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**SPECIAL EDUCATION
SERVICES**

Case Number: 2011-0276
[REDACTED] vs. Hazel Crest SD 152-5
Hearing Officer: Kristine Anderson

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

**Impartial Due Process Hearing Decision
Cover Page**

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District Name [REDACTED] **Phone:** [REDACTED]
Superintendent [REDACTED]
Address [REDACTED]
Represented by [REDACTED]

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

Date and Timelines

Date of Written Request: 06/07/2011
Date of Pre-hearing Conf: 07/12/2011

Date of Hearing: 08/30/2011 to 08/31/2011
Date of Decision:

Summary of Decision

The Parent filed a request for a due process hearing on June 7, 2011 on behalf of her son, [REDACTED]. In her request, the Parent alleged that the District denied her son FAPE by failing to rely on appropriate data when the team determined that a public therapeutic day school was the Student's least restrictive environment. The Parent further alleged that the District denied her son FAPE by failing to compensate [REDACTED] for the loss of education for the period of time that he was suspended from school and recommended for expulsion to the end of the school year. The hearing officer found that the evidence showed a therapeutic day school is the Student's least restrictive environment. In addition, though the Student did not attend school from January 26, 2011 (when he was suspended) to the end of the school year, the evidence showed that the Student's lengthy absence was not attributable to a denial of FAPE by the District. The Student, therefore, is not entitled to compensatory educational services.

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)
) ISBE CASE NO. 2011-0276
)
) Kristine Anderson
) Impartial Due Process
) Hearing Officer

HEARING DECISION AND ORDER

This matter is before me pursuant to the Parent's due process complaint alleging that the District failed to provide her son, [REDACTED] with a free appropriate public education. (FAPE) I have jurisdiction to hear and decide this matter pursuant to 105 ILCS 5/14-8.02(a) et. seq., and 23 Illinois Administrative Code §§226.600 et. seq. For the reasons stated below, I find in favor of the District on both issues.

PROCEDURAL HISTORY

The Parent, [REDACTED] presented the District with a due process complaint on June 7, 2011. The District forwarded the complaint to the Illinois State Board of Education and it was received on June 13, 2011. I was reappointed as the hearing officer in this matter on June 13, 2011.¹ The specific issues raised by the Parent in her complaint are set forth below.

The parties participated in an unsuccessful resolution session on June 22, 2011. I convened a status call with the parties on June 29, 2011. During our call we agreed that the pre-hearing conference would take place on July 12, 2011. I sent the parties a written Notice of Pre-hearing Conference on June 30 confirming the date of our pre-hearing conference, and specifying the issues that would be discussed in our conference. The notice also included a statement of the Parent's rights. The pre-hearing teleconference was held on July 12 as scheduled. [REDACTED] who was not represented by counsel, participated on behalf of her son. The District was represented by [REDACTED] and [REDACTED]. During the conference, we confirmed that the hearing would take place on August 30 and 31, and that August 23 would be the five day disclosure date.

After receiving the parties' five day disclosure statements, I was concerned by the fact that the Parent's final witness list included only three witnesses, none of whom were school employees. I also was concerned that the Parent did not intend to testify. Thus, I convened a conference call on August 29, 2011. I reiterated to the Parent that she had the

¹ Prior to this proceeding, the Parent had requested a due process hearing on March 8, 2011. At issue in that matter was the Parent's request that the District evaluate her son. She withdrew that request on April 4, 2011. Because I had been the hearing officer in that case, I retained jurisdiction of the matter when the Parent filed her current request for a due process hearing.

burden of proof, and that it might be difficult for her to meet that burden without calling any district witnesses or testifying herself. I explained that the District was not obligated to call any of the witnesses on its list. Finally, during the call I gave the Parent an opportunity to amend her list to include herself as well as any witness included on the District's list. [REDACTED] chose not to make any changes to her witness list.

The hearing took place on August 30 and 31 as scheduled.

Issues Presented

The Parent alleges that the District denied [REDACTED] a free appropriate public education in the following ways:

1. The District has failed to provide the appropriate data to support the team's recommendation that a therapeutic day school is the appropriate placement for [REDACTED]. Such a placement, according to the Parent, would violate the Student's right to receive an education in the least restrictive environment.
2. The IEP team's determination that, as a result of the manifestation determination, the expulsion should be rescinded fails to compensate for the loss of educational time since January 26, 2011.

Relief Requested

The Parent requests the following relief for the District's alleged violations of FAPE:

1. A finding by the Hearing Officer that [REDACTED] is the least restrictive environment for [REDACTED] and an order that the Student will attend [REDACTED] for the 2011-12 school year.
2. An order by the Hearing Officer directing the District to provide the Student with compensatory educational services in the form of before or after school tutoring to address the Student's loss of educational opportunity resulting from the expulsion recommendation. In addition, the Parent has requested training for herself and the Student's support team, if warranted.

FINDINGS OF FACT

"[REDACTED] is a 12 year old boy who attended the [REDACTED] School during the 2010-11 school year. Without contradiction, the evidence presented at the hearing showed that during his 6th grade year, [REDACTED] exhibited extreme shifts in his mood and behavior, with "dramatic highs and lows." (See 6/6/11 Initial Eligibility and IEP Conference Report, EX 6) The testimony of [REDACTED] 6th grade language arts teacher, [REDACTED] is illustrative. [REDACTED] attended [REDACTED] class for two-and-a-half hours each day. [REDACTED] frequently interacted with [REDACTED] outside of class, too. According to [REDACTED] [REDACTED] has many strengths. He is a bright and friendly boy, who is good at creative writing and often interacts pleasantly in one-on-one situations. Academically, [REDACTED] functions at or above grade level, and is capable of producing high quality work when he is motivated.

On the other hand, [REDACTED] testified that [REDACTED] also has a great deal of difficulty controlling his anger, and exhibits serious episodes of rage. During these episodes, which were most evident during transitions and less structured time, [REDACTED] was confrontational with other students and defiant toward adults. [REDACTED] would engage in outbursts that were very disruptive to the class. He also would refuse to complete classroom assignments or homework.

[REDACTED] tried a number of different intervention strategies to help [REDACTED] modify his negative behavior. (See Interventions Used with [REDACTED] EX 13) For example, during his episodes of rage, [REDACTED] would take [REDACTED] into the hallway and talk to him to try to calm him down. If that was unsuccessful, [REDACTED] would send [REDACTED] to a fellow teacher with whom he had a good relationship.² She also sent [REDACTED] to the office to allow him to “cool down.” (Memo re: [REDACTED] EX 9) Since [REDACTED] had particular difficulty working in a group, [REDACTED] often allowed [REDACTED] to work alone, or one-on-one with her. (Testimony, see also EX 13) Ms. [REDACTED] employed several other interventions, as well, such as positive reinforcement of [REDACTED] good behavior, and rewards for completing assignments. (Id.) Finally, [REDACTED] testified that as a last resort, she filled out office referral forms. (See Disciplinary Reports and Notices, EX 15) On December 6, 2010, for example, [REDACTED] referred [REDACTED] to the office when he ran out of the classroom and then, upon returning, refused to leave. (12/6/10 Office Referral Form, EX 11, see also 1/18/11 Office Referral Form, EX 12)

Despite [REDACTED] interventions, [REDACTED] rages and other negative behaviors began to increase in frequency and intensity by October or November. (Testimony) Indeed, a handwritten log kept by [REDACTED] describes several incidents during those months when [REDACTED] disrupted the class by shouting obscenities and yelling at or hitting other students. (Notes of Behavior Incidents, EX 10) In response to [REDACTED] deteriorating behavior, [REDACTED] the school principal, instituted a check-in system of daily progress reports for [REDACTED] (BEP Program – Daily Progress Reports, Ex. 6) Under this system, [REDACTED] teachers graded him -- from 0 to 2 -- on whether he was prepared, respectful and responsible. The forms also allowed the teachers to provide written comments. In response to questioning about the daily progress reports, [REDACTED] agreed that they showed periods in which [REDACTED] had good behavior. She maintained, however, that [REDACTED] behavior did not improve overall, and that his outbursts caused him to miss increasingly more instruction time. [REDACTED] stressed that [REDACTED] disruptive behavior coupled with his refusal to complete his work, caused [REDACTED] to receive failing grades in language arts. (Testimony) [REDACTED] attended an eligibility conference and IEP meeting for [REDACTED] on June 6, 2011. During the meeting, she shared her observations about [REDACTED] classroom behavior and poor academic performance. She agreed with the team’s determination that [REDACTED] meets the characteristics of a student with an emotional disability. (See 6/6/11 Initial Eligibility and IEP Conference Report, pp. A60-61, EX 7) She also agreed with the team’s determination that [REDACTED] would not benefit

[REDACTED] candidly testified that two of [REDACTED] teachers felt that [REDACTED] was not a problem in their class. [REDACTED] the school principal, provided similar testimony, as well. As discussed more fully below, while those teachers may have believed that [REDACTED] was more compliant with them, they nevertheless confirmed that [REDACTED] exhibited many of the same negative classroom behaviors that [REDACTED] observed. (See Testimony of [REDACTED] concerning 5/23/11 Social Developmental Study Assessment, EX 22)

from a general education classroom – either with or without resource and behavioral supports. (*Id.* at A75) [REDACTED] testified she believes [REDACTED] requires the structure and support of a therapeutic day school in order to succeed academically.

[REDACTED] principal, also testified about [REDACTED] behavior during the 2010-11 school year. [REDACTED] frequently observed and interacted with [REDACTED] both in and out of the classroom, as well as when [REDACTED] was sent to the office for poor behavior. [REDACTED] He testified that he had a good rapport with [REDACTED] and believes that [REDACTED] is a “bright kid” who is academically capable, but whose behavior is keeping him from succeeding. [REDACTED] observations are supported by school records of [REDACTED] academic performance, which show that in reading and math, [REDACTED] functions in the average to above average ranges as compared to his peers at [REDACTED] (AIMSweb Report of Curriculum Based Measures, EX 17) [REDACTED] 6th grade report card, however, does not reflect [REDACTED] ability. Other than one B for the first quarter of science, [REDACTED] received D’s and F’s in every academic subject.³ [REDACTED] Report Cards, EX 18)

As principal, [REDACTED] is responsible for overseeing [REDACTED] disciplinary procedures. According to [REDACTED] adheres to the PBIS (Positive Behavior Intervention and Supports) approach. PBIS employs a three tiered approach to discipline. Tier 1, or the universal tier, includes all of the strategies and interventions that are used with the general student body. At Tier 1, teachers independently select and implement interventions and modifications that they believe are appropriate to address a student’s negative behaviors. (Greene Testimony) For more serious behavior problems but still at Tier 1, teachers may fill out office referral forms. (*See, e.g.*, 12/6/10 Office Referral Form, EX 11) Similarly, if a disciplinary infraction occurs on the bus instead of at school, a driver may submit a School Bus Safety Conduct Report. (*See, e.g.*, School Bus Safety Conduct Report, EX 15 p. B15) In either case, [REDACTED] responds to a referral by speaking to the student and other involved parties. He then makes a decision about what action to take. Consequences for a student’s misbehavior depend on the severity of the incident and the district’s disciplinary guidelines. [REDACTED] testimony)

Under PBIS, when a student receives more than three office referrals, Tier 2 interventions are put in place. According to [REDACTED] these interventions are more intensive and are generally in place for 6-8 weeks. At that time, depending on the student’s performance, the student may be returned to Tier 1, or progress to Tier 3, which requires a functional behavior assessment to be completed and a behavior intervention plan to be put in place. [REDACTED] testified that, as principal, he is primarily responsible for deciding whether and when to move a student to Tier 2. Once a student reaches Tier 2, decisions about whether to move the student to Tier 3 or pull back to Tier 1 are made by a team that includes the student’s teachers as well as a special education teacher. [REDACTED] Testimony)

[REDACTED] testified – and school records confirm -- that he received a number of office referrals and bus conduct reports concerning [REDACTED] between September and January of the 2010-11 school year. (*See* EX 15, pp. B11-25) Notably, [REDACTED] appears to have

³ [REDACTED] 6th grade report card only includes grades for the first two quarters of the school year. As will be explained below, [REDACTED] stopped attending school in January 2011 after an incident in which he hit a teacher.

been the only teacher to have given [REDACTED] an office referral during September and October. By November, though, other teachers and staff members began to refer [REDACTED] to the office for incidents of misconduct at school and on the bus. (*Id.* at B23, 31, 35, 37, 39) On November 3, 2010, for example, [REDACTED] suspended [REDACTED] from school for two days for using profanity and disobeying the rules on the bus. (*Id.* at B33)

To address [REDACTED] deteriorating behavior, [REDACTED] testified that he initiated Tier 2 interventions, specifically, the daily progress report system that is described above. (*See* EX 6) [REDACTED] stated that he notified [REDACTED] of this decision by telephone and letter. He could not recall precisely when [REDACTED] began receiving daily progress reports (and there is little supporting documentation), but copies of the reports show that the intervention started at least as early as mid-November. (*Id.*) Notably, only five Daily Progress Reports were introduced into evidence, though they spanned a two month period. (*Id.*) When asked why there were not more reports, [REDACTED] insisted that the reports were sent home daily for the Parent's signature -- a Parent signature is clearly called for on the form -- but that the Parent refused to sign and return the forms.

At least initially, the Daily Progress Reports seemed to have had a positive impact on [REDACTED] behavior. Specifically, [REDACTED] received only two office referrals in December (down from six referrals in November). In January, however, [REDACTED] negative behaviors began to increase once again even though the Tier 2 intervention was still in place. A particularly serious incident of misbehavior occurred on January 20, 2011 when [REDACTED] and two other students got into a fight on the bus and were escorted to school by a police officer. (*See* EX 15 p. B51) As a consequence, [REDACTED] received a 3 day suspension. (*Id.* at p. B53) The very next day, [REDACTED] requested that the District evaluate [REDACTED] to see if he was eligible for special education services. (1/21/11 Student Referral, EX 19) The District promptly responded to the Parent's request for an evaluation, notifying her on January 25 that an initial evaluation was deemed necessary. (1/25/11 Parent Notification of Decision Regarding Request for an Evaluation, EX 2)

On January 26 -- his first day back from the suspension for fighting on the bus -- [REDACTED] ran down the hall and hit a teacher on the head. (EX 15 at B55) He was suspended from school for ten days and recommended for expulsion. (*Id.* at B57) In lieu of expulsion, however, the District notified [REDACTED] that [REDACTED] was being referred for an administrative transfer to the District's alternative school, [REDACTED] (*See* 3/1/11 [REDACTED] Letter to [REDACTED] referencing 1/31 letter, EX 26) The letter also made clear that [REDACTED] expulsion was to be held in abeyance contingent upon the Student's full participation in the alternative school program. (*Id.*)

While the District delayed [REDACTED] expulsion proceedings, it sought to move forward with its initial evaluation of [REDACTED]. [REDACTED] was Director of Special Services for the District during this period. [REDACTED] retired from the District in June 2011, but she testified at the hearing about the District's efforts to complete an initial evaluation of [REDACTED]. She also testified about the June 6 eligibility and IEP conference, which she attended. According to [REDACTED] the District notified [REDACTED] on February 1, 2011 that it had scheduled a meeting on February 9 at the [REDACTED] elementary School. The meeting was intended to have the dual purpose of being a domain conference and an intake meeting. (2/1/11 Notification of Conference, EX 23) On February 8, however, [REDACTED] notified the District that she could not attend the meeting. (*See* EX 26, p. 2)

On February 10, ██████ sent the Parent a second conference notification rescheduling the domain meeting to February 24 at ██████ school. (2/10/11 Notification of Conference, EX 25) In addition to the notice itself, ██████ explained in a separate email that the meeting was being held "to determine which evaluations are needed to provide a complete assessment of ██████ (2/10/11 ██████ email to ██████, EX 24)." ██████ also stressed that the Parent's written consent was needed before the team could begin the evaluations. (*Id.*) According to ██████ the February 24 meeting did not take place because the Parent failed to appear. Moreover, because ██████ failed to attend the domain meeting, the District was unable to obtain her consent to evaluate ██████ and, therefore, could not proceed.

On March 1, 2011, District Superintendent ██████ notified ██████ by letter that the District intended to go forward with an expulsion hearing for ██████ on March 8. According to the letter, the District had made this decision because ██████ had failed to attend ██████ as required, and because the Parent had failed to participate in the scheduled domain meeting and provide her consent to evaluate ██████ (EX 26)

The expulsion hearing proceeded as scheduled on March 8. (*See* 3/11/11 Hearing Officer's Report of Expulsion Hearing, EX 8) On the same day, ██████ presented the District with a due process complaint. (████████ testimony) The complaint, which was limited to a single issue, alleged, "[t]he District refused to evaluate prior to expulsion." (3/8/11 Due Process Complaint, EX 27) Two days later ██████ wrote to ██████ seeking to schedule a resolution meeting on March 14. (3/10/11 ██████ Letter to ██████, EX 28) In her letter, ██████ made clear that the District was willing to evaluate ██████ on an expedited basis. She also offered to convene a domain meeting immediately following the resolution conference. Finally, she stated that the District was willing to hold its recommendation for expulsion of ██████ in abeyance during the evaluation period.⁴ (*Id.*; *see also* 3/10/11 Notification of Conference, EX 29) ██████ notified the District that she could not attend a meeting on March 14, and suggested March 23 or March 30 as alternatives. (3/11-3/15/11 Email Correspondence, EX 30) The District agreed to the Parent's request to meet on March 30, but ██████ subsequently failed to confirm that she would attend on that date. Once again, the meeting did not take place. (*See* 3/22/11 Brotine Letter to ██████, EX 32; 3/29/11 ██████ EX 33) The parties agreed to reschedule the domain meeting to April 11, 2011.

On April 11, about an hour before the domain meeting was to occur (*See* ██████ Testimony), ██████ once again requested that the meeting be rescheduled. (4/11/11 ██████ Email to ██████ EX 40) This time, however, the District refused her request and the meeting proceeded as scheduled. The Parent did not attend, nor did she participate by conference call as was offered by the District. (4/11/11 ██████ Email to ██████, EX 41)

The participants in the domain meeting included ██████ the school social worker, ██████ the school psychologist, the school nurse, a speech and language therapist, and legal counsel for the District. (4/11/11 Conference Report, EX 20, p. A13) As a starting point, the team considered existing information concerning ██████

⁴ Though an expulsion hearing was held for ██████ on March 8, the actual decision to expel a student requires the approval of the school board. (*See* 3/8/11 Harrison-Williams Letter to RF, EX 27a) That is the final step the District was willing to delay.

to determine which domains should be assessed. Specifically, with respect to [REDACTED] academic achievement, the team considered ENI and AIMSweb data (See EX 17), ISAT scores, as well as [REDACTED] report cards. (EX 20, p. A14) In addition, [REDACTED] shared her observations of [REDACTED] classroom performance. (*Id.*; see also [REDACTED] Testimony) With respect to [REDACTED] social-emotional status, the team considered school files, SWIS data,⁵ office referrals and teacher reports. (EX 20 at p. A15) After considering this, and other data, the team agreed that the school psychologist would assess [REDACTED] in the areas of academic achievement, functional performance, and cognitive functioning. (*Id.* at A14) The team also agreed that the school social worker would complete a social development study, and that the school nurse would complete a review of [REDACTED] health records and conduct vision and hearing screenings. [REDACTED] at [REDACTED] 4-15) Finally, the team decided not to assess [REDACTED] in the areas of communication status and motor abilities. (*Id.*)

On April 13, counsel for the District forwarded a copy of the domain conference report to [REDACTED] and once again requested that she provide her consent to allow the District to proceed with its evaluation of [REDACTED] (4/13/11 [REDACTED] to [REDACTED] EX 42) The very next day, [REDACTED] repeated the District's request that [REDACTED] sign and return the consent to evaluate form. (4/14/11 [REDACTED] to [REDACTED] EX 43) Over the next two weeks, the District made at least three more attempts to obtain the Parent's consent to evaluate [REDACTED] (See 4/19/11 [REDACTED] EX 45; 4/27/11 [REDACTED] Email to [REDACTED] EX 47; 4/28/11 [REDACTED] Email to [REDACTED] EX 50) [REDACTED] responded with various questions to which the District responded. (See, e.g., EXs 43 and 45) On May 9, 2011, the Parent provided the District with her consent to evaluate [REDACTED] (5/9/11 Consent to Evaluate, EX 51)⁶

During this same period, the District also notified [REDACTED] of its intent to proceed with meeting of the Board of Education meeting to consider the administration's recommendation that [REDACTED] be expelled for gross misconduct. (4/27/11 [REDACTED] Letter to [REDACTED] EX 48) The meeting went forward as planned on May 16, and the board voted to expel [REDACTED] for the remainder of the 2010-11 school year and for the 2011-12 school year, as well. (5/17/11 [REDACTED], EX 49)

[REDACTED] was evaluated on May 23, 2011. On June 6, the District convened a conference to consider [REDACTED] eligibility and write an IEP. (See 6/6/2011 Conference Report, EX 7) [REDACTED] attended the meeting along with her advocate, [REDACTED] and her daughter, [REDACTED] Other members of the team were: [REDACTED] the school nurse, [REDACTED] a speech and language therapist, [REDACTED] a special education teacher, and counsel for the District. (*Id.* at p. A52)

During the meeting, the team considered the results of [REDACTED] initial evaluation. [REDACTED] who was a school psychologist for [REDACTED] during the 2010-11 school year, shared the results of his psychological evaluation of [REDACTED] [REDACTED] is no longer employed by the District, but he testified at the hearing about his evaluation report concerning [REDACTED] and

⁵ SWIS Reports provide information concerning a student's office referrals in graph and chart form. (See SWIS Report concerning [REDACTED] EX 16) Mr. Greene testified that major office referrals are included in the SWIS graphs. In response to questioning from the Parent, however, it became evident that [REDACTED] received several major referrals in October 2010 which were not included in the SWIS Report.

⁶ The date next to the signature line of the consent form appears to be "4/12/11." However, the fax legend on the top of the form clearly shows that the document was not transmitted until May 9, 2011. (*Id.*)

about the June 6 eligibility and IEP meeting. [REDACTED] has extensive experience as a school psychologist, both in the areas of evaluation and providing services to students.

Specifically, [REDACTED] administered the Wechsler Individual Achievement Test II to assess [REDACTED] levels of performance in reading, math and other areas of language arts. (5/23/11 Psychological Evaluation Report, EX 21) Results of the test revealed that [REDACTED] exhibited adequate skill development in word reading and reading comprehension, but had underdeveloped decoding skills to help sound out words [REDACTED] did not know. (*Id.* at A40) In understanding math concepts, [REDACTED] scored at the mid seventh grade level. His performance in numerical operations was quite a bit lower – at the mid 4th grade level. (*Id.* at A39-40) [REDACTED] testified, however, that [REDACTED] rushed and seemed to make careless mistakes during that portion of the test. (*See Hill Testimony*) [REDACTED] exhibited underdeveloped skills in spelling and written language, but his listening comprehension and oral expression were well above current grade expectations. (EX 21 at 40-41) Overall, [REDACTED] concluded that [REDACTED] is capable of performing at his grade level. Likewise, [REDACTED] cognitive functioning, as evidenced by his performance on the Wechsler Intelligence Scale for Children, is within the average range of ability, with no statistically significant difference between the processing modalities. (*Id.* at 44)

To assess [REDACTED] behavior in the classroom, [REDACTED] spoke with [REDACTED] teachers. He also asked two of [REDACTED] teachers to complete behavior checklists. (*Id.* at A38, 43-44; *see also* [REDACTED] Testimony) In describing their responses, [REDACTED] noted that one teacher reported [REDACTED] exhibited significant behavior problems in his classroom. Other teachers reported some behavior issues, but not on the same level. In fact, one teacher said that [REDACTED] was not a problem in her classroom. (*Id.*) Based on that information, [REDACTED] concluded in his report that [REDACTED] problem behaviors seemed to be related more to [REDACTED] interactions with one teacher than to an emotional disturbance. (*Id.* at 45)

While testifying at the hearing, [REDACTED] stressed that his opinion about [REDACTED] changed during the IEP meeting. Specifically, as he listened to the reports shared by other team members – particularly [REDACTED] [REDACTED] stated that he realized [REDACTED] behavior was more extreme than he had initially thought. As [REDACTED] put it, the information shared in the eligibility meeting presented a different picture of [REDACTED]. Thus, [REDACTED] concluded that [REDACTED] met the requirements for a diagnosis of emotional disability. ([REDACTED] Testimony) Mr. [REDACTED] also agreed with the team's determination that [REDACTED] needed the more restrictive placement of a public therapeutic day school to address his behavior issues. Significantly, Mr. [REDACTED] testified that [REDACTED] agreed with the team's determination that [REDACTED] needed the structure of a therapeutic day school. She disagreed, however, when she learned that the school was to be [REDACTED] (*Id.*)

In addition to Mr. [REDACTED] report, [REDACTED] a school social worker for the District, presented the results of her Social Developmental Study Assessment to the IEP team. (5/23/11 Social Development Study Assessment, EX 22) She testified about her report at the hearing, and about her participation in the June 6 eligibility and IEP meeting. [REDACTED] [REDACTED] has worked as a social worker in the [REDACTED] School District for 25 years. In this position, she conducts social assessments and provides a variety of support services to students, teachers and families.

According to her report, [REDACTED] obtained information for her social assessment of [REDACTED] from a number of sources. In particular, [REDACTED] interviewed the Parent and [REDACTED]. She also

consulted with [REDACTED] the principal, as well as [REDACTED] teachers, including [REDACTED] (language arts), [REDACTED] (math), [REDACTED] (science), and [REDACTED] (social studies). [REDACTED] also reviewed [REDACTED] school records such as report cards and records of behavioral incidents. (See generally, EX 22)

[REDACTED] testified that during their interview, she found the Parent to be very cooperative, insightful and concerned about [REDACTED]. [REDACTED] learned that [REDACTED] comes from a large family. According to the Parent, [REDACTED] and his siblings are encouraged to take responsibility for their actions. In school, [REDACTED] believes that [REDACTED] has academic problems that affect his behavior. She reported that [REDACTED] was receiving F's in all of his classes, and that he had been suspended and expelled from school for severe behavior problems. (Id. at A29)

In summarizing her interviews with school staff, [REDACTED] noted that according to [REDACTED] [REDACTED] has the ability to complete assignments when he stays focused. He often appears to be in a rage, however, and requires extended cool down time. During one of his rages, [REDACTED] told [REDACTED] to "get the hell out of his way," as he pushed past her. [REDACTED] also stated that [REDACTED] was placed on a behavior intervention plan in which he was to take home daily progress reports and return them with his mother's signature. The reports were not returned, however, and according to [REDACTED] [REDACTED] did not return her phone calls. (Id. at A29-30) [REDACTED] also reported that [REDACTED] exhibits significant behavior problems that include, breaking school rules, defying teachers, disrupting class, lying and teasing other children. Notably, one teacher, [REDACTED], reported that [REDACTED] did not argue with or defy her. She also stated that [REDACTED] almost always pays attention in class. She agreed with the other staff members, however, that [REDACTED] loses his temper easily, lies and disrupts the school work of other children. (Id. at A30)

During the hearing, [REDACTED] was asked about the seeming discrepancy between Ms. [REDACTED] reports about [REDACTED] as compared to the other teachers' observations. [REDACTED] pointed out that [REDACTED] is an experienced teacher and strict disciplinarian. While Ms. [REDACTED] reported that [REDACTED] didn't defy her, she agreed with the observations of other staff members that [REDACTED] loses his temper easily, lies and disrupts the class. (Id. at A30) Also, on the BASC-2 (discussed below) [REDACTED] reported [REDACTED] to be at risk in each of the areas measured. [REDACTED] Testimony)

In addition to her interviews, [REDACTED] also administered the Vineland Adaptive Behavior Scale to the Parent, [REDACTED] and the Behavior Assessment System for Children (BASC-2) to [REDACTED] teachers and to [REDACTED], and to the Parent. On the Vineland, [REDACTED] scores fell within the adequate to moderately low range for communication, daily living and socialization. Notably, [REDACTED] reported that [REDACTED] is too impulsive, has poor concentration and attention, and has temper tantrums. (Id. at 31-32) With respect to the BASC-2, several of the responses by school staff fell within the clinically significant range, indicating that [REDACTED] exhibits a high level of maladjustment. For example, [REDACTED], [REDACTED] all reported clinically significant scores in the area of Externalizing Problems. All of the staff rated [REDACTED] either clinically significant or at-risk in the areas of school problems and behavioral symptoms. (Id. at 32-33)

In testifying about the conclusions she reached from her assessment of [REDACTED] [REDACTED] stressed that [REDACTED] is a student who has a history of negative behaviors at school. School

staff have tried to address [REDACTED] behaviors through a number of disciplinary strategies including, parent consultations, opportunities to “cool down,” office referrals, daily progress reports, and suspensions. Despite these intervention strategies, however, [REDACTED] behaviors have escalated to the point of expulsion. As [REDACTED] put it, “I’m seeing a student who’s had a whole bunch of strategies used and none of them worked.” ([REDACTED] Testimony)

Finally, [REDACTED] testified that she presented these findings at the June 6 IEP meeting. She believes her findings are consistent with [REDACTED] results. [REDACTED] also testified that the Parent and teachers were in agreement with the information that she shared. (*Id.*)

After considering the results of [REDACTED] and [REDACTED] assessments, the team agreed that [REDACTED] did not exhibit the characteristics of a student with a learning disability. (*See* EX 7, pp. A57-59) They did, however, agree that [REDACTED] met the criteria of a student with an emotional disability. (*Id.* at A60-61) Indeed, according to the undisputed evidence presented at the hearing, this was a unanimous decision. (*See* Testimony of [REDACTED])

The team then turned its attention to identifying the least restrictive placement for [REDACTED]. The team determined that [REDACTED] could benefit from “a structured program with small class sizes that provides more behavioral supports such as psychological counseling, social work services, a functional behavior analysis and a behavior intervention plan.” (EX 7, p. A67) Based on those identified needs, the team determined that neither a general education placement nor a general education placement with resource services would provide the necessary supports to allow [REDACTED] to be successful. (*Id.* at 75) Team members agreed that a public therapeutic day school was the least restrictive environment that would provide [REDACTED] with the necessary behavioral and emotional supports. (*Id.*)

As noted above, [REDACTED] attended the June 6 meeting as the Parent’s advocate, and she testified about the team’s interactions on that day. In [REDACTED] opinion, the District provided insufficient documentation to show how it had used the RTI (response to intervention) process with [REDACTED]. Specifically, [REDACTED] stated that records were “sketchy” concerning the interventions that were used to address [REDACTED] outbursts. In addition, there was little data to show who was monitoring the interventions, and whether they were succeeding. ([REDACTED] testimony) She noted, however, that as [REDACTED] asked questions, she received “lot’s of clarity” from the team. (*Id.*) When the meeting progressed to a discussion of eligibility and placement for [REDACTED] testified that the Parent agreed with the team’s determination that [REDACTED] qualified for special services as a student with an emotional disability. (*Id.*) [REDACTED] also initially agreed that [REDACTED] should attend a public therapeutic day school, but changed her position when she learned that [REDACTED] would attend [REDACTED] School. (*Id.*; *see also* EX 7 conference notes, p. A77)

Thus, on June 7, 2011 the Parent presented the District with a request for a due process hearing.

CONCLUSIONS OF LAW

Congress created the Individuals with Disabilities Education Act (IDEA) to ensure that all children with disabilities have access to a free appropriate public education (FAPE). 20 U.S.C. §1412(1). A free appropriate public education must be “specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction.” *Board of Educ. v. Rowley*, 458 U.S. 176, 188-89 (1982). A key component of FAPE is the requirement that children be educated in the least restrictive environment. 34 C.F.R. §300.114(a). Put another way, school districts must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are non-disabled. *Id.* This does not mean, however, that every child has a right to be educated in a regular classroom. To the contrary, as the Seventh Circuit held in *Lachman v. Illinois State Board of Education*, 852 F.2d 290 (7th Cir.1988), “IDEA’s mainstreaming preference is to be given effect only when it’s clear that the education of the particular handicapped child can be achieved satisfactorily in the type of mainstream environment sought by the [parent].” See also *MR by RR v. Lincolnwood Bd. of Educ., Dist. 74*, 843 F. Supp. 1236, 1239 (N.D. IL 1994) (court relied on *Lachman* in holding that therapeutic day school was the appropriate placement for a student since the student did not receive educational benefit from mainstreaming).

Deciding what constitutes LRE is the responsibility of the IEP team. 23 Ill. Admin. Code §226.240(a) and (b) Moreover, courts have recognized that deference should be given to the decisions of trained educators. See *Heather S. v. State of Wisconsin*, 125 F.3d 1045, 1057 (7th Cir. 1997). Finally, because [REDACTED] is the moving party in this case, she shoulders the burden of proof in demonstrating that the District denied [REDACTED] FAPE. *Schaffer v. West*, 546 U.S. 49 (2005). For the reasons set forth below, in applying the law to the facts of this case, the evidence does not support the Parent’s assertions that the District denied [REDACTED] FAPE when it recommended that he attend a public therapeutic day school. Nor does the evidence support Ms. [REDACTED] contention that [REDACTED] is entitled to compensatory relief for [REDACTED] loss of educational time after January 26, 2011.

Whether the District Denied [REDACTED] FAPE by Failing to Rely on Appropriate Data to Support the Team’s Decision that a Therapeutic Day School is the Least Restrictive Environment for [REDACTED]

The Parent contends that the District denied [REDACTED] FAPE because it failed to rely on appropriate data when it determined that a public therapeutic day school is the least restrictive environment for [REDACTED]. Specifically, the Parent maintains that as a first step in addressing [REDACTED] negative behaviors, the District was legally required under IDEA (34 C.F.R. §300.309(b)) to implement a data-based RTI (response to intervention) process that included monitoring to evaluate and document the effectiveness of its behavior interventions with [REDACTED]. The District’s behavior intervention program, according to [REDACTED] fell far short of the data-based documentation required by law. [REDACTED] alleges, for example, that the District failed to document the start and end dates of its various interventions, and also failed to monitor or document the effectiveness of each intervention. [REDACTED] further asserts that the District failed to give her the opportunity to

provide input on the strategies being used. According to [REDACTED] the District's failure to obtain appropriate RTI data and consider it as part of its initial evaluation of [REDACTED] rendered the evaluation invalid. Thus, [REDACTED] argues that the team's subsequent determination that a therapeutic day school is [REDACTED] least restrictive environment cannot be supported and amounts to a denial of FAPE.

Ms. [REDACTED] argument fails, however, because it rests entirely on the requirements of §300.309(b), which does not apply in this case. Rather, §300.309 governs the procedures for determining the existence of a specific learning disability. Indeed, §300.309(b) explicitly states:

To ensure that underachievement in a child *suspected of having a specific learning disability* is not due to lack of appropriate instruction *in reading or math*, the group must consider as part of the evaluation ... (1) Data that demonstrates that prior to, or as a part of the referral process, the child was provided appropriate instruction in the regular education settings... and (2) Data-based documentation or repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

Here, there was no evidence presented to indicate that the Parent or the District suspected [REDACTED] of having a learning disability. To the contrary, the evidence showed that [REDACTED] teachers believed he was quite capable of performing the required academic tasks, but that his behavior prevented him from doing so. Thus, while the Parent is correct in her assertion that District did not employ the type of detailed and precise data collection contemplated by §300.309(b), the District was not required to do so.

Setting aside the Parent's misplaced reliance on §300.309(b), the evidence still does not support her contention that the IEP team erred when it determined that a public therapeutic day school is [REDACTED] least restrictive environment. Indeed, contrary to the Parent's assertion, the District introduced ample documentary evidence to show that from the beginning of the school year until he was suspended on January 26 for hitting a teacher, [REDACTED] engaged in numerous incidents of serious misbehavior at school and on the bus. The evidence also showed that the District tried to address [REDACTED] negative behaviors through its system of Positive Behavior Intervention and Supports (PBIS). [REDACTED] testified, for example, that the staff tried several intervention strategies at the Tier 1 level, and when those failed, [REDACTED] decided that [REDACTED] should be moved to Tier 2. [REDACTED] was suspended for hitting a teacher before a team could evaluate the effectiveness of the Tier 2 interventions.⁷

⁷ While there is no basis to conclude that the District's documentation of its PBIS interventions constituted a denial of FAPE, nevertheless, there was room for improvement. That there was not a more complete record of the Tier 2 Daily Progress Reports was troubling, for example. And while the evidence showed that the gaps in the record were due to the Parent's failure to sign and return the reports, that problem could have been remedied by making a copy of the report before sending the original home each day. Also concerning was the lack of a written record to indicate that the Parent was informed [REDACTED] was receiving Tier 2 interventions. Both Ms. [REDACTED] and Mr. [REDACTED] testified, however, that they notified [REDACTED] about the daily progress reports. [REDACTED] did not introduce any evidence to the contrary.

When its PBIS interventions proved unsuccessful, the District – at the Parent’s request – conducted an initial evaluation of [REDACTED] to determine if he was a Student with a disability. Setting aside the question of the lengthy delay in completing the evaluation, which is addressed in the section below, the evidence shows that the District fully complied with all of the legal requirements for administering an evaluation. Specifically, the District used a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about [REDACTED] (See 34 C.F.R. §300.304(b)) Mr. Hill, for example, administered the WIAT and the Wechsler to assess [REDACTED] academic levels and cognitive abilities. [REDACTED] conducted interviews with school staff, the Parent and the Student, and administered two statistically normed rating scales that assessed [REDACTED] adaptive skills and behavior.

[REDACTED] shared the results of their assessments at an eligibility meeting attended by the Parent, her advocate, and her daughter. [REDACTED] also shared her classroom-based observations of [REDACTED] (See *Id.* at §300.305(a)(1)) Notes of the conference confirm that the Parent also provided input and asked questions. (*Id.* at §300.305(a)(2)) Based on all of this information, the team determined that [REDACTED] was eligible to receive special education services as a student with an emotional disability. The team then determined that based on [REDACTED] individual needs, a public therapeutic day school was his least restrictive environment. The evidence showed that all of the team members – including the Parent and her advocate – agreed that a public therapeutic day school was the appropriate placement for [REDACTED] [REDACTED] objected to the placement only after she learned that [REDACTED] was the school [REDACTED] would attend.

In short, the evidence supports the team’s determination that a public therapeutic day school is the least restrictive environment for [REDACTED]. The Parent’s assertion that the District denied [REDACTED] FAPE by failing to rely on appropriate data to support that determination fails.

Whether [REDACTED] is Entitled to Receive Compensatory Education Based on the District’s Failure to Provide [REDACTED] with FAPE from January 26, 2011 to the End of the School Year?

The Parent contends that [REDACTED] is entitled to receive compensatory education for the period that he did not attend school after he was suspended for hitting a teacher. That period extended from January 26, 2011 to the end of the school year. Though she did not specify the legal basis for her assertion, [REDACTED] apparently contends that the District violated §300.534(a) of IDEA because its January 26 suspension and recommendation for expulsion occurred after the Parent had requested a special education evaluation on January 21, 2011. Also relevant to her argument is the fact that the team subsequently determined [REDACTED] to be a student with an emotional disability, and that the act for which he was suspended – hitting a teacher – was determined to be a manifestation of [REDACTED] disability. (EX 7 at pp. 78-79) Those facts, however, are incomplete. Specifically, the evidence also shows that despite requesting an evaluation for [REDACTED] [REDACTED] would not allow the District to conduct the evaluation. As shown below, Ms. [REDACTED]’s failure to allow the District to proceed precludes her claim for compensatory education for her son.

Section 300.534(a) of IDEA states in relevant part:

A child who has not been determined to be eligible for special education and related services ...and who has engaged in behavior that violated a code of school conduct, may assert any of the protections provided for in this part if the public agency had knowledge... that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

A school district is deemed to have knowledge that a child has a disability when a parent requests an evaluation of the child before the behavior that precipitated the disciplinary action occurred. *Id.* at §300.354(b) Notably, however, there is an important exception to that rule. A District is *not* deemed to have knowledge if a parent has not allowed an evaluation of the child pursuant to §300.300 through §300.311. *Id.* at §300.534(c)(1)

Here, there is no dispute that the Parent requested an evaluation for [REDACTED] on January 21, before he was suspended for hitting the teacher on January 26. Thus, under normal circumstances the District would be deemed to have had knowledge that [REDACTED] was a student with a disability. However in this case, the exception applies because the evidence shows that after requesting an evaluation on January 21, 2011, [REDACTED] failed to allow the District to administer the evaluation. A complete discussion of that evidence appears in the Statement of Facts of this decision, and I will not repeat it here. *See supra* pp. 5-7 In summary, the evidence demonstrates that after agreeing to the Parent's request for an evaluation on January 25, 2011, the District made four attempts to hold a domain meeting (on February 10, February 24, March 30 and April 11) to determine the scope of [REDACTED] evaluation. Two of those dates were requested by the Parent. Yet in each instance, [REDACTED] either asked that the meeting be postponed or simply failed to attend. When the fourth attempt to include the Parent was unsuccessful, the District proceeded with the domain meeting on April 11 without her. It subsequently (and promptly) provided her with a copy of the conference report. The District then made at least five attempts to obtain [REDACTED]'s consent to proceed with the evaluation. (April 13, 14, 19, 27, 28) *Id.* Nearly four months after requesting an evaluation for [REDACTED] [REDACTED] finally provided the District with her consent to proceed on May 9, 2011. Once consent had been granted, the District wasted no time in completing its evaluation of [REDACTED] and convening an eligibility/IEP meeting for [REDACTED] on June 6, 2011.

In short, the District did not deny [REDACTED] FAPE by failing to accord him the protections of §§300.534(a) and (b). To the contrary, the evidence demonstrates that the District tried to proceed with the evaluation but [REDACTED] would not allow it. Notably, there is no dispute that [REDACTED] missed approximately half of the school year even though the District had arranged for him to attend PACE School in lieu of expulsion. Unfortunately for [REDACTED] however, he is not entitled to compensatory education because the responsibility for his lost educational opportunity lies with the Parent, not the District.

Pursuant to the above findings of fact and conclusions of law, it is hereby ordered:

- 1) The Parent's request for an order finding that, for the 2011-12 school year, placement at [REDACTED] with appropriate supports is [REDACTED] least restrictive environment is denied.
- 2) The District's request for an order finding that placement at a public therapeutic day school for the 2011-12 school year provides [REDACTED] a free appropriate education in his least restrictive environment is granted.
- 3) The Parent's request for an order directing the District to provide [REDACTED] with compensatory education in the form of before or after school tutoring to address [REDACTED] lost educational opportunity resulting from the expulsion recommendation is denied.

In light of this order denying the Parent's requests for relief, there is no requirement for the District to provide proof of compliance to the Illinois State Board of Education Compliance Division.

DATED: September 12, 2011



Kristine L. Anderson
Impartial Hearing Officer

RIGHT TO REQUEST CLARIFICATION

Either party may request clarification of this decision by submitting it in writing to the undersigned Hearing Officer within five 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 and to the Illinois State Board of Education. The right to request such a clarification does not permit a party to request reconsideration of the decision itself, and the Hearing Officer is not authorized to entertain a request for reconsideration.

RIGHT TO FILE A CIVIL ACTION

This decision shall be binding upon the parties unless a civil action is commenced. Any party to this hearing aggrieved by this 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)(2004), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision is mailed to the parties.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the aforesaid Decision and Order was transmitted electronically to the parties and by certified U.S. mail on September 12, 2011.

DATED: September 12, 2011.



Kristine L. Anderson

Impartial Hearing Officer
P.O. Box 7065
Evanston, IL 60204