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**SPECIAL EDUCATION  
SERVICES**

Case Number: 2012-0223

[REDACTED] 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**

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

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

Parent Name [REDACTED] Phone: [REDACTED]  
Address [REDACTED]

Date and Timelines

Date of Written Request: 12/02/2011

Date of Hearing: 04/12/2012

Date of Pre-hearing Conf: 01/31/2012

Date of Decision: April 15, 2012

Summary of Decision

The Parent filed this complaint alleging nine issues related to the provision of FAPE for the Student. The Parent moved to bifurcate the hearing to enable the IHO to determine whether or not the Parent was entitled to the Parent's requested six Independent Educational Evaluations (IEEs) at public expense. The IHO approved the motion to bifurcate and set the burden of proof with the District. The District prevailed in four (4) of the six (6) requested IEEs. The District failed to meet its burden of proof in the areas Assisted Technology (AT) and consideration of the results of medical vision examination provided by the Parent at the request of the District. The District was ordered to conduct a vision and AT assessment and convene an IEP team meeting to consider and incorporate recommendations from the two assessments no later than May 11, 2012. The District was also ordered to reimburse the Parent for 2/6 or 33% of the documented costs for the Parent's expert witness who testified at the bifurcated hearing. The remaining issues in this DPCN are set for hearing on May 21, 22 and 23, 2012.

ILLINOIS STATE BOARD OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)  
) ISBE CASE NO. 2012-0223  
)  
) Michael Risen  
) Impartial Due Process  
) Hearing Officer

**BACKGROUND**

- 1) On December 2, 2011, the Parent filed this request over a dispute between the Parent and District regarding placement of the Student and eight other identified issues.<sup>1</sup> The Student is a 16-year-old male whose primary disability was identified as Emotional Disorder per the 4/25/2011 IEP developed for the Student and now disputed by the Parent.
- 2) On January 5, 2012, the Parent notified the independent hearing officer (IHO) that the District had agreed to place the Student at a private therapeutic day school that was agreeable to the Parent, thereby removing the issue of placement from the Due Process Complaint Notice (DPCN).
- 3) On January 31, 2012, the Pre-Hearing conference was completed. Both parties submitted the required disclosure documents as prescribed by (IHO).
- 4) On February 3, 2012, the Parent submitted a motion to bifurcate the hearing to enable the (IHO) to determine whether or not the Parent was entitled to individual educational evaluations (IEE) at public expense. The District filed the District's response on the same day.
- 5) On February 4, 2012, the (IHO) approved the Parent's motion to bifurcate. Further, the (IHO) placed the burden of proof on the District to defend the efficacy of the District's evaluations. The District objected to bearing the burden of proof.<sup>2</sup>
- 6) On April 5, 2012, both parties timely filed hearing disclosure documents. The Parent chose to have a closed hearing. A full transcript was completed but unavailable to IHO for the writing of the decision.
- 7) Testifying at hearing were: [REDACTED] [REDACTED] District speech and language

<sup>1</sup> See PHC summary at DJ HO pp. 93-96.  
Illinois State Board of Education  
Due Process System

<sup>2</sup> See HO Exhibit at DJ HO pp.126-129.

pathologist (referred to herein under her initials "LD"), [REDACTED]

District case manager ([REDACTED])

[REDACTED] Student's special education teacher [REDACTED]

classroom aide [REDACTED]

District school psychologist ([REDACTED])

[REDACTED], clinical

psychologist and Parent's expert

witness ([REDACTED] and the Student's

Mother [REDACTED])

### ISSUES

- 8) The issue(s) identified in the Parent's amended complaint<sup>3</sup> for the bifurcated part of this hearing were: "Did the District fail to conduct adequate assessments of all areas of potential disabilities, with the result that the student's educational program for this period did not address, or addressed inadequately, his learning impediments and emotional difficulties; to date, no formal assessments of the student's need for speech language services, occupational therapy, assistive technology, behavior modification or vocational services were made?"<sup>4</sup>

### PROPOSED RELIEF

- 9) Should the Parent prevail at the

<sup>3</sup> See IHO exhibit DJ HO p. 68.

<sup>4</sup> Ibid.

hearing, the Parent sought to have the (IHO):

- i. Direct that [REDACTED] pay for independent educational evaluations in areas of identified need including cognitive and academic skills; assistive technology; social assessment; expressive and receptive language; concerns regarding attention and impulsiveness; occupational therapy to address organizational deficits; and a comprehensive vocational assessment by a certified vocational rehabilitation counselor;
- ii. Order the District to convene an IEP meeting during the week of May 14, 2012 to consider any additional IEE's that may be ordered;
- iii. Order that a vision itinerant teacher conduct a record review and classroom observation of the student, and prepare recommendations for the IEP meeting as ordered above, including an order that the District identify the individual selected within five (5) days of receipt of the decision. If the District cannot or does not identify a vision itinerant within the stipulated time frame ordered, the Parent may select a vision itinerant teacher from another District with costs to be paid by [REDACTED];
- iv. Order the District to pay for the documented costs relative to the attendance of

any ordered private evaluator to attend the ordered IEP meeting to review the respective reports;

- v. Order the District to reimburse the Parent for expenses incurred by the Parent for record review and testimony of [REDACTED]

[REDACTED]

10) Should the District prevail at the hearing, the District sought to have the hearing officer find in favor of the District on all counts noted herein, provided however, that if the (IHO) finds that additional testing is required, that the District be allowed to utilize appropriate District professionals to complete any identified testing or assessments ordered by the IHO in the findings.

#### **FINDINGS OF FACT**

1) In the February/March, 2011 timeframe, the District completed a triennial re-evaluation of the Student. The evaluation included testing completed by the District's school psychologist [REDACTED] and school social worker. The tests administered to the Student by the school psychologist included tests to assess the Student's intellectual functioning, general intelligence (including the Student's strengths

and weaknesses), the Student's abilities in reading, spelling and mathematics, the Student's behavior functioning,<sup>5</sup> and the Student's social emotional functioning as documented by the school social worker's report.<sup>6</sup>

- 2) On April 25, 2011, the District properly conducted an IEP team meeting to review the results of the Student's triennial evaluations and to develop programs and services for the Student's coming senior year.<sup>7</sup>
- 3) In the Spring of 2011, and at all times preceding that time period that the District documented two years prior, the Student was making adequate progress in the normal curriculum and was on a track to graduate from high school alongside his typically developing peers and as documented by the Student's report cards.<sup>8</sup>
- 4) On October 1, 2011, the Student was accosted off school grounds by students from his high school and physically beaten. This incident

<sup>5</sup> See SD pp. 78-85.

<sup>6</sup> The school social worker was experiencing both personal and familial medical issues and was unable to testify. The parties agreed to defer the issue of social emotional functioning to the hearing scheduled to address the other eight issues identified in the DPCN. For her report, see SD pp. 90-93.

<sup>7</sup> See SD pp. 1-41.

<sup>8</sup> See SD 190-194.

(also documented in the local press)<sup>9</sup> caused the Student to fear coming to school and his attendance ceased, thereby causing him to fail all of his academic subjects for the Fall of 2011.<sup>10</sup>

- 5) On December 2, 2011, the Parent filed the DPCN alleging among other issues, the District's failure to provide an appropriate placement for the Student.<sup>11</sup>
- 6) On January 5, 2012, the District provided a Parent approved placement for the Student at [REDACTED]
- 7) The undersigned finds that the District presented credible testimony by the speech and language pathologist [REDACTED] and documented by the Student's last agreed to IEP, that the Student exhibits deficits in written language. Further, the undersigned finds that the District has planned appropriately to address the identified deficits as reflected in the credible testimony of [REDACTED] and as documented in the Student's IEP goals and quarterly benchmarks that

are designed to address the written language issues.<sup>13</sup>

- 8) The undersigned finds that the District presented credible testimony<sup>14</sup> that the Parent of the Student has served at all times as an effective advocate for the Student.<sup>15</sup>
- 9) The undersigned finds that the record submitted by the Parent fails to document any request by the Parent during any point in time for up to two years preceding the filing of the DPCN for additional testing in the area of speech and language.
- 10) Further, the undersigned finds that the testimony of the Mother [REDACTED] failed to establish that she has at any point notified the District of any additional concerns in the area of speech and language.
- 11) The undersigned makes a credibility finding that the District's case manager [REDACTED] a National Board Certified teacher with 18 years of experience, provided credible evidence that [REDACTED] has established a rapport with the Student. [REDACTED] also provided credible testimony that [REDACTED] had unique insight and understanding of the Student's needs as a developing adolescent and

<sup>9</sup> See IHO exhibits at DJ HO p. 46.

<sup>10</sup> See IHO document at DJ HO p. 8.

<sup>11</sup> Ibid. p. 10.

<sup>12</sup> SD pp. 18-19.

<sup>13</sup> Testimony of SR, SM and DS.

<sup>14</sup> Testimony provided by (LD), (SW), and (HIR).

<sup>15</sup> Ibid.

student with a disability. The undersigned finds that the testimony of [REDACTED] credibly supports the District's position that the Parent did not at any time express concerns with the District's assessments in the areas of social work, nursing or psychological. It is also a finding of the (IHO) that [REDACTED] provided credible testimony relative to the District's conduct of a Manifestation Determination Review (MDR) and the appropriateness of the Functional Behavior Assessment developed as a result of that MDR and the efficacy of the resulting Behavior Intervention Plan.<sup>16</sup> Further, the undersigned finds that [REDACTED] provided credible testimony relative to the District's completion of the required plan for transition services as detailed in the Student's April 25, 2011 IEP.<sup>17</sup>

12) The undersigned finds that the testimony of [REDACTED], the Student's special education teacher, credibly supports the District's position that prior to the behavior incident that occurred off campus in the fall of 2011, the Student was on track to graduate alongside his typically

developing peers. [REDACTED] also provided corroborating testimony of the testimony provided by [REDACTED]

13) The undersigned makes a credibility finding that the testimony of the Student's personal aide ([REDACTED] provided for by the District through the Student's IEP, further supports the District's position that prior to the aforementioned off campus behavior incident, the Student was effectively completing school work that enabled the Student to earn the proper credits to graduate on time with his typically developing peers.

14) The undersigned makes a credibility finding that the testimony of the District's school psychologist [REDACTED] effectively substantiated the rationale for the tests given by [REDACTED]. Further, [REDACTED] testified that the tests were given to complete the Student's triennial evaluation and [REDACTED] effectively defended the basis for the determinations made and reflected in the completed triennial re-evaluation.<sup>18</sup>

15) The undersigned finds that the District failed to provide to the Parent the requested triennial psychological protocols until the day after the hearing. [REDACTED] testified as to

<sup>16</sup> PD 67-69.

<sup>17</sup> Transition Service Plan found on pp. SD 33-SD 34; Transition goals found at SD 24 – SD 27.

<sup>18</sup> SD 78-85.

what he recollected regarding the content of those protocols. The undersigned finds a review by the (IHO) of the submitted protocols,<sup>19</sup> did not impeach the testimony or evidence submitted by the District's school psychologist [REDACTED]. Thus, the undersigned finds this failure by the District to timely provide the requested protocols amounts to harmless error on the part of the District.

16) The undersigned finds that the testimony of the Parent's expert witness [REDACTED] failed to impeach, or otherwise contradict the testimony of the District's school psychologist (PG). Further, the undersigned finds that the testimony of (C) affirmed many of the findings of the triennial evaluation completed by (C) and the efficacy of the assessments utilized in the triennial evaluation as completed during February/March 2011 and reflected in the report of [REDACTED].<sup>20</sup>

17) The undersigned finds the testimony of the expert witness [REDACTED] to be credible and defensible. The undersigned also finds that the testimony of [REDACTED] did not find error

with the testing and assessments completed by the District, but rather, suggested that further testing and assessments suggested by [REDACTED] would make the District's triennial assessment "better."

18) The undersigned agrees with the District's assessment of the Parent's [REDACTED] testimony when the District asserts that the testimony of [REDACTED] can best be summarized as "unclear." The undersigned finds that when questioned by both Parent's counsel and under cross-examination by District's counsel, [REDACTED] was unable to articulate any concerns with the assessments that were completed, or where [REDACTED] believed the assessments may have failed to be accurate or otherwise incomplete. Rather, [REDACTED] testified similar to that of the Parent's expert witness [REDACTED] in that [REDACTED] believed the Student could do "better."

19) The undersigned finds that the Parent requested that the District provide the Student with Assistive Technology and that this request was documented on at least two occasions.<sup>21</sup> The undersigned finds that the District responded to these requests by completing an Assistive

<sup>19</sup> See IHO exhibits at DJ HO pp.304-367.

<sup>20</sup> SD 78-85.

<sup>21</sup> See PD pp.105 and 158.

Technology Evaluation of the Student on April 15, 2009 and found the Student to need Assistive Technology.<sup>22</sup> The undersigned finds that the District reflected in the Student's triennial re-evaluation dated April 25, 2011 that the Student does not require Assistive Technology. Although the District's witnesses testified they did not believe the Student needed any Assistive Technology, no evidence was provided, nor documentation submitted to support this testimony, or to support the IEP conclusion that AT was not necessary for the Student as reflected in the April 25, 2011 re-evaluation. Further, the District failed to provide testimony or documentation that the Student was receiving, or ever received the required assistive technology documented in the District's previous Assistive Technology evaluation dated April 15, 2009 which required that the District provide the Student with the following: "writing assignments should be typed and spell checked when possible...continue the use of a calculator when appropriate when performing math operations. A math

program will be given to assist with practice for the goal of math operations." Equipment recommended included "Mathblaster."<sup>23</sup> There was limited testimony provided by District staff suggesting the Student may have been provided occasional use of a calculator, but the testimony was not clear or specific and was therefore found to be non-determinative as to the District's compliance with their own Assistive Technology evaluation for the Student. The only documentation found relative to Assistive Technology other than the April 25, 2009 AT evaluation was found in the triennial re-evaluation IEP team meeting which simply included a "check" next to box reflecting "no" the student does not require any Assistive Technology.<sup>24</sup> However, there was no discussion in the IEP or reflected in any of the assessments submitted by the District to support the finding of "no" relative to Student's need for Assistive Technology.

20) The undersigned finds consistent testimony and documentation to reflect the Student is essentially

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<sup>22</sup> See PD pp. 489-490.

<sup>23</sup> Ibid.

<sup>24</sup> SD p. 7.

blind in the right eye.<sup>25</sup> Further, the undersigned finds that the District referred the Student for a medical evaluation for failing the District's vision screening.<sup>26</sup> As a result of this referral, Parent had the Student examined by [REDACTED] who found in part that the Student continues to suffer from "No functional sight at far or near" in the right eye.<sup>27</sup> The undersigned also finds that the report of [REDACTED] made specific recommendations for the District to use as accommodations for this identified disability.<sup>28</sup> The undersigned finds that the District's school psychologist also reported "deficits in visual-spatial and spatial-motor coordination in the triennial re-evaluation completed in 2011."<sup>29</sup> The undersigned finds the District failed to produce any testimony or documentation that the District has considered the impact of this identified vision issue.

#### **CONCLUSIONS OF LAW**

21) State and Federal special education laws are set out in Article 14 of the

Illinois School Code, 105 ILCS 5/14-8.02a and the Individuals with Disabilities Education Act, 20 U.S.C.A. 1400 *et seq.* (IDEA).

22) With regards to the burden of proof in due process proceedings, the U.S. Supreme Court has held that the ultimate burden of persuasion lies with plaintiff, or person filing the complaint.<sup>30</sup> As a result, the District is adamant that the Parent bears this burden as the plaintiff in these proceedings. However, and for reasons detailed in the (IHO) order to bifurcate the hearing, the (IHO) found that the burden of proof is to be shouldered by the District relative to the District's assessments that were completed during the most recent triennial evaluation.<sup>31</sup>

23) Relevant federal special education laws related to the District's responsibility to evaluate require that Districts conduct a "variety" of assessments that gather "functional, developmental and academic information about the child."<sup>32</sup>

24) Further, the IDEA requires Districts to assess students in "all areas of suspected disability."<sup>33</sup> Per the

<sup>25</sup> For example, see PD p. 474.

<sup>26</sup> See PD pp. 773-774.

<sup>27</sup> See PD p. 769.

<sup>28</sup> See PD p. 772.

<sup>29</sup> See PD p. 390.

<sup>30</sup> *Schaffer v. Weast* 546 U.S. 49 (2005).

<sup>31</sup> See IHO exhibits at DJ HO pp. 118-129.

<sup>32</sup> See 34 CFR §300.304.

<sup>33</sup> See 34 CFR §300.304(c)(4).

IDEA, this also includes both assessing the Student for AT needs and providing AT for the Student such that AT is “made available to a child with a disability if required as a part of the child’s...” special education or related services.<sup>34</sup>

25) The IDEA also requires District IEP teams to review existing evaluation data on the student, classroom-based, local or State assessments and classroom observations, and reports from teachers and related service providers when completing re-evaluations.<sup>35</sup>

26) For students 14.5 years and older, the IDEA, and Illinois statutes, require that Districts provide “transition services” for children with a disability. Such services must be “results-oriented” and “focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities...” It is to be based on “the individual child’s needs taking into account the child’s strengths, preferences and interests”

that include each of five different categories.<sup>36</sup>

27) With regard to the assessments used, the IDEA requires that they be free of racial or cultural bias, administered in the student’s native language, and used in a manner that is consistent with the design requirements or assessment model, while administered by trained personnel.<sup>37</sup>

28) Parent suggested the federal regulations relative to the identification of a child with a specific learning disability (SLD)<sup>38</sup> was also relevant to the issue before this (IHO). Essentially, the IDEA provides that a student can be identified as a student with a SLD based upon a severe discrepancy between achievement and ability in one or more of the eight specifically identified areas.<sup>39</sup> Further, Illinois statutes require additional procedures to determine whether or not a student can be identified as a student with a SLD.<sup>40</sup> The statutes require that Districts first determine how a child responds to scientific, research-based

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<sup>34</sup> See 34 CFR §300.5, §300.6 and §300.105 (a)(1-2).

<sup>35</sup> See 34 CFR §300.305 (a)(1).

Illinois State Board of Education

Due Process System

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<sup>36</sup> See 34 CFR §300.43 and 105 ILCS 5/14-8.03

<sup>37</sup> See 34 CFR §300.304(c)(1)(i-v).

<sup>38</sup> See 34 CFR §300.309.

<sup>39</sup> Ibid. (a)(1).

<sup>40</sup> See 23 Ill Admin Code §226.130 (a-d).

interventions before a student can be identified as a child with a SLD.<sup>41</sup> The testimony of [REDACTED] and the completed psychological testing<sup>42</sup> supported the District's position that the Student's eligibility of Emotional Disturbance was the appropriate identification and testing for a SLD was not required. The finding in this area was for the District.

29) In addition to examining and interpreting the documented evidence submitted by the parties and referenced herein, the most significant judgment question before this hearing officer is whether to give more credence to the six District staff members who testified or rely on the testimony of the one expert witness offered by the Parent and the notably "unclear" testimony of the Parent. This question is answered in the discussion that follows relative to a recent Seventh Circuit decision that provides direction on this question. But for the testimony of the Parent's expert witness [REDACTED] the undersigned finds that the District submitted documentation as referenced in paragraphs (7), (9), and (10) above that support a conclusion that the

District met its burden of proof that a separate and distinct evaluation by a speech and language pathologist is not warranted. While the expert witness testified that she believed the assessments completed, in particular by the District's school psychologist, could have been "better," she did not testify that she disagreed with the assessments given, the results obtained, or the recommendations made. Additionally, as noted in a recent Seventh Circuit decision, it was affirmed that there is no reason to give greater weight to the testimony of a private evaluator when that testimony may be in conflict with the testimony of the District's trained educators. As noted in the decision:<sup>43</sup> "Second, this court has expressed the view that it is inappropriate to defer to the opinion of a single psychologist,<sup>44</sup> particularly where that opinion is in conflict with the opinions of 'teachers and other professionals.' The deference is to trained educators, not necessarily psychologists. While the latter certainly have a role to play, and can contribute meaningful insight to the evaluation of a

<sup>41</sup> See 23 Ill. Admin. Code §226.130(c).

<sup>42</sup> See SD pp. 78-85.

<sup>43</sup> *M.B. v. Hamilton Southeastern Schools and Hamilton-Boone-Madison Special Services*, 2011 U.S. App. LEXIS 25557, decided December 22, 2011

<sup>44</sup> See *Heather S.*, 125 F.3d at 1057

student, the school district is required to bring a variety of persons familiar with a child's needs to an IEP meeting, including, specifically, teachers."

30) The Court further commented: "That is, an IEP must be 'evaluated prospectively and not in hindsight.'"<sup>45</sup> In other words, and as noted in the District's closing arguments, that hearing officers and courts should avoid the concept of Monday morning quarterbacking. In this instance, the testimony of District staff and Parent's expert witness [REDACTED] are not so much in conflict, as the Parent's expert believes additional testing is warranted to make the District's testing "better." Therefore, consistent with the guidance given by the Seventh Circuit in *M.B.*, and with the credibility findings noted above with respect to the issue of an IEE for speech and language, the undersigned finds for the District.

31) Similarly, with respect to the effective measurement of cognitive and academic skills, the credible testimony of [REDACTED] and the documented and varied assessments administered and submitted as evidence and as discussed herein in paragraphs 14-17, and the previously

discussed guidance of the Seventh Circuit, the undersigned rules in favor of the District with regard to the psychological and academic testing completed by the District as part of the Student's recent triennial evaluation.

32) With regards to the need for an Occupational Therapy assessment, the testimony of the District's several witnesses supports a finding that such an assessment is not warranted for this Student. Several witnesses testified to the Student's athletic ability, in particular his skill at basketball. Additionally, multiple District witnesses testified to the Student's relative accomplished eye hand coordination and this is also reflected in the evidence submitted demonstrating the Student's handwriting, which District teachers testified that the handwriting was legible and clear in both the formation of the letters and spacing of the words. Student work and handwriting samples were also submitted by the District.<sup>46</sup> Finally, there was no evidence entered into the record, or in testimony from the Mother [REDACTED] that reflects the Parent

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<sup>45</sup> *Op Cit.*, *M.B.*,

<sup>46</sup> See Student Academic work product at SD pp. 265-321.

ever requested testing or evaluation of the Student in the area of OT. As a result, the ruling is for the District relative to an OT evaluation.

33) The undersigned finds that the testimony of the majority of the District's witnesses reflected there was no need for an Assisted Technology (AT) evaluation of the Student. It is also a finding that the Parent had requested this evaluation on more than one occasion and the District completed same and found the Student was eligible when the AT evaluation was completed.<sup>47</sup> At some point, the District appeared to have concluded that the District would no longer provide the AT even though AT services were reflected as identified in the District's own evaluation and as required by the Statutes referenced in paragraph 24 above. While it is not clear from either testimony given, or the evidence submitted, as to why the District ceased the recommended AT (or when it may have been discontinued) it is clear that the District stopped providing the recommended AT as noted in the April 25, 2012 IEP. However, as documented in paragraph 19 above,

reasons for this change are not evident or supported in District testimony and/or documentation. As a result, a finding is made that the District failed to meet its burden of proof in this area and failed to properly and effectively either provide the required AT, or to re-evaluate the Student's AT needs, before making a determination to discontinue the District's identified AT services for the Student. Thus, the ruling on AT is for the Parent.

34) There was credible testimony given by the Mother that she had legitimate concerns regarding the Student's medically documented vision issues and that the District completed a recent referral of the Student for vision reasons. Additionally, there was a medical report and medical recommendations documented in paragraph 20 above. The District failed to provide credible testimony or evidence to demonstrate that this referral and subsequent medical findings and recommendations have either been considered by the District (as required by statute)<sup>48</sup> or have been incorporated or addressed in the Student's program, services, or modifications and accommodations.

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<sup>47</sup> See SD pp.489-490.

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<sup>48</sup> See 34 CFR §300.502.

It is important to note for the record that the medical recommendations referenced in paragraph 20 are very recent and it is fair to grant the District the opportunity to first consider these recommendations with their own staff and have the opportunity to incorporate them into the Student's IEP and program and services. However, the finding in the area of a vision evaluation for the Student is for the Parent.

- 35) Based on the finding noted in paragraph 12 above that the District provided a Transition Services Plan, completed Transition Services Goals and Quarterly Measurable Benchmarks for achievement, and did so commensurate with the requirements of the IDEA as discussed earlier.<sup>49</sup> Therefore, the undersigned finds the District met its burden of proof that the District has met its requirement to provide a transition services plan for the Student that meets the required standards detailed in the statutes noted in paragraph (26). As a result, the ruling regarding the District's provision of transition services for the Student is for the District.

### ORDER

- 36) The ruling is split (though not evenly) between a finding in part for the District and a finding in part for the Parent.
- 37) Since the ruling regarding an IEE in speech and language, cognitive and academic skills, expressive and receptive language, attention and impulsiveness, and occupational therapy, and transition services, favors the District, the Parent's requests for IEEs in these areas are denied.
- 38) Since the ruling regarding an IEE in the areas of AT and vision services favors the Parent, the Parent's requests for evaluations are approved. However, the rulings against the District do not reflect inaccurate or incomplete evaluations, but rather a failure to either update or consider evaluations provided by the Parent. Thus, and consistent with the finding of "good faith" on the part of the District discussed earlier, and consistent with the finding that the vision results supplied by the Parent are very recent (March of 2012), the District is to be given the opportunity to first comply with this order by utilizing the District's own staff. Considerable time has passed since

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<sup>49</sup> See 34 CFR §300.43.

the DPCN was filed and the end of the school year is near. Thus, the District must strictly abide by the timelines provided in the order. The undersigned also finds that this ruling must consider fairness and thus rules the District should be able to consider the vision results and provide the appropriate evaluation for the vision issues identified by the Student's physician.

39) Within five (5) days of the date of this order,<sup>50</sup> the District shall identify to the Parent the District's Assistive Technology (AT) teacher (or equivalent teacher or expert of the District's choosing). Within ten (10) days of the date of this order, the District shall direct the identified AT consultant to conduct the appropriate review of the Student's records and complete appropriate classroom observations necessary to prepare recommendations for consideration by the Student's IEP team. This assessment and subsequent recommendation must be completed no later than May 10, 2012. Should the District fail to notify the Parent consistent with the directives of this order, the Parent is then authorized

after six (6) days of the date of this order to select their own AT consultant/teacher or expert from another district or other recognized source to complete the required record review, classroom observation(s), and make recommendations and attend the Student's IEP team meeting to review same. The District will bear the burden of all documented costs for the Parent's selected AT consultant/teacher or expert, including costs of attending and participating in the Student' IEP team review to consider the results of the AT recommendations.

40) Within five (5) days of the date of this order, the District shall identify to the Parent the District's vision itinerant teacher (or equivalent teacher or expert of the District's choosing). Within ten (10) days of the date of this order, the District shall direct the identified vision consultant to conduct the appropriate review of the Student's records and complete appropriate classroom observations necessary to prepare recommendations for consideration by the Student's IEP team. This assessment and subsequent recommendation must be completed

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<sup>50</sup> An unsigned copy of the decision was delivered electronically and simultaneously to both parties.

no later than May 10, 2012. Should the District fail to notify the Parent consistent with the directives of this order, the Parent is then authorized after six (6) days of the date of this order to select a vision itinerant teacher or expert from another district or other recognized source to complete the required record review, classroom observation(s), and make recommendations and attend the Student's IEP team meeting to review same. The District will bear the burden of all documented costs for the Parent's selected vision expert or itinerant teacher, including costs of attending and participating in the Student' IEP team review to consider the results of the vision recommendations.

- 41) The District is to schedule an IEP team meeting for May 11, 2012. The District is to conduct an IEP team meeting and review the results of the ordered evaluations and incorporate the recommendations as noted in the reports of the vision itinerant and vocational rehabilitation counselor into the Student's IEP.
- 42) The Parent requested a total of six (6) IEEs at public expense.<sup>51</sup> The

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<sup>51</sup> Parent actually requested seven (7) IEEs at public expense, but due to the medical issues of Illinois State Board of Education Due Process System

District was found to be substantially in compliance with the statutory and case law relative to the District's obligations to evaluate and/or re-evaluate students with a disability. The District prevailed in four (4) of the six (6) parental requests. Besides prevailing in 4 of the 6 areas, the District has also demonstrated good faith in its efforts to provide for the needs of this Student as evidenced by the District's joint decision to place the Student at the [REDACTED] after considering a safety request submitted by the Parent. In addition, the District has demonstrated competence in the evaluation areas where the District prevailed in this bifurcated hearing. However, the Parent still prevailed in part in this bifurcated hearing and is therefore entitled to a commensurate amount of relief for incurred costs relative to the Parent's expert and her time and expenses to prepare for testimony at the bifurcated portion of the hearing. Thus, the District is ordered to reimburse the parent for 2/6 or 33% of the documented costs submitted by [REDACTED] relative to her preparation for testimony at the

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the social worker, the social/emotional assessment was mutually agreed to be set aside for the second part of the bifurcated hearing.

hearing completed on April 12, 2012. Documented costs may include costs and time related to her review of the record, preparation time for testimony, travel to and from the hearing, expenses related to that travel as properly documented, and her time to testify at the hearing on April 12, 2012. Upon being presented with the proper documentation of these costs and fees as detailed herein, the District shall reimburse the Parent through her attorney, [REDACTED] within 30 days of receipt of the required documentation.

- 43) The District shall provide proof of compliance with this order to the Illinois State Board of Education, Compliance Division, by May 18, 2012.

**RIGHT TO REQUEST  
CLARIFICATION**

- 44) Section 14-8.02a (h) of the Illinois School Code, allows the hearing officer to retain jurisdiction after the issuance of the decision for the sole purpose of considering a request for clarification. A request for clarification shall specify the portions of the decision for which clarification is sought and a copy of

the request shall be mailed to the other parties and to the Illinois State Board of Education. The request shall operate to stay the implementation of those portions of the decision for which clarification is sought. The undersigned will issue a clarification of the specific portion of the decision or issue a partial or full denial of the request in writing within ten (10) days of receipt of the request and email copies of the clarification as an attachment and sent via USPS, 1<sup>st</sup> class, prepaid mail, copies to all parties to whom the decision was mailed.

**FINALITY OF DECISION**

- 45) This decision shall be binding on all parties.

**RIGHT TO FILE CIVIL  
ACTION**

- 46) Any party to this hearing aggrieved by the final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 ILCS 5/14-8.02a(1) and provided that civil action shall be brought in any court of competent jurisdiction within 120 days after this decision was mailed.

D. Michael Risen

D. Michael Risen, Impartial Due Process  
Hearing Officer

Entered: April 18, 2012

D. Michael Risen  
222 E. Surrey Lane  
East Peoria, IL 61611  
Phone: 309-694-4864  
Fax: 309-694-2995  
[mikerisen@msn.com](mailto:mikerisen@msn.com)

CERTIFICATE OF SERVICE

The undersigned certifies under oath that on April 18, 2011, the following parties received via email attachment and certified mail, prepaid, return receipt, the attached Impartial Due Process Hearing Decision at the following addresses:

1) M [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
@: [REDACTED]

And

2) [REDACTED]  
Due Process & Mediation  
[REDACTED]  
[REDACTED]  
@: [REDACTED]

And

3) Mr. Andy Eulass, Esq., Due Process Coordinator  
Due Process and Mediation  
Illinois State Board of Education  
100 N. First St.  
Springfield, IL 62777-0001  
@: [aeulass@isbe.net](mailto:aeulass@isbe.net)

D. Michael Risen  
D. Michael Risen  
Impartial Hearing Officer