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ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

█
Student
vs.

Case No. 2011-0478

█
School District

█ Hearing Officer

DECISION AND ORDER

This matter is before the undersigned Hearing Officer for a due process hearing concerning the Parent's assertion that the District violated its child find obligation and denied the Student a free, appropriate, public education (FAPE). The Hearing Officer has jurisdiction to hear and decide the matter under 105 ILCS 5/14-8.02a, 34 C.F.R. 300.506-509, 23 Ill. Admin. Code 226 Subpart G, and the Individuals with Disabilities Education Act, as amended, 20 U.S.C. 1415 et seq. ("IDEA"). The parties were informed of their rights pursuant to these statutes.

PROCEDURAL BACKGROUND

The original due process hearing complaint was filed on June 27, 2011, and amended November 8, 2011. On May 14, 2012, this Hearing Officer received an appointment in this matter after the previously assigned Hearing Officer became unavailable. After this Hearing Officer was appointed, the parties agreed to mediation and to continue the case to the week of September 10, 2012. The mediation was unsuccessful. The case could not proceed to hearing the week of September 10 because of the teachers' strike. The parties agreed on the week of December 3. The hearing concluded on December 7. Both parties' group exhibits were admitted into evidence. Parents' exhibits are designated as PD and the District's exhibits are designated as SD.

ISSUES AND RELIEF REQUESTED

Parent stated issues and relief as follows: Procedural violations – failure to provide all of the Student's records; failure to provide prior written notice and take actions in response to requests for evaluation and special education services; failure to provide a copy of the procedural rights to Parents. Substantive violations – failure to fulfill Child Find duties; failure to complete

academic assessments as agreed and convene an IEP; failure to timely provide a comprehensive evaluation; failure to offer school based social work and/or psychological services; failure to timely develop an IEP and provide an appropriate educational program/placement; failure to identify and provide appropriate assistive technology; failure to conduct an adequate functional behavior assessment.

Proposed remedies: (1) order the District to provide Student records; (2) a finding that the District failed to adhere to IDEA's Child Find mandate and denied the Student FAPE; (3) a finding that the District's lack of appropriate responses to requested evaluations and failure to convene an IEP meeting to consider outside evaluations reports, and provide safeguards, impeded the Student's right to a FAPE and significantly impeded the Parent's opportunity to participate in the decision-making process, and caused a deprivation of educational benefit; (4) order the District to fund the placements at [REDACTED] and [REDACTED] and transportation; (5) order the District to reimburse Parents for tutoring costs during [REDACTED] years; (6) order the District to reimburse Parents for [REDACTED] psychological counseling; (7) order the District to complete an IEE; (8) order the District to convene an IEP; (9) compensatory education services; (10) reasonable attorney fees.

At the conclusion of the hearing, Parents withdrew the request for an IEE and IEP.

FINDINGS OF FACT AND ANALYSIS

The District has the burden of presenting evidence that the special education needs for the Student have been appropriately identified and that the special education program and related services proposed to meet the needs of the Student are adequate, appropriate, and available. 105 ILCS 5/14-8.02a(g-55). The Parents, however, have the burden of proof regarding the request for a due process hearing involving a denial of FAPE based on the United States Supreme Court ruling in *Schaffer ex rel. Schaffer v. Weast*, 126 S.Ct. 528, 537 (2005) which was analyzed with respect to the relevant Illinois statute (the Illinois School Code) by the Northern District. *Kerry M v. Manhattan School Dist.*; and *the Illinois State Board of Education*, U.S. District Court, Northern District of Illinois, IDELR 194 106 LRP 58547 (September 2006).

Parents essentially contend that the District: (1) Failed to adhere to Child Find obligations pursuant to IDEA; and (2) Failed to provide an appropriate and individualized evaluation in a timely manner in order to adequately identify the nature and extent of the Student's disabilities and develop an IEP for the Student which would provide [REDACTED] an appropriate educational program/placement based on scientific, researched based evidence with related services to meet [REDACTED] educational needs, which is a denial of FAPE.

1. Whether the District failed: to adhere to child find obligations based on IDEA; to provide prior written notice and take actions in response to requests for evaluation and special education services; to provide a copy of the procedural rights to Parents; to provide Student records.

Districts are required to identify, locate and evaluate all children with disabilities who regardless of the severity of the disabilities: (1) have disabilities and need special education and related services as a result; or (2) are suspected of having disabilities and being in need of special education and related services (20 U.S.C. § 1412(a), 34 CFR 300.111(c)) even though a student is advancing from grade to grade. A district is obligated to determine whether a student should be referred for an evaluation, not whether a student would actually qualify for services.

In responding to an inquiry regarding a concern that some local education agencies (LEAs) may be using Response to Intervention (RTI) strategies to delay or deny a timely initial evaluation for children suspected of having a disability, OSEP issued a Memorandum to Special Education State Directors on January 21, 2011, addressing this matter. "The provisions related to child find in section 612(a) of the Individuals with Disabilities Education Act (IDEA), require that a State have in effect policies and procedures to ensure that the State identifies, locates and evaluates all children with disabilities residing in the State, including ... children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services. It is critical that this identification occurs in a timely manner and that no procedures or practices result in delaying or denying this identification... States and LEAs have an obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of an RTI strategy." OSEP 11-07, 111 LRP 4677 (2011).

Further, OSEP opined, "The regulations at 34 CFR Sec. 300.301(b) allow a parent to request an initial evaluation at any time to determine if a child is a child with a disability. The use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation, pursuant to 34 CFR Sections 300.304-300.311, to a child suspected of having a disability under 34 CFR Sec. 300.8. If the LEA agrees with a parent who refers their child for evaluation that the child may be a child who is eligible for special education and related services, the LEA must evaluate the child. The LEA must provide the parent with notice under 34 CFR Sections 300.503 and 300.504 and obtain informed parental consent, consistent with 34 CFR Sec. 300.9, before conducting the evaluation. Although the IDEA and its implementing regulations do not prescribe a specific timeframe from referral for evaluation to parental consent, it has been the Department's longstanding policy that the LEA must seek parental consent within a reasonable period of time after the referral for evaluation, if the LEA agrees that an initial evaluation is needed.... An LEA must conduct the initial evaluation within 60 days of receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. 34 CFR Sec. 300.301©. If, however, the LEA does

not suspect that the child has a disability, and denies the request for an initial evaluation, the LEA must provide written notice to parents explaining why the public agency refuses to conduct an initial evaluation and the information that was used as the basis for this decision. 34 CFR Sec. 300.503(a) and (b). The parent can challenge this decision by requesting a due process hearing under 34 CFR Sec. 300.507 or filing a State complaint under 34 CFR Sec. 300.153 to resolve the dispute regarding the child's need for an evaluation. It would be inconsistent with the evaluation provisions at 34 CFR to reject a referral and delay provision of an initial evaluation on the basis that a child has not participated in an RTI framework." OSEP, 111 LRP 4677 (2011).

This case is an analogous situation in that the District initiated an Intervention Assessment (IAT) meeting after receiving Parent's email requesting testing, rather than commencing an evaluation or denying the request. The chronology of this case is instructive as to whether the District fulfilled its Child Find obligation.

The Student began seeing [REDACTED] a psychologist, on April 15, 2009, to help "figure out what's going wrong in school, what's going to make me behave better." PD 277. The Student had been a high-achieving elementary school student, with basically all A's. [REDACTED] was admitted into the District's selective enrollment school for honors classes, which are above normal grade level, for the 2009-2010 school year, on the basis of those grades, a high entrance exam score, and high ISAT scores. During [REDACTED] year, Parents had engaged a math tutor to help the Student beginning in November 2009. PD 539. At the end of the Student's [REDACTED] year, on [REDACTED] the Student's report card reflected two Fs and two Ds.

Mother sent an email on October 26, 2010, (PD16) stating that the Student's psychologist advised them to look into testing the Student because of focus issues related to schoolwork and that [REDACTED] was performing "way below [REDACTED] potential." Mother also emailed the Student's American Literature teacher (PD 14) and History teacher (PD 15, the same day asking if [REDACTED] could have his exams in a more quiet setting because of focus issues that the Parents were looking into. On the same day Mother was advised by email of the Counselor's and the Case Manager's names, indicating that both of them had been copied on the reply. PD 17. On October 27, Mother emailed the Counselor indicating she had spoken with another counselor last year because the Student "was not adjusting to [REDACTED] school work so easily and his grades dropped significantly. This year is even worse. (The Student's) psychologist suggests we have [REDACTED] tested. [REDACTED] is having trouble focusing in exams and the classroom. Perhaps you can guide us to the people who can start this process as soon as possible before (the Student) gets too far behind." PD 18.

On November 19, the Case Manager sent Parents a Conference Notification regarding a meeting with the Intervention Assistance Team meeting scheduled for December 1, 2010. PD 20.

On November 20, the Student's psychologist, at the request of the Parents, wrote to the District, stating that the Student had been in therapy since April 15, 2009, with [REDACTED] until the present. [REDACTED] noted that behaviorally [REDACTED] seems "within the normal range of adolescent [REDACTED]" Further [REDACTED] noted his intellectual abilities and potential are both very high but [REDACTED] academic achievement does not reflect this. The Student expressed to [REDACTED] a "strong desire to figure out this problem."

█ stated, "It is █ professional opinion that (the Student) needs a battery of tests to understand fully why █ is incapable at this point to achieve █ goals.... I see possibilities of ADD, ADHD, LD, depression and/or anxiety that are preventing (the Student) from self-actualizing.... This needs to be addressed now so that (the Student) can be successful at school and in █ life." PD 71.

In attendance at the December 1 meeting besides Parents were the Case Manager, Counselor and School Psychologist. The recommendations from the meeting were: continued outside therapy; seeing counselor intern as needed, school psychologist to begin informal testing. On December 9 and 15 the School Psychologist met with the Student for the initial informal testing.

On the recommendation of the Student's psychologist, Mother contacted █ who conducted a neuropsychological evaluation on December 29 and December 31. █ report was completed on January 28, 2011, and provided to the District. PD 274 – 294.

On February 16, 2011, Father emailed the Counselor regarding a discussion the Counselor had with Mother about a virtual class where the Student could work with a tutor. Father reported the Student was "excited" about the prospect of working with a tutor and "felt as if a big weight had been lifted." PD 542. However, the class was full. The Counselor reported later to Mother that seniors had to complete classes to graduate and they filled the available slots. The Counselor mentioned summer school virtual, would be offered at another school.

On March 1 the Student's progress report reflected two Fs and two Ds. Private tutoring commenced again on March 3. On March 3, the Student was involved with three other students in a "tagging incident." PD 24. A meeting was held on March 3, 2011. The Student was suspended for five days, from March 15 to 21.

On March 23, the Case Manager left a message for Parent indicating █ was trying to reach █

On March 28, █ who did the neuropsychological evaluation wrote a clarification letter regarding her report. PD 72, 3.

On April 29 the Case Manager left another message, stating █ did receive the information that was left for █ and passed it on to the school psychologist. The Counselor also called that day stating █ "did get though to (the case manager) and the case manager would call" the Parents. █ stated the Case Manager found the papers. The Counselor stated that █ the Counselor, located the PLAN and the PSAT scores but was unable to find the EXPLORE scores.

On May 4 the World Studies teacher sent an email stating █ would work with the Student in getting █ work in on time and allow extended deadlines for assignments and if needed, extra time for tests. █ also stated █ would discuss the homework matter with the Student to see about getting some of █ missing work turned in. On the same day Mother emailed the Math teacher regarding the Student indicating █ has ADHD and slow processing, asking for more time to finish █ tests and to be placed in front of the room.

On May 6, an email was sent from [REDACTED] the Student's therapist, recommending an "in milieu" type of program indicating that the Student had a strong desire to figure out [REDACTED] problem regarding [REDACTED]'s academic achievements, and that [REDACTED] is willing to try whatever is suggested including a battery of tests, seeing a psychiatrist, and individual and family counseling. PD 29.

On May 8 the American Literature teacher emailed, in response to Mother's email, indicating that the Student sits in front of the room and has additional time on his tests, with a reduced number of questions on tests for all the students, giving them all the entire class period to finish a test. [REDACTED] indicated the Student lost 25% of the grade for not doing a research paper.

On May 12, Parents were sent a conference notice for a 504 meeting to be held May 26. PD 30.

On May 13 the Student was found with marijuana and a smoking pipe and taken to a police station. PD 31, 32. A misconduct report of that date stated [REDACTED] was being suspended for ten days until May 28. After this incident Mother met with an education consultant, [REDACTED], who advised Mother to take [REDACTED] out of the school.

On May 16 the Counselor issued a letter to Parents indicating that the Student must attend summer school to make up for the classes which the Student failed: adv alg/trig, Spanish I, biology. PD 33. At the May 26 meeting Mother stated they were removing the Student. The District coded the withdrawal so that the Student would not be permanently out of the system if [REDACTED] wanted to return. PD 36.

On June 2, 2011, a Notice of Expulsion hearing was sent to Parents regarding the Student. This was withdrawn after Parents retained an attorney and filed for due process on June 27, 2011. Parents received a copy of the procedural safeguards from the District at an Assessment Planning meeting on October 3, 2011, (PD 103) and on October 13 signed the consent for evaluation.

From the October 26, 2010, email from Mother requesting testing until the May 26 removal of the student, the District did not provide Prior Notice (34 CFR § 300.503), the procedural safeguards which must be given to a parent on initial referral or parent request for evaluation ((34 CFR § 300.504), a consent form for evaluation (34 CFR Sec. 300.9), and did not conduct an evaluation. Thus, the District failed to conduct the initial evaluation within 60 days of receiving parental consent for the evaluation (34 CFR Sec. 300.301©). Notice of an Intervention Assistance Team meeting (IAT) (PD 20) and IAT form (PD 21) do not meet notice requirements. Parents could not challenge the IAT process, as they did not receive notice of Procedural Safeguards.

The Case Manager testified that [REDACTED] received an October 26, 2010, email (PD 17) in which Parents were asking for testing, but [REDACTED] did not think it was for evaluation. [REDACTED] scheduled an intervention assistance meeting. [REDACTED] also acknowledged seeing a November 20, 2010, letter from the Student's psychologist, [REDACTED] (PD 71) stating that the Student was having difficulty. [REDACTED] recommended a "battery of tests", noting possible ADD, ADHD, LD, Depression. The Case Manager testified that [REDACTED] did not think this required an evaluation. [REDACTED] also testified that Parents have to use the word "evaluation" because testing could be informal, not a full evaluation. This testimony is unsupported in law. Procedures with respect to

requesting an evaluation by Parents seeking an appropriate education for their children are meant to facilitate the process and not intended to be an impediment to parents, who are not special education experts or attorneys.

The Case Manager also testified with respect to [REDACTED] indication of LD that [REDACTED] said this was a possibility and the Case Manager testified that could be determined in the IAT. The Case Manager decided not to do an evaluation and decided on an IAT based on teacher reports. [REDACTED] decision is contradicted by the School Social Worker who testified that an evaluation should be completed if the school received a request from an outside psychologist. Neither the Case Manager nor the School Social Worker accurately testified as to the federal regulations at 34 CFR Sec. 300.301(b) which allow a parent to request an initial evaluation at any time to determine if a child is a child with a disability

The Case Manager further testified that it could be determined at the IAT meeting to do a full evaluation, based on a team decision and sometimes at IAT meetings it is decided to go to a full evaluation. Nonetheless, in this case, it was not decided to do a full evaluation at this meeting and Parents were not informed of the basis for this decision as required by federal regulations. 34 CFR Sec. 300.503(a) and (b).

Even assuming arguendo that the Case Manager did not interpret Parent's statement regarding the psychologist requesting testing as a request for evaluation, the request was completely clarified when the psychologist, in her November 20 communication, recommended a "battery of tests", noting possible ADD, ADHD, LD, and Depression. The Hearing Officer finds that this is a follow up/second request/referral for an evaluation for the Student, pursuant to the regulations at 34 CFR § 300.301(b) which allow a parent to request an initial evaluation at any time.

Nonetheless, the Case Manager determined that an IAT was appropriate for the Student because to [REDACTED] nothing indicated that a full evaluation was warranted. [REDACTED] said [REDACTED] could not remember what [REDACTED] told the Parents because [REDACTED] has over 200 recommendations a year for a 504 plan.

The District had a right to utilize an IAT to determine if the Student needed services that could be implemented immediately but that process does not replace the District's obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of an RTI (or IAT, or school based problem solving (SBPS)) strategy. OSEP 11-07, 111 LRP 4677 (2011). Additionally, the only plan developed from the December 1 meeting was to: continue outside therapy with registered psychologist; meet with counselor intern as needed; informal academic testing by school psychologist. Parents were already providing the Student with the outside therapy with a registered psychologist, so the school did not offer any services in this regard. There was no specific time for the Student to meet with the counselor intern; the Student was given the responsibility of following up when it was clear that [REDACTED] needed specific guidance and that the follow up should have been the responsibility of school personnel. Finally, the school psychologist did not complete the informal testing.

By early February the District had the neuropsychological evaluation of [REDACTED] which provided the District with sufficient information had they chosen to implement some

recommendations. [REDACTED] diagnosis was: dysthymic disorder, cannabis abuse, attention deficit hyperactivity disorder – combined type (mild). PD 287. [REDACTED] recommended continued individual therapy with [REDACTED], for addressing depression and marijuana abuse (noting he might require more intensive substance abuse treatment if [REDACTED] felt it would be beneficial), learning alternative coping strategies for anxiety and frustration, learning strategies to promote attention and learn compensatory strategies to manage symptoms of ADHD, such as time management and organizational strategies; and may benefit from medication consultation with a psychiatrist to determine if he could benefit from an anti-depressant or other medication. PD 287, 8.

For academic intervention, [REDACTED] recommended that the Student receive intervention in the educational setting, “e.g., 504 plan.” [REDACTED] specific recommendations included possible removal from honors classes and return to general courses until [REDACTED] can raise and maintain grades; in-school tutor to assistance in developing organization, study skills strategies, and classroom accommodations. [REDACTED] also made home recommendations regarding the Student’s marijuana use. PD 288, 9. Other recommendations included assistive technology and engaging in [REDACTED] music and team sports.” PD 289. The District, however, did not implement any of the recommendations although it could have done so as part of IAT while initiating an evaluation of the Student. The Hearing Officer finds that no services were offered to the Student during the time subsequent to the Parents’ October 26, 2010, request for an evaluation and May 26, 2011 when Parents withdrew the Student.

It is also noted that the Student was in school from the time of the request for evaluation in late October until Parents withdrew [REDACTED] in late May 2011 and thus [REDACTED] was available to the District for evaluation but the District did not evaluate [REDACTED]. The Hearing Officer finds that the District had access to the Student but failed to evaluate [REDACTED].

The Case Manager demonstrated knowledge of the requirements for safeguards because [REDACTED] testified that usually the safeguards are given at a meeting and the District has ten days to respond to a request. The Hearing Officer finds that the Parents were not given the procedural safeguards as required on initial referral or parent request for evaluation. 34 CFR § 300.504.

In this matter, in light of the Case Manager’s determination that [REDACTED] did not believe a full evaluation was required, the District was obligated to inform the Parents that the District does not suspect that the child has a disability and denies the request for an initial evaluation, providing Parents written notice explaining why the District refuses to conduct an initial evaluation and the information that was used as the basis for this decision, pursuant to 34 CFR Sec. 300.503(a) and (b). Parents could then challenge this decision by requesting a due process hearing under 34 CFR Sec. 300.507. The Hearing Officer finds that the District did not follow the mandated procedures to provide written notice.

The District’s witnesses, the Case Manager and the School Social Worker, gave conflicting testimony regarding the necessity to conduct an evaluation. The Hearing Officer finds that Mother and the psychologist, [REDACTED] were credible witnesses with respect to the request for evaluation and Parents provided documentary evidence supporting their assertion regarding the request for evaluation.

The District did not provide Prior Notice (34 CFR § 300.503), the procedural safeguards which must be given to a parent on initial referral or parent request for evaluation ((34 CFR § 300.504), a consent form for evaluation (34 CFR Sec. 300.9), and did not conduct an evaluation. Federal regulations require that an initial evaluation be conducted within 60 days of receiving parental consent for the evaluation (34 CFR Sec. 300.301©). The District did not provide the Parents with a consent to sign. Had the District provided the consent form upon request for the evaluation the evaluation would have to be completed by the end of December 2010. Instead the District convened an IAT for December 1. Parents requested an evaluation but instead received an IAT and no services for the Student.

The District failed to provide Parents written notice explaining why the District refused to conduct an initial evaluation and the information that was used as the basis for this decision, pursuant to 34 CFR Sec. 300.503(a) and (b) and thus did not provide Parents information about challenging this decision by requesting a due process hearing under 34 CFR Sec. 300.507. The Hearing Officer finds that the District violated its Child Find obligation to identify, locate and evaluate all children with disabilities who regardless of the severity of the disabilities: (1) have disabilities and need special education and related services as a result; or (2) are suspected of having disabilities and being in need of special education and related services. 20 U.S.C. § 1412(a), 34 CFR 300.111(c).

The Parents were denied meaningful participation because they were not provided a copy of their legal rights by the District as required by IDEA. The decision regarding which process was to be utilized, such as IAT, SBPS, or 504 plan and not to conduct an evaluation was determined by the Case Manager and the School Psychologist based on their own testimony.

The Hearing Officer finds that the District, having access to the psychologist's letter of November 20, 2010, detailing [REDACTED] concerns about possible ADD, ADHD, depression, and LD, and the neuropsychological report diagnosing dysthymia, cannabis use and ADHD, acted unreasonably in not evaluating the Student nor in providing written notice to Parent that it was not going to evaluate which denied Parents their legal rights with respect to challenging the decision in a due process hearing.

Thus, Parents have met their burden with respect to a Child Find violation.

Parents also have asserted that all the Student's records were not provided. IDEA requires a school district to allow parents or their representatives to inspect and review records "without unnecessary delay and before any meeting regarding an IEP, or any hearing..." §300.613(a). With respect to procedural violations of IDEA, only "procedural inadequacies that result in the loss of educational opportunity constitute a denial of FAPE." *Evanston Community Consol. School Dist. No. 65 v. Michael M.*, 356 F. 3d 798, 804 (7th Cir. 2004); *Board of Ed. Of Township High School District No. 211 v. Michael R.*, 2005 WL 2008919 (N.D. Ill. 2005). IDEA-2004 which became effective on July 1, 2005, also requires that where a procedural violation is alleged, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies: (I) impede the child's right to a FAPE; (II) significantly impede the parents' opportunity to participate in the decision making process regarding the provision of a FAPE; or

(III) cause a deprivation of educational benefits. P.L. 108-446, Section 615(f)(3)(E)(ii). During the hearing there was testimony from some witnesses, particularly the Case Manager, that certain records had not been produced.

II. Whether the District failed: to complete academic assessments and convene an IEP; to timely provide a comprehensive evaluation; to offer school based social work and/or psychological services; to timely develop an IEP and provide an appropriate educational program/placement; to identify and provide appropriate assistive technology; to conduct an adequate functional behavior assessment.

A school district is required by Congress to identify, evaluate and place potentially disabled students. 20 USC § 1412(a) (3) (A); 23 Ill. Admin. Code 226.100. Specifically, in Illinois, as noted above in the burden of proof description, the school code requires a district to present evidence “that the special education needs for the Student have been appropriately identified and that the special education program and related services proposed to meet the needs of the Student are adequate, appropriate, and available. 105 ILCS 5/14-8.02a(g-55). IDEA defines an evaluation as procedures mandated to determine whether a child has a disability and the nature and the extent of the special education and related services that a child needs. 34 CFR § 300.15. Based on IDEA requirements, the evaluation materials include those tailored to assess specific areas of educational need including that the district “use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information.” 34 CFR §300.304 (c)(2). IDEA requires that a full and individual evaluation include all components that are needed to identify a student’s disability and educational needs including related services. 34 CFR § 300.301(a).

As noted in the previous section, the Hearing Officer has made a finding that the District failed to meet its Child Find obligation subsequent to the October 26, 2010 request for an evaluation. The District’s evaluation (PD 143-162) was conducted in early 2012 and provided to Parents on February 21 (PD140) and 24 (PD 142).

At the arranged 504 meeting on May 26 Mother notified the District that [REDACTED] was removing the Student. [REDACTED] then met with the Principal to confirm the removal. On June 2, 2011, a Notice of Expulsion hearing was sent to Parents regarding the Student. This was withdrawn after Parents retained an attorney and filed for due process on June 27, 2011.

The District asserts that supports such as tutoring, summer school, and virtual school were offered. However, no specific plan was developed for the Student to provide for tutoring in the school; again, it would be left to the Student to attend tutoring as needed, if it was available. Nonetheless, Parents attempted to get him enrolled in the virtual school, working with a tutor after school on a computer, to make up the Fs. That effort failed because slots are given to seniors who need credits to complete school. Evidence reflects that summer school is not available at the District school.

Since June 2, 2011, the Student had been in three programs out of state: [REDACTED] and [REDACTED]. A letter from [REDACTED] on October 18, 2011, advised that the Student should not return home for testing because it "could be devastating to the progress [REDACTED] has made. A trip home could also put the Student in harm's way as he recently participated in self-harm by cutting [REDACTED] and this occurred in our highly structured environment. Of less importance, but still worth mentioning, is the fact that (the Student) is experiencing some success academically at our school and taking [REDACTED] out of classes for several days could set [REDACTED] back and possibly result in loss of credit for the semester." PD 324. The Student did return for testing on January 12 and 13, 2012. PD 139.

After the May 16, 2011, incident involving the Student being found with marijuana and taken to a police station, Mother met with an education consultant, [REDACTED], who advised Mother to take [REDACTED] out of the school. Mother testified that the Student had "downward spiraled ... had to remove [REDACTED] from stress ... came so fast ... terrible."

[REDACTED] has an extensive CV (PD 576-583), which reflects a background of work in special education. [REDACTED] is a Licensed Clinical Professional Counselor and Certified Educational Planner who has worked as an educational consultant since 1988 and also worked as an adolescent group therapist. [REDACTED] has co-authored [REDACTED]. As an educational consultant, [REDACTED] works with families to identify programs/schools that are deemed appropriate for a student. PD 384. [REDACTED] testified that she was contacted by the family in the spring of 2011 because the Student was in trouble in school. Mother wanted [REDACTED] to find a place for [REDACTED] because [REDACTED] was becoming more and more depressed.

[REDACTED] reviewed [REDACTED]'s report (PD 274-293) to understand the underlying issues. Parents told [REDACTED] they had no response from the school. [REDACTED] was looking for learning and executive functioning issues. [REDACTED] spoke with [REDACTED] and J [REDACTED] discussed the processing speed issue, attention, and depression, noting the span between other abilities and the ability to process, which was below average. PD 279. The Student was not feeling motivated, was sad, and had an executive functioning issue. One of the Student's teacher completed information with similar concerns regarding the Student not being able to be a self-starter. PD 281.

[REDACTED] reported to [REDACTED] the Student had deep depression, a sense of hopelessness, felt more intelligent than what [REDACTED] was putting out, could attend school but was not making a contribution, so [REDACTED] was doing drugs. The Student was self medicating, using drugs. Self-medicating is a way someone feeling emotional pain would find ways to soothe oneself--the pain of the emotion was greater than the ability to overcome.

[REDACTED] recommended a two step process to the Parents: sending the Student to a wilderness program to understand what [REDACTED] needed and what would encourage [REDACTED] because [REDACTED] had a "feeling of hopelessness." [REDACTED] recommended [REDACTED], a wilderness program for adolescents who have complex emotional feelings and are using drugs to work through their feelings. It is a short term

intervention. Its purpose is to give a short period of time to get grounded and for substances to leave the body. [REDACTED] has met with the [REDACTED] therapists and believes their environment is effective for certain children. The Student began the wilderness program in early June 2011.

[REDACTED] spoke with the [REDACTED] Therapist [REDACTED] on a weekly basis. [REDACTED] did a report of diagnostic impressions dated July 22, 2011. PD 305,6. [REDACTED] is a short term program. Student was not discharged home. [REDACTED] needed to go on to work on academics and work on [REDACTED] life instead. [REDACTED] described the Student as an intelligent person but something was missing; [REDACTED] had to have things repeated. There were no reports of [REDACTED] using drugs at the wilderness program.

After [REDACTED] went to [REDACTED] which [REDACTED] recommended because [REDACTED] peer group would be [REDACTED] intellectual equal and there would be therapy. The Student did not complete the program there because while [REDACTED] was benefiting from academics [REDACTED] was feeling worse about [REDACTED]. She testified that it is common for children like the Student to get worse before getting better [REDACTED] then suggested another program: [REDACTED]. [REDACTED] met with the Student when [REDACTED] came home in January 2012. [REDACTED] was feeling sad and depressed. Although [REDACTED] was slowly starting to get a better idea regarding [REDACTED] academics he felt badly about [REDACTED] because the thought [REDACTED] should be producing more and [REDACTED] was frustrated. Parents make the final decision about placing the child. [REDACTED] has been to [REDACTED] which is all [REDACTED], living in houses, more homelike, with emotional support, and a separate place for classes. The Student was successful at [REDACTED] [REDACTED] was in constant conversation with the therapist there and with Parents. [REDACTED] was not more restrictive than [REDACTED]--just a different environment, with more intensive therapy. There were no reports of alcohol or drug use at [REDACTED] or [REDACTED].

[REDACTED] reviewed the District's evaluation and testified that the 30 minutes of social work per week would not have been appropriate because of the Student's level of sadness. PD 213.

[REDACTED] testified on cross examination that [REDACTED] did look at the state approved list of schools, was familiar with them and felt none were appropriate because the Student is not low functioning. [REDACTED] needed academic peers [REDACTED] was not a cutter who needed a lock down environment. [REDACTED] did not need a restrictive environment because [REDACTED] was not a danger to himself or others. [REDACTED] looked at Heritage and Provo, which were \$130,000 per year. [REDACTED] is \$5,000 per month. [REDACTED] did not discuss with Parents that approved schools would be funded by the public schools. [REDACTED] offers traditional setting, small classes, where children were free to walk around the environment and there was no fear of their running. [REDACTED] did not feel an ISBE approved school can provide that. [REDACTED] did not know the extent of the Student's drug use. [REDACTED] did not have an academic program, so he could not earn credits; it was not an ESY program. The Student was asked to leave [REDACTED] he was feeling overwhelmed emotionally and he needed more treatment. [REDACTED] was not helping. [REDACTED] tried to hurt [REDACTED] [REDACTED] made a gesture of trying to cut [REDACTED]. If it was more than a gesture, [REDACTED] testified, then an ISBE school might have been more appropriate.

Representatives of all of the three programs the Student attended also testified. [REDACTED] [REDACTED] therapist, [REDACTED] testified that [REDACTED] has a Masters in Social Work and is a Licensed Clinical Social Worker. PD 313-4. [REDACTED] is a not a drug treatment program. There are no academics at [REDACTED]. It is a clinical program for adolescent [REDACTED], a

primary intervention for families, with an assessment and treatment program. On July 22, 2011, [REDACTED] completed the discharge summary. PD 305, 6. [REDACTED] spoke with [REDACTED] and read [REDACTED] report. From the psychological testing [REDACTED] noted slow word processing speed score and this can set the stage for how students learn and take in information and what type of learning style a student has. [REDACTED] also observed the Student's slow processing in session.

[REDACTED] assigned the Student a reading and writing assignment. [REDACTED] had difficulty completing assignment; it was hard for [REDACTED] to get assignments started and follow steps to finish [REDACTED] program website reflects that it a treatment program providing intervention assessment, stabilization and first-phase treatment for emotional and behavioral problems for [REDACTED] year old [REDACTED] with mood dysregulation, oppositional-defiance, low self-esteem, difficulty with family and or peer relationships, or early to mid-stage substance abuse ... therapeutic wilderness program working with adolescent [REDACTED], primary intervention. The Student had extreme emotional intensity and dysregulation. [REDACTED] did not feel good about [REDACTED], was avoiding things, had engaged in substance abuse [REDACTED] described self-medication as using a substance to cope with something else. [REDACTED] did not use substances at [REDACTED]

[REDACTED] discharge summary reflects that [REDACTED] learned strategies to help with depression, attention deficit skills, such as breaking complex tasks into a series of small steps and having instructions repeated, and understanding substance abuse [REDACTED] recommended individual and group therapy.

[REDACTED] testified that [REDACTED] needed a residential boarding school that had individual therapy and small classrooms. In [REDACTED] professional opinion the Student was having difficulties accessing education, did not have a good understanding of [REDACTED] difficulties, and lacked motivation. When someone is not doing well in school, it lowers their self-esteem, prevents doing well in school. The Student had not been doing well in school.

[REDACTED] [REDACTED] Director; testified that [REDACTED] has a bachelors in math, Masters in Educational Leadership, and is working on a doctorate. The Student was a student at the boarding school, enrolled near the end of July 2011, who left at the end of January 2012. Class size average is 7.

Parents asked [REDACTED] to write a letter in October 2011 because the District wanted [REDACTED] to come home for testing and [REDACTED] School felt it would be disruptive for [REDACTED] and that [REDACTED] should not go home for testing. PD 324. It was the opinion of the leaders/directors of the school that the timing was not appropriate, academically and therapeutically.

The Student did very well, had some struggles but became more engaged, and had good grades—a very typical student for [REDACTED]. It has a mission as a college preparatory school. PD 336. Most students go on to college [REDACTED] is licensed by [REDACTED] as an alternate residential program. PD 337. It is a year round, block system school with teachers on campus five nights a week to provide help. PD 339. In one year a student can take six core classes, plus electives. If a student arrives late for a block, the student goes into orientation and earns credit. The Student participated in orientation. Then he moved into classes in the fall block. PD 342. The facility has an organic garden, animals, culinary arts, where students learn a work ethic. The Student had group and individual therapy and was on the farm and garden crew.

██████ does not use IEPs. ██████ takes the psychological testing students come in with and puts together an academic program. For most students the small size and staff and supports are enough without extra supports. The teachers are not special education and the school is not accredited by the ██████ State Board of Education.

The Student did not complete the ██████ program because there were some behavioral issues that made ██████ not appropriate for the program, although ██████ was a fit academically. In the dorms ██████ bullied other children and ██████ made a decision that it was not a good fit in that aspect. If a child cannot be safe without an adult in the dorm, then the child is not appropriate for ██████.

██████ testified that he is the primary therapist with ██████. ██████ has a Masters in Social Work and is a Licensed Clinical Social Worker. PD 558,9. ██████ testified that ██████ is a therapeutic boarding school to work on emotion, behavior, substance abuse; it is not a drug rehab facility. The Student arrived in January 21, 2012 and ██████ worked with ██████ as his primary therapist. The Student's primary diagnosis came from his providers' history of the Student and ██████'s own intake finding of depressive disorder. PD 560-5. No additional testing was done. The Student participated in treatment and received individual therapy, group therapy, and substance abuse work, which is part of the therapy plan. PD 351

The academics at ██████ included IEPs, N█████ Accreditation, certified and licensed teachers, one on one tutoring, high school diplomas, ACT/Sat preparation classes, college courses, vocational training, and employment opportunities. PD 353. When he attained a certain level, the Student had a job at the two different stores, where ██████ was successful.

██████ testified that the Student needed ██████. Parents had tried out patient therapy at home and that had not proved helpful for the Student. They appropriately sought higher levels of intervention. It was not likely ██████ was in a place where ██████ would be successful at home. Without getting emotional issues in check ██████ did not believe the Student would have been successful academically.

██████ March 29, 2012, letter written for the Parents (PD 348, 9), reflected the Student was doing better than expected, given the level of defiance demonstrated there. ██████ was not ready to be released then because of the struggles ██████ was having socially, emotionally. With respect to behavior, ██████ had not developed the skill set to be successful. At ██████ had individual, group, family therapy, staff with students, peer support, and people ██████ is living with to help ██████ with ██████ struggles. ██████ behavior warranted his being at ██████.

The Student has been participating effectively in the program, in therapy, more fully identifying ██████ issues, but not ready to do that on ██████ own. PD 348. ██████ struggled with peer relationships, compared ██████ to others; based on ██████ own insecurities, it was common for ██████ to joke around, which is easier for ██████. When ██████ had a problem ██████ struggled to deal with that directly, making sarcastic comments rather than addressing the problem directly and tried to put peers down. ██████ had negative views of ██████ and a poor sense of self. Outwardly ██████ was competent and capable but ██████ had fears and insecurities. ██████ had a high level for relapse risk in emotional issues, behavior, defiance, and acting out that was part of substance abuse. All these areas would

have an impact of education [REDACTED] was participating in the academic portion of the program and experiencing success [REDACTED] was responding to treatment appropriately but it was [REDACTED] recommendation that [REDACTED] was not ready for discharge and should remain at [REDACTED]

On March 27, 2012, a letter written by the Student's school teacher, [REDACTED] described that the Student sat in a corner of the room, more secluded, by [REDACTED] choice, to be less distracted. PD 350. No computers were in the class, other than the teacher's. The Student did not have an alpha smart but [REDACTED] did not know if [REDACTED] brought one from home. The Student's grades were mostly As and Bs but has received an A on every test [REDACTED] has taken.

The Student had an IEP in place but [REDACTED] did not need things outlined. In the classroom setting, type of work [REDACTED] did, the teacher was accessible and the Student was able to complete the work within that structure. [REDACTED] does not have its own IEP and the Student's teacher was not a special education teacher. [REDACTED] was still at [REDACTED] in August 2012, showing progress in all areas, doing well academically, improving with [REDACTED] behavior and relationships and did have a home visit. [REDACTED] believed that the Student should remain at [REDACTED] because [REDACTED] still had more work to do, before [REDACTED] was ready to go home and manage [REDACTED] without that level of support. [REDACTED] was not aware of any supports CPS could provide. The Student completed the program and graduated in October 2012. PD 536. The Student's high school diploma was issued through the State of Utah [REDACTED] is not going back to [REDACTED] but, [REDACTED] testified, if there is a need [REDACTED] can come back. There is a local university some students who completed high school attend.

On August 4, 2011, the District's attorney sent the Domain sheets to Parents' attorney. In a series of emails in August 2011, Parents' attorney referred to the Domain sheet as "incomplete" and indicated that Parents wanted a meeting with the IEP team, as offered by the District. The Domain meeting was set for October 3. Parents received a copy of the procedural safeguards from the District at this Assessment Planning meeting on October 3 (PD 103) and on October 13 signed the consent for evaluation (PD 133).

Subsequently, the District sought to evaluate the Student. On October 18, [REDACTED] School, where the Student was in residence, sent a letter to the District stating that [REDACTED] School felt it would be disruptive for him and that he should not go home for testing. PD 324. The Student came home in January and was evaluated on January 12 and 13, 2012.

The School Psychologist evaluated the Student for approximately three hours on January 13, 2012. [REDACTED] testified that [REDACTED] is assigned to the school one and a half day per week. [REDACTED] first met the Student at the IAT meeting in December 2010, where Parents shared their concerns regarding the Student's performance. Parents stated they were getting an outside evaluation. In the interim, the School Psychologist was to do informal testing using the Kaufman Test of Educational Achievement (KTEA). IAT is a screening to see what can be done. No other interventions were offered for the Student, than what was listed: continue outside therapy, meet with counselor intern as needed, and informal academic testing by School Psychologist. SD 54. [REDACTED] did the informal academic testing of the Student twice within one week. SD 91.

█ testified that he received a "redacted" letter from █ and spoke with the Case Manager because the letter was "redacted." PD 72 – █ March 28, 2011, letter. It is noted that Mother testified █ did not "redact" the letter but surmised that someone else may have highlighted a portion of it. The letter, without any marking, was submitted to the District. PD 301, 2. It is also noted that the letter clarifies information with respect to recommendations already contained in █'s January neuropsychological report. PD 274 – 294. Any implication that Parents altered the letter is illogical and unsupported by evidence.

The School Psychologist also asked the Case Manager for the neuropsychological evaluation, which █ did not have. █ was involved in the May 26, 2011, conference for a 504 plan for the Student. █ felt this situation was "going on too long" and a decision was made in May 2011 to "go with 504" but then Mother removed the Student.

█ was unable to be at the October 3, 2011, domain meeting and asked someone to be there; the other school psychologist attended. PD 100. When █ did a psychological evaluation on the Student on January 13 (PD 143-154) █ was not aware of the October 18, 2011, letter from █ (PD 137). █ only wanted to talk with the Student and did not ask for outside information.

In his report he reviewed the evaluation done by █ on December 29 and 31, 2010, with respect to the scores on the Wechsler Intelligence Scale for Children, 4th Edition (WISC) and noted the issue of processing. PD 143.

In █ diagnostic profile chart dated January 13, 2012 (PD 154) of standard scores done from █ initial informal testing of the Student on December 9, 2012, █ noted a discrepancy one standard deviation below mean. █ testified that █ could have completed a processing speed test from the WISC but did not do it because the neuropsychological evaluation was very thorough and █ took it for its face value. █ felt there was no sense in putting the Student through that, although the processing speed could have changed. █ testified that "if it went down, it is already addressed but if it went up that is good ... but processing speed is not only a learning disability ... it can be effected by emotionality, use of substances, compulsivity." Low processing speed means █ should be provided the ability to process at █ own speed. The School Psychologist admitted that █ does not know by █ testing if it went up.

█ did not address processing skills because █ was told the Student was available on Thursday and Friday, but then it was changed to three hours on Friday. █ had to make a decision whether to give the WISC (Wechsler entire), or WASI (Wechsler Abbreviated Scale of Intelligence); the same was true for KDEA. █ was not able to give the Student the Wechsler including processing, and did not have time for KDEA, so █ used information from the first time █ evaluated █. █ acknowledged, however, that █ could have given the processing speed sub test (one sub test takes two minutes) and no other. █ testified that █ needed to establish rapport, listen to the Student, and would have wanted to do more, but █ was told █ had only Friday morning.

█ did not do a formal written assessment because the Kaufman assessment (KTEA) has more to do with punctuation and grammar than expanding on the Student's acumen. █ testified that

the District limits the type of tests used, noting that psychologists are trained on certain tests and those tests are purchased for the school psychologists to use. At that time KTEA was what was given to be used. The Student has consistently scored high on standardized types of tests. The KTEA testing was broken up over a year's time. The School Psychologist testified that the Student is bright, "and why put him through that again." The psychologist testified that [REDACTED] approaches (an evaluation) from a holistic perspective, not focusing on every discrete entity. PD 144.

[REDACTED] acknowledged that the KTEA for December 9 and 15, 2010 and January 13, 2012, did not show testing for math after December 2010. PD 469. [REDACTED] did not complete the written test to look at [REDACTED] organization skills because [REDACTED] did not have the other test available at the time.

The School Psychologist did Parent and Student assessment regarding areas of concern: the Student said [REDACTED] has a lack of attention; Father mentioned hyperactive, attention problems, adaptability, anger control, development social disorder, executive functioning. Mother described hyper, attention, adaptability, social skills, leadership, anger, emotional functioning. The school psychologist testified that these factors are important for placement and could impact [REDACTED] in school setting. Parents noted that the Student did not get into [REDACTED] first choice of selective enrollment schools but the Student reported that although it bothered [REDACTED] at the time [REDACTED] had gotten over it. PD 274; 277.

The Student shared that [REDACTED] took Adderall for ADHD. PD 143, 145, 146. With respect to the requirements to meet ED such as inability to learn, not due to intellectual, health, sensory concerns, unusual, inappropriate feelings, inability to maintain peer relations, the School Psychologist noted that the Student had friends-- some were a good influence, some not, but this is what the Student told [REDACTED] and Parents. The Student had anxiety, even about Parents, but that "is not atypical for teens."

The Student was sent to a wilderness program, followed by a residential program, where [REDACTED] fought with others and was deemed not a good fit. PD 152.

The School Psychologist wrote the Academic Performance for the Eligibility Determination, noting that "(the Student) is more than capable of functioning at a level consistent with [REDACTED] same-age peers but "depression... anxiety related to school performance and peer acceptance, and attention deficits were noted, all of which could negatively impact the efficiency of [REDACTED] input, storage, retrieval, and output of information, including organization of ideas, study skills, speed of processing information, written expression, and motivation and interest." PD 184

The School Psychologist testified that [REDACTED] gives psychological services to students, i.e., if they need to talk about their problems. These services were not offered to the Student. The School Psychologist attended the February 27, 2012, IEP meeting. PD 191. The Team determined the Student was eligible under Other Hearing Impaired (OHI).

The Hearing Officer finds based on this testimony and documentary evidence that the testing was incomplete.

The School Social Worker testified that [REDACTED] is assigned to the school two days a week. [REDACTED] evaluated the Student, noting under Adaptive Behavior that, "Given [REDACTED] history of drug use, it

could be surmised that [REDACTED] has been self-medicating and that prescription medication provided by a psychiatrist would be appropriate.” [REDACTED] did not find that [REDACTED] is depressed. But under Recommendation [REDACTED] noted that [REDACTED] diagnosed [REDACTED] with Dysthymic Disorder (the Hearing Officer notes Dysthymic Disorder is described as “depressed mood for most of the day”. PD 299) and that recommendations from that report are consistent with [REDACTED] impression. The Student “should continue to receive appropriate services to address the symptoms of depression and to develop a repertoire of healthy coping skills. [REDACTED] would benefit from various academic accommodations and modifications to address deficits and weaknesses ... weekly social work services ... to work on coping skills to manage any symptoms of depression / ADHD, or low self-esteem. While a school cannot recommend family therapy and consistent rules and consequences in the home [REDACTED] did make this recommendation.” PD 253, 4. This testimony is conflicting in that the School Social Worker states [REDACTED] did not find that the Student is depressed but then acknowledges [REDACTED]’s diagnosis of Dysthymic Disorder and bases [REDACTED] recommendations on that diagnosis.

[REDACTED] attended the eligibility determination meeting on February 27, 2012. [REDACTED] contributed the Social/Emotional component, indicating that the Student “is eligible for school social work services to address poor motivation, low self-esteem, and to learn and monitor coping skills [REDACTED] listed poor motivation because, based on previous functioning and potential for regression on returning to this environment... because [REDACTED] had been out of this less restrictive environment for quite some time.” [REDACTED] was allotted 30 minutes a week for this goal. SD 164. [REDACTED] was thinking of [REDACTED] best interests; providing more support at the beginning, rather than wait and see, in [REDACTED] opinion, was the best practice. [REDACTED] was made eligible under Other Health Impairment (OHI). PD 191. [REDACTED] could not stay for the whole meeting and had no further involvement with the Student. Although [REDACTED] testified that [REDACTED] did not believe residential placement was appropriate for [REDACTED] because of [REDACTED] diagnosis, present functioning, and previous functioning, the Hearing Officer finds this analysis did not take into consideration the fact that [REDACTED] was in a residential facility when [REDACTED] interviewed [REDACTED]

The Assistive Technology (AT) evaluator testified that [REDACTED] met with Mother and the Student on January 12, 2012, and discussed tools appropriate for [REDACTED] if he returns to the District, to assist with processing and note taking. SD 124. [REDACTED] reviewed [REDACTED]’s recommendations and felt these were appropriate for the Student. PD. 293. [REDACTED] testified [REDACTED] recommendations were similar but [REDACTED] has a preference for LiveScribe for taking notes. [REDACTED] did not feel the Student needed NovaMind (for Apple) as recommended by [REDACTED]. For use of Dragon Naturally Speaking the Student would have to have one in the school setting or it would be not usable and not as functional for the Student. PD 293. The AT evaluator found the Student to be highly intelligent. [REDACTED] recommended Draft Builder and LiveScribe pen (smartpen) and notebooks. These recommendations would help with word processing and speed. SD 126. The Hearing Officer notes that although the Student did not require any AT in the Crossroads program to succeed, had the District provided AT when the Student was at the District school it might have made a difference. Thus, the Hearing Officer finds that the District failed to offer AT in a timely manner.

The School Nurse also did an assessment of the Student on January 12, 2012, generally reviewing the [REDACTED] report. [REDACTED] noted that [REDACTED] is currently in a healthy environment, not taking any medications for ADHD or depression. [REDACTED] is in a small size classroom with frequent

individualized attention. PD 242. The Hearing Officer notes that the IEP team did not consider this with respect to a determination of appropriate placement.

The Functional Behavior Assessment (FBA) defined the target behavior as limited work production, which occurs in the school. SD 174. The presumed purpose of the targeted behavior is defined as task avoidance. Among interventions listed were: meetings with counselor informal academic testing by school psychologist, outside therapeutic support, and suspension from school. Other than suspension, this is what was defined in the IAT plan. The meetings with counselor did not occur and Parents were already having the Student engage in therapy. The Behavior Intervention Plan (BIP) discussed a plan summary requiring that the Student will complete assignments and participate in class discussions; adjust the instructional method, accommodations and modifications for ADHD and depressive symptoms. SD 175. The Hearing Officer notes that this could have been done upon receipt of [REDACTED]'s January 2011 report but was not. This FBA with its "presumed purpose of the targeted behavior defined as task avoidance" does not comport with the diagnoses of [REDACTED] which were relied on by the District in its evaluation, and thus is overall not meaningful for the Student. The Hearing Officer finds that the FBA was inadequate with respect to its definition of the target behavior and its interventions, particularly suspensions as intervention, which would defeat the purpose of providing the Student with an appropriate placement so that [REDACTED] could access his education.

The IEP team convened on February 27, 2012, to review the evaluations and determine eligibility. The team decided on Other Health Impairment (OHI). PD 184. The Student would be placed in general education classes with accommodations and modifications for Language Arts/English/Reading, Mathematics, Biological & Physical Sciences, Social Sciences, Health/Medical, and World Language. The accommodations and modifications were the same for all classes: allow use of assistive technology; extend time allotted for task completion by 50%. Additionally, the Student would have 30 minutes of social worker direct services a week and 15 minutes quarterly for the nurse to consult with the general education teacher. The Hearing Officer finds that the social work services allotment does not taken into consideration the Student's then-intensive environment of supports and is completely inadequate.

The IEP also lacked sufficient goals/benchmarks to address the Student's needs; there was no consideration of the "in milieu" environment recommended by the psychologist or input from [REDACTED] residential placement. Parents filed a lengthy dissent to the IEP.

The [REDACTED] therapist's March 29, 2012, letter written for the Parents (PD 348, 9), reflected the Student was doing better than expected but [REDACTED] was not ready to be released then because of the struggles [REDACTED] was having socially, emotionally. With respect to behavior [REDACTED] had not developed the skill set to be successful. At [REDACTED] [REDACTED] had individual, group, family therapy, staff with students, and peer support to help [REDACTED] with his struggles. [REDACTED] behavior warranted [REDACTED] being at [REDACTED]. The IEP team could have re-convened on receipt of this letter to consider the Student's individual needs but did not do so.

The Hearing Officer finds that this IEP was not sufficiently individualized to address the Student's unique needs and capabilities.

What is striking is that all evaluators referred to and/or relied on [REDACTED] report, which had been completed and provided more than one year earlier, yet no services were offered, based on the report's recommendations, to the Student during the period of time [REDACTED] was still in the school. Even if Parents had not made a request for evaluation, services can be provided. The Science Department Chair was concerned about the Student at the end of [REDACTED] year, noting [REDACTED] was "going through some changes." [REDACTED] gave the Student modified assignments and additional time. When contacted by Parents a number of teachers provided some accommodations and one teacher in email noted [REDACTED] had been providing an accommodation for the Student and others in [REDACTED] class. Yet the District asserts that the Student was capable of doing the work but made bad choices.

The District's IEP team designated the Student as eligible for OHI, recognizing the Student's diagnoses from [REDACTED] report of dysthymia, cannabis use, and ADHD (mild.) Not only did the Student not "choose" to have these conditions, having been referred to a therapist by [REDACTED] Parents, [REDACTED] sought to understand his behavior. A number of witnesses, including the School Social Worker and the [REDACTED] therapist, having reviewed [REDACTED] report, testified that the Student was self medicating, using drugs. Self-medicating is a way someone feeling emotional pain would find ways to soothe oneself--the pain of the emotion was greater than the ability to overcome. This was not behavior by choice, as the District contends. It is recognized that the Student's substance abuse is an additional factor in this case but the testimony regarding self-medication reflects that it could be considered a co-existing condition to the depression and ADHD, with the conditions aggravating or intensifying the others. The District's Principal testified that the school has a substance abuse prevention and intervention program. PD 514. Counseling and referrals are available if necessary. The Principal did not know if there was any referral for the Student. The evidence shows that the District did not offer the Student counseling or a referral.

It is noted that had the District conducted the evaluation when it was required to do so in 2010, there may have been a different outcome for the Student with respect to substance abuse, had [REDACTED] been found eligible or been provided with services even without a determination of eligibility. Also, at the time [REDACTED] was suspended from school for ten days for marijuana [REDACTED] might have had IDEA protections with respect to discipline. Nonetheless, it was not required that [REDACTED] have an IEP to be able to utilize counseling and referral under the District substance abuse prevention and intervention program. The District was aware of the Student's substance abuse since early 2011 but did not provide information on the program to Parents or make a referral for the Student. Had it done so, the outcome might have been different with respect to the Student's marijuana use and the May 2011 suspension. Had [REDACTED] been receiving the services based on the "in milieu" environment recommended by [REDACTED] and the recommendations of [REDACTED] available since January 28, 2011, the Student may have responded to such services. The District's failure with respect to Child Find precludes knowing whether the Student "spiraling down" "happening so fast" that Mother described in testimony could have been prevented. The Student had to suffer the consequences, as did [REDACTED] family.

The three representatives of the programs Student attended were qualified professionals. The Elements Wilderness Program therapist, [REDACTED], has a Masters in Social Work and is a Licensed Clinical Social Worker. [REDACTED] Academic Director, has a

bachelors in math, Masters in Educational Leadership, and is working on a doctorate. [REDACTED] the primary therapist with [REDACTED] Academy, has a Masters in Social Work and is a Licensed Clinical Social Worker. All of them were credible witnesses who testified as to the Student's needs but the IEP team did not solicit information from them. All of the providers have been paid by the Parents and thus have no stake in the outcome of the proceeding as to whether Parents will be reimbursed.

The Hearing Officer finds that the District failed to complete academic assessments as agreed; to timely provide a comprehensive evaluation; to offer adequate school based social work and/or psychological services; to timely develop an appropriate IEP and provide an appropriate educational program/placement; to timely identify and provide appropriate assistive technology; to conduct an adequate functional behavior assessment.

Subsequent to the IEP, Parents filed a lengthy dissent, to which there was no response. Mother testified that there was discussion during the mediation in early summer 2012 about the Student returning to the District. The Special Education Director informed [REDACTED] would assist with the return. During the summer Mother attempted to contact [REDACTED] and was unable to reach [REDACTED]. Parents testified as to concerns that the District would not assist the Student, based on their past experience. The Parents returned the Student to Crossroads on September 2, 2012. Father went to the school on September 4 to obtain the Student's schedule.

The Special Education Director testified that [REDACTED] was at a mediation for the Student in 2012. [REDACTED] offered to assist in enrolling the Student at the District school (for the school year 2012-2013, beginning in September 2012). There was a discussion on credit recovery for the Student but [REDACTED] did not try to have him in credit recovery. [REDACTED] reviewed his IEP. [REDACTED] acknowledged Mother's September 3 email stating that Mother had tried to contact [REDACTED] on several occasions to enroll the Student and had provided the transcript requested and noted that Father would be coming in to the school on September 4 to get the Student's class schedule and his books and would like to meet with the Special Education Director. PD 515. The Director responded on September 3, noting [REDACTED] had been at work all last week but did not get a message from Mother. [REDACTED] said in the email that the Student is all set with classes and stated that [REDACTED] and the Case Manager could meet with Father and address his concerns. PD 516. She also emailed on September 4 with the name of the Student's division teacher and room number. PD 517.

[REDACTED] testified that [REDACTED] received the transcript from Parent, met with Father, and provided a schedule. [REDACTED] told him the IEP would be implemented. In reviewing the Student's schedule (PD 518) [REDACTED] testified that the IEP had services outside of class. [REDACTED] reviewed Mother's September 4 email expressing concerns about the Student's schedule. By email on September 4 [REDACTED] invited Mother in for a meeting with the Student's counselor to go over the schedule. On September 5 [REDACTED] emailed Mother that, in looking at the Student's schedule [REDACTED] was "unsure how to proceed because of the pending lawsuit." [REDACTED] asked if Mother wanted his "most recent IEP implemented." The email stated his schedule would change if the IEP was implemented. [REDACTED] testified that his schedule would not change but he would be pulled from class for direct services.

Mother replied on September 5 indicating [REDACTED] would not have time to meet with the Counselor in the next two days because of preparation for the hearing. Mother noted [REDACTED] came in early August

to meet with staff and called the Special Education Director "repeatedly in hopes of working this all out" before school started. PD 557.

The Special Education Director testified that there are resource classes with less than ten students in which the Student could be placed. Resource is a class for credit, taught by a special education teacher helping with organizational skills and class work. But [REDACTED] acknowledged that there was no resource class listed on the Student's schedule.

[REDACTED] testified that the IEP notes that classes of areas of needs, goals, and accommodations are listed but no goal for a resource room. PD. 191-197. [REDACTED] reviewed the Least Restrictive Environment (LRE) sheet and testified that resource class would not be listed. PD 215.

[REDACTED] needed to have Parents fill out forms for enrollment but the Case Manager would be responsible for setting the schedule with the service provider.

[REDACTED] testified that [REDACTED] does not work in the summer. [REDACTED] spoke with the Programmer who received an unofficial transcript from Mother. [REDACTED] did not communicate with Parents that the transcript was unofficial. [REDACTED] never received the official transcript but programmed the schedule for the Student by the first day of school. Regarding the 250 minutes of services, the Student would be pulled from class to receive services. However, the Student did not return to school.

[REDACTED] reviewed the Student's official transcript from [REDACTED], which showed 24 total credits. PD 536. The Student has completed requirements for [REDACTED] school and graduated as of October 31, 2012. To graduate from the District school, students need 24 credits and the school cannot enroll a student who already has high school diploma. [REDACTED] testified that [REDACTED] does not know if the 24 credits would transfer to the District school.

IDEA does not factor in or make exceptions during the summer for the District's responsibility to provide FAPE to the Student. Summer cannot therefore be used as an excuse for not working with or communicating with the Parents regarding returning the Student to the District.

Having found that the District did not provide an appropriate placement for the Student, the Hearing Officer reviews the evidence to determine if Parents' placement is appropriate. The Student was initially placed at [REDACTED], a wilderness program, in June 2011. However, the [REDACTED] representative testified that it is not an academic program. Nor is it an ESY program as contended by Parents. The Hearing Officer finds that this was not an appropriate placement on that basis for purposes of considering reimbursement.

The Student was taken directly from [REDACTED] to [REDACTED] School. The [REDACTED] representative testified that it was a good academic fit for the Student. The Student had good grades (in core subjects, he was achieving Cs to As) and most students go on to college. The Student had group and individual therapy and was on the farm and garden crew. [REDACTED] does not use IEPs but takes the psychological testing students come in with and puts together an academic program. The small size class and staff and supports were enough for the Student to achieve academically without extra supports. The Student did not complete the [REDACTED] program because there were some behavioral issues that made [REDACTED] not appropriate for the program, although [REDACTED] was a fit academically. The Hearing Officer makes a finding that the Student had success in the academic

component of the school but not with respect to it being a residential facility. Thus, consideration can be given to reimbursement of Parents for the academic portion of the program.

The Student was placed at ██████████ Academy at the end of January 2012. The academics at ██████████ included IEPs, ██████████ Accreditation, certified and licensed teachers, one on one tutoring, high school diplomas, ACT/Sat preparation classes, college courses, vocational training, and employment opportunities. Additionally, the Student had a job at the two different stores, where ██████████ was successful.

The ██████████ primary therapist testified that the Student needed ██████████, noting that Parents had tried out patient therapy at home and that had not proved helpful for the Student. Higher levels of intervention were necessary. The therapist did not think it likely ██████████ was in a place where ██████████ would be successful academically, without resolving emotional issues. The March 29, 2012, letter written for the Parents reflected the Student was not ready to be released then because of the struggles ██████████ was having socially, emotionally. With respect to behavior, ██████████ had not developed the skill set to be successful. At ██████████ had therapy and support staff. The therapist believed ██████████ behavior warranted ██████████ being at ██████████ and that the Student was participating effectively in the program, in therapy, but not ready to do that on ██████████ own. The therapist described "a high level for relapse risk in emotional issues, behavior, defiance, and acting out that was part of substance abuse" which would have an impact on education. The Student was participating in the academic portion of the program and experiencing success. ██████████ was responding to treatment appropriately but was not ready for discharge. The Student had an IEP in place but ██████████ did not need things outlined. In the classroom setting type of work ██████████ did, the teacher was accessible and the Student was able to complete the work within that structure.

The Student's school teacher at ██████████ described that the Student sat in a corner of the room, more secluded, by ██████████ choice, to be less distracted. The Student's grades were mostly As and Bs but has received an A on every test ██████████ has taken.

██████████ was still at ██████████ in August 2012, showing progress in all areas, doing well academically, improving with ██████████ behavior and relationships and did have a home visit. The Student completed the program and graduated in October 2012.

The Hearing Officer finds that the placement at ██████████ was appropriate and consideration may be given to reimbursement for the whole program.

Denial of FAPE

The District has the burden of presenting evidence that the special education needs for the Student have been appropriately identified and that the special education program and related services proposed to meet the needs of the Student are adequate, appropriate, and available. 105 ILCS 5/14-8.02a(g-55). The Parents, however, have the burden of proof regarding the request for a due process hearing involving a denial of FAPE based on the United States Supreme Court ruling in *Schaffer ex rel. Schaffer v. Weast*, 126 S.Ct. 528, 537 (2005) which was analyzed with respect to the

relevant Illinois statute (the Illinois School Code) by the Northern District. *Kerry M v. Manhattan School Dist.*; and the *Illinois State Board of Education*, U.S. District Court, Northern District of Illinois, IDELR 194 106 LRP 58547 (September 2006).

The Hearing Officer has determined that the Parents have met their burden.

In *Hendrick Hudson Dist. Bd. of Education v. Rowley*, 458 U.S. 176 (1982), the United States Supreme Court has set the standard to determine whether a child has been given a free appropriate public education (FAPE) under the IDEA. The Hearing Officer must determine whether the IEP was reasonably calculated to enable a child to receive an educational benefit. That determination is based on whether the District's IEP for the Student identified his needs/eligibility and offered services to address those needs as required by statute.

The Hearing Officer has made a finding that the District violated the Child Find requirement. The District did not provide Prior Notice (34 CFR § 300.503), the procedural safeguards which must be given to a parent on initial referral or parent request for evaluation ((34 CFR § 300.504), a consent form for evaluation (34 CFR Sec. 300.9), and did not conduct an evaluation. Federal regulations require that an initial evaluation be conducted within 60 days of receiving parental consent for the evaluation (34 CFR Sec. 300.301©). The District did not provide the Parents with a consent to sign. The District also failed to provide Parents written notice explaining why the District refused to conduct an initial evaluation and the information that was used as the basis for this decision, pursuant to 34 CFR Sec. 300.503(a) and (b) and thus did not provide Parents information about challenging this decision by requesting a due process hearing under 34 CFR Sec. 300.507. The Hearing Officer found that the District violated its Child Find obligation to identify, locate and evaluate all children with disabilities. 20 U.S.C. § 1412(a), 34 CFR 300.111(c).

The District argues that the issue of procedural safeguards is a "red herring" and it is not a violation that the safeguards were not provided to the Parents because "the child was not yet eligible." District's closing argument, p. 4. This argument is in direct conflict with the federal regulations: the procedural safeguards must be given to a parent on initial referral or parent request for evaluation. 34 CFR § 300.504.

After Parents retained an attorney and filed for due process, the District agreed to do an evaluation and convened an IEP. The *Rowley* standard is whether the IEP was reasonably calculated to provide educational benefit. To determine whether the District complied with *Rowley* the Hearing Officer must find that the District's IEP for the Student identified [redacted] needs/eligibility and offered services to address those needs as required by statute. The Hearing Officer has made a finding that the IEP did not comport with IDEA.

The District argues that its position is supported by *Thomas Loch, et al., Plaintiffs-Appellants, v. Edwardsville School District No. 7, Defendant-Appellee*, 327 F. App'x 647 (7th Circ. 2009). The District asserts that in that case the student was not eligible for special education when the student performed in the average range until [redacted] stopped going to school and parents did not prove that diabetes or anxiety prevented [redacted] from going to school. It is unclear why the District

looks to the *Loch* case for support when the District in this case did eventually determine that the Student was eligible for services, as distinguished from *Loch* where the 7th Circuit found the student not eligible. In *Loch* the court noted that the student was not taking medication for [REDACTED] anxiety and had not seen [REDACTED] psychiatrist or [REDACTED] therapist in the previous six months. Additionally, the student received satisfactory grades until [REDACTED] stopped attending class in [REDACTED] year. The court determined that there was no medical evidence that the student's anxiety or diabetes had progressed to the point where [REDACTED] was unable to attend school. Further, the court noted that the student performed very well at the community college level and thus the student could not demonstrate that [REDACTED] needed special education services at the high school level to receive an educational benefit.

In the instant case, the Student was not performing well, was seeing a psychologist since April 2009, was diagnosed by a neuropsychologist with ADHD, dysthymia, and cannabis use. In its February 27, 2012, IEP, the District determined that the Student was eligible for services under the label of OHI. Thus, the *Loch* case is distinguishable.

The District further contends that Parents would like the District to fund their choice of what they consider the best possible education and support services, not what is free and appropriate under the law. The *Rowley* standard requires that an IEP must be “‘reasonably calculated to enable the child to receive educational benefits.’ 458 U.S. at 206,7.” *T.H. v. Board of Education of Palatine Community Consolidated School District 15*, 55 F. Supp. 2d 830, 841 (N.D. 1999). The Hearing Officer has found that the District violated its Child Find obligation and that the IEP developed was inadequate. Thus, it was not an IEP reasonably calculated to enable the Student to receive educational benefits that were more than nominal. Parents placed him a facility where he received an appropriate education based on his needs. That is the standard for determining whether the Parents are entitled to relief. *T.H. v. Board of Education of Palatine Community Consolidated School District 15*, 55 F. Supp. 2d 830, 832 (N.D. 1999).

The Hearing Officer has made a finding that the District's proposed placement was inappropriate and Parents' placement in [REDACTED] was appropriate for the academic program but not the residential component and placement in [REDACTED] was appropriate. It is noted that the United States Supreme Court has held that it does not matter for a private placement if the teachers are not special education teachers if the District denied FAPE. *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).

The District also argues that it cannot be held liable or cases where a student is not motivated and uses drugs outside of school, cautioning that if that precedent is set after this hearing, “a very slippery slope will ensure if placement in a non-ISBE approved residential drug treatment facility becomes the norm for children who do not apply themselves and use marijuana.” District closing argument, p. 6. This argument has no support, even from District personnel. The School Psychologist, Social Worker, Nurse, and AT Evaluator all referred to and/or relied on [REDACTED] report, which reflects the diagnoses of dysthymia, cannabis use, and ADHD. The School Social Worker and [REDACTED] therapist described the Student as self-medicating and this Hearing Officer notes the use of substances was co-existing with [REDACTED] other conditions and the conditions intensified each other. A student's substance use and depression combined should raise great concern for any school. The District ultimately conducted an evaluation, although it

was not sufficient, and determined the Student eligible for services under the category of OHI, and defined accommodations and modifications, although inadequate, in the IEP. This alone refutes the District's argument about the Student using drugs and not applying [REDACTED]

There is no evidence to support a contention that the residential placement was made for reasons other than academic, not to treat drug use. That notwithstanding, a parent's motives for a placement are not germane to making a relevant determination as to whether there is a right to relief; the standard is whether the student at issue qualified for special education and whether the school district provided FAPE to address the needs.

To support its position, the District submits an Illinois case involving unilateral placement where the student was found to have drug and alcohol dependence and a major depressive disorder. However, the District's position has no support in that case where the Court determined that the district's placement was inappropriate and, in finding that the residential placement was appropriate, relied on the expert who testified that the student's academic performance has been consistently good at the residential placement. *Dale M. v. Board of Education of Bradley-Bourbonnais High School, District No. 307*, 1998 WL 11759129 (C.D. Ill.). The Court, disagreeing with the reviewing officer, found that the student's conduct was central to a proper determination of an appropriate placement and the district's IEP did nothing to address this. *Dale M.* at 7. Similarly, in the instant case, there is testimony and documentary evidence that the Student did well at [REDACTED] the private school from which he graduated.

The implication that the Student attended residential drug treatment facilities is rejected. All the program representatives testified that the programs are not drug treatment programs but do treat children who use substances, along with a myriad of other conditions. Clearly, the programs at [REDACTED] and [REDACTED] provided academics, and in fact the Student successfully completed the academic program at [REDACTED]

There is no indication that the IEP team considered [REDACTED]'s May 6, 2011, email, which was forwarded May 9 (PD 304), recommending an "in milieu" environment, a program to address [REDACTED] education and emotional needs, an environment with staff to address all his needs. [REDACTED] testified that [REDACTED] wrote the email for Parents to be used to help move things along for the Student with respect to his need for help. She testified that he was a "...typical adolescent, good kid," and had issues that moved around between anger and sadness, hurt, frustration, inability to sleep headaches, confusion, very motivated to not feel these feelings. [REDACTED] wanted to see [REDACTED] to be well, and was willing to go on medication, see a psychiatrist, willing to do family counseling, to talk with [REDACTED] mother and father. He was upset that [REDACTED] could not do [REDACTED] life "right."

The IEP did not reflect in any way an attempt to recognize the kind of environment that [REDACTED] recommended or an attempt to factor in the issue of the intense environment in which the Student had been functioning in the private programs and what would be necessary to prepare for [REDACTED] return to school. Instead the only services offered were standard accommodations and modification of extending time for task completion and use of assistive technology, with only 30 minutes a week of social work services. The Educational Consultant, who is a Licensed

Clinical Professional Counselor, testified that this amount of social work services would be inadequate.

The IEP team has overlooked which issues would re-surface in a return to the District school from a residential placement. With the inadequate modifications and accommodations offered and only 30 minutes of social work per week, it would be of concern that the Student's situation would replicate what occurred before [REDACTED] left. Despite the District's indication of a plethora of services in the school such as tutoring, virtual school, Edline for parents to oversee a student's work, the fact remains that [REDACTED] did not succeed in that environment before and with no thought or preparation given to the environment in which [REDACTED] was functioning in the residential placement where [REDACTED] had 24-hour a day support, it is incumbent upon the Hearing Officer, to "decide whether experience shows the pretty picture painted in (an IEP) is more an impressionistic than a realistic rendering of what actually happens in the classroom." *Board of Ed. Of the City of Chicago v. ISBE*, 106 LRP 62249 (N. D. Ill 2006).

Developing an IEP one year after [REDACTED] report, with evaluators referencing the report and not completing vital testing, such as the processing, which could have been done with in a matter of minutes, does not reflect the standard of the Illinois School Code of "a carefully completed case study." 105 ILCS 5/14-8.02(b).

To support its position, the District submits another Illinois case involving a private residential school placement by the parents. In that case the district argued that the student received "some" education benefit at the district placement. The Court found that its reliance on the word "some" from *Rowley* ignored the *Rowley* requirement that, "...the 'basic floor of opportunity' provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." *Board of Education of Oak Park and River Forest High School District Number 200 v. Illinois State Board of Education*. 21 F. Supp. 2d 862. "The Court found the district's proposed placement was not appropriate, stating that *Rowley* does not mean that a *de minimis* benefit is sufficient. *Board of Education of Oak Park and River Forest* at 877. The Court noted the student failed half her classes and was receiving Ds in the remaining half. Thus, the educational benefit that the student was receiving was minimal. *Board of Education of Oak Park and River Forest* at 877. The Court agreed with the reviewing officer that the district's interventions were insufficient to meet the *Rowley* test of educational instruction specifically 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 Education of Oak Park and River Forest* at 877.

The Court found the private placement to be an appropriate educational placement for the student, where she demonstrated academic progress; thus, the parents were entitled to retroactive reimbursement for the educational portion of her placement. The Court also noted that the private placement was not an ISBE-approved placement and did not meet the IDEA definition of a FAPE, which is not a bar to reimbursement because such requirements do not apply to parental placements. *Board of Education of Oak Park and River Forest* at 878. The Court found that the twenty-four hour residential placement was for non-educational reasons because it was due to her uncontrolled out-of school behavior, substance abuse, runaway behavior, defiance of home rules, and involvement with a negative peer group. *Board of Education of Oak Park and*

River Forest at 878. This set of facts is distinguished from the instant case because there is no evidence, and the Hearing Officer has made no finding that, the Student was involved in uncontrolled out-of school behavior, runaway behavior, and involvement with a negative peer group. The Hearing found that the substance abuse was a co existing condition with dysthymia and ADHD and the residential placement was not for other factors such as aggressive behavior.

A school district is required by Congress to identify, evaluate and place potentially disabled students. 20 USC § 1412(a) (3) (A); 23 Ill. Admin. Code 226.100. Specifically, in Illinois, as noted above in the burden of proof description, the school code requires a district to present evidence “that the special education needs for the Student have been appropriately identified and that the special education program and related services proposed to meet the needs of the Student are adequate, appropriate, and available. 105 ILCS 5/14-8.02a(g-55). In this case, the District has not met the standard of the Illinois School Code of “a carefully completed case study.” 105 ILCS 5/14-8.02(b).

The Hearing Officer finds that the District failed to provide an appropriate and individualized evaluation in a timely manner in order to adequately identify the nature and extent of the Student’s disabilities and failed to develop an IEP reasonably calculated to provide educational benefit. This constitutes a denial of FAPE.

Least Restrictive Environment (LRE)

To meet IDEA requirements, the School Code and implementing regulations, the District must provide the Student with a FAPE in the least restrictive environment (LRE).

While the District correctly asserts that the law mandates placement in the LRE and mainstreaming to the maximum extent appropriate, that is not at the expense of FAPE. “Under the IDEA, children with disabilities must be mainstreamed with non-disabled peers to the extent possible.... (mainstreaming) was not developed to promote integration with non-disabled peers at the expense of other IDEA educational requirements and is applicable only if the IEP meets IDEA minimums.... In implementing the LRE mandate, each school district must maintain a continuum of program options, which range from regular classrooms with supplementary aids to separate schools and residential facilities. *See* 34 C.F.R. 300.551(b)(1). Thus, the regulations contemplate that mainstreaming is not required in every case.” *Board of Education of Murphysboro Community Unit School District v. Illinois State Board of Education*, 41 F.3d 1162, 1168 (7th Cir. 1994).

The District asserts that it must be offered the opportunity to try less restrictive alternatives prior to a residential. However, the District’s position is unavailing. The District’s assertion that the District must be allowed to work through the continuum is erroneous. Federal and state statutes and administrative rules require that school districts ensure that a continuum of placement options is available to meet the needs of children with disabilities for special education and related services. 34 CFR 300.39 and 115, 23 Ill. Admin. Code 226.300. The continuum includes instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions. The requirement is that placement options must be

available to meet the needs of a student—not to test out each step on a continuum to experiment as to whether it will address a student’s needs. A placement must be based on an appropriate assessment/evaluation of a Student’s needs to determine what will address those needs. In fact, the District’s “continuum” argument is undermined by the Seventh Circuit as cited in *Murphysboro* above which only requires that each school district must maintain a continuum of program options, not that the District must be allowed to utilize all those options prior to a residential placement.

The District’s position is also rejected in a United State Supreme Court opinion, *Forest Grove Sch. Dist. v. TA*. 2009 U.S. LEXIS 4645, (June 22, 2009). In *Forest Grove Sch. Dist. v. TA*. 2009 U.S. LEXIS 4645, page 7 (June 22, 2009), the Supreme Court, noting the school district’s position was “at odds with the general remedial purpose underlying IDEA...and similarly conflicts with IDEA’s ‘child find’ requirement”, declared that “when a school district unreasonably failed to identify a child with disabilities it would not comport with Congress’ acknowledgment of the paramount importance of properly identifying each child eligible for services” if an appropriate remedy was not available. *Forest Grove*, page 7. In *Forest Grove*, a private specialist advised the parents that the child would “do best in a structured, residential learning environment” and parents then enrolled him at a private academy that focuses on educating children with special needs. *Forest Grove*, page 3.

In this case, the Student’s Parents placed [REDACTED] in a residential educational program on the advice of a specialist, who is a Licensed Clinical Professional Counselor. This Hearing Officer’s finding that the District violated its Child Find responsibility in not conducting an evaluation of the Student upon request of Parents to determine eligibility for special services, despite [REDACTED] compelling needs, requires a remedy to meet the standard enunciated in *Forest Grove*: “the express purpose of the Act is to ‘ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs’ Sec. 1400(d)(1)(A).” *Forest Grove*, page 7.

The District’s assertion notwithstanding, it would be unreasonable to expect the Parents to agree to an exercise that requires more periods of inappropriate schooling and could lead to deterioration. IDEA does not require this of parents.

Nor does IDEA require that parents allow their child to fail all classes prior to taking action to ensure an appropriate education. Parents are not special education experts, attorneys, or mental health specialists and cannot be held responsible for not being experts.

The Parents had advocated on behalf of the Student, seeking an evaluation, which was not done, hired tutors for [REDACTED], and provided a therapist. Despite the diagnoses proffered by the neuropsychologist, the requests for testing for ADD, ADHD, LD, and depression by the psychologist, the District did not act. [REDACTED] co-existing conditions of ADHD, cannabis use, and dysthymia were serious and warranted a response. The Student knew [REDACTED] was not performing at school and unable to focus. Like his Parents [REDACTED] wanted help. It was not forthcoming. Where the District fails to act, parents may take steps to ensure an appropriate education for their child. There is no evidence that Parents wanted a residential placement because of safety concerns or

aggressive behavior at home or school. The District's teachers and the evaluators found [REDACTED] appropriate in behavior. The School Social Worker found [REDACTED] to be "lovely." In this case, as in *Forest Grove*, Parents relied on the advice of a private specialist with a background in special education in removing [REDACTED] from the District.

The Seventh Circuit in *Murphysboro* also found that if a district has failed to offer FAPE and did not present any alternatives, the only option is the alternative offered by the parent. The hearing officer is not required to locate another school that would satisfy the LRE requirement but simply to determine whether the one offered by the district would be appropriate. *Board of Educ. of Murphysboro Comm. Unit School Dist. No. 186 v. Illinois State Board of Educ.*, 41 F.3d 1162, 1169, P6 (7th Cir. 1994) Page 4. In the instant case, the District has not offered appropriate special education services and the Parents have met their burden in proving that they had an appropriate placement.

The Northern District has upheld reimbursement for an out of state residential placement even where witnesses testified that a residential facility was not necessary for a student to obtain educational benefit and the District argued that such residential placement was not the least restrictive environment. *Board of Education of the City of Chicago v. Illinois State Board of Education* 106 LRP 62249 (N. D. 2006). The Court found that "to succeed with its challenge on that basis District must have presented an alternative less restrictive plan for Max's education that is appropriate under IDEA It did not, and that defeats its challenge." *Bd. of Ed.*, P. 8.

The *Rowley* standard is whether the IEP was reasonably calculated to provide educational benefit. To determine whether the District complied with *Rowley* the Hearing Officer must find that the District's IEP for the Student identified [REDACTED] needs/eligibility and offered services to address those needs as required by statute. The Hearing Officer has made a finding that the IEP did not comport with IDEA and did not meet the *Rowley* standard.

Parents have met their burden pursuant to statute and case law in demonstrating that the District failed its Child Find obligation and violated applicable statutes in failing to provide the Student a FAPE and are entitled to relief.

Remedy/Relief Request

Parents are entitled to relief, although some of the requests for relief are denied or reduced.

Records

IDEA requires a school district to allow parents or their representatives to inspect and review records "without unnecessary delay and before any meeting regarding an IEP, or any hearing..." §300.613(a). The District will turn over all records testified to in the hearing that have not been provided.

Diploma

Parents have requested that the Hearing Officer order the District to provide the Student with a diploma from the District. The Parents cite no authority, other than the Hearing Officer's

authority to order equitable remedies. The Hearing Officer determines that this authority does not encompass the ability to order a high school diploma from the District. Parents' request for a diploma is denied.

Compensatory Education

IDEA regulations recognize compensatory education services awards (20 USC § 1415(i)(2)(C)(iii), 34 CFR 300.151(b)(1)) and such services have been affirmed by the Seventh Circuit which upheld a hearing officer's order of compensatory OT services for a student in elementary school in *Evanston Community Consolidated Sch. Dist. No. 65 v. Michael M.*, 356 F.3d 798 (7th Cir. 2004) ("Compensatory services are well-established as a remedy under the IDEA.")

Parent request compensatory education services of sufficient duration and intensity to restore the Student to the position he would have attained had the District provided him with FAPE, citing *Petrina W. v. City of Chicago Public School District 299*, 109 LRP 78111, p. 4 (N.D. Ill. 2009) ("remedy...an educational deficit created by an educational agency's failure...to provide a FAPE to a student...as such, award for compensatory education should be reasonably calculated to provide the education benefits that likely would have accrued from special education services the school district should have supplied in the first place.") In that case, the Northern District stated that: "As the Seventh Circuit has yet to offer guidelines for such an exercise, this Court can either look to the formula developed by the Third Circuit, on the one hand, or the standard adopted by the D.C., Sixth, Ninth, and Eleventh Circuits, on the other." *Petrina W. v. City of Chicago Public School District 299*, 109 LRP 78111, p. 4 (N.D. Ill. 2009). The Northern District decided on the qualitative method, noting that, "Because a flexible, individualized approach is more consonant with the aim of IDEA, as articulated in its statutory language and Supreme Court jurisprudence, this Court finds such an approach more persuasive than the Third Circuit's formulaic method. See 20 U.S.C. § 1400(d)(1)(A); *Rowley*, 458 U.S. at 201." *Petrina* at 5.

The compensatory education requests by Parents for reimbursement for therapy services and tutoring are determined as follows:

(1) Reimbursement for Parents is approved for costs of therapy services by [REDACTED] for all sessions subsequent to Parents' request for evaluation on October 26, 2010, in which the Parents advised the District that the request for testing was being made by his psychologist. The School Psychologist testified that [REDACTED] can provide psychological services to students but none were provided to the Student by the District. Additionally, the District, in its IAT recommendations of December 1, 2010, stated: Continue outside therapy with registered psychologist.

(2) Reimbursement for Parents' tutoring costs for November 13, 2009, to June 2, 2010 is denied. Parents had the right to provide tutoring for the Student but there was no indication at this time that the District had failed to provide services requested or would be on notice that such services might be necessary because of Student's needs for services. Parents had contacted teachers individually for some modifications and some were provided. As noted above, Parents notified the District on October 26, 2010, that they were requesting testing on the psychologist's recommendation. The tutoring from November 13, 2009, to June 2, 2010, predated that time.

However, the tutoring services provided by [REDACTED] from March 3, 2011, to May 3, 2011, will be reimbursed.

(3) Reimbursement for Parents for services provided by [REDACTED] [REDACTED] did not provide services to the Student. As an educational consultant she provided requested services to Parents. Reimbursement is denied.

(4) Reimbursement to the Parents for the private evaluation by [REDACTED] is approved.

(5) Reimbursement is approved for Parents for [REDACTED] and [REDACTED] for their actual out of pocket costs incurred for the time for testifying that can be documented. Request for reimbursement for Parents for [REDACTED]'s testimony time is denied for the same reason as above.

Reimbursement for private placements

The remaining remedy is reimbursement for private placements including therapy and transportation costs: [REDACTED] [REDACTED] and C [REDACTED]

The District notes pursuant to IDEA, 1412(a)(10)(C)(ii), if parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

The District argues that the cost of this reimbursement may be reduced or denied if the parent fails to give timely notice of the parent's rejection of the placement proposed by the school district, the parent's concerns and the parent's placement intention of enrolling the child in private school at public expense. That notice, the District states, must take place at either the most recent individualized education program meeting that the parents attended prior to the removal of the child from the public school or at least ten business days prior to the removal of the child from the public school. 20 U.S.C. 1412(a)(10)(C)(iii)(I). The flaw in this argument is obvious: in this case, the Student was not "a child with a disability, who previously received special education and related services under the authority of a public agency...." Nor was there an IEP or proposed placement. Thus, no notice was required.

IDEA also provides that reimbursement shall not be reduced or denied for failure to give notice if the school prevented the parent from providing such notice, IDEA, § 1412 (a)(10)(C)(iv)(I)(aa); or if the parents were not provided with written procedural safeguards stating this notice requirement. IDEA, § 1412 (a)(10)(C)(iv)(I)(bb) or if compliance with the notice clause would likely result in physical harm to the child, IDEA, § 1412 (a)(10)(C)(iv)(I)(cc). In this case, the District did not conduct an evaluation when it was

requested or provide Parents with notice of their intent to not do so and the reasons for this decision, as discussed with reference to the Child Find violation.

The Supreme Court has held that it is not a prerequisite to reimbursement under IDEA that a child have been previously enrolled in and receive services from a public school. In *Forrest Grove Sch. Dist. v. TA* 129 S.Ct. 2484, 52 IDELR 151 (U.S. June 2009) The Court noted that under its previous rulings in *Burlington* and *Carter*, courts have broad authority to grant appropriate relief when there has been a violation of IDEA. The Student never received services from the District and there is no impediment to consider reimbursement.

The Supreme Court held in *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993) that to be entitled to reimbursement parents need only demonstrate that the public school placement was improper under the IDEA, the private school placement complied with IDEA standard of appropriateness in that it was reasonably calculated to allow the child to receive educational benefits, and the total reimbursement was reasonable. Contrary to the issue raised by the District that the Student's education setting was "non-ISBE" approved, *Carter* also holds that a parental placement need not be in a state board-approved residential facility in order to receive reimbursement. *Carter* at 14. The Northern District also determined that reimbursement was allowed for an out of state non-ISBE-approved residential placement. *Board of Education of the City of Chicago v. Illinois State Board of Education*, 106 LRP 62249 (ND Ill 2006).

The District also contends that reimbursement may also be reduced or denied because Parents withheld the Student and prevented the District from testing him. 20 U.S.C. 1412(a)(10)(C)(iii)(II). This argument is also unsupported. On the contrary, as noted above, the Student was in school through the period of time when Mother requested an evaluation on October 26, 2010, through May 2011, when Mother removed him. After Parents filed for due process and the domain meeting was set for October 3, 2011, the [REDACTED] School sent a letter cautioning against withdrawing the Student from the program at that time for testing. The Student was available for testing within three months of that letter. The District contends that in August 2011 it offered the same tests that were offered when the Parents requested a Domain meeting, which was held in October 2011, when all participants were available. Parents had a right to participate in such a meeting and exercising this right cannot be used to bolster a claim that this was done to make the Student unavailable. This argument is unsupported and the Hearing Officer makes no finding that the Parents withheld the Student and prevented the District from testing him. The Student was available for evaluation for the seven months he was in school after Parents' October 26, 2010, request for evaluation until he was removed on May 26, 2011, and [REDACTED] was made available when it was safe for [REDACTED] to return.

The District argues that *Patricia P. v. Bd. Of Education*, 8 F.Supp.2d 801 (7th Cir. 1998) supports its position. That case is distinguished for a number of reasons. In *Patricia P.* the child's case study evaluation was completed and a year later the parent enrolled him in the district. A few weeks later she brought him to the district for regular education placement testing but shortly thereafter parent unilaterally placed the student at a private facility and then requested a due process hearing. The Court upheld the findings by the hearing and reviewing officers that there was no parental request for a reevaluation before parent elected on her own to place the child at a private school. Further, the hearing and reviewing officers found that once the parent

sent the child to an out of state school [REDACTED] became unavailable for a reevaluation and [REDACTED] did not offer to return [REDACTED]. Rather the parent suggested the district use outside evaluations or send school personnel out of state to the private school to conduct an out of state evaluation. The Court upheld the findings of the hearing and reviewing officers that the child was unavailable for a reevaluation. *Patricia P* at 808, 9.

In this case, the District did not evaluate the Student as requested even though the Student was available at the school for seven months after Parents requested an evaluation, until the end of May 2011. After Parents requested a hearing, the District prepared to evaluate the Student in October. However, the facility where he was currently located, [REDACTED] sent a letter in October stating it would cause harm to the Student to return [REDACTED] then. The Student was brought to the District for testing in January 2012. The Hearing Officer has made a finding that this scenario does not constitute withholding of the Student.

The Hearing Officer has made findings about the three private placements as follows: [REDACTED] is not an academic program nor is it an ESY program and therefore not an appropriate placement. The request for reimbursement is denied.

It is noted that the District did not contend that costs were not reasonable but did question witnesses regarding costs for items that were included in the invoices. However, in considering reimbursement for the two other placements, the Hearing Officer uses the *Carter* standard: the total reimbursement was reasonable. Where the Hearing Officer determines that some costs are not reasonable or not related to academics at Monarch or the residential placement at Crossroads, the Parents will have to bear some of the costs.

[REDACTED] - the Student had success in the academic component of the school but not with respect to it being a residential facility. Parents will be reimbursed for the academic portion of the program but not for the time spent in orientation, therapy sessions only for the Student, the consultation with the nurse, and necessary and reasonable transportation costs. No other costs will be reimbursed.

[REDACTED] - in light of the finding that the placement was appropriate, Parents will be reimbursed for the total costs of the program, except that Parents will share the cost of the Student's therapy which was billed at \$300 an hour for individual therapy. It is noted that the therapist is an LCSW and that the Student's psychologist charged only \$175 an hour. Thus, the Hearing Officer finds that the cost for the [REDACTED] therapy is not reasonable. The District will reimburse the Parents for one half the cost of the individual therapy. The District will reimburse the Parents for the group therapy billed at \$75 an hour. Reimbursement for family therapy is denied.

CONCLUSIONS OF LAW

Based on the evidence, the Hearing Officer makes the following conclusions of law:

I. The District violated its Child Find obligation to identify, locate and evaluate all children with disabilities who regardless of the severity of the disabilities: (1) have disabilities and need special education and related services as a result; or (2) are suspected of having disabilities and being in need of special education and related services. 20 U.S.C. § 1412(a), 34 CFR 300.111(c). The District did not provide Prior Notice (34 CFR § 300.503), the procedural safeguards which must be given to a parent on initial referral or parent request for evaluation ((34 CFR § 300.504), a consent form for evaluation (34 CFR Sec. 300.9), and did not conduct an evaluation. Federal regulations require that an initial evaluation be conducted within 60 days of receiving parental consent for the evaluation (34 CFR Sec. 300.301©). The District did not provide the Parents with a consent to sign. Had the District provided the consent form upon request for the evaluation the evaluation would have to be completed by the end of December 2010.

The District violated federal regulations in failing to provide Parents written notice explaining why the District refused to conduct an initial evaluation and the information that was used as the basis for this decision, pursuant to 34 CFR Sec. 300.503(a) and (b) and thus did not provide Parents information about challenging this decision by requesting a due process hearing under 34 CFR Sec. 300.507.

II. The District violated its obligation, in compliance with applicable law, to offer the Student a free, appropriate public education (FAPE). IDEA 20 U.S.C.A sec. 1400(d)(1)(A). The District failed to meet the standard the United States Supreme Court articulated--a two-prong test to determine whether a child has been given a free appropriate public education under the IDEA. *Hendrick Hudson Dist. Bd. of Education v. Rowley*, 458 U.S. 176 (1982). The first prong is whether the school district complied with the procedural requirements of the IDEA. With respect to the second prong, the Hearing Officer must determine whether the IEP was reasonably calculated to enable a child to receive an educational benefit. That determination is based on whether the District's IEP for the Student identified his needs/eligibility and offered services to address those needs as required by statute. In this case, the Hearing Officer determined that the District did not meet the standard of a legally sufficient IEP. Accordingly, the Student's IEP did not meet the *Rowley* standard of an IEP reasonably calculated to enable a child to receive an educational benefit.

The District must ensure a FAPE is available to each child with a disability who resides in the state and is enrolled in the District and requires special education and related services, to accord with 34 CFR 300.101 through 300.103. The District violated its obligation to provide education and services according to the child's individualized education program. 34 CFR 300.39(a); 223 III. Admin. Code 226. 50.

ORDER:

1. The District will provide to Parents all missing Student records testified to in the hearing that have not been provided.
2. Parents' request for a diploma is denied.
3. The District will reimburse Parents for costs of therapy services by [REDACTED] for all sessions subsequent to Parents' request for evaluation on October 26, 2010.
4. The District will reimburse Parents for the tutoring services provided by [REDACTED] from March 3, 2011, to May 3, 2011. Request for reimbursement for the tutoring from November 13, 2009, to June 2, 2010, is denied.
5. Request for reimbursement for Parents for services provided by [REDACTED] is denied.
6. The District will reimburse the Parents for the private evaluation by [REDACTED]
7. The District will reimburse Parents for [REDACTED] and [REDACTED] for their actual out of pocket costs incurred for the time for testifying that can be documented. Request for reimbursement for Parents for [REDACTED] testimony time is denied.
8. Parents' request for reimbursement for [REDACTED] is denied.
9. The District will reimburse Parents for the academic portion of the [REDACTED] program but not for the orientation program, therapy sessions only for the Student, the consultation with the nurse, and necessary and reasonable transportation costs, on submission of invoices. Request for reimbursement for other costs is denied.
10. The District will reimburse Parents for the total costs of the [REDACTED] program and necessary and reasonable transportation costs, on submission of invoices. The District will reimburse the Parents for one half the cost of the individual therapy. The District will reimburse the Parents for the full cost of the group therapy. Request for reimbursement for family therapy is denied.

Within 30 school days the District shall provide to ISBE proof of compliance with this order.

