

Case Number: 2012-0040

vs. [REDACTED]
Hearing Officer: Michael Risen

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

Impartial Due Process Hearing Decision Cover Page

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District Name [REDACTED]
Superintendent [REDACTED]
Address [REDACTED]
Represented by [REDACTED]

Phone: [REDACTED]

Parent Name [REDACTED]
Address [REDACTED]
Represented by [REDACTED]

Phone [REDACTED]

Date and Timelines

Date of Written Request: 08/17/2011
Date of Pre-hearing Conf: 09/20/2011

Date of Hearing: 11/30/11 thru 12/2/2011
Date of Decision: 12/11/11

Summary of Decision

There were three (3) issues in this DPCN. All three issues were procedural in nature dealing with parent participation, provision of a properly executed independent educational evaluation for the Parents' review, and proper consideration of Parents' concerns when developing the Student's IEP. The Parents met their Burden of Proof on Issues one (1) and three (3), but failed to meet the Burden of Proof for Issue number two (2). A finding was entered in favor of the Parents for Issue one (1) and three (3) and the District is ordered to conduct an IEP team meeting no later than January 31, 2012 and implement the orders provided herein.

heard from fifteen (15) witnesses: [REDACTED] Director of Special Education for [REDACTED] Superintendent of the District, [REDACTED] Occupational Therapist for the Student, [REDACTED] Student's current teacher, [REDACTED] Student's sister, [REDACTED] Student's current speech and language therapist, [REDACTED] Principal, [REDACTED] Assistant Principal, [REDACTED] Social Worker and behavior consultant for Student, [REDACTED] Student's Mother, [REDACTED] Student's Father were all called as witnesses by the Parent. Testifying for the District were two of the same witnesses, including the Director of Special Education and Superintendent of District [REDACTED] plus [REDACTED] Director of Curriculum and Learning for [REDACTED], social worker for [REDACTED] [REDACTED] Superintendent of [REDACTED] and [REDACTED] Assistant Superintendent for Special Education for Lagrange [REDACTED] and employed by the District to complete an Individual Education Evaluation (IEE) of the Student. The parties submitted memorandums of law during their closing statements, along with, proposed case law for the consideration of the hearing officer. These documents have also been included as part of the administrative record. The record was closed at 4:25 pm on December 2, 2011 and the matter taken under submission.

ISSUES PRESENTED

1. Did the District violate the Student's right to a FAPE by failing to provide the Parents with the opportunity to participate in the decision to change the child's placement from the current Easter Seals placement?
2. Did the District violate the Student's right to a FAPE by failing to provide the Parents the opportunity to have and review an accurate copy of the Student's records, specifically the official copy of an independent educational evaluation?
3. Did the District violate the Student's right to a FAPE by failing to consider the concerns of the parents for enhancing the education of the Student?

FACTUAL BACKGROUND

- 1) On March 21, 2005, an IEP was completed for the Student and it contains the earliest data on intellectual functioning and is reflected in SD0306. Findings reflect "Age equivalents fell at the two year ten month level with skills up to three years seven months." This IEP was completed when the Student's chronological age was six (6) years old. Full scale psychological test results were not submitted by either party. Portions of an IEP dated March 20, 2007, an IEP dated January

16, 2007, February 25, 2008, March 20, 2008, February 24, 2009, February 17, 2010, February 16, 2011, March 15, 2011 and August 4 and August 11, 2011 were submitted jointly into evidence. Each of these IEP's reflect in various ways similar findings relative to the Student's intellectual functioning. As reflected in the February 16, 2011 IEP on SD 0085, the IEP's consistently reflect information similar to the findings stated in this referenced IEP as follows: "Prior evaluations have found (the Student's) cognitive functioning to be in the low range, below the 1st percentile of children her age. Her last evaluation noted that her level of functioning did not allow formal testing in this area." As a result, her primary eligibility finding is "cognitive disability" (SD 0086) and secondary "speech or language impairment" (SD 0086). The year prior, the Student's IEP at SD 0131 reflects the Student's adaptive behaviors functional level of "3 yr. 7 mos." (SD 0131) when the Student was 10 years 11 months chronological age. This would reflect that her adaptive behaviors functional level had remained the same since the Student was a chronological age of six (6) years. In the "Report of Adaptive Behaviors" submitted with the February 16, 2011 IEP and recorded on SD 0099 the Student reflected growth in the area of adaptive behavior and functional skills to an age equivalence of four (4) years four (4) months. This result was achieved when the Student's chronological age was eleven (11) years eleven (11) months.

- 2) On February 16, 2011, an IEP meeting was called by the District to discuss the Student's current placement.
- 3) On March 15, 2011, an IEP was conducted by the District at the [REDACTED] School location during which the District recommended that the Student's placement be changed from [REDACTED] to the [REDACTED] program at [REDACTED]. Besides the Parents, there were eight (8) Sandridge school district employees (including the Director of Special Education and the Superintendent of Schools), the Superintendent of the [REDACTED] cooperative of which the [REDACTED] is a member of, and the principal of [REDACTED] invited to the March 15, 2011 IEP meeting.²
- 4) On August 4, 2011, the District again convened an IEP team meeting for the Student. Similar to the March 15, 2011 IEP team meeting, there were seven [REDACTED] employees in attendance (including the Director and

² Parent testimony reflects this was the first time since the Student was placed at Kirby that the location for the IEP was conducted in the home school district. None of the Student's service providers at Kirby were invited by the District at the March 15, 2011 IEP team meeting.

Superintendent), [REDACTED] Assistant Superintendent and two [REDACTED] employees who currently work with the Student and the Student's Mother. At this meeting, the District finalized the Student's change of placement over the objection of the Mother.

- 5) On August 17, 2011, the Student's Mother filed a Due Process Complaint Notice (DPCN) with the District objecting to the change in placement recommendation made by the District at the August 4, 2011 IEP team meeting.

**DISCUSSION OF TESTIMONY, FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

Contentions of the Parties

- 1) The Parent's position, as stated during the opening statements, reflects the Parent's confirmation that the issues identified in this DPCN are procedural in nature and that the Parent would introduce evidence during the hearing to "overprove" these issues and the result of these procedural violations denied the Student a FAPE as required by the IDEA and the rules and regulations of the State of Illinois.
- 2) The District's position agreed that the issues were procedural in nature. The District posits that the Parent had an opportunity to participate at all points and given the maximum opportunity to participate, including notice & procedural safeguards, outside expert advice, consent for evaluation and the District went out of its way to allow the Parent to participate. The District also contends that there are no requirements that an IEE be presented on letter head or that an IEE be signed. The District contends there is no reason within the law that there should be an issue with the IEE provided to the Parent by the District. Finally, the District contends that school districts are not required by law to acquiesce to any parent's desires. Simply arriving at a decision that differs from the parent's position does not mean the District violated any procedural issues.
- 3) The Director of Special Education for the [REDACTED] [REDACTED] (hereinafter referred to as Director), was called first by the Parent to testify during the hearing. The essence of the Director's testimony during the Parent's direct examination consisted of the Director indicating that she observed the Student at [REDACTED] and became concerned that the Student was

not receiving the proper “social development” due to the lack of the Student’s interaction with the other disabled peers in the Student’s current [REDACTED] placement. As a result of this observation, the Director testified that she decided to have the IEP team³ consider the Student’s current placement and seek to find a more appropriate placement for the Student that would enable the Student to have more peer interaction to further develop the Student’s speech and language development. The Director testified that the Student seemed to rely on her interactions with the adults at [REDACTED] but had little if any interaction with her peers at [REDACTED]. The Director also testified that she believed the Student would progress more if the Student was placed with higher functioning students who had fewer and/or less behaviors than those being displayed by the Student’s peers at [REDACTED]. The Director testified she has been in her current position since essentially the 2009-2010 school year and in her view (and as a result of classroom observations and a review of the Student’s records) the Student “was doing a little better” each year and therefore believed a change in placement was warranted. Additionally, the Director testified she believed the Student had “grown out” of the [REDACTED] placement because in her view the Student was the “most social kid in the class.” The Director also testified that the expert hired by the District believed the Student would “flourish” if moved into a higher functioning class. There were numerous concerns raised in the mind of the hearing officer during the Director’s testimony as to the Director’s candor and possibly truthfulness. There were numerous responses from the Director under direct examination that resulted in “don’t recall” type responses and/or that resulted in responses that should have demonstrated prior consideration by the Director as a professional with the Director’s background, training and experience. As a result, the testimony that raised those concerns will be reviewed in detail in this part of the decision;

- a. At the March 15, 2011 IEP team meeting, the Superintendent attended. When the Director was asked if the superintendent talked or spoke at the meeting, her response was “I don’t remember.”

³ February 16, 2011 IEP team meeting at SD 0087.

- b. When asked if the Director knew the other area Directors she responded “not at all.” When asked as a follow up how many area Directors there were, she responded “15 or 16.”
- c. When asked if she had ever shared difficulties that she perceived she was having with [REDACTED] with other Directors of Special Education she responded “I don’t recall.”
- d. When asked about the Student’s prior year (2009-2010 school year) experiences at [REDACTED] relative to asserted extreme behaviors displayed by the Student and the result of those behaviors (e.g., Do you know how much time the Student spent out of the classroom as a result of those behaviors?) the response was “I don’t know.”
- e. When asked if that would be good information to know or to ask for she responded “sounds like it.”
- f. When asked if she ever sought out that information she responded “don’t recall.”
- g. When asked if the Director had ever expressed to [REDACTED] staff concerns about the cost of providing the Student with 1:1 aide during the aforementioned period of extreme behaviors her response was “I don’t recall.”
- h. When asked what criteria the Director would use in determining the appropriateness of a 1:1 aide for the Student she responded “on a case by case basis.” When further pressed for her criteria for such a decision she responded 6/10 attempts. This answer seemed unresponsive as well and did not provide any rationale for what might constitute the appropriateness of a 1:1 aide for a student with the disabilities similar to the Student’s in this DPCN.
- i. When asked if the change in placement was supported by any previous experiences the Student had with higher functioning students her response was “I don’t know, we have never tried to move her to a higher functioning class.”

⁴ Director testimony reflected frustration with [REDACTED] not providing timely progress reports for the Student even after the Director had asked for the progress reports.

- j. When asked if the Student's history with higher functioning students actually reflected the Student experiencing serious behavior issues would that be a reason not to move the Student to the [REDACTED] program and her response was the "she is not at [REDACTED]" She further testified the Student needed to be with girls and when challenged by the Parent she stuck to this position that the Student needed more females in her class and this would result in greater success for the Student. This answer was essentially non-responsive in that she never addressed the issue of the Student having been placed previously in a higher functioning class.
- k. When asked if the staff at [REDACTED] agreed with her recommendations her response was I am not sure what you mean and then she said "I don't know." When asked as a follow-up she finally acknowledged that the Kirby staff did not agree out of concern for regression for the Student. When asked why they had that concern she testified: "I don't know, I am not them."
- l. When asked if anything else stood out in her mind about the February 16, 2011 IEP team meeting and she testified "No."
- m. When asked about the statement in the 2nd last paragraph at SD 0002 regarding the fact that the Student had experienced her "best year ever at school" and wouldn't it be important that she continue this progress, her answer was "it would be important to anybody to continue their progress." This answer was deemed evasive and non-responsive.⁵
- n. When asked if the District told the independent evaluator about the concern about regression for the Student she responded "yes." When asked if there was anything in the report about this concern for regression and how it should be handled she responded "No."
- o. When asked if there were any other reasons for asking for the change in placement for the Student, she responded "I don't think so."
- p. When asked about the number of [REDACTED] staff who were invited to attend the March 15, 2011 school year, the Director was unable to recall. When asked if the Kirby Principal had been invited she first responded that she

⁵ Additionally, addressing this information at an IEP meeting is required by Statute that Districts be prepared to provide it to parents and will be discussed in more detail in the Conclusions of Law.

might have been invited by the Parent. When the hearing officer tried to elicit a more definitive response from her, she was at first non-responsive with her answers. She finally, upon additional questioning from the hearing officer acknowledged that the Principal would probably be included in the list of invitees to the Student's IEP team meetings.

- q. When asked if she could provide the cost for a 1:1 aide she indicated she did not know.

These seventeen (17) instances of answers that were deemed as evasive, or non-responsive from an administrator of her position, background and training when testifying about incidents that were alleged to have occurred, or established as having occurred by other testimony later in the hearing, caused this hearing officer to question the credibility of the testimony of the Director for the [REDACTED]

- 4) Testimony by the Superintendent confirmed the District employed and paid for an IEE to determine the viability of a change in placement for the Student, confirmed the District would pay all transportation costs for the Student to attend [REDACTED] (including transportation back to [REDACTED] for after school care), and confirmed the District was willing to employ the Student's current [REDACTED] teacher at the [REDACTED] location for two weeks to help with the transition for the Student from [REDACTED] to [REDACTED]. The Superintendent's testimony regarding these issues was deemed factual and credible.
- 5) The OT from [REDACTED] testified next. Testimony of note from the OT included confirmation that the Student had performed very poorly during the 2009-10 school year when placed with higher functioning students and testified that the Student has now demonstrated progress since being placed in her current placement and believes the Student will continue to progress in that environment. When asked about the February 16, 2011 IEP meeting, the OT testified that the Director early on in the meeting brought up the idea about changing the Student's placement and gave the reasons as "not pleased with the Student's progress" and not pleased with communications from the Kirby program. The OT testified specifically that the Director mentioned her displeasure with not receiving the quarterly progress reports for the Student. The OT also testified that when the Parents tried to discuss their concerns

about changing the placement for the Student they were “brushed off” by the Director. The OT also testified this happened when the [REDACTED] staff and Parents wanted to discuss the Student’s speech and language progress. The OT’s testimony was also note-worthy under cross-examination by the District when she was asked about the fact that the majority of students at [REDACTED] were on the autism spectrum and whether or not programming specific to students on this spectrum were appropriate for the Student, she provided an informed and professional response. She responded there was a high level of structure, repetition, shorter time periods. She was also able to explain the methodology known as TEACH. She equated that these approaches work effectively with both students on the autism spectrum and students with cognitive disabilities. Her testimony was deemed to be credible.

- 6) Next to testify was the Student’s current teacher, [REDACTED]. Of note in her testimony was that she had informed the Parent in early February of 2011 that she was going to request a part time 1:1 aide for the Student. The request was to be based on data relative to the Student’s need for assistance with transitioning issues the Student was experiencing. The transition issues were causing some delays in the Student’s ability to access the programs and services currently prescribed in her IEP. She further testified she was present on a conference call in the office of the [REDACTED] Principal when the Director was informed of this aide request. [REDACTED] testified the Director’s response to the [REDACTED] Principal was that the District would be seeking an alternative placement for the Student. When asked if she believed the Director’s response was in retaliation for the aide request, she responded that she did take it that way. When asked if she attended the February 16, 2011 IEP team meeting and whether or not she believed the Parents’ were allowed to fully participate she responded that she did attend and did not believe they were allowed to fully participate due to the Director’s focus on finding an alternative placement for the Student. She also testified that she believed the Student’s previous [REDACTED] placement with higher functioning students caused the many inappropriate behaviors witnessed at school and at home that were displayed by the Student at that time. She further testified she believed the behaviors were the Student’s communicating her frustration with the higher functioning program. She also

testified that the Student is performing much better since being placed with Students who were lower functioning than the Student and that this seemed to enable her to believe she was one of the better students in the class. It was also worth noting that [REDACTED] was the first witness to address the issue of Least Restrictive Environment (LRE) for the Student and that she believed the current [REDACTED] placement was the LRE for this Student. Her testimony was deemed credible.

- 7) Next to testify was the Student's sister. Her credible testimony essentially confirmed that the District had utilized her to deliver the results of the IEE to the Mother and that she took the IEE home to Mother from school and that the IEE was in a sealed envelope with the Mother's name on the envelope.
- 8) The Student's speech and language pathologist was the next [REDACTED] staff member to credibly testify on behalf of the Student and Parent. She testified she also attended the February 16, 2011 IEP team meeting. It was her conclusion that the Parents' were very upset and emotional during the meeting and that this was brought on by the Director's seemingly sudden decision to seek an alternative placement for the Student. When asked if the Director ever addressed the Parent's concern about regression at this meeting should a change be effected, she testified "No" only the Director's personal concerns about the Student's lack of progress at the [REDACTED] program. This observation was further deemed a credible observation when the speech and language pathologist was asked to testify about the document at P001. This document is dated February 16, 2011 (same date as the IEP team meeting discussed previously) and signed by [REDACTED] Speech and Language Pathologist. When asked if she wrote the document, she confirmed that she had. The memo reflects a lengthy note to the Parents that was written after the February 16, 2011 IEP team meeting had concluded. The content of the note apologizes to the Parents for the lack of professional behavior by the District's Director during that IEP team meeting and further speculates that the Director's reason for pursuing a change in placement for the Student was personal in nature to the Director. She speculates in the note that the personal issue that the Director had for wanting to change the Student's placement was a conflict between the Director and someone at [REDACTED]. She also notes in the memo that

her perspective was that the Director was "more or less attacking you both." She even comments "It was not easy to listen to!" The memo closes by encouraging the Parents to fight for their daughter and their right to do so and to again apologize to them for what they had to experience during the IEP meeting. When asked under direct examination if she believed the Parents had been "badgered" at the February 16, 2011 IEP team meeting she responded in the affirmative. When asked why she thought this, she responded that each time the Parents' tried to discuss their concerns with the Director or express their views, they were quickly shut down and told they would still need to seek an alternative placement. She also confirmed previous testimony by the OT when she testified that she witnessed during the aforementioned IEP meeting the Director was "aggressive" in shutting down the OT when the OT tried to suggest reasons for considering the current placement as the correct option. She also testified that she had brought information to the IEP meeting to discuss proposed speech and language goals but this was never discussed, just the Director's desire to change placement.

- 9) The next person to testify was the Principal of [REDACTED]. When asked how many districts her school serves she said they had 58 districts who sent students to the [REDACTED] program. When asked how many Directors out of those 58 Districts had expressed concerns about paper work from [REDACTED] back to the Districts, she testified only [REDACTED]. She also confirmed in her testimony the content of the phone call testified to earlier by [REDACTED] and that it was also the Principal's impression that the change in placement was in retaliation for the request for the part time 1:1 aide for the Student. She also testified that her Assistant Principal, [REDACTED] (whose office is shared with her office), was present during the conference call in question. She further testified that the Director arrived early for the February 16, 2011 IEP meeting and requested during a meeting in the Principal's office that she, nor her staff, bring up the topic of a 1:1 aide during the upcoming February 16, 2011 IEP team meeting. The Principal also confirmed previous testimony regarding the Student's placement with higher functioning students and the resulting improvement when the Student was placed with students who were lower functioning. She further testified that when the Parents brought up the need for the aide the

Director said that it was not something that needed to be discussed as they were going to explore alternative placements. The Principal also testified that the Director had indicated to her that the Director attends area meetings of other special education directors and that she would never recommend the ██████ program to those directors. She further testified that the Director was the only IEP team participant during the February 16, 2011 IEP team meeting who saw a need for a change of placement for the Student. The Principal testified that the ██████ staff knows the Student well, has developed a solid working relationship with the Student and the Parents, that the Student has been making progress over the course of the last year and that the Principal believes the Student should be allowed to remain in the current ██████ placement. The Principal also testified that the March 15, 2011 IEP team meeting was unusual in that it was held at the ██████ and all of the invited participants were ██████ school district employees. The ██████ Principal was the only ██████ staff member invited to attend the meeting where the change in placement decision was confirmed.⁶ She also expressed surprise that the consultant hired by the District did not talk with the Principal or ask her any questions about the Student. She continued to express her surprise that the final IEP team meeting where the Student's placement at ██████ was determined the participants only included her and a three (3) other ██████ staff members along with nine school district staff members and two staff from ██████. When asked if she felt outnumbered, she testified in the affirmative. She also testified the consultant was not present to discuss her report with the IEP team. When asked if there was anything discussed at the August 4, 2011 IEP meeting to support the conclusion that the ██████ program would provide more "social skill development" as reflected at SD0030 in the Additional Notes section of the IEP, she testified "No." When asked if anything was discussed that would have supported a placement at ██████ she also testified "No." When asked under cross-examination by the District if other districts request quarterly progress reports she testified "just ██████" When asked by the District if in reality there never was a conversation relative to the 1:1 aide as previous testimony would suggest, she responded firmly that the

⁶ See SD 0047

conversation she testified to took place as described. The District's cross examination tried to impeach the witness' testimony regarding the meeting with the Director, a phone call to the Superintendent, and whether the Director had visited the [REDACTED] school early on the 16th of February and prior to the scheduled IEP meeting. The District also tried to establish whether or not the [REDACTED] Principal's real issue was the Principal did not want to lose the funding when this Student would be moved to the [REDACTED] program. The hearing officer concluded this attempt to impeach the Principal's testimony was not successful on all issues, and in fact, the Principal presented herself as very clear in her responses. The Principal's testimony was reflective of a sincere concern for the Student and an effort to determine what was the most appropriate program and services for the Student. When asked on rebuttal by the Parent whether or not the Principal believed the Director was seeking the change in placement out of retaliation for the request for the aide and issues related to paper work, the Principal responded affirmatively.

- 10) Next to testify for the Parent was the [REDACTED] Assistant Principal. Of importance in her testimony was that she confirmed the phone call with the Director in the Principal's office on the speaker phone with the teacher ([REDACTED] also present as testified to by [REDACTED] and she confirmed the Director's response to the request for an aide as indicating the District would be seeking an alternative placement for the Student. The Assistant Principal also confirmed the previous testimony of the Principal regarding the meeting in the Principal's office with the Director that occurred prior to the February 16, 2011 IEP meeting. The Assistant Principal also testified that the Director expressed at that IEP meeting the reason for seeking the alternative placement was the Director was not satisfied with the progress the student was making at the [REDACTED] school. Her testimony also corroborated the testimony of other [REDACTED] staff that the Director's tone and behavior at the meeting was one where individuals felt "talked down to" and that there did not appear to be open conversation for the Parents during the IEP meeting. The Assistant Principal testified that the tone of the meeting was "this is how it is going to be." She also testified that while the Mother was out of the room composing herself the Director made comments that the OT suggested the Director put in writing for the Parents to

have and the Director responded by looking at the Principal and stating "see, this is what I am talking about." Cross-examination was focused on trying to impeach the witness on the issues that provided corroboration to other [REDACTED] staff member's testimony. It was the view of the hearing officer that the Assistant Principal was a credible witness even though the District tried very assertively to try to impeach her testimony (including cutting off the witness mid-sentence several times to the point that the hearing officer asked the District to discontinue doing so during the remaining questioning). The cross-examination tried to establish that the Assistant Principal interpreted the directness of the Director at the IEP team meeting as inappropriate and unprofessional by asking the Assistant Principal if the directness of the District's cross-examination was making her uncomfortable. The Assistant Principal acknowledged that the District's treatment of her was making her uncomfortable, but the Assistant Principal remained clear in her position that the Director's conduct was inappropriate at the IEP team meeting she attended.

11) The final [REDACTED] staff member to testify on behalf of the Parent's case-in-chief was the [REDACTED] social worker [REDACTED]. Her testimony corroborated the Student's difficulties when placed with higher functioning students, the improvements when the programming was changed, the high degree of cooperation the [REDACTED] school had consistently received from the Parents, including suggestions for improving the Student's behaviors both at home and at school. She also noted that the District asked the Parent to sign the release for an outside consultant but she also testified that it was presented to the Parent that failure to sign the requested relief would result in the Student automatically being placed in the [REDACTED] program proposed by the Director. The social worker who also worked intimately with the Student, other [REDACTED] staff, and the Parent to improve the Student's behavior testified that the consultant did not question her at any time before compiling her report and subsequent recommendations. The District's cross examination tried to establish that the prior adverse behaviors exhibited by the Student were due to the Student mimicking the behaviors of the Students in the classroom and not due to the fact that the Student was frustrated by being placed with higher functioning students. The testimony of the social worker reflected that her

belief was that the behaviors demonstrated by the Student in the Primary D classroom were a result of the Student's frustration. The hearing officer asked the social worker if these same behaviors were now exhibited by any of the students who are in the Student's current placement and the social worker responded affirmatively.⁷

12) The first witness to testify for the District besides the Director and Superintendent was the Assistant Superintendent for the [REDACTED] program. The hearing officer found her testimony to be credible and informed. Her testimony focused on what the [REDACTED] program could provide for the Student and her role in explaining that information to the Parents at the IEP meeting she attended. It was noteworthy that upon cross-examination by the Parent, the Assistant Superintendent acknowledged she had not been made aware that the Student had serious behavior issues when the Student had been placed with higher functioning peers during the 2009-2010 school year. She also testified that she did not recall that this issue was addressed in the IEE completed by the consultant.

13) The Mother testified next. During her initial testimony she provided a brief history of the Student's experience in school. She testified the Student was first identified as a student with a disability when the Student was six years old in 2005. During that time the District tried to fully include the Student at the [REDACTED] location with supports and services. The Parent testified this inclusion approach was a "huge, huge, failure." The Director during 2005 was an educator named [REDACTED]. The Mother testified that due to this failure the Director [REDACTED] said that she would go out of her way to make sure the Student received the proper programming. The Mother testified that after considerable effort on the part of Director [REDACTED] and the Mother, the placement at [REDACTED] was determined to be the most appropriate for the Student. Under direct examination, the Mother testified that the experience working with the District through Director [REDACTED] was a much different experience than with Director [REDACTED]. The Mother testified that Director [REDACTED] was willing to make sure that the Student was properly placed. In the Mother's words, she testified

⁷ There was no evidence or testimony that the Student now mimics inappropriate behaviors in the Student's current classroom, something that should be expected if the behaviors in Primary D were the result of mimicking behaviors and not exhibitions of frustration on the part of the Student.

that Director [REDACTED] went “above and beyond” and the resulting placement was the appropriate placement for the Student. The Mother was then asked to provide a description of the Student’s transition from the Primary A classroom where the Student was placed during the 2007-2008 school year. SD 0224 is a progress report from the Primary A classroom and reflects the Student had made “significant progress ...both academically and behaviorally.” The Parent was then asked if she has attended all of the Students IEP meetings and cooperated with the District by signing all required documents and she responded affirmatively up until the February 16, 2011 IEP team meeting. The Parent described the 2/16/11 IEP meeting as hostile. She testified that Director [REDACTED] brought up the idea of changing the Student’s placement early on in the meeting and that the Director indicated that she wanted to explore the change due to the Student not making satisfactory progress in the eyes of the Director. When asked if the Director explained what she meant by “satisfactory progress” the Mother testified the Director did not provide any definition or discussion what she meant by that statement. When asked if the Mother knew about the possibility of this happening she testified in the affirmative. When asked how she knew, she testified that she received a call from the [REDACTED] school sometime before the February 16, 2011 IEP team meeting that the staff at [REDACTED] wanted to give her a heads up that the Director and [REDACTED] had communicated and that the Director intended to bring up the idea of changing the Student’s placement.⁸ Prior to this IEP team meeting, the Mother was asked if she had ever been accused of being uncooperative, and she testified “no.” Once the February 16, 2011 IEP team meeting began, she testified the meeting started out fine but at the very beginning the Director brought up the idea of the change in placement and after the Parent disagreed with the Director. The Mother testified that the Director asked to speak to the Parents without the other IEP team members present and that the Director shared with the Parents that the Director was having difficulty with paper work with the [REDACTED] school and that the Director did not have this

⁸ This testimony corroborates the testimony of [REDACTED], Assistant Principal [REDACTED] and Teacher [REDACTED] regarding their testimony that the Director informed them she intended to seek alternative placement for the Student.

type of trouble with any other District.⁹ The Mother then testified about the decision in the 2009-2010 school year to place the Student with higher functioning peers at the [REDACTED] school. The Mother testified the Student was very frustrated because she could not keep up and that the Student displayed several very inappropriate behaviors during the 09-10 school year including biting herself, taking all of her clothes off in the classroom, urinating on herself and the floor, and other very inappropriate behaviors both in the Primary D classroom and at home. Mother described this time period when the Student was in the Primary D classroom with higher functioning students during the 2009-2010 school year as a "living hell." The Mother also testified that after the February 16, 2011 school year she visited the [REDACTED] program preferred by the Director and that the Mother was accompanied by Teacher [REDACTED] from [REDACTED]. The Mother testified that the [REDACTED] program seemed like a nice school but that there were a large number of physically handicapped students in the school. As a result, the Mother testified there was a lot of equipment in the hallways at the [REDACTED] program and that this equipment would likely be very distracting to the Student. The Parent was then asked about the Parent/Guardian Notification of Conference Form dated March 2, 2011 and located at SD 0047. The Mother was asked if there were invited attendees that she found unusual at the time. The Mother testified in the affirmative. When asked to identify those she was surprised they were invited, she testified that there were eight (8) [REDACTED] school employees on the list, the superintendent of the [REDACTED] program and the [REDACTED] Principal. When asked if she knew why these staff members were invited, including the [REDACTED] superintendent she testified she did not know. The Mother also testified and the document at SD0047 confirmed that there were no other representatives from other alternative placements proposed by the Director other than the superintendent of [REDACTED]. The Mother also testified that none of the [REDACTED] school employees or the [REDACTED] superintendent who attended the March 15, 2011 IEP team meeting attended the prior IEP meeting on February 16, 2011. The Mother next testified that prior to attending the March 15, 2011 IEP team

⁹ This testimony corroborates the testimony of Principal [REDACTED], AP [REDACTED] and Teacher [REDACTED] regarding their testimony that the Director was upset about paper work from the [REDACTED] school.

meeting with these [REDACTED] staff members, she called the [REDACTED] school and spoke with the Director's secretary and sought permission to record the IEP team meeting and she testified that she was granted permission to do so. She then testified that when she arrived at the March 15, 2011 IEP team meeting and attempted to record the proceedings she was informed by the Superintendent of [REDACTED] that she could not as at least one person at the meeting was not "comfortable" with the meeting being recorded but that the superintendent did not identify who that person was. The Mother then testified that she responded to the superintendent that she did not want to carry on with the meeting but that he said they had to so she said she did and tried to cooperate at the meeting. She further testified that the superintendent said that since they could not reach agreement they could hire an outside consultant but if the parent did not sign for the outside consultant the District's position was that the Student would then be placed at the [REDACTED] program. The Parent testified that she felt the March 15, 2011 IEP team meeting was very hostile for her. She testified that she was constantly interrupted by the Director and that the Director told the Mother that what the Mother wanted to discuss was not appropriate to discuss at the March 15, 2011 whenever she tried to speak. She also testified that the Director and superintendent were constantly exchanging notes back and forth during the meeting and that they were getting up and answering their phones during the meeting. When asked how many times the Parent was interrupted she testified "quite a few." She testified that "whatever point I wanted to make they did not want to hear it." The Parent then testified that the Director provided the Parent with three (3) names of outside consultants and the Parent was allowed to choose the consultant and the Parent testified that the Parent selected [REDACTED] (hereinafter referred to as the Consultant). The Parent testified that the Director and the Superintendent did not show a preference for any of the consultants which added to the credibility of the Mother. The Mother further testified that she did not believe she had any say in the matter of placement for her child. She testified that she had the impression that the Director wanted to change the Student's placement from [REDACTED] no matter where it was. The Parent was then asked to testify about her written complaint dated August 17, 2011 and found at SD 0006. The Parent

was asked if she trusted the Director or superintendent to treat her fairly when she wrote the DPCN and she testified "No." When the Parent was asked if she ever received anything in writing from the District explaining why they wanted to change the Student's placement to another alternative school placement different from the current [REDACTED] school and she testified "No." The Parent was again asked about the February, 2016 IEP meeting and specifically about the District's written response to the DPCN and found at pages SD 0002 and 0003 that reference the IEP team meeting. The Parent was asked if the description of the February, 2011 IEP meeting was accurate and the Parent testified "No." The description at SD0002 and 0003 describe that the District convened the IEP team meeting for the purpose of discussing the results of the Student's recent re-evaluation and reviewing and revising her IEP based upon recent progress and current present levels of performance. The District's response in the 1st paragraph of SD0003 also asserts that the February, 2011 IEP meeting discussed whether the [REDACTED] location could continue to meet the Student's needs and foster growth for the Student. The response continues in that 1st paragraph of SD0003 to assert that the team determined that the [REDACTED] school could not provide any opportunity for the Student to use her language and/or to expand her communication skills, that the [REDACTED] school could not provide the Student with explicit instruction or provide the Student with appropriate, positive behavior, pragmatic and socialization skills. When the Mother was asked if any of this was true, the Parent testified "No." The Mother indicated in her testimony that the meeting was more focused about paper work issues from [REDACTED] and the Mother testified she told the Director that was not her problem but that it was an issue between the [REDACTED] school and the [REDACTED] school district. When asked if the February, 2011 IEP team meeting discussed any of the Student's speech and language growth the Mother testified "No." The Mother also testified that these issues were not addressed with the speech and language pathologist from [REDACTED] even though she was in attendance at the February, 2011 IEP team meeting. The Mother was then asked if the second paragraph of the district's response at SD 0003 was true at any part and she testified "yes" that the District asked her to consider other alternative placements and to visit placements suggested by the District and she responded

“yes.” When asked if the statement in this paragraph asserting the Mother refused to consider other placements the Mother testified she took a day off work without pay to visit the placements as requested and that she did not believe this was an accurate assertion. In the third paragraph of that same document, it states: “That independent educational consultant’s report confirmed the IEP team’s concerns with keeping the Student at the [REDACTED] Therapeutic Day School.” The Mother testified this was not a true statement as the IEP team that met on February 16, 2011 never reached an agreement. The Mother testified that only the team consisting of [REDACTED] faculty and the superintendent of [REDACTED] reached such an agreement.¹⁰ The Mother testified she believed this statement from the District’s response was not accurate. The Mother testified that when she tried to question the March 15, 2011 IEP team decision she was “shut down” and told her concerns were not being discussed at that time. In the fourth paragraph of this same document, the District asserts that the proposed [REDACTED] program located at [REDACTED] offered more appropriate programs and services for the Student than the [REDACTED] location. When asked under direct examination if the [REDACTED] program was ever compared to the [REDACTED] program during any IEP team meeting the Mother testified “No.” When asked about the educational consultant’s report and whether there was any mention of the Student’s regression during her time in the Primary D classroom at [REDACTED] the Mother testified “No.” When asked about the consultant not sharing the Mother’s concern about regression and if the consultant knew about the Parents’ reasons for their concern, the Mother testified the consultant did not know of the concerns as she was not provided the opportunity to share this with the consultant. The District response at SD 0003 continued to assert that the IEP team that met in August of 2011 discussed that the [REDACTED] program offered more opportunities for the Student’s behavioral, pragmatic and social development than the [REDACTED] program. The Parent testified that she did not believe this was true and that there was no information given to her to support this assertion. When asked if the IEP team ever discussed the [REDACTED] school proposal for a part-time 1:1 aide and why the 1:1 aide proposal would not address the District’s concerns, the Parent testified that this was not ever

¹⁰ IEP team meeting on March 15, 2011

discussed at any of the IEP team meetings. The District's response at SD 0004 then asserts that the IEP team considered other placements and the reasons why they were rejected. When asked under direct examination whether the IEP team discussed placement in the regular classroom, or if placement in a regular classroom with an aide was discussed, or if adding supports at the [REDACTED] program were discussed, the Parent testified "No." When asked if a placement at [REDACTED] was discussed the Mother testified "No." The Mother testified that [REDACTED] was one of the programs considered but it was not discussed. When asked if [REDACTED] as a continued placement was discussed, the Mother testified "No." When asked if the IEP team discussed how the [REDACTED] placement was inappropriate as a placement or the potential harmful effect that such a placement would have on the Student or that the [REDACTED] placement would not fully address and foster the Student's growth as asserted in the District's response to the DPCN at SD 0004, the Mother testified that none of this was discussed at any of the IEP team meetings. The Parent was next asked under cross examination what she based her opinion on for her concerns about "regression" the Parent responded that [REDACTED] provided her with the information that she based this concern for the Student's regression. The District then asked the Parent considerable information about the Parent's experiences attending the Student's IEPs since the Student was first identified in 2005. The Parent's responses to all of this questioning seemed accurate and credible. The District then asked the Parent a line of questioning that included questions related to understanding the procedures under the IDEA, parent rights and responsibilities, signing of documents, and the Parent's responses were deemed to be straight forward and credible to this line of questioning. The District also asked the Parent if she received a completed copy of the March 15, 2011 IEP and the Parent thought she was given a copy at a later date. She was then asked about her visits to the District's proposed placements, individuals the Parent had invited to IEP meetings and this also seemed to be credible in the Parent's response to this questioning. The District also asked questions about the Parent's desire to record the March 15, 2011 IEP meeting and the Parent's attendance and participation at a school board meeting on August 17, 2011, in particular if the Parent received a signed copy

of the consultant's report after speaking about it at the board meeting and the Parent testified she did receive a signed copy after that Board meeting. The District asked the Parent about the District's response to the DPCN and in particular about page SD 0003 paragraph 1. In this questioning, the District attempted to elicit testimony from the Parent that the first sentence in paragraph 1 at page SD 0003 was not connected to the remaining content of that paragraph. The Parent did not understand the questioning. However, it was the conclusion of the hearing officer that indeed the remaining sentences in that paragraph were written as supporting statements for the first sentence. The paragraph reads follows:

"At that meeting, the IEP team also discussed whether the [REDACTED] Therapeutic Day School could fully address and foster (the Student's) growth. Within the [REDACTED] Therapeutic Day School, (the Student) had almost no opportunity to use her language and/or to expand her communication skills – areas of recent growth for her. In addition, the [REDACTED] Therapeutic Day School was unable to provide (the Student) with explicit instruction, including a defined scope and sequence, for her broadening receptive and expressive language skills. Finally, the [REDACTED] Therapeutic Day School was unable to provide (the Student) with appropriate, positive behavior, pragmatic and socialization models."

When the above quoted paragraph is examined in the context of the District's response to the DPCN, the reader is lead to believe that the IEP team discussed all of the information above at the IEP meeting and that the supporting statements were the reasons the IEP team concluded that the [REDACTED] Therapeutic Day School was not appropriate for the Student as stated in the first sentence of the paragraph. The District's attempt to cross examine the Parent to demonstrate that that there was not a relationship between the remaining supporting sentences in this 1st paragraph to the opening topic sentence failed.¹¹ The remainder of the Mother's testimony cross-examination and/or rebuttal testimony confirmed the testimony already reviewed that was conducted during the direct examination of the Mother. The hearing officer found the Mother's testimony credible.

14)The Father testified next. His testimony lasted about eighteen (18) minutes and essentially corroborated testimony given by the Mother for those instances in which he was questioned about her testimony. The father testified on the

¹¹ No evidence or other testimony presented suggested or supported a different conclusion.

following issues/questions identified by the hearing officer as important testimony:

- The Parents' satisfaction with the [REDACTED] program;
- The Parents' concerns about regression for the Student if she is placed with higher functioning peers;
- The Parents were given forewarning that the District was going to seek a change in placement and that the forewarning came from the [REDACTED] staff;
- The Director raised the change of placement issues early on during the February 16, 2011 IEP meeting;
- Both the Father and the Mother became emotional during that IEP meeting;
- He did not recall any discussion at the February 16, 2011 IEP meeting related to the Student's specific progress or information related to a three year re-evaluation other than the Student was not making enough progress;
- The Director tried to have him sign a document that he did not understand what it represented and that he sought out his wife who was in the hall crying and trying to compose herself for assistance;
- He visited with the Superintendent over his concerns that the Director was harassing his wife;
- He also attended the referenced Board of Education meeting in August of 2011; and
- He believes that the [REDACTED] school is the best and most appropriate program for the Student. At this point, the Parents ended their Case-in-Chief.

15) [REDACTED] Social Worker testified next for the District. He said he became involved with the situation when he attended the March 15, 2011 IEP and then again at the August 4, 2011 IEP team meeting. He also testified that during the March 15, 2011 meeting there was considerable tension. When he was asked by the District what he thought this tension was related to he testified he sensed there was a personality conflict between the [REDACTED] school district and the [REDACTED] school. He further testified that the March 15, 2011 IEP meeting seemed to be an open forum where all attendees had the opportunity to speak. He also testified that he determined that it was necessary during a break that he

approach the Parents and reassure them that he thought everyone was there to try to do what was best for the Student. When asked by the District if he thought the tension he sensed was due to the fact that the meeting was dealing with serious issues, he disagreed and reiterated that he thought the tension was due to the conflict between the two school organizations (which the hearing officer interpreted to mean between the Director and the [REDACTED] principal). When asked if he thought this influenced the IEP meeting he responded with the statement "regardless, I wanted what was best for the Student." When asked on cross-examination as to whether any of the IEP meetings he attended discussed the Student's history of regression he testified "No." When asked by the Parent if there was any discussion about the Student's history of problems in the Primary D classroom at [REDACTED] school and he again responded "I do not believe so." He also testified under cross-examination that he conducted an observation of the Student at the [REDACTED] school to determine the Student's social functioning level. The [REDACTED] social worker also testified that it is important that the observation be on a typical day. He also testified that he had the chance to review the Student's educational records. He testified that he assumed that the day he observed was a typical day and that the Student was very well behaved. When asked if he saw anything in the Student's records or if anyone from [REDACTED] told him why this may not be a typical day for the Student or why the Student may have been on her best behavior, he testified that he did not see anything in the record nor did anyone suggest she may have been on her best behavior. When asked about his testimony about the March 15, 2011 IEP meeting being very intense and why he thought this way, he testified it was from the body language of the participants and that some of the questioning seemed to be personal, in terms of the Parents stating "am I going to get a chance to speak" and "other statements like that." He then followed this testimony with "I did not feel it was personal but I did observe this and I heard these types of statements." The testimony of [REDACTED] was deemed candid, sincere and credible.

16) The next District witness was [REDACTED] Superintendent of [REDACTED]. The testimony of this witness primarily focused on her role as a state approved Director of Special education and whether or not she believed the IEP team meeting she attended on March 15, 2011 was conducted in the manner that

she believed was expected for IEP team meetings and she testified that she believed that the meeting was conducted as she would expect it to be. She also testified that she observed that the Parents had visited the [REDACTED] facility, that she had never observed the Student, and her involvement in suggesting names for the consultant being considered. [REDACTED] testimony was generally deemed to be credible.¹²

17) The final witness to testify was the consultant employed by the District to assist with the proposed change in placement for the Student. [REDACTED] (hereinafter referred to as consultant) was employed for this purpose. The consultant testified that she had a BS in special education, MS in curriculum and instruction, and post masters certificate in administration with an endorsement in special education. The consultant currently serves as the Assistant Superintendent of [REDACTED] for three years and prior to that she served 24 years in a classroom, and she served as a special education coordinator and director for six years. The consultant testified this evaluation was the first IEE she had completed. The consultant testified that she observed the Student on multiple occasions and in multiple settings. She also testified that her review of the records occurred in the Student's classroom during one of those aforementioned observations. The consultant testified under direct examination that she believed the Student could do more than what was currently being asked of her and that her language development and academic needs were not currently being met in the Student's current [REDACTED] school placement. When asked about her degree of certainty regarding these evaluative conclusions under cross-examination she testified her degree of certainty was "strong." When asked if her conclusions were based on her belief the Student would make these gains by being given the opportunity to interact with higher functioning students, she responded affirmatively. When asked by the Parent if she would be surprised that the Parents and [REDACTED] staff had previously made a similar decision and had placed the Student with higher functioning students and that the placement failed miserably the consultant testified that it would surprise her. The consultant testified that she did not know this had happened and that she had not had that

¹² It was not entirely clear that [REDACTED] believed the IEP was developed properly in its entirety. Questioning from both attorneys did not follow-up on this topic so it is not now addressed herein.

conversation with anyone. The consultant also acknowledged under cross-examination that the recommendations that she had for the Student regarding explicit instruction could be included in the services she would receive from the [REDACTED] school by including this in the Student's IEP. The consultant also acknowledged that the primary difference between her recommendations and the current program is the environmental opportunity to integrate the Student with higher functioning students. The consultant also testified that she did not know or could not remember the Student's full scale intelligent quotient. When given the opportunity to share if there is anything the consultant would do differently in the assessment of the Student she testified "probably not." When asked by the Parent if the consultant believed the Student had maximized her learning opportunities at the [REDACTED] school she responded "No." She testified similarly to a question from the Parent whether she disagreed with the [REDACTED] staff that the Student had room to grow at the [REDACTED] school. The District then rested the District's Case-in-Chief at the conclusion of the consultant's testimony.

FINDINGS OF FACT

- 1) The Student is a student with a disability as defined by the IDEA and the rules and regulations of the State of Illinois and is eligible for programs and services through an IEP.
- 2) The Student's program to date has been designed to provide the Student with a FAPE in the least restrictive environment.
- 3) The Student's program and services at the [REDACTED] school have enabled the Student to receive educational benefit.
- 4) The [REDACTED] School recommended a part-time 1:1 aide be provided for the Student to the Director of special education and this recommendation caused the Director to decide to examine whether or not the Student could be placed in another alternative day treatment program.
- 5) The testimony of the principal of the [REDACTED] school ([REDACTED]) was deemed credible and corroborated by testimony of the Assistant Principal [REDACTED] and further corroborated by the Student's current teacher ([REDACTED]). The testimony regarding the phone call from the Director (sometime prior to the February, 2011 IEP meeting at the [REDACTED] school) that resulted in the Director informing the principal that the Director would be seeking an alternative placement for the Student is

determined to be factual. The testimony of the Parents also corroborates the timeline of this occurrence in that both parents testified that they were told by the Student's teacher before the February, 2011 IEP meeting that the Director would be seeking a change in placement for the Student. This could not have happened if the Director had not informed the [REDACTED] staff that she would be seeking this change of placement.

- 6) The testimony of the [REDACTED] school principal and assistant principal also corroborated each other to confirm that a meeting took place the day of the February 16, 2011 IEP meeting between the principal, assistant principal and teacher in the [REDACTED] school office with the Director. It is a finding of this hearing officer that the content of that meeting included a statement from the Director to the effect that the idea of 1:1 aide should not be discussed during the upcoming IEP meeting and that the Director would be seeking a change of placement for the Student. Further, the testimony of the Director, Principal, Assistant Principal, Teacher at [REDACTED] when considered in its total context also reflects that the Director was upset with the [REDACTED] school for proposing a 1:1 aide for the Student and had an on-going issue with concerns about paper work being provided in an appropriate manner to the Director from the [REDACTED] school and that these issues were the primary motivating factors in the Director's decision to seek an alternative placement for the Student.
- 7) As noted earlier, seventeen (17) evasive or "I don't recall" answers from the Director caused her entire testimony to be deemed not credible.
- 8) The cumulative testimony of the [REDACTED] staff, including the testimony of the social worker, speech pathologist and teacher was convincing that the Student was placed during the 2009-10 school year in a program that included students who were higher functioning and that this placement resulted in the Student acting out with a myriad of inappropriate behaviors in an attempt to communicate to those around her that she was frustrated. It is further found that the likely cause of this frustration was the placement of the Student in a program whose curriculum and services were designed for students who functioned above the Student's programmatic level and that the placement in the program known as Primary D was an inappropriate placement for the Student at that time. This same cumulative testimony, when combined with the testimony of both parents, results

in a finding that the resulting change in classrooms for the Student during the 2010-11 school year that continues today resulted in a dramatic reduction of these behaviors caused by the Student's placement in the classroom known as Primary D. This was corroborated by all [REDACTED] staff who testified, but in particular when the current teacher, [REDACTED], testified that the Student is performing much better since being placed with students who were lower functioning than the Student and that this seemed to enable her to believe she was one of the better students in the class. Thus, and even as stated by [REDACTED] in her testimony, it is a finding of this hearing officer that the current placement for the Student at the [REDACTED] school is the least restrictive environment for the Student.

- 9) While the testimony of the consultant was found to be credible, the independent evaluation completed by the consultant was found to be less than stellar. The consultant's record review was completed in a relative short period of time and done while also observing in the Student's classroom. This is deemed an insufficient amount of time for an outside consultant to review a record as detailed and involved as this Student's record would be. Additionally, the consultant failed to ask detailed questions of specific [REDACTED] staff who might likely have alerted the consultant to issues in the Student's record and the Student's past programming that if known to the consultant may have resulted in a different finding in the IEE. This failure, in particular, to ask questions of the speech and language pathologist regarding the Student's current placement and any issues in the Student's past history, clearly resulted in an IEE that was not reflective of important historical markers in the Student's educational program. Failing to identify the [REDACTED] school's previous decision to try the placement with higher functioning students for the Student and the failure to document the resulting long-term serious misbehaviors of the Student was a critical shortcoming in the data utilized by the consultant in drawing her conclusions. Additionally, failing to visit the Director's preferred placement ([REDACTED]) while students and programs were actually occurring was also a critical flaw in the assessment of what was best for the Student. Viewing a facility and interviewing the tour guide while viewing the facility does not constitute a professional observation when trying to serve as independent expert charged with designing recommendations for a child's program placement, particularly when that program placement is opposed by one

of the parties involved in the decision. Additionally, the consultant testified she was unaware of the Student's full scale intelligent quotient. This was concerning to the hearing officer as such a fact should have been uncovered by any competent review of the Student's records. Further, knowing the Student's Full Scale IQ should also be a critical piece of data important to the completion of any IEE considering placement. It is difficult to conceive of any outside expert making a program placement recommendation without knowing the FSIQ of any student the expert is considering, since this is a data point critical to the most basic of identification principles under the IDEA, eligibility as a student with a disability is frequently determined by knowing and establishing the FSIQ of any student under consideration. The fact that previous IEP's entered into this record note the Student's disability to be severe enough that accurate psychological testing to determine a FSIQ is not possible for this Student could have been easily uncovered by a competent review of the records (see the section labeled "Cognitive Functioning" located in the February 16, 2011 IEP at SD 0085). These shortcomings are not meant as criticisms of the consultant's professional ability, but are likely the result of inexperience, since this IEE was the first ever completed by the consultant as testified to by the consultant. As a result, it is a finding of this hearing officer that the IEE completed by the consultant was incomplete and therefore not reliable.

- 10) It is a finding of this hearing officer that the motivation of the Director of special education for seeking a change of placement for the Student was due to a conflict the Director had with the personnel serving the Student at the [REDACTED] school. There was considerable testimony given and reviewed in this decision by the [REDACTED] staff and the Parents of the Student to establish this fact. The Director's own testimony, or lack thereof, caused considerable suspicion that something else was in play besides a motivation to insure success for the Student. This suspicion was confirmed by the testimony of one of the District's own witnesses, social worker, [REDACTED] [REDACTED] testified not once, but twice, that there was obvious and unusual tension in the room during the March 15, 2011 IEP team meeting and when asked by District counsel to what he attributed that tension, he testified a personality conflict between the two districts. He was asked the same question later on under direct examination in an effort to rehabilitate this previous

testimony and at that time he attributed the tension to a likely “personality conflict.” Hence, it is a finding of this hearing officer that this “personality conflict” between the Director of special education and the [REDACTED] principal was the motivating factor in the Director seeking a change of placement for the Student.

11) Finally, it is a finding of this hearing officer that during the conduct of the March 15, 2011 IEP team meeting, the District essentially offered the Parents a “Hobson’s choice.” By indicating to the Parents at an IEP team meeting mostly populated by [REDACTED] school district members (9) almost completely (other than the Parents and the [REDACTED] school principal, social worker and teacher) the district in an effort to force agreement from the Parents to the Director’s preferred change of placement at the [REDACTED] program at [REDACTED] indicated the Parents’ could agree to have the District fund an independent evaluation or otherwise the predominantly populated IEP team favoring the [REDACTED] School District would simply determine placement for the Student at [REDACTED] over the objection of the Parents. This in essence is offering the Parents no choice at all. Several facts entered into evidence warrant this finding of fact: testimony of the [REDACTED] superintendent, credible testimony of the [REDACTED] school principal, and the corroborated and credible testimony of both parents and the [REDACTED] occupational therapist.

CONCLUSIONS OF LAW

1) When considering a dispute regarding a student with a disability and the student’s school district that alleges a failure to provide a Free Appropriate Public Education (FAPE), the hearing officer must first begin by considering the Supreme Court decision in *Rowley (Board of Education of the Hendrick Hudson School District, Westchester County et al. V. Rowley by her Parents, Rowley et ux. 458 U.S. 167 (1982))*.¹³ In *Rowley*, the decision is directed by the Supreme Court which set forth a two pronged test for determination of a (FAPE) in the least restrictive environment (LRE). The first prong directs any hearing officer decision to determine whether or not the District has complied with the statutory procedures required by the Individuals

¹³ The *Rowley* decision was also offered as one of the case law decisions submitted by the District for hearing officer consideration.

with Disabilities Education Act (IDEA) 20U.S.C. 1401 et seq. Rowley indicates that any substantial denial of procedural safeguards that result in adverse impact on the parents' participation or the Student's education in so much as the result is a loss of educational opportunity then there has been a denial of the law's requirement for FAPE. This first test of Rowley provides for relief only when the procedural violations result in substantial harm to the student (*W.G. v. Board of Trustees*, 960F.2d 1479, 1484 (9th Circuit 1992)).

2) In this DPCN, the issues identified by the Parent as listed in 1-3 above are procedural issues related to 34 CFR §300.501 (c) (1-2) and 34 CFR §300.502. The question this hearing officer must answer relative to issues 1-3 is whether or not the Parent provided evidence to support the burden of proof carried by the Parent that the District's conduct as alleged by the Parent violated the Student's right to a FAPE by failing to provide the parents with the opportunity to participate, failing to provide the parents with a copy of a signed IEE on letterhead, and failing to consider the concerns of the Parents at the IEP meetings.

3) The statutes that need to be considered relative to the three issues presented at hearing include 34 CFR §300.324 (a)(1)(i-iii)(2)(i) which states in part: "...development of the IEP, the IEP team must consider: (i) strengths of the child; (ii) the concerns of the parents for enhancing the education of their child; (iii) the results of the initial or most recent evaluation of the child." 34 CFR §300.321 (a)(1&3) states in part: "...the IEP team ...must insure...IEP team include (1) Parents (2) not less than one special education teacher of the child." 34 CFR §300.322 (b)(i-ii) states in part: "...inform the parents of the provisions in §300.321(a) and (c) which relates to the provision that the district is required to invite and allow participation of other individuals on the IEP team who have knowledge or expertise about the child. Further, and as presented in the District's "Memorandum of Law," 20 U.S.C. § 1400(d)(1)(A) states in part the IDEA was enacted to: ensure that all children with disabilities have available to them a free appropriate public education...designed to meet their unique needs and prepare them for further educational, employment, and living." As confirmed in Rowley, the procedural safeguards enumerated in the IDEA are designed to ensure parent's rights of notification of decisions that may affect the child, as well as, provide parents the opportunity to object to those decisions (20 U.S.C. § 1415 et seq.).

4) Since the issues in this case are procedural in nature, it is also important to recognize that 34 C.F.R. § 300.513(a)(2)(i-iii), *Oak Park & River Forest High Sch. Dist. No. 200 v. Kelly E.*, 21 F. Supp.2d 862, 874 (N.D. Ill. 1998); *Heather S. v. State of Wis.*, 125 F.3d 1045, 1059 (7th Cir. 1997); and *W.G. v. Bd. Of Trs.* 960 F.2d 1479, 1484 (9th Cir. 1992) all instruct the decision in this case that the extent of any procedural violation must be to a degree that the procedural violation actually interferes with the provision of a FAPE for the Student.

5) Pre-determination can also be a procedural violation that needs consideration in this instant case. As noted in the District's "Memorandum of Law," *Briere v. Fairhaven Grade School District*, 948 F. Supp. 1242 (D.Vt. 1996) indicates that pre-determination denies a student a FAPE if it can be established that IEP team members prevent parents from meaningfully discussing parent's concerns or fails to provide parents with reasons for decisions made by the IEP team. Similarly, *W.G. v. Bd. Of Trs.*, 960 F.2d 1479, 1484 (9th Cir. 1992) reflects that procedural violations deny a student a FAPE if a school district presents parents with a "take it or leave it" position during the conduct of the IEP team meeting.

6) In order to find for the Parent in this instant case, the evidence must demonstrate that the alleged procedural violations either result or will result in denying the Student access to educational benefit, or in some other way impeded the Student's right to a FAPE, or constitute a significant denial of the parent's opportunity to participate in the decision-making during the IEP team meeting that determines what will constitute a FAPE for the student (*W.G. v. Bd. Of Trs.* 960 F.2d 1479, 1484 (9th Cir. 1992); *Heather S. V. State of Wis.*, 125 F.3d 1045, 1059 (7th Cir. 1997); and 34 C.F.R. § 300.513(a)(2)(i-iii)).

7) The first issue states: "Did the District violate the Student's right to a FAPE by failing to provide the Parents with the opportunity to participate in the decision to change the child's placement from the current [REDACTED] placement?" When considered in the context of the statutes and case law cited herein, the legal principles that must be examined include the concepts of "substantial denial" (Rowley and W.G.); that the IEP team was properly constructed to ensure that the decisions of the team were designed to meet the "unique" (emphasis added) needs of the student (20 U.S.C. § 1400(d)(1)(A)); the concept of pre-determination, whether or not the IEP team prevented parents from meaningfully discussing the concerns of the parents

and/or failed to enumerate reasons for the IEP team's decisions (Briere); and finally, whether or not the concept of the "parent's attitude towards the district's proposed placement" should have had any bearing on the decision of the IEP team (*R.G. v. Bd. Of Trs.*, 960 F.2d 1479 (9th Cir. 1992)). Whether or not "substantial denial" occurred as required by Rowley and W.G. can be determined if evidence was submitted by the parent that when viewed in its preponderance demonstrates that either the District failed to provide a properly constructed IEP team, the District came to the IEP team with an attitude of predetermination, or, whether or not the Parent's attitude towards the District's proposed placement in this instant case is so poisoned that it creates an atmosphere with the potential of dooming the placement to failing to provide FAPE to the Student before it even begins. Evidence presented in testimony during the hearing supports all of these concepts. The lack of credibility of the Director's testimony during Parent's direct examination caused the hearing officer to conclude that the Director was either trying to hide something or avoid testifying to information that might damage the district's position on the issues. Testimony of Principal [REDACTED] Assistant Principal [REDACTED] Teacher [REDACTED] and the Parents all clearly provided evidence that the issue of providing the Student with a part time 1:1 aide was an issue the Director was not willing to consider and intended to avoid. Further, the evidence demonstrated the Director was not willing to discuss the need for the 1:1 aide at an IEP team meeting or intended to prevent the request from being presented on behalf of the Student. Further, the testimony of the [REDACTED] school district social worker, [REDACTED] confirmed that there was a conflict between the Director and the [REDACTED] school, if not the [REDACTED] principal. The testimony of the Parents both reflected that the [REDACTED] principal called them ahead of the February 16, 2011 IEP team meeting to give them a "heads up" that the Director intended to bring up the idea of a change of placement of the Student, and the fact that the Parent testified that prior to that "heads up" they had no idea this was an issue adds further credibility to the testimony of the [REDACTED] staff members on the issue of the 1:1 aide. The fact that the IEP team was not designed to ensure that the decisions of the team would meet the "unique" needs of the Student is informed by the membership of the team members for the two determinative team meetings conducted on March 15, 2011 and August 4, 2011. These two team meetings were conducted differently than any team meeting held prior to those dates and dating back to 2006 when the Student

was first placed at the [REDACTED] school location. Prior to these final two IEP team meetings, the location of the team meetings was at the [REDACTED] facility and the invited and participating staff team members were all the direct service providers of the Student (those staff who know her best), the Parents, and the Director of the [REDACTED] School District special education programs. As reflected at SD 0047, the District moved the IEP team meeting to the [REDACTED] school location and of the ten (10) invited members, nine (9) were employees of the [REDACTED] school district. Of the nine (9) invited Sandridge school employees, testimony reflects that only two had any recent knowledge of the Student (Director and Social Worker) and that knowledge was the result of recent observations of the Student. There was no evidence submitted to suggest that the other seven (7) invited [REDACTED] employees knew anything at all about the Student they were about to make decisions for regarding the Student's future placement, program and services. Inviting a speech and language pathologist, school principal, psychologist, special education teacher, director of the special education cooperative to an IEP team meeting (none of whom had direct knowledge of the Student being considered) to determine placement of a Student who has been progressing in a therapeutic day school program for four (4) out of the five (5) years the Student has been attending, is at least suspicious, and at worst, manipulative. The concern the change of location for the IEP meeting and team membership raised in the hearing officer's thinking was why would such an important decision regarding the Student, namely, to select between two therapeutic day school programs for the Student, need to suddenly have the vast majority of the IEP team attendees be staff members who knew little or nothing about the Student or even the Student's history. The Parents and the [REDACTED] principal both testified that the atmosphere created, in particular at the February 16, 2011 IEP team meeting and the March 15, 2011 IEP team meeting (the meeting where both the decision to change placements seemed all but certain and the meeting where the sudden change in membership and location first occurred), seemed to be one of intimidation due to feeling "outnumbered." As a result, this suggested that the District's mind was already made up, and the need to pay attention for additional evidence of the principle of "predetermination" was raised in the mind of the hearing officer as a result. Additional concerns were raised during the testimony of the [REDACTED] occupational therapist, principal, and both parents who all testified that the Parents left the room

during the February 16, 2011 IEP team meeting visibly upset with the procedures of the meeting. The [REDACTED] OT further testified that while the Mother was out of the room the Director made statements that the IEP meeting would be adjourned for 30 days and if the [REDACTED] placement was still preferred, then "so be it." The OT further testified that while the Parents were out of the room during the time the Director made this statement, the OT suggested the Director put those statements in writing since they were made in the Parents' absence and the OT testified that the Director's response was to make a retort to the [REDACTED] principal to the effect "this is what I am talking about." This testimony of the OT was corroborated by the [REDACTED] principal and interestingly, there was no testimony from the Director attempting to refute that this occurred at the February 16, 2011 IEP team meeting. Further testimony documented in this decision reflects that the Parents were told on several occasions at various IEP team meetings that the concerns the Parents wished to discuss were not allowed to be discussed by the Director. In addition, testimony reflects that the Director and/or the Superintendent informed the Parents that the issues the Parents wanted to discuss were not going to be addressed at those IEP team meetings. The evidence in support of the treatment of the parents during the IEP meetings is also corroborated at parent document P 001 which is a signed and dated statement from the [REDACTED] speech pathologist who attended at least one of the IEP team meetings in question and wrote this document the same day that the February 16, 2011 IEP meeting took place. The document reflects the speech pathologist's concern for the Parents and the way they were treated during the meeting, the lack of professionalism on the part of the Director, that the Director's motivation seemed to be a personal issue, and that the Director seemed to be "more or less attacking" the parents. This document is quite persuasive since it was written on the same day as the February 16, 2011 IEP meeting took place and it addresses many of the facts that have been found by the hearing officer and that have been corroborated by the testimony of several other witnesses. Another piece of persuasive testimony that was not refuted by the District came from the Father's testimony. His testimony corroborated that his wife needed to leave during the February 16, 2011 IEP team meeting to compose herself and that he too had become upset to the point of actual tears, something he said does not happen easily for him, a self-employed roofer by trade. He then testified that while he was upset and the Mother was out of the room

trying to compose herself the Director presented him with a document and asked him to sign it. He testified he refused to sign it because he did not understand what the document was or what he would be signing away. He said he needed to retrieve his wife to come back to the meeting because he did not understand what he was being asked to do by the Director. He further testified that to this day he does not understand what the document was or what it contained, a clear violation of the IDEA.¹⁴ Further, the District did not present any data driven evidence for the Director's perceived notion that the Student was "not making the progress." Additionally, the report presented by the District from the consultant contained enough flaws to deem the report unreliable, yet the District presented the report as corroboration for the Director's unilateral decision to seek and implement a change of placement for the Student. The District did not refute that the Director failed to consider the prior and multiple attempts to educate the Student with higher functioning peers (when the Student was first identified by the District and when the Student was placed in the Primary D classroom at Kirby). Evidence and testimony at the hearing demonstrated clearly that these placements resulted in serious behavioral issues for the Student at school and at home. Both of these placements with higher functioning peers were deemed as miserable failures by the then [REDACTED] district Director [REDACTED] – according to testimony by the Parents and no attempt to refute by the District) and the Parents and [REDACTED] staff in total who testified during the hearing (and again no attempt to refute this cumulative testimony relative to the Student's experiences in the Primary D classroom just eight (8) months prior to the February 16, 2011 IEP team meeting). Failure to either demonstrate consideration of this data relative to placement of the Student with higher functioning peers or refute it in some way by the District personnel, the [REDACTED] personnel, and the independent consultant (all who testified when questioned by the Parent they were not aware of the issues during the times the Student had been placed with higher functioning peers) demonstrates the Director's lack of due diligence in pursuing a proposed change in placement. Thus, the evidence cited supports a conclusion of the Director's intent to act unilaterally due to a predetermined outcome of wanting to move the Student. Evidence also supports the motivation of the Director was due to her frustrations resulting from the [REDACTED] school and Parents repeated requests for a part time 1:1 aide

¹⁴ See 23 I.A.C. §226.530
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for the Student and the Director's frustrations with paper work issues between the [REDACTED] school and the [REDACTED] School District. Finally, the Parent testified on numerous occasions that both Parents had very strong feelings that the placement proposed by the District would result in serious regression for the Student and return the family to a "living hell" if the placement were forced upon the Parents. As noted in R.G., such a poisoned attitude of any parent towards a proposed district placement should be considered by the IEP team to determine if the attitude of the parents might doom the proposed change to failure before it even started. The District did express a willingness to try to provide for a transition period for the Student, but there was no evidence presented that the District considered the likelihood of the success of the proposed two week transition plan, or what the District would do if at the conclusion of that transition if the fears of the Parents came to fruition. This lack of consideration of real and justifiable fears of the Parents and corroborated by data reflected in the Student's behavior reports at [REDACTED] supports a finding that the District was simply set in their thinking that the placement change was going to happen no matter what, in other words, the District had arrived at a pre-determined outcome. Thus, the preponderance of the evidence supports a finding in favor of the Parents for Issue number one (1).

8) The second issue in this DPCN reads as follows: "Did the District violate the Student's right to a FAPE by failing to provide the Parent the opportunity to have and review an accurate copy of the Student's records, specifically the official copy of an independent educational evaluation?" The Parent testified that she was first given a copy of the consultant's report in a sealed envelope with the Parent and Student's name on the envelope. The Student's older sister testified that she was given the envelope at school and asked to give to her Mother which the sister testified she did. This testimony was corroborated by the Mother's testimony and not disputed by the District. The copy given to the Mother was not on letterhead nor was it signed. The consultant testified that she had first sent a copy of her report to the District via email as a Word document attached to the email. Thus, the consultant testified that the initial offering of her report to the District was unsigned and that the consultant did not have formal letterhead to print the report on when delivering the formal copy to the District via USPS which the consultant testified was signed. The Parents confirmed during cross-examination by the District that after the Parents complained

to the Board of Education at a Board meeting in August of 2011, the Parents were then given a copy of the signed consultant's report. When comparing the unsigned copy of the consultant's report at P034 with the signed copy at SD033, there is simply no difference in the two reports except that the document at SD033 contains the signature of the consultant and the copy at P034 does not. The Parent testified that receiving the unsigned copy of the report, when combined with her already and rapidly developing mistrust of the District's administration, caused her to be concerned that the report might not be authentic or otherwise not representative of what the consultant intended. However, once the Parent received the signed copy and was able to confirm the authenticity of the first report given to the Parent, albeit unsigned, the Parent's concerns about authenticity should have been alleviated. Thus, there is no legal basis, either statutory or case law, to suggest that the District intentionally or actually mislead the Parent with the unsigned copy first given to the Parent. While it is understandable the Parent might have the fears the Parent testified to as to the authenticity of the first report the Parent received, this understandable fear does not rise to the level necessary to find that the District violated any procedures required of them under the IDEA related to independent educational evaluations (see IDEA § 300.502 (a-e(2))). Thus, the preponderance of the evidence supports a finding in favor of the District for Issue number two (2).

9)The third issue identified in the DPCN reads as follows: "Did the District violate the Student's right to a FAPE by failing to consider the concerns of the Parent for enhancing the education of the Student?" Multiple witnesses testified and/or submitted written documentation that the Mother, in particular, and at times, knowledgeable staff from the [REDACTED] school, were prevented from proposing information for consideration at the IEP team meetings on February 16, 2011 and March 15, 2011. Specific issues/information that the Parents were denied an opportunity for consideration at the referenced IEP team meetings include:

- the request for a part-time 1:1 aide for the Student (Mother and [REDACTED] staff testified the Mother attempted to raise this issue at the February 16, 2011 IEP meeting);
- the issues caused by the Student's placement with higher functioning students in the class known as Primary D (considerable testimony was given by the Mother, [REDACTED] speech and language pathologist, [REDACTED] social

worker, [REDACTED] OT, and the [REDACTED] principal corroborating this legitimate and documented concern);

- that the Mother and [REDACTED] staff were prevented from seeking reasons for the change in placement at the February 16, 2011 IEP team meeting; and
- the Parents were denied the opportunity to discuss on-going concerns about regression of the Student if the Student was changed from the [REDACTED] programming (again multiple testimony is documented in the review of testimony establishing this fact).

With regards to the provision of the part-time 1:1 aide for the Student, 23 I.A.C. § 226.310 states in part: “each school district shall ensure that related services (as defined in 34 C.F.R. § 300.34) are provided if necessary to assist an eligible child in benefitting from his or her special education. Multiple [REDACTED] staff testified as to the need for this 1:1 aide for the Student due to the Student’s ongoing issues with distractibility while transitioning from one place to another during the school day. Testimony from the [REDACTED] principal, assistant principal and teacher all corroborate the Parent’s assertion that the Director denied consideration of the proposal by insisting early on the discussion needed to focus on a change in placement at the February 16, 2011 IEP team meeting. The effect of this proposed change in placement near the outset of this IEP team meeting had the impact of denying the Parent and persons knowledgeable about the Student’s needs the opportunity to propose and justify the need for the 1:1 aide. Paraprofessional classroom aides are a common proposal in special education settings and are typically raised by both parents and staff who are knowledgeable about the potential benefit to the Student of this related service. Failure to allow either the Parent or the [REDACTED] staff who knew the Student’s needs best to even propose, let alone the opportunity to present data to justify the request for this related service, is consistent with procedural violations as found in other circuits. As documented in the Parent’s “Memorandum of Law,” “The Ninth Circuit cited the district’s failure to consider the recommendations of persons knowledgeable about the student justified a finding of procedural violations....” In the court’s decision, the Court found that failure to consider recommendations of persons “knowledgeable” about the student, the IEP was not reasonably calculated to

enable the child to receive educational benefit.¹⁵ The Parent also maintained that during the February 16, 2011 IEP team meeting when the Director informed the Parent that the purpose of the meeting was not to discuss the request for the 1:1 aide, the Parent testified that the Director did not provide any reasons for refusing to discuss the provision of the aide or to provide reasons for that refusal, a violation of the IDEA.¹⁶ The testimony of the Parents and corroborated by the testimony of the multiple [REDACTED] staff documented herein establishes that the District interrupted the Parent on multiple occasions during the February 16, 2011 IEP team meeting, refused to allow the [REDACTED] staff in attendance proper participation, and refused to consider or respond to the Parent's request for a part time 1:1 aide. This is a clear violation of the State of Illinois expectation that school districts and their personnel "... take whatever action is necessary to facilitate the parent's understanding of and participation in the proceedings at a meeting."¹⁷ Thus, the preponderance of evidence supports a finding in favor of the Parents in Issue number three (3).

BURDEN OF PROOF

It was readily apparent from the testimony of the Parent and the staff at the [REDACTED] school that there has been a sincere and credible effort on their part to provide an educational and home environment in the best interest of the Student. It is also readily apparent from the testimony and documentary evidence cited herein that the Parent, by the preponderance of this evidence presented at the hearing and cited herein, has met the burden of proof for issues numbered one (1) and three (3) as required by [*Schaffer v. Weast*, 546 U.S. 49, 62 (2005)]. The testimony and evidence does not support the Parent's issue identified as number two (2). While the evidence presented relative to issue two (2) indeed explains the root of the Parent's additional mistrust of the District, the preponderance of the evidence does not support a finding of procedural error on the part of the District that denies the Student a FAPE.¹⁸ As noted in *Rowley*, "Congress sought to protect individual children by providing for parental involvement..." *Honig*¹⁹

¹⁵ *W.G. v. Bd. Of Trs.* 960 F.2d 1479, 1484 (9th Cir. 1992).

¹⁶ See 34 C.F.R. 300.503 et seq..

¹⁷ See 23 I.A.C. §226.530.

¹⁸ *Oak Park & River Forest HSD #200 v. Kelly E.*, 21 F. Supp.2d 862, 874 (N.D. Ill. 1998).

¹⁹ *Honig v. Doe*, 484 U.S. 305, 311 (1988).

notes "Congress repeatedly emphasized throughout the Act the importance and indeed the necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness." While the District demonstrated that in all instances prior written notice was given to the Parent regarding IEP meetings as required by the IDEA and Illinois regulations, and that multiple IEP meetings were conducted within required timelines of the IDEA (although the assertion by the District that they were "up against the 30 day timeline" with the March 15, 2011 IEP did not ring true since the same regulations allow for waiver of this timeline by the Parents), the make-up of the membership of these meetings and the substance of these meetings fail to meet the expectations of the requirements of the IDEA and the rules and regulations of the State of Illinois and related case law as cited herein. This procedural failure by the District regarding Issues one (1) and three (3) as identified in the Parent's DPCN and cited in this decision are deemed to constitute procedural FAPE and the finding is therefore in part for the parent on issues one (1) three (3) and in part for the District on issue two (2) a determination that these violations denied the Parents their rights to participate and resulted in a denial of FAPE to the Student.

ORDER:

As a result of the Parent prevailing on the substantial issues one (1) and three (3), the following is hereby ordered:

- 1) The District will convene an IEP team meeting located at the [REDACTED] location of the [REDACTED] Therapeutic Day School no later than January 31, 2012. The District shall invite the Parents, the [REDACTED] administrator and all [REDACTED] teachers and related service providers currently serving the Student at the [REDACTED] school. At the [REDACTED] School District Superintendent's discretion, the Superintendent may ask to be invited and participate in this or any other IEP meetings called on behalf of the Student for the purpose of understanding the necessary resources for any programs and services for the Student decided at this IEP meeting or subsequent IEP meetings. The Superintendent's attendance at this ordered IEP meeting, and any subsequent IEP meetings through the close of the 2012-2013 school year shall not be for the purpose of vetoing or otherwise denying any team decisions made on behalf of the Student. The Superintendent may otherwise participate in the ordered IEP team meeting and subsequent IEP team meetings as an equal participant of the IEP team to determine the most appropriate programs and

services for the Student. The IEP team will consider at this IEP team meeting the Student's present levels of performance and determine goals and objectives (and all other issues as required of IEP team meetings for the purpose of developing a completed IEP under the rules and regulations of the IDEA and the State of Illinois) that are determined necessary to meet the Student's current needs as they can be met at the [REDACTED] school for the remainder of this school year (2011-2012).

- 2) Because of the obvious mistrust between the [REDACTED] School District special education director and the parents, the IEP team meeting(s) for the Student that need to be conducted beginning with the IEP meeting ordered herein and continuing through the 2012-2013 school year shall be conducted by an administrator qualified to conduct IEP team meetings other than the [REDACTED] Director. At the District's option, Principal [REDACTED] if qualified, or the Director of the [REDACTED] who demonstrated at the hearing to be a knowledgeable and professional administrator and who serves as the [REDACTED] District's State approved Director may serve in this capacity. Should the District select the [REDACTED] Director and the need arise for the [REDACTED] Director to delegate this responsibility, any [REDACTED] administrator not directly associated with the [REDACTED] School District and who possesses the necessary training and certification to conduct IEP team meetings, may be appointed by the [REDACTED] Director as her substitute to conduct any and all IEP team meetings for the Student. Should this happen, the District must provide the Parents with proper prior written notice. (It should be noted that the Assistant Superintendent of the [REDACTED] Cooperative, [REDACTED] demonstrated through her testimony to also be a knowledgeable and professional special education administrator) and she could serve in this capacity at the discretion of [REDACTED] or the [REDACTED] School District.
- 3) At the IEP team meeting to be conducted no later than January 31, 2012, the IEP team shall fully examine and discuss whether or not a part-time 1:1 aide is necessary for the Student and include in the IEP completed for the Student the amount of time determined as appropriate for the provision of a part-time 1:1 aide, if any. If the decision of the IEP team is to provide the aide as a related service for the Student, as required by the IDEA, the District shall pay 100% of the cost of this related service.

- 4) The District is barred from seeking an alternative placement, not specifically agreed to in writing by the Parents, for the remainder of the 2011-2012 school year and the entirety of the 2012-2013 school year. Future consideration of a change of placement for the Student for the school year 2013-2014 and beyond should then be conducted in a manner consistent with the requirements of the IDEA and the rules and regulations of the State of Illinois.

RIGHT TO REQUEST CLARIFICATION

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party(s) and to the Illinois State Board of Education. After a decision is issued, a hearing officer may not make substantive changes to the decision. The right to request such a clarification does not permit a party to request reconsideration of the decision itself, and the hearing officer is not authorized to entertain a request for reconsideration.

RIGHT TO FILE A CIVIL ACTION

This decision shall be binding upon the parties unless a civil action is timely commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-8.02(i) that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision is mailed to the parties.

D. MICHAEL RISEN
HEARING OFFICER

ENTERED: December 11, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **Decision and Order** was sent via first class USPS, certified mail, return receipt and electronic mail, return receipt, and directed to:

[REDACTED]

And

[REDACTED]

And

[REDACTED]

And

[REDACTED]

Illinois State Board Of Education
100 N. First St.
Springfield, IL 62777-0001
(Email and USPS 1st class only)

Before 5:00 PM on December 11, 2011 (electronic mail)
Before 5:00 PM on December 12, 2011 (USPS)

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