—10/19/10-- referred by [REDACTED], Math teacher. Level I: Classroom disturbance. Level II: Profanity/abusive language. Action Previously Taken by Teacher: Temporary removal from class; Verbal reprimand; Detention. Narrative: "The Student came to class today and as I was passing out papers and giving instructions for what students were to be doing he was talking with other students. First he and a female started to get into it. After he calmed down from the situation, he and the male student were talking and he told the other student he should hit him in the fucking face. He soon took a STO to Ms. [REDACTED]." (SD I-53)

Referral #28—10/19/10—referred by attendance secretary—Level II: Truancy. Narrative: "10/19/10--came in around 9 AM with his dad – no reason or excuse. Also came at the beginning of his study Hall night. Saying he couldn't get into his locker because he didn't know the combination and that he had always had it jammed or rigged before." (SD I-53)

Referral #29—10/19/10—referred by attendance secretary—Level II: Tardiness 3 4. Narrative: "Late to sixth period. Did not come to get a pass." (SD I-54)

Referral #30—10/20/10—referred by [REDACTED] & [REDACTED]—Level II: Profane/abusive language. Level III: Insubordination/disrespect (Serious). Narrative: "At 9:25 AM, during 2nd hour Resource, the Student started to draw in his calculator. Seeing that he wasn't work, I asked if he had the Science packet done that was for 1st quarter, due on Thursday. He said, Oh yeah. No, I'm not going to do it. I said, okay, then let her know so that she can finish her grades and put in a zero for it. The Student said, no, I'm not going to do it, but I'm not going to receive no credit for, I already did it twice before then they kicked me out of school and I'm not doing it again. At that point, I asked the Student to walk out into the hallway to finish the conversation so he doesn't interrupt the rest of the class. When the Student was out in the hallway, I explained that Ms. [REDACTED] cannot just give him credit if he doesn't turn anything in. At that time, [REDACTED] was walking down the hallway and I waved her to come over. I explained the Student's situation and he began to raise his voice, again saying that we kicked him out and he threw away everything. I said that we did not kick him out and he said, then why do we have to write a letter for me to get back in the school? I said at the meeting, which you were invited to, we

made a decision, and here erupted and said, I can never go to those meetings. I always get kicked out halfway through and they won't let me. It was probably the same meeting where I always get kicked out of. Valerie tried to explain that if he wants to receive credit for the classes, he still needs to turn in the work. He then said, whatever, fuck it. I'm not doing the fucking packet and I'm not staying in the fucking class or at this fucking school. With that he walked back into the room, through a calculator off of his desk, grabbed his book, and headed down the hallway. [REDACTED] went after him to calm him down and I called Mr. [REDACTED] to inform him about the situation." (SD I-55-56-signed by Ms. [REDACTED] & Ms. [REDACTED])

Referral #36—11/23/10—referred by [REDACTED] Special Education Teacher. Level II: Truancy. Narrative: "The Student came into Resource 2<sup>nd</sup> hour at 9:20 AM. I asked if he had a pass and he said no, he was in the bathroom." (SD I-73)

Referral #37—11/23/10—referred by attendance secretary—Level II: Disrespect/insubordination (Simple); Profanity/abusive language; Verbal abuse. Level III: Off campus/Out of bounds area. Narrative: "On 11/23/10 the Student was escorted to the office and asked to leave for disciplinary issues. I asked for his home phone and he refused to give me the number so I looked it up and talked to [REDACTED] and told him the Student had been asked to leave. Then the Student got up to sign out and made a (word recognizable) about them wanting to watch him take a fucking shit. I said you and I know that's not true. And he called me a fucking bitch. I said I would have to write that up and he said go for it you fucking (SIC) cunt." (SD I-74)

Referral #38—11/23/10—referred by teacher, Principal and Dean of Students. Level II: Profanity/abusive language. Level III: Continuation of Level II offense; Insubordination/disrespect (Serious). Action Taken by Principal: In-School Suspension (1 to 3 days) (Simple); Out-of-School Suspension, one-half day. Narrative: "The Student was late for Ms. [REDACTED]'s second hour class. Mr. [REDACTED] and I attempted to locate him and eventually heard him talking to someone in the middle school bathroom. There were several 5th grade students who also were taking their break at that time. Another high school student came out of the bathroom and we escorted him back to Art class as we were doing that the Student came out of the bathroom and walked to his second hour classroom 20 minutes late he did not follow the procedure of going to class first for permission to go to the bathroom and was unexcused. We did not address this situation at the time and allowed the Student to get to class. Ms. [REDACTED] wrote up discipline referral # 36 to address the situation. The Student was tardy to Mrs. [REDACTED]'s third hour class. After lunch, Mr. [REDACTED] reported that the Student did not show up for study hall. (Mr. [REDACTED] is also the cafeteria supervisor and knew the Student was here because he saw him at lunch ). Mr. [REDACTED] and I checked the hallways and did not see the Student. At about 11:25 AM Mr. [REDACTED] and I entered

the boy's bathroom and I asked if the Student was in there. He said yes. I then told him that he needed to get to study Hall. He slammed the stall door open and began cursing at us, using the F-word repeatedly. He did not appear as if he was using the bathroom, he was simply waiting by the stall door for us to come in so he could confront us. He again used the same phrases he had used before (you can't watch me take a "fucking shit" and you can't "fucking follow me around"). The Student had already been in the bathroom for 20 minutes during second hour and had 30 minutes during lunch hour to use it again. It is likely he is staying in the bathroom to avoid going to class and he again demonstrated by his behavior that he does not want to be here. I spoke by phone to [REDACTED] to inform him of the situation and that he needed to come and get the Student. As I was talking, the Student walked out of the building on his own. A disturbing portion of this incident is the fact that the Student directed such nasty profanity to the school secretary (referral # 37). While it is bad enough to speak to an administrator in this manner, it is especially unnerving to Mrs. [REDACTED] to be subjected to this kind of verbal abuse by a Student. For profanity/Abusive language and Insubordination/Disrespect (Serious) the Student is suspended from school for one half-day on November 23<sup>rd</sup>. he is also assigned one day of in-school suspension to be served upon his return to school." (SD I-75)

[REDACTED] the Student's mother testified on the 2<sup>nd</sup> day of Hearing. Questions were posed by her husband, [REDACTED] [REDACTED] testified about her son's past academic history. She attributes the beginning of her son's problems to when he was in kindergarten and her son's teacher wanted her son diagnosed with ADHD. She regrets following her advice because her son has been treated differently ever since. Medication was part of the treatment and she stated that it made her son feel like a "Zombie." She moved her son to [REDACTED] a private parochial school located in [REDACTED] when her son was in 5<sup>th</sup> Grade because he couldn't function in a larger class setting. He functioned better with more 1:1 attention. She attributed her son's success to a teacher at [REDACTED] who would let her son take out his frustrations by taking him to a separate room where he could punch a box. The teacher also gave him more attention and he wasn't treated differently. He had an IEP when first moved to [REDACTED] similar to the one he has now but what they would do things different. When he got frustrated at [REDACTED] they would let him leave the classroom and go punch boxes. He would go to the middle school for English and another class but could not remember what the class was. It wasn't working at the Middle School and the teacher at [REDACTED] by looking at the Student's test scores, told the mother that he didn't need to be in special education classes. He left [REDACTED] to attend 7<sup>th</sup> grade [REDACTED] Middle School. She moved him because one of the teachers he was having trouble with at [REDACTED] Elementary school, became principal at [REDACTED] and she immediately began treating him differently. In one incident he was involved with at [REDACTED] he was administered discipline but the other person, who was a girl, did not get any punishment. The mother admitted that her son was easily distracted. When this occurred a [REDACTED] the teacher would take him to an extra desk set up in the office to do his homework. When the principal came into the office and saw him sitting there, she allegedly

started harassing him. [REDACTED] stated that her mother, who worked in the Principal's office at [REDACTED] verified this occurrence. When he went back to [REDACTED] schools to attend the middle school, his teacher there was allegedly telling "derogatory" things to other students about her son. One of the student's who heard these things told her son about what she was saying about him and it upset him to the point where he did not want to go back to school there. She testified that [REDACTED] a district employee, agreed that the student appeared on a mission to get himself kicked out because he didn't want to go to school there because he felt he was being treated unfairly and she affirmed that he was. She testified that she and her husband were told that their son would be treated like a [REDACTED] student when the decision was made by the IEP to send him to [REDACTED] School to continue middle school. She later found out that it wasn't true. They tried to charge him for any activity he would attend or make him leave. If he wanted to go to a dance, they would have to call someone to see if they had permission to let him attend. She testified that they dropped Special Education services because they were told that that was the only way they could get him back into [REDACTED]. She said they were never told that to get him services at [REDACTED] they could ask for another IEP. She testified that she doesn't believe that the IEP written on 10/6/10 was administered properly and doesn't think anyone knows who does what or is responsible for administering the IEP. In her opinion, nobody knows who is supposed to be checking on whether the IEP is being followed. The mother believes that everything was being done to keep her son from staying in the school. Mr. [REDACTED] the principal allegedly told the student that he was finished at [REDACTED]. She testified that her son has never told her that he wants to go to [REDACTED] School but that he wants to go to [REDACTED] and be treated like everyone else. The Mother believes that as long as Mr. [REDACTED] is the Principal, that's never going to happen. She talked with Ms. [REDACTED] to see what, if anything could be done to keep her son at [REDACTED] and it was suggested that they contact the School to try to arrange for Mediation. Mediation, although scheduled, was not attended by the Parents due to health problems of the student. Mediation was not rescheduled. When asked the question as to what she would like to see happen by having this Hearing, the mother testified she would like to see her son stay at [REDACTED] and Mr. [REDACTED] no longer the Principal "because you can't trust him and he doesn't treat the student's fairly." The Mother thinks it's ridiculous to have to bus a student an hour away just because they are not a "cookie cutter type of student" or if they are just average. Mother doesn't see anything positive if her son goes there. He "could get involved with drugs and fall in with the wrong crowd." The mother is of the opinion that at [REDACTED] if a student decides to walk out they have to let him go because they cannot restrain him. She testified to one occasion when he was attending [REDACTED] she received a call on her Cellular phone. She was unable to answer because she was attending a class in Quincy, but found a message on her phone telling her that she would have to come pick up her son. When the School couldn't get in touch with the mother, the student became agitated and left. The Student's grandparents had to go to [REDACTED] to pick him once they were able to locate him after 7 pm. She concluded her testimony "that if her son could be just left alone without interference from Mr. [REDACTED] or Ms. [REDACTED], she believes he could succeed with the proper supports in the IEP in place."

Ms. [REDACTED] Principal of [REDACTED] School, testified on the 2<sup>nd</sup> day of Hearing. She testified to how the Student was performing at the [REDACTED] Middle School before attending [REDACTED] School. She said that the Student was struggling and not able to complete work in a setting even with a 1:1 aide. He had frequent outbursts, swearing and spent a lot of time in the Principal's office. He was not passing his classes and had trouble with work completion, even with the 1:1 aide. The Student attended from February 2009 through May 2010. She described the [REDACTED] School setting as never more than 8 students in a classroom. Ms. [REDACTED] consider 's the school to be a therapeutic setting because two social workers and a behavior specialist are available full time to interact with students having difficulty in the classroom and free floating aides that remove a child to work 1:1 in a separate class setting if necessary. [REDACTED] School draws from 19 school districts. Everyone is bussed in. No one is allowed to drive or walk. There are currently 69 students attending and have 25 staff members which calculates to about a 3:1 student/staff ratio. The quality of work is what's important and what students are graded on, not necessarily the quantity. Students do not take homework home. All work is completed in school. All classes are self contained. The teacher's move around. The aides stay with student. PE & Lunch are the unstructured times where students can "socialize" with others, but if they have not completed work, they must do it during lunch. All teachers are trained in Crisis Prevention Intervention ("CPI"). Students appearing anxious or showing signs of outbursts are taken on the side and worked with in a 1:1 setting. Each student receives 60 minutes per week ("mpw") social work services (30 mins. group 30 mins individual). Students are never suspended. Ms. [REDACTED] described the concept of PALE (Positive Alternative Learning Environment) utilized at [REDACTED] School. When students are struggling, the student is taken out of the regular setting and given 1:1 intervention with an aide or staff member. When asked how [REDACTED] could help the Student Ms. [REDACTED] stated that the Student would benefit from Social Work services and small groups. He could get attention when he needed it. He was able to complete work when he attended [REDACTED] previously. She noted that the Student has a lot of hidden anxieties that he doesn't share with just anybody. The Student had no peer problems while at [REDACTED]. He fit in, and seemed happy. He would have the option to go to "quiet room" if the Student felt he was having a problem. If a teacher asks a student to be removed, it's called a "timeout" and either Ms. [REDACTED] the behavior specialist, or Ms. [REDACTED] would talk to him. When he attended [REDACTED] School for Middle School he was completing work and passing courses and his social skills were good. She noted his improvement in anger management. At the end of last school year, she would not have recommended the student stop attending [REDACTED] to go to a regular high school. She believed that the Student wasn't ready to handle the interaction in that large of a setting. She believed the Student could accomplish anything he set his mind to, but didn't believe his going to [REDACTED] was what he wanted although admitted he would vacillate when asked whether he wanted to go to [REDACTED]. When the Student stopped attending [REDACTED] in October, 2010, the Parents and Ms. [REDACTED] talked a lot about his removal before the Parents decided to revoke consent. She testified that the Student later called her saying that he wanted to come back to [REDACTED] back in October 2010. When questioned by [REDACTED] Ms. [REDACTED] described how [REDACTED], a child psychiatrist, recommendations would be implemented at [REDACTED] School. She

also testified about BIP developed in the 10/15/10 IEP. Previous interventions were discussed and identified in the preparation of the BIP. She described positive supports to be provided for good behavior such as movie time and individual teacher rewards. For perfect attendance, students participate in a pizza party. She verified that [redacted] School Students are allowed to go to extracurricular activities at their home schools and stated affirmatively that “if any kid is not allowed, she makes it happen.” Ms. [redacted] confirmed that the IEP team and case manager are the persons responsible for making sure and IEP is being implemented. However, [redacted] added that the school administration would be ultimately responsible. [redacted] asked Ms. [redacted] if there would be anything to add to the IEP for the Student to attend [redacted] what would that be. Ms. [redacted] responded, “adding my program [at [redacted] School]”.

### **Burden of Proof**

The Parents have the burden of proof as they filed the due process complaint. *Schaffer v. Weast*, 126 S.Ct. 528 (2005). Under Illinois law, the school district must provide evidence that the special education needs of the child have been appropriately identified and that the special educational program and related services proposed to meet the needs of the child are adequate, appropriate and available. 105 ILCS 14-8.02a(g). The Illinois School Code clearly requires the district to present evidence at Hearing that it has properly identified and evaluated the nature and severity of the student’s suspected or identified disabilities including eligibility for special education and related services. 105 ILCS 5/14-8.02a(g-55). *Kerry M. v. Manhattan*, 106 LRP 58547 (N.D. Ill. 2006). In the Hearing held over two days (1/6 & 7/2011) the testimony elicited from all witnesses, mostly consisting of District employees, and the documentary evidence provided, demonstrates that the Student’s Parents have not satisfied their burden of proof regards the allegations contained with the Due Process Complaint Notice.

### **Discussion and Conclusions of Law**

The IDEA requires that a school district provide children with disabilities with a free appropriate public education (“FAPE”). When a hearing officer reviews a school district’s placement decision, he or she must engage in two inquiries: whether the school district complied with the procedures set forth in the IDEA, and whether the Student’s IEP is “reasonably calculated to enable the child to receive educational benefits.” *Board of Educ. v. Rowley*, 458 U.S. 176 (1982). Also, the IDEA requires the IEP not only confer some educational benefit, but to do so in the least restrictive environment (“LRE”). 20 U.S.C. §1412(a)(5). Accordingly, a Student with a disability may be removed from the regular classroom when “the nature or severity of the disability... is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 20 U.S.C. §1412(a)(5).

The least restrictive environment (LRE) is one that allows the disabled child to be educated with nondisabled peers (mainstreamed) to the greatest extent appropriate. *Beth B. v. Van Clay*, 282 F.3d 493, 497 (7th Cir. 2002). This does not mean, however, that every child has a right to be educated in a regular classroom. To the contrary, as the court put it in *Wilson v. Marana Unified Sch. Dist. Of Pima County*, 735 F.2d 1178, 1182 (9th Cir. 1984):

Although the policy of mainstreaming is to be applied “to the maximum extent appropriate,” where, as here, “the nature or severity of the [disability] is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily ...,” a [child with a disability] may be removed from “the regular educational environment.” (Citations omitted.)

Deciding what constitutes LRE is the responsibility of the IEP team. *See* 23 Ill. Admin. Code §226.240(a) and (b)) (placement decision must be made by the IEP team and must be consistent with the Student’s IEP). Moreover, courts have recognized that in this type of situation deference should be given to the decisions of trained educators. *Heather S. v. State of Wisconsin*, 125 F.3d 1045, 1057 (7th Cir. 1997).

In this case, from the School District’s perspective, the IEP team has determined, through its proposed IEP dated October 15, 2010, that the special education program at ██████████ School constitutes the least restrictive environment for the Student. The Parents disagree, and because they are the moving party, they shoulder the burden of persuasion. *Schaffer v. Weast*, 126 S. Ct. 528 (2005). For the reasons that are discussed herein, the Parents have been unable to meet their burden.

The IEP team’s recommendation for the Student’s placement and services, for the reasons stated above, would provide the Student with FAPE in the least restrictive environment because: 1) the District has followed appropriate procedures under the IDEA; 2) the IEP is designed to enable him to receive educational benefits; and 3) the Student cannot be educated satisfactorily in the regular public high school.

In *Beth B.*, the Court stated the following:

Each Student's educational situation is unique. We find it unnecessary at this point in time to adopt a formal test for district courts uniformly to apply when deciding LRE cases. The Act itself provides enough of a framework for our discussion; if Beth's education at Lake Bluff Middle School was satisfactory, the school district would be in violation of the act by removing her. If not, if it's recommended placement will mainstream her to the maximum appropriate extent, no violation occurs. In this case we can say with confidence that the Lake Bluff school district's decision to remove Beth from the regular school did not violate the IDEA's mandate to mainstream disabled children to the maximum extent appropriate. Beth was in class for about 50% of her day. Her academic progress was virtually nonexistent and her developmental progress was limited. Although the school district provided her with aides, communication devices, computerized books, and an individual curriculum, she was receiving very little benefit from her time there.... The school officials' decision about how to best educate Beth is based on expertise that we cannot match. They relied on years of evidence that Beth was not receiving a satisfactory education in the regular classroom. The placement shows for concern of both ordered development and for keeping her mainstreamed, to an appropriate extent.... Although we respect the input that Beth's parents have given regarding her placement and their continued participation in IEP decision-making, educators have the power to provide

handicapped children with the medication they consider more appropriate than that proposed by the parents. (*Beth B.* 282 F. 3d 493, 497 (7th Cir. 2002))

The Testimony presented over the two day Hearing period shows that: 1). The Student has behavioral and emotional issues that cannot be segregated from the learning process; and 2). the Student has consistently demonstrated these issues over time at [REDACTED] Middle School at [REDACTED] High School. The Student's needs haven't changed. He requires a more structured classroom environment and additional support than a level of intensity than what is available at [REDACTED] in order to receive educational benefit. The District made an attempt to educate the Student in the regular classroom but without satisfactory outcome and in the District's perspective no amount of support available would make it satisfactory. The Student's behavioral problems occur on a repeated basis and are difficult to handle with the level of resources and experience of staff in a typical "regular school environment." (Emphasis Added). The Student has had attendance problems and it is easy for him to leave school and walk home. His behavior interferes with and disrupts the education of other students and normal course of events during the school day. The record makes clear that the Student has a diagnoses of ADHD, mood disorder, post traumatic stress disorder and has recently been hospitalized for a period of time in a mental health facility and at that time continued to have diagnoses of severe depression, mood disorder and of ADHD. His prior evaluations suggest a clinically significant level of problematic behavior and school staff have testified that the Student's behavior is not typical and is not average but is extreme. Testimony has established that the Student will not receive a satisfactory benefit in a regular education school setting. He is not making progress in the general curriculum or on his IEP goals or on positive social relationships. The Student's need for intensive special education outweighs any need to interact with non disabled peers in the regular school setting and the therapeutic environment at [REDACTED] allows the Student to let his guard down and complete his academic work. The Student engages in significantly disruptive behavior even with the use of interventions which interferes with the education of other classmate and the Student is so demanding on the Administrator's and the Teacher's time and attention that he substantially interferes with the learning of others. Each of these are factors that courts have used to approve a change of placement from a regular education environment to a more restrictive environment. In fact, the Student's needs have never changed. In the District's opinion the only intervening factor was a revocation of consent that has not only slowed but put a complete halt to the Student's educational development and he should never have left [REDACTED] in the first place. To this point, the Hearing Officer Agrees. The question to be considered is not whether any amount of time is appropriate in the hypothetical, but whether it was appropriate for "this" Student and this Student's needs have never changed. The IEP team had determined that they would give a very brief window to attempt special education before the detriment to the Student would be so great as to lose the benefit of an entire semester and no change was observed. The District has averred that it is a difficult task for school personnel to discuss the implementation of an IEP from 4 months ago for which the Student has not attended and therefore school staff have had no interaction that IEP on the ground or in practical terms. The Parent has not proven that that IEP was not implemented and even if that fact were a determining factor in the placement decision, which the District states it is not, a response to questions of whether or not it may or may not be possible is not enough to establish the truth of the matter asserted. The District states its appreciation in closing that the Student's Parents have a

preference for continued placement at [REDACTED] the District quickly points out that the courts and the Department of Education have routinely and consistently maintained that while parental preference may be one factor in determining placement, it is not the determinant factor. All placement decisions must be made on a case by case basis and according to the educational needs of the Student and made by the IEP team and made by the consensus of the IEP team and if a parent disagrees with the consensus of the IEP team, he or she has the right to invoke the due process rights and have a Hearing such as this conducted. Statements made in the course of this Hearing make it clear that there is a certain level of anger at school personnel from the Parent and that their preference is not guided by merely the educational interest of the Student. [REDACTED] herself said she doesn't really care about her son's education at this time, but rather that he find himself. This, however, is juxtaposed to the District's obligation. The District must and has a legal duty to assure that it is providing a free and appropriate public education. The Parents have argued that school personnel have acted to escalate the Student's behavior but the record established over the course of the Hearing has proved opposite. A review of the numerous incident reports generated by a varied number of school staff demonstrates otherwise. First, school staff have had no history with the Student and have had no reason to single him out as the Parent's claim. Second, these behaviors existed before the Student ever attended [REDACTED] and the record establishes no need to provide a new evaluation to support a change of placement at this time as the prior set of recommendations continue to align with the Student's behavior. The Student is scheduled for Re-Evaluation on November 2, 2011 according to the IEP drafted on 3/12/2010 (SD B-258). At that time, the District will have the opportunity to update the Student's Psychological performance by administering current testing in hopes of gleaning greater insight on how to better meet the Student's unique needs. Up to now, however, the District believes the Student's needs haven't changed. The Student has made little to no effort to be successful at [REDACTED]. It is significant that the Student's needs have remained constant and remain consistent. The IEP team's recommendations for placement and services for the reasons stated would provide the Student with FAPE in the LRE because it appears that the District has followed all appropriate procedures under the IDEA and the IEP is designed to enable him to receive educational benefit and that he cannot be educated satisfactorily in the regular public high school. Since the evidence does not support the Parent's claim that continuation in a regular public high school is the LRE for the Student, the Parents failed to meet their burden. The District has provided ample proof that the placement at [REDACTED] School is the appropriate placement for the Student and each of the District's witnesses have provided by their testimony that they believe that the [REDACTED] program is the LRE for the Student and that they do not believe that he would succeed in a program at [REDACTED]. When the IEP team met on October 15, 2010 to develop an IEP for the Student and ultimately recommended placing him at [REDACTED] School. School personnel who worked with the Student and the IEP team indicated that the services had no impact on the Student's behavioral compliance, his work completion and his class attendance. The Student continued to refuse to comply with school staff and the plan that was outlined for him. He continued to be late for school, tardy for class, to use profane and disrespectful language, and to hang out in areas he was not supposed to such as the in school suspension room or the bathroom. He exhibited deficits in organization and focus, he was a constant disruption to the school environment and its administrative and instructional functions. The Student had 38 discipline referrals while attending 14 ½ days of school. The Student's academic performance was also a significant concern to school personnel. Due to his refusal to

complete work, the Student has failed to earn any credit for the first semester while attending [REDACTED]. The observations of Mr. [REDACTED] alluded to by the Mother in her testimony, back when her son was in Middle School, appears to ring true. The Student appears to be "on a mission to get himself kicked out." And while the Parent seeks to believe that the District has singled the Student out, the truth is that the Student's behavior has been uniquely challenging. School personnel testified concerning the difficulties presented. Mr. [REDACTED] testified that only one other student in his career had exhibited worse behavior and that that student was residentially placed. Ms. [REDACTED] testified that she has no other student that exhibits such behaviors to the extent that the Student has. For these reasons and the relative success in the past at [REDACTED] School, the IEP team recommended a change in placement to [REDACTED] School where the Student will have significant behavioral supports in order to function, work on his academics and earn credits toward graduation. At [REDACTED] the Student will be able to recover credits on a quarterly basis and which would provide a better opportunity for attaining the needed credits and shorter term goals for academic motivation. References made through witness testimony in the record as to the Student's own perception regarding a lack of credits was a motivating factor for him. So the ability to maintain credits would be a significant motivation and has been in the past. When the Student attended [REDACTED] School, he responded to the structure in that environment and developed a good relationship with school staff, particularly, the Principal, Ms. [REDACTED]. He attended more regularly, he completed work, he fit in, he made friends, his organizational issues were minimized. His unstructured time where he has problems were minimized. He has more access to trained staff. There is a reduced risk to flight. He only left once during his time there, and he never did it again. There are more social work services available in both a group and individual setting. More individualized attention and small class sizes, something the Parent has testified that he's needed at a very young age. When the Student attended [REDACTED] in the past he was able to advance from grade to grade and he is currently unable to do so at [REDACTED]. Therefore, it appears that the IEP team correctly determined that the Student's education at [REDACTED] was not satisfactory and placement at [REDACTED] had been and would be again appropriate to help him progress academically, improve behaviorally and continue his education. The evidence presented in this Hearing has borne this out. The nature and severity of the Student's disability makes education in the regular school far from satisfactory and the Student's placement at [REDACTED] public school provides him with FAPE. To allow the Student to continue at [REDACTED] to encourage his failure, a result that can be easily reached by encouraging his attendance at [REDACTED] School as recognized by all of the educators involved through the IEP team process.

[REDACTED] throughout his skilled and pointed questioning of several witnesses at the Hearing, averred that the School District has not followed the IEP dated 10/6/10. "Which came first, the chicken or the egg? Is the Student causing the problems at school or is the school causing the problems with the Student? The evidence, according to [REDACTED] [REDACTED] has shown that the school really doesn't know what they are doing at the school, what they are doing with the IEP and what the procedures are in place, if they provide a LRE or even if they followed to a "T". [REDACTED] emphasized that, in his opinion, "no one knows who's accountable: The IEP team, the special education person, Mr. [REDACTED] or the administration." A conclusion he draws from the Parents questioning of District staff, Ms. [REDACTED], Mr. [REDACTED], Mr. [REDACTED], Ms. [REDACTED], and the special education teacher and case manager, Ms. [REDACTED] is "who's to know who's really supposed to be implementing

this and who has what role with the IEP or the Behavior Intervention Plan. There is none.” (Closing Argument). continued: “As far as diagnosis the only one that the testimony has shown at Hearing is ‘Depression’ for this school year which could very well stem from feeling that he has been singled out, that nobody at the school cares for him and the IEP and BIP not being instituted properly or at all is causing that depression. More structured environment, who’s to say. We’re talking about a LRE, would be least restrictive than would be. There’s testimony of the availability of a time out room. There’s limited interaction socially at There’s only 69 students in the entire schools. 38 discipline referrals in 14 days shows that somebody is being singled out. The Student needs to be placed at with an IEP in place and give it an amount of time with no interference for at least a semester to see if it’s successful.” (Closing Argument).

The Parents’ further argued that, in their opinion, the School District has not followed the IEP developed on October 6, 2010, for a long enough time to see if that would be beneficial for their son; nor have they implemented the IEP as it was written. The Parents have expressed their understanding on how the School placement could be a benefit for their son, however they do not believe that the School District, has exhausted all avenues yet at the School District and they would like to see that happen. They point to the alleged inconsistencies by the school staff that testified at Hearing as to who called who and who’s told somebody what or who’s actually in charge of making sure that the IEP is being implemented. What the Parents are asking is that the Student be allowed to continue at High School with the “target” off his back so that he could be allowed to continue with an IEP in place and the proper supports being provided.

The Hearing Officer takes notice of the Parents’ apparent bewilderment from the answers proffered by School District staff, particularly surrounding the implementation of the IEP and whose responsibility it is to insure it is being implemented. The consistent answer given to the direct question asked by the Parents, “whose job is it to make sure the IEP is being implemented” was the “IEP Team.” No one individual is responsible. The case manager, Ms. did admit that she is ultimately the one who bears the responsibility of making sure that all regular/special education staff know which students have IEP’s and what services need to be provided. She admitted that she was not 100% certain whether or not the Student’s teachers were, in fact, following the IEP but believed as “professionals” all teachers involved with the Student were performing in accordance with their professional ethics. Additionally, when the Parents asked staff whether Dr. Child Psychiatrist, recommendations were being implemented and how, the answer were not as clear. The probable reason, however, is because the Student was attending as a “regular education” student and therefore regular education staff would not have been privy to the information as the Student was a new student in the high school and the Psychiatrist’s report was generated when the Student was a special education student attending School as a middle school student. However, a question that remains to be answered in the Parents’ mind is how is it the “Behavioral Intervention Strategies and Supports” listed in both the October 6 and October 15, 2011 BIP’s will be met at School, particularly the first

one that states "He needs to sit near positive role models." (SD B-323) The Parents' fail to see how this goal can be achieved if their son is required to attend [REDACTED] School where the students attending are there for similar reasons, i.e. emotional/behavioral disorders. Ms. [REDACTED] the case manager/special education teacher was able to answer that the Student was provided that opportunity in her classroom when the Student attended, and believed the other teacher's were making the accommodation in their classrooms when the Student was with them. When Ms. [REDACTED] the Math teacher was questioned, she was able to affirm that the student's seating was considered and being implemented. Ms. [REDACTED], the [REDACTED] School Principal described the [REDACTED] School program and the small student/ teacher ratio of 3:1 and the small class enrollment of 69 students. More structure and more attention to the student by [REDACTED] staff would be available. When Ms. [REDACTED] was provided with the reasons why the Parents "revoked" consent, i.e.. opportunity for the Student to play football at [REDACTED] being involved with age appropriate peers, the high school is more convenient and not as far away as [REDACTED] and opportunity to participate in vocational education programs, she responded that the Student would still be able to try out for football at [REDACTED] and play if accepted and that the student would be involved with peers his own age at [REDACTED] School. As to the distance from [REDACTED] Ms. [REDACTED] believed this would be a good thing since the Student would be less likely to leave school to go home given the 45 minute to 1 hour bus ride. Ms. [REDACTED] admitted that [REDACTED] School does not have vocational education programs. [REDACTED] testified to the successes that the Student experienced while at [REDACTED]. It was noteworthy that the Student had to repeat 7<sup>th</sup> grade and concern was expressed as to this delaying his entry into high school. However, he was able to make up the work in time to graduate from middle school and attend high school with age appropriate peers as a Freshman. Ms. [REDACTED] testified to the Student being of average intelligence, with a great sense of humor, but attendance being a problem. She acknowledged the Student's progress in anger management, completing assignment on time, and improved social skills at [REDACTED] School, but when asked whether she would recommend the Student attending a regular high school program she said that "the Student wasn't ready." Had he thought he was ready, she would have begun discussions about "integration" from Garrison to [REDACTED].

The District, in its closing argument, stated that the Student is one with significant needs and those needs haven't changed. Congress has created the IDEA to ensure that all children with disabilities have access to a free and appropriate public education. The nature and severity of the Student's disability warrants removal from the Least Restrictive Environment, in this case, [REDACTED] High School to a more restrictive placement, a [REDACTED] School, a public day school operated by the [REDACTED] Co-operative of which the [REDACTED] Community Unit School District is a member. Testimony by the Principal of [REDACTED] spoke to the successes she witnessed while the Student was placed there for his 7<sup>th</sup> & 8 grade years. The Parents' don't dispute this. However, they are concerned with the distance away from the community, 45-60 minutes away by bus to a neighboring town, [REDACTED] and the bad influences that their son may be exposed to. They also expressed concern for having their son participate in extracurricular activities, such as playing football and attending

extracurricular events without being charge a "fee" because he is not "technically" considered to be a [REDACTED] student. They also expressed concern for having their son participate in extracurricular activities, such as playing football and attending extra-curricular events without being charged a "fee" because he is not considered a [REDACTED] student. The Student's mother testified to her feeling of "loss of control" since she does not know the other "kids" at [REDACTED] School nor their families. Whereas by attending the E [REDACTED] High School, the Parents' would have a better idea about whom their son is associating with and who their Parents are since everyone knows everyone in [REDACTED] Illinois.

The Parents, although presenting themselves as credible and appear truly committed to doing what they believe is in their son's best interest, did not produce any written documentation or corroborating testimony to prove what amounted to be "verbal" allegations that the Principal and Dean of Student's lied in their testimony and are harassing the Student, despite the mother's statements that they have letters and other written document to support their allegations. On the other hand, the School District has presented credible testimonial and documentary evidence to support their premise that the recommended placement and the procedures follows are appropriate in the eyes of the current status of Federal and State laws. The Student's own behavior as documented by school personnel in addition to that of the Principal and Dean of Students demonstrates the need for the placement and services recommended by the School District in the more restrictive setting at [REDACTED] School.

Therefore, from the totality of the testimony and evidence produced at Hearing, it is the opinion of this Hearing Officer that the Parents' revocation of consent for special education services, without an opportunity for the Student to have been properly transitioned from [REDACTED] School to [REDACTED], has proven to have a very negative impact on the Student's learning. The recommended return of the Student to [REDACTED] School is appropriate through witness testimony and documentary evidence provided during the course of the two day Hearing.

### ORDER

- 1). The Hearing Officer finds that the Parents have not met their Burden of Proving their allegations against the District and therefore finds against the Parent and for the District.
- 2). The Hearing Officer also finds that:
  - a). The District has, to this point in time, provided an appropriate education for the Student; and,
  - b). Given the Student's demonstrated behavioral and emotional issues causing him to fail in the regular education setting at [REDACTED] High School, the District's proposed placement at [REDACTED] School, as per the October 15, 2011 IEP, is the appropriate Least Restrictive Environment Placement at this time.

- 3). Placement at [REDACTED] School is to occur immediately consistent with the terms and provisions of the October 15, 2011 IEP.
- 4). Within forty-five (45) days of receipt of this **Order**, the [REDACTED] Community Unit School District [REDACTED] shall submit proof of compliance to:

ILLINOIS STATE BOARD OF EDUCATION  
PROGRAM COMPLIANCE DIVISION  
100 NORTH FIRST STREET  
SPRINGFIELD, ILLINOIS 62777-0001

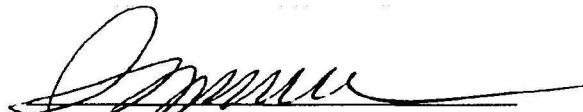
**Right to Request Clarification:**

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 other party(s) and the Illinois State Board of Education. After a decision is issued, the Hearing Officer may not make substantive changes to the decision. The right to request such 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 Civil Action**

This decision is binding on the parties unless a civil action is timely commenced. Any party to this Hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the Hearing. Pursuant to ILCS 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.

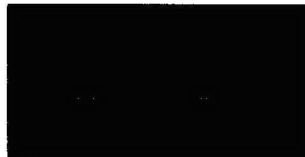
Dated this 17<sup>th</sup> day of January, 2011.

  
**Harry A. Blackburn**  
**Hearing Officer**

**CERTIFICATE OF SERVICE**


The undersigned hereby certifies that a true and correct copy of the **DECISION AND ORDER** was sent to [REDACTED] and Mr. Brandon K. Wright, via Certified Mail and directed to the following addresses:

Mr. Andrew Eulass  
Due Process Coordinator  
Illinois State Board of Education  
100 North First Street  
Springfield, Illinois 62777-0001



Brandon K. Wright  
Miller, Tracy, Braun, Funk & Miller, Ltd.  
316 S. Charter, PO Box 80  
Monticello, IL 61856

before 5:00 p.m. on January 18, 2011 (January 17, 2011 being a United States Nationally observed Holiday).

  
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