

Case Number: 2012-0246

Hearing Officer: Joseph P. Selbka

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

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Impartial Due Process Hearing Decision Cover Page

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

Parent Name [REDACTED] Phone: [REDACTED]
Address [REDACTED]
Represented by Michael O'Connor

Date and Timelines

Date of Written Request: 03/23/2012
Date of Pre-hearing Conf: 05/25/2012

Date of Hearing: 03/04/2013 to 03/04/2013
Date of Decision:

Summary of Decision

The District filed a due process request requesting a finding that their evaluation was appropriate. The Parent filed a counter request alleging violations of IDEA related to child find; evaluation; IEP design; and Placement. The IHO found for the parent as to timeliness of evaluation, comprehensiveness of evaluation, IEP design, and Placement. The IHO found for the District on Child Find and timeliness of evaluation. The IHO found for the Parent on all other issues.

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)
) ISBE CASE NO. 2012-0246
)
) Joseph P. Selbka
) Impartial Due Process
) Hearing Officer

FINAL HEARING OFFICER DETERMINATION AND ORDER

I. Introduction and Procedural History

1. [REDACTED] ("Student") is a nine year old child who is eligible for special education and attends at one of the schools of [REDACTED] District").

2. The District proposed an IEP for Student on April 29, 2011 which was modified slightly on June 8, 2011. For purposes of this case, the important aspects of the proposed IEP were the school nursing services minutes; the amount of time Student was mainstreamed with nondisabled students; and the fact that Student would be educated at [REDACTED] rather than [REDACTED].

3. The April 29/June 8, 2011 IEP proposed to mainstream Student for up to 270 minutes per week. Student was to attend music, physical education, art, lunch, science and social studies with the general education students (S.D pg. 82). The April 29/June 8, 2011 IEP proposed to provide Student with 60 minutes per day in nursing services and a 1:1 aide (S.D. pg. 82).

4. Student's Parent, [REDACTED] ("Parent") retained counsel in June, 2011 (Parents Ex. #22), and filed her due process complaint on May 2, 2012.

5. No resolution session occurred, and no issues were ultimately resolved.

6. A prehearing conference occurred on June 4, 2012. The parties at that time agreed to hearing dates of August 27-30, 2012. However, due to a medical emergency, the hearing was continued at the request of the District to October 1, 2012. The parties have opted to file closing briefs.

7. At the prehearing conference, the Parent's Counsel stipulated that there was no expedited issue in this matter. Thus, there is no issue related to a change of placement for disciplinary issues or regarding a manifestation determination conference.

8. At the hearing, the following witnesses testified: Parent, Student, M [REDACTED] ("Case Manager"); [REDACTED] ("District Speech Language Pathologist"), [REDACTED] ("District Psychologist"); [REDACTED] ("District Occupational Therapist"), [REDACTED] ("Parent Speech Language Pathologist"), C [REDACTED] ("Parent Social Worker"), J [REDACTED] ("Parent

and written language; fails to provide OT services in the areas of sensory processing, attention and organizational skills, fails to provide speech and language services to address documented weakness in communication skills; fails to provide adequate levels of social work and/or psychological counseling to Student; fails to provide assistive technology services; fails to provide Student with ESY.

Parent withdrew Issue c in her closing memorandum (Parent Closing Brief, pg, 12).

The issues associated with Parent's remedies are as follows:

g) Whether the Student should be placed in a more restrictive placement with sufficient structure and support to provide FAPE and to remediate the previous failures to provide Student with FAPE.

h) Whether the IEP must be amended to provide FAPE. Specifically, whether the IEP should be amended to provide: direct instruction to improve phonological skills; direct instruction to improve written language skills; occupational therapy; social work or psychological counseling; direct instruction in use of assistive technology; and ESY.

i) Whether Student should receive compensatory education as a result of the District's actions in this matter.

j) Whether Student's parent should be fully compensated for the cost of an independent evaluation.

k) Whether the District provided Student with a comprehensive and appropriate evaluation which complied with Federal law.

III. Findings of Fact

Student's History at Altgeld and Other Facts Related to the District's Child Find Efforts

13. Student is a third grader who has had a history of learning and behavioral problems (PD 554). Student has been diagnosed with ADHD, intermittent explosive disorder, impulse control disorder, and asthma (PD 17, 470, 554).

14. In January, 2010, the District created a 504 Plan for Student to accommodate Student's asthma (Tr. 137).

15. Student first enrolled at [REDACTED] in October, 2010 (PD 548).

16. While at [REDACTED] Student was being in a "response to intervention" ("RTI") program (Tr. 155). At [REDACTED], even when Student is making only a small amount of progress, this does not necessarily trigger a need for a special education evaluation (Tr. 155). Student was only evaluated for special education in response to a request by the Parent (Tr. 156).

17. Student was suspended for fighting in First Grade (PD 410).
18. Student was referred for counseling in January, 2011, to the [REDACTED] (PD 446).
19. Student was suspended for rude and discourteous behavior in January, 2011 (PD 409). The counseling sessions diminished the disruptive behaviors (Parent's Closing Brief, pg. 10).
20. While there were incidents in September through November, 2011, Student's behavior could be managed and deescalated by District personnel (PD 413-432). The District monitored Student's behavior through the first semester of 2011 (Tr. 154-155).
21. Student's behavior deteriorated in November, 2011 (Tr. 149, and he was suspended twice in November, 2011 (PD 407-408), for disruptive conduct.
22. Student was hospitalized in December, 2011, and diagnosed with "intermittent explosive disorder." (PD 547).
23. On December 7, 2011, Parent requested an evaluation because of Student's behavior problems in school (PD 462). On December 13, 2011, Parent signed a release allowing the District to obtain Student's records from his hospitalization (PD 466).
24. Parent requested an evaluation on December 7, 2011 (PD 462). Student was discharged from the Hospital on December 14, 2011 (PD 470).
25. The District's evaluation was completed by February 28, 2012 (PD 95). Parent did not move to admit a school calendar for [REDACTED] in evidence nor demonstrate that the evaluation was not completed within 60 school days of Parent's request.
26. Student was first found eligible for special education in March, 2012 (PD 1-11). At the hearing District personnel acknowledged Student's IEP should have been revised in certain ways (Tr. 234). Case Manager believed Student needed more pull out time in the afternoon (Tr. 235-236) Case Manager also believed that the District could not call IEP meetings or communicated with the Parent during the litigation process (Tr. 236-239).

Aspects of Student's Disability

27. Student is very focused and desirous to do well in school (Tr. 141). However, since December, 2011, Student has had misconduct violations at school including an incident when he threw chairs during an episode in April, 2012 (PD 549). Student had and has behavioral episodes on a fairly regular basis (Tr. 836). From October, 2012 to January, 2013, he had 27 behavioral incidents which reflect inappropriate behaviors in the classrooms (IHO Ex. 9, pg. 7).
28. Student has serious problems in spelling; in higher order language functioning; problem solving; identifying colors; and writing (PD 564-565). He is 2-3 years behind his peers in this area (PD 566). The Student also has problems with working memory, attention to task, and executive functioning (PD 564-567). Student's poor working memory puts him at significant

risk for problems with spoken language comprehension (PD 566). Student has trouble finishing sentences (PD 563). Student had problems with measurements (Tr. 1042).

29. Student still has problems in phonemic awareness and three word blends (PD 552). Student has problems with long and short vowel patterns, and struggles to differentiate between fact and opinion (PD 95).

30. Student also has a disability associated with a spoken language comprehension disorder (PD 566). Student reads slowly and has deficiencies in writing, grammar, and spelling (IHO Ex. 9, pg. 13-14).

31. Students classified as ED (including Student in this case) require routine; structure; and rules and boundaries in the classroom environment (Tr. 131). In order for ED students to effectively learn, district staff have to determine students' triggers and develop a plan for delaying the trigger and/or deescalate the student when the trigger has been activated (Tr. 133). A relationship with the student is also essential in order to teach an ED student to follow rules and obey boundaries (Tr. 133).

32. Student has problems controlling his emotions, especially in transition between classes (IHO Ex. 9, pg. 11 Tr. 142, 836, PD 95). Student also has high anxiety and depression (Tr. 131, 1040). Student experiences a great deal of frustration in school and has problems with interpersonal relationships and social skills (Tr. 142, 1040, 1064). Student's reactions to stimuli at Altgeld School are out of proportion to the way in which peers react to similar stimuli (IHO Ex. 9, pg. 14).

33. Previously, in the beginning of second grade, Student's behavioral episodes occurred in class often and it was very difficult to deescalate Student (PD 549).

34. Currently, Student's greatest needs are in transitions (Tr. 142, PD 97). Student is often subject to behavioral explosions and meltdowns when interacting with the noise, hustle and bustle, and fellow classmates of changing classes, eating lunch, or at gym (Tr. 142). Specifically, when structure is not tight, and Student has to interact with his peers, he often has behavioral meltdowns/blow-ups (Tr. 142, 176).

35. Student often has altercations with his classmates in transition times (Tr. 176, 1042). Student has problems controlling his emotions in interacting with other students (Tr. 176, 1042). Student does not understand how to interact with peers and lacks social skills and cannot read the social cues from his peers (Tr. 142, PD 547). In class, Student has a history of aggression towards peers, defiance towards authority, poor peer relations and problems during transitions (PD 97). Student's behaviors currently do not manifest in ways which impinge on Student's academics (Tr. 196). Rather, Student's emotional meltdowns and blow ups occur in social situations with other students (Tr. 196).

The Services Provided to Student, Student's Academic Abilities and Progress

36. Student is provided at least 90 minutes per week of pull out minutes from the [REDACTED] Special Education Case Manager for 1:1 education (Tr. 134-135). Student often spends time every day with Altgeld's Special Education Case Manager to deescalate (Tr. 143).

37. Student is making good progress academically (Tr. 146-147). Student has been making average to slightly above academic progress relative to his peers in second and third grade in most areas (PD 152-157, Tr. 191-196, IHO Ex. 9, pg 10). In October, 2012 Student still lagged behind his peers in math (Tr. 193). However, Student has since been able to make excellent progress in math (IHO Ex. 9, pg. 10, 21). Moreover, since Student has had an IEP, he has been making significant progress compared to where he's been (Tr. 191-196). Student's phonemic awareness is increasing, and Student is learning phonics (Tr. 179-180). Student's spelling is improving (Tr. 180). Student's ability to write and communicate are also improving (Tr. 180). In reading, however, Student continues to have serious problems with expressive language difficulties found by the Parent Speech-Language Pathologist (IHO Ex. 9, pg. 10, 11).

38. Student has average cognitive potential (Tr. 363-364, IHO Ex. 9, pg. 9-10). Student has average intellectual abilities in most areas (PD 97). Student has a significant weakness in visual motor problems (PD 97).

39. The March, 2012, IEP has a behavioral intervention plan ("BIP") (Tr. 168, PD 38-39). All of Student's teachers have the BIP, and Case Manager meets with staff weekly to reinforce the BIP (Tr. 170-171). The BIP uses a point system and rewards to reinforce positive behavior for Student (PD 39).

40. In August, 2012, Case Manager developed a series of behavioral interventions in order to address Student's behavioral issues in the classroom (Tr. 163-165). As part of the initial behavioral interventions, Student was initially monitored by the school counselor in the morning, and is then immediately sent to Case Manager if Student is not doing well (Tr. 163-164). If the Case Manager cannot deescalate Student, Student receives social work minutes to determine why Student cannot function in the classroom (Tr. 166).

41. The District has a school counselor and school social worker available as well as Case Manager who is a certified special education teacher and administrator (Tr. 129-130, 166). The District has also put in place a de-escalation room and constant access to social work services available for Student (Tr. 176). The District is also attempting to teach Student to improve his interactions with his nondisabled peers (Tr. 176).

42. Student also often needs 1:1 pull-out time in the morning and in the afternoon because interactions with classmates cause Student a great deal of stress (Tr. 141-145, 167, 235). Student should also not be approached in an aggressive or assertive manner (Tr. 170). Student must be approached in a calm manner as he has greater anxiety than his peers (Tr. 170).

43. Student has a behavioral intervention plan (PD.38-39).

44. In October, 2012, the District began providing Student with a 1:1 aide (IHO Ex 3, pg. 8, Tr. 1571).

45. According to the District teaching staff, the interventions have been successful. To wit, according to District staff: (1) they have learned Student's triggers and how to deescalate Student (PD 549, Tr. 175-177); and (2) Student is now able to regulate himself and be redirected quickly once staff intervenes pursuant to the terms of the behavior intervention plan (Tr. 167); and (3) Student's medication has affected his behavior for the better (PD 549).

46. Independent Appointed Evaluator critiqued Student's current behavioral intervention plan extensively as well as the functional behavior analysis which led to Student's current behavioral intervention plan (Independent Appointed Evaluator Testimony). Specifically, the functional behavioral analysis failed to identify Student's environmental triggers, the District failed to have the aide use her anecdotes to connect triggers to behaviors; and, therefore, the District failed to determine whether Student is/was developing successful coping behaviors to deal with his triggers, and failed to track Student's behaviors. As such: (1) it is difficult to determine whether Student is improving or regressing; and (2) it is difficult to create an appropriate behavioral intervention plan (Independent Appointed Evaluator testimony). The District's behavioral interventions did not eliminate Student's explosive incidents over a four month period (IHO Ex. 9, pg. 7).

47. Student is sometimes able to deescalate relatively quickly when a teacher or case manager intervenes to diffuse Student's triggers (Tr. 176-177). However, Student has had explosions where he is unable to function for the better part of a day despite the behavioral intervention plan prepared by the District (Tr. 1584-1587). Moreover, Student has had 27 serious behavioral incidents from October, 2012, to January, 2013 (IHO Ex. 9, pg. 7).

48. Student has also had multiple altercations with school personnel (Tr. 1564-1568, Tr. 1062, IHO Ex. 9, pg. 12) since October, 2012. Student has needed and needs to be physically restrained on occasion since October, 2012 (*id.*). Student still has problems with altercations with other students since October, 2012 (Tr. 1061, IHO Ex. 9, pg. 12). Student has been bullied and has also been a bully since October, 2012 (Tr. 1061, IHO Ex. 9, pg. 12).

49. In light of the above stated incidents which took place in this school year after the District interventions were put in place, the undersigned makes a credibility finding that Student's behavioral outbursts and issues have not been successfully ameliorated.

50. In March, 2012, the District began providing Student with 30 minutes per week of direct OT services. Student's handwriting is improving, and Student is making progress in this area (Tr. 179, 184). Student's spacing of words, handwriting, and formation of letters are all improving (Tr. 184).

Findings of Fact Related to the District's Evaluation and Critiques of the District's Evaluation

The District's Psychological Assessment, the Records Review of the Parent's Psychologist and the Evaluation of the Independent Psychologist

51. The District administered a standardized test to determine Student's cognitive ability, the WISC IV (PD 96). However, in regard to the test on block design, the District psychologist failed to indicate that she properly followed the protocols. To the extent she failed to follow the protocols, this would make the District psychologist's findings on special reasoning invalid (Tr. 427-428, 1043-1045, SD Ex. 162-164; IHO Ex. #9, pg. 2). The School Psychologist claimed to have done the protocols properly but simply failed to write down the appropriate results (Tr. 427-428). The undersigned makes a credibility finding against the School Psychologist and finds that the School Psychologist failed to follow the test protocols based on the fact that the written results do not reflect proper use of the protocols.

52. The District psychologist also improperly administered the digital span subtest which measures Student's working memory, auditory memory, mental manipulation and mental tracking (Tr. 1046). The District psychologist improperly calculated Student's raw score (Tr. 1046-1047). The School Psychologist could not say the error was harmless (Tr. 428-429).

53. According to Independent Appointed Evaluator and Parent Psychologist, in administering assessments to Student, School Psychologist failed to score responses accurately, failed to query responses appropriately, failed to even record a score for the written expression subtest and failed to ask the correct number of subtests to Student (IHO Ex. #9, pg. 2, Tr. 1044-1047). The undersigned makes a credibility finding against the District in this matter as the District had the opportunity to present evidence to contradict Independent Appointed Evaluator's testimony, but failed to do so.

54. The District also administered a test to determine Student's academic achievement, the WYAT-II (PD 96). The District psychologist miscalculated Student's raw score on Student's mathematics subtest resulting in a nine percentile score error (Tr. 1047-1048, IHO Ex. 9, pg. 2).

55. District Psychologist also administered the Vineland Adaptive Behavior Scales, but the District Psychologist failed to properly follow the Basal and ceiling rules (IHO Ex. 9, pg. 2) which rendered the test invalid (*Id.*). The District Psychologist claims her administration of the Vineland led to a valid result. However, the Parent Psychologist noted that the results of the District Vineland failed to match the anecdotes and Student's behavioral history (Tr. 1053-1055). Based on the fact that the results of the District Vineland are completely at odds with the anecdotal reports of the Student, the undersigned makes a credibility that the District administration of the Vineland was improper and resulted in an invalid assessment.

56. The undersigned finds that the scoring errors and administration errors render the tests administered by School Psychologist invalid (IHO Ex. #9, pg. 2, Tr. 1044-1049). School Psychologist disagreed, but in light of the fact that the District failed to introduce the manuals into evidence, the undersigned makes a credibility finding against School Psychologist and finds that the errors were material as testified to by the Independent Appointed Evaluator and Parent Psychologist. In making a credibility finding against the District, the undersigned notes that the arithmetic errors alone caused a change in 6-9 percentile points in some cases (IHO Ex. 9, pg. 2).

57. The District Psychologist also failed to give a subtest on listening comprehension even though Student showed attention problems as the other psychological assessments were administered (Tr. 1050). There was also not a subtest on oral expression provided which was a suspected area of disability given the Parent's statements that Student cannot express himself well (Tr. 1051). The District also failed to administer a pseudo word decoding test which would test Student's phonemic awareness and mastery of phonics (Tr. 1052).

58. Parent Psychologist noted that Student may have a "nonverbal learning disability." (Tr. 1273). The Parent Psychologist also made extensive recommendations as to needs for Student's IEP; Student's need for a placement at a therapeutic day school; and needs for additional goals and accommodations (P.D. Ex. 551-552). Parent Psychologist never actually evaluated Student (Parent Psychologist only completed a records review (Tr. 1039) and never was able to provide an opinion to a reasonable degree of scientific certainty that Student actually has a "nonverbal learning disability." (See e.g. Tr. 1063). Parent Psychologist repeatedly admitted that she didn't know Student's functioning (Tr. 1223); academic abilities (Tr. 1197, 1207); emotional and behavioral needs in the classroom (Tr. 1197-1198); and the exact nature of Student's disability (Tr. 1198, 1200, 1207-1208). As such, the undersigned makes a credibility finding against Parent Psychologist regarding her opinion (to the extent one was provided) that Student has a nonverbal learning disability; Student's need for a therapeutic day school; and needs for changes to Student's IEP.

59. The undersigned makes an inference that the District psychological assessment did not appropriately identify the extent of Student's disabilities and needs because Student's disabilities related to written expression were not or appropriately assessed.

60. Moreover, despite extensive testing, it is unclear whether Student has a learning disability (IHO Ex. 9, pg. 15). However, evidence based reading and writing instruction will help Student learn whether he has a learning disability or not (*id.*).

The District's Speech and Language Assessment and Parent's Critique Thereof

61. The District performed a speech and language assessment in 2012 (Tr. 70). The District evaluator conducted an observation of Student and consulted with teachers and other clinicians involved (Tr. 72). The District conducted an informal oral motor assessment, voice assessment, Goldman Fristoe Test of Articulation (PD 311-312). The District also administered formal Oral and Written Language Scales ("OWLS") (PD 312). The District found that Student did not have a communication impairment that adversely affected his educational performance PD 312).

62. Parent Speech-Language Pathologist opined that Student needed a different set of assessments to determine Student's disability and the extent of Student's disability (Tr. 754). In light of Student's asthma and psychiatric admissions, Parent Speech-Language Pathologist opined that the District should have known more extensive testing was necessary (Tr. 755-757, 760, 767-768, 17562). Parent Speech-Language Pathologist also testified the District did not use the latest edition of the OWLS (Tr. 761). The edition used by the District had a tendency to score children too high (Tr. 761). Parent Speech-Language Pathologist also noted that Student's vocabulary was nearly two years below Student's chronological age (Tr. 765-766).

63. Parent Speech-Language Pathologist testified that Student's problems are with integrating semantic knowledge with linguistic knowledge (Tr. 768). The OWLS should have revealed this aspect of Student's disability (Tr. 769).

64. Parent Speech-Language Pathologist conducted an independent assessment of Student wherein Student's ability to integrate semantic knowledge with linguistic knowledge was tested (Tr. 772). Student clearly has a disability in this area (Tr. 772-773). Student has a specific language learning impairment where he has problems processing some types of linguistic information (Tr. 778-780). Student has problems with letters, lines, phonetics, and colors as a result of his impairment (Tr. 777-781). Student also has serious problems with his executive functioning (Tr. 782-783). Student has problems integrating the components of language (Tr. 783). Parent Speech-Language Pathologist ultimately diagnosed Student with an oral language impairment categorized as a moderate scoping and written language production disorder (Tr. 783, PD 567). Student was also significantly at risk for a spoken language comprehension disorder (he is at risk for failing to be extract adequate meaning from what people are saying (PD 567, Tr. 783-784). Student also has significant deficits in working memory, verbal working memory, and in visual spatial working memory (Tr. 785-786, 1752).

65. The undersigned makes an inference that the District Speech and language Pathologist should have been able to discern from Student's affect and OWLS scores that Student may have had a disability in the area of an oral language impairment categorized as a moderate scoping and written language production disorder. The undersigned bases the inference on the explanation of Parent Speech Language Pathologist as to how he diagnosed Student with the impairment.

66. Parent Speech Language Pathologist testified that because of the specialized nature of Student's disability, he requires a speech and language pathologist to provide related services to Student because Student needs someone who comprehends completely the nature of Student's impairments (Tr. 1752-1758). The undersigned makes an inference in favor of Parent Speech Language Pathologist based upon his testimony that, in light of the complexity of Student's disability, Student needs a speech-language pathologist to provide Student with related services in speech and language.

67. According to Parent Speech-Language Pathologist, Student needs speech-language related services which would focus on spoken language production, developing narrative skills, developing problem solving skills, increasing the rate of vocabulary learning, and improving working memory (Tr. 785). Student will need direct and consultative minutes (Tr. 788-789). The speech language services should be provided in a pull-out environment (Tr. 789).

68. Parent Speech-Language Pathologist also opined that Student should have been evaluated and found eligible for speech language services from kindergarten given the symptoms Student manifested in the schools and with the psychiatric hospitalizations (Tr. 790). The undersigned rejects this opinion given the fact that Student was not hospitalized until second grade. The undersigned finds that Student did not need to have been evaluated until within 60 school days of December, 2011 (as discussed above).

69. The undersigned makes an inference in favor of Parent Speech Language Pathologist that Student continues to need speech and language services both to benefit from special education and, in light of Student's disabilities, to receive special education generally. The undersigned bases this inference on the diagnosis of Parent Speech Language Pathologist. Moreover, the undersigned thus adopts the opinions of the Parent Speech Language Pathologist as to Student's educational needs and disabilities.

The District's Social-Emotional Assessment and The Parent's Critique Thereof

70. The District conducted a social-emotional assessment which recommended interventions when Student has explosive episodes and otherwise only encouraged Student's Parent to continue with community based psychiatric treatment (PD 307).

71. Parent Social Worker contends that Student needs group and individual counseling (PD 557). Student appears not to comprehend when he is becoming overwhelmed, when he needs to solve problems, and how to use effective coping strategies (PD 557). Student also does not seem to be able to read other students' body language (Tr. 142). This leads to anger and anxiety in the school context (PD 557).

72. District Case Manager agreed that Student has problems understanding social contexts and could use social skills training as well as modeling behaviors from other students (Tr. 236). Independent Appointed Evaluator also opined that Student needed therapy in the form of evidence based interventions designed to teach anger management and social skills (IHO Ex. 9, pg. 15).

73. Parent Social Worker did provide opinions on matters outside of her expertise such as Student's academic functioning, speech and language, and occupational therapy (Tr. 400). The undersigned rejects any of Parent Social Worker's opinions in these areas because there was no evidence Parent Social Worker has any expertise as to these subjects (Tr. 400).

74. Parent Social Worker testified that Student needs two hours per week of outside social services training to make up for the District's failure to provide social work services for two years (in addition to two hours per week for two years of therapeutic services for Student to receive FAPE (Tr. 913-915). Because the undersigned found that the District did not violate Child Find, the undersigned rejects the opinion of School Social Worker as to the need for compensatory education.

75. Social work services in the form of therapy/social skills training would allow Student to develop self-awareness, behavior management, social awareness, interpersonal skills, help Student to develop positive relationship (Tr. 891). Social work services could also be set up to consider ethical, safety, and societal factors in making decisions if the therapy was set up to do this (Tr. 892).

76. The undersigned adopts the opinions of Parent Social Worker and Independent Appointed Evaluator and finds that Student needs direct social work services in the form of

therapy in order to benefit from special education and in order to receive FAPE under State Standards. The undersigned bases this inference and/or credibility finding on the fact that Student's explosive episodes have not been satisfactorily ameliorated after months without the social work services recommended by Parent Social Worker and Independent Appointed Evaluator (See IHO Ex. 9, pg. 7).

77. The undersigned adopts the opinion of Parent Social Worker and Independent Appointed Evaluator that Student needs an additional 120 minutes of group and individual therapy per week to provide Student with FAPE (Tr. 913-915, IHO Ex. 9, pg. 19).

The District's Occupational Therapy Assessment and the Parent's Critique Thereof and Parent's Claim for the Need for an Assistive Technology Assessment and the Parent's Critique Thereof

78. The District performed an occupational therapy assessment and, found Student needed occupational therapy minutes.

79. The District administered one of the main assessments, the Beery-Buktenica VMI on two separate occasions which invalidated the second administration of the test (Tr. 1111). The undersigned makes a credibility finding against District personnel because they did not produce any manual suggesting the second assessment would be valid. The first administration of the Beery-Buktenica was improperly scored (IHO Ex. 9, pg. 2). The District also did a visual perception exam without appropriate vision screenings for Student (Tr. 1112).

80. The VMI also showed that Student doesn't understand spatial figures (Tr. 1116-1118). A second assessment, the WRAVMA demonstrated Student may have a disability related to fine motor skills (IHO Ex 9, pg. 10).

81. Student may also have issues with sensory processing as he has attention deficit disorder and has significant problems with self-regulation, noise, and transitions (Tr. 1126-1130). Sensory processing problems are often comorbid with ADD (*Id.*). The District should have therefore completed a sensory profile (Tr.1129, 1462-1463). In light of these facts, the undersigned makes a credibility finding against the District Occupational Therapist when she testified that Student did not present as needing a sensory profile.

82. Parent Occupational Therapist contends Student also needed a visual processing test and motor test (Tr. 1128-1129). Moreover, Parent Occupational Therapist contends Student needs assessments to determine his organizational or executive functioning abilities (Tr. 1130). District Occupational Therapist stated that Student did not present as needing an assessment in organizational or executive functioning (Tr.285). The accommodations provided to Student in his IEP suggest otherwise (PD 27, 29). Moreover, Student's has a diagnosis of ADHD which often manifests in executive functioning and organizational deficits (Tr. 331, IHO Ex. 9, pg. 10). In light of these facts, the undersigned makes a credibility finding that the District should have known Student needed to be assessed in organizational skills and executive functioning.

83. Student may have problems with sequencing including tying shoelaces, buttoning shirts, and working a remote control (Tr. 1123, PD 610, IHO Ex 9, pg. 12). The District occupational therapist believed Student could tie his shoes and based her belief on Student's self-reporting. The undersigned finds that Student's sequencing ability should at least have been addressed through a formal assessment given the Parent's reporting in this area.

84. There was no assistive technology assessment completed even though Student needs assistive technology as an accommodation (PD 20).

85. Parent Occupational Therapist admitted that there is no way to determine the extent of Student's loss of educational benefit or whether compensatory education is warranted without occupational therapy assessments in the needed areas (Tr.1232).

The Need for ESY

86. Parent Psychologist is the only person to opine that Student needs ESY. Because Parent Psychologist failed to base her opinion on a complete and comprehensive evaluation, and because Parent Psychologist admitted she did not fully understand the nature of Student's disability; the undersigned rejects Parent Psychologist's opinion that Student is in need of ESY.

The Appropriateness of Student's Current Placement, LRE, and Location of Services at Altgeld School

87. At the beginning of the hearing, Student was in "LRE 1," which means Student was out of general education for 20% or less of his school day (Tr. 171-172).

88. The District has not yet attempted less restrictive placements to determine whether Student can be educated in a less restrictive environment than a therapeutic day school (which is 100% out of general education placement) (Tr. 174-175).

89. Student gains a benefit from having access to his nondisabled peers because he needs to learn how to socially interact with his peers (Tr. 199-200, 401-402). One important way to Student to socialize is to have him (at least partially) in a general education setting (Tr. 200, 401-402). Student learns appropriate behaviors from modeling behaviors from nondisabled students (Tr. 401).

90. However, Student does need a more structured environment than nondisabled students (Tr. 142, 1057-1059, IHO Ex. 9, pg. 13). Student needs a predictable environment with a calm teacher who can explain consequences to him (Tr. 143, 1059, IHO Ex. 9, pg. 5, 15).

91. Student also needs a crisis plan to deescalate Student or restrain him if necessary (IHO Ex. 9, pg. 12-13). The people charged with restraining Student must be trained in crisis management techniques in order to minimize the chance of harm to Student (IHO Ex. 9, pg. 12, Independent Appointed Evaluator Testimony).

92. Student is also unable to tolerate punishments of the entire class or consequences for behavior which he is not responsible for (IHO Ex. 9, pg. 12). Student needs predictable consequences for behavior of both Student and his classmates (IHO Ex. 9, pg. 13). Due to his disability, Student is going to react in explosive ways to peer conflict, negative consequences to Student or his peers; negative consequences to his class; aggressive speaking; or failing to complete his homework could cause an explosive episode (IHO Ex. 9, pg. 14).

93. Given an appropriate behavioral intervention plan, placement, and physical location of services, Student can be partially or fully mainstreamed (Independent Appointed Evaluator Testimony, Tr. 402-403). Parent psychologist noted that Student could be mainstreamed if appropriate accommodations were in place to address Student's attention deficit disorder and suspected learning disorder (PD 557).

94. Without an appropriate way to delineate Student's triggers, a behavioral plan that is effective, and a crisis intervention plan with trained personnel, Student's safety and the safety of others is in danger (IHO Ex. 9, pg. 13). Fewer variable changes and a more sophisticated behavioral monitoring system than what is available at [REDACTED] is necessary to make a more accurate diagnosis as to the causes of Student's outbursts (IHO Ex. 9, pg. 14). A more stable, structured, therapeutic environment will also allow for a more accurate diagnosis of Student (*Id.*).

95. To wit, one of the problems with providing services for Student is that Intermittent Explosive Disorder is a catch-all diagnosis when the actual neurological or psychological basis for Student's outbursts are not known (Independent Appointed Evaluator Testimony). A more structured environment with positive, predictable behavioral interventions will lead to a better understanding of what causes Student's behavioral explosions and allow for a better diagnosis and IEP for Student (IHO Ex 9, pg. 14).

96. Without a more predictable environment wherein Student's triggers can be more clearly determined and diagnosed, Student's emotional condition will probably worsen (IHO Ex. 9, pg. 15).

Facts Related to Remedies Not Addressed Above

97. As Student is performing according to his potential in academic areas other than in certain areas of reading, the undersigned makes an inference that Student was not denied educational benefit in the area of academics (except for written expression and areas of reading).. Moreover, the undersigned makes an inference that the District: (1) did not fail to identify a learning disability in the area of mathematics; and (2) did not fail to provide special education in the area of mathematics. The undersigned makes this finding based on the report of Independent Educational Evaluator.

98. The undersigned finds that it is not clear whether Student needed special education before November, 2011, and therefore, the District did not violate Child Find until the suspensions in November, 2011. The undersigned makes: (1) an inference that the District could have rationally believed that RTI interventions might have been successful in ameliorating Student's behavior until December, 2011 when Student was hospitalized; and (2) a credibility finding that the

District did believe it could have ameliorated Student's behavior. Moreover, the undersigned makes an inference that the District was not negligent in failing to order testing based on its monitoring of Student through the RTI process and attempted interventions through RTI.

99. The undersigned makes an inference that the District's failures to properly evaluate Student by conducting: (1) a defective and inadequate psychological assessment; (2) an inadequate speech and language pathology assessment; (3) an inadequate social-emotional assessment; and (4) a defective and inadequate occupational therapy assessment; as well as (5) by failing to conduct an assistive technology assessment; led to a deficient IEP, placement, and location of services. The undersigned finds that the accommodations, services, present levels of performance, goals, and the aspects of the physical location of services of Student's IEPs were inappropriate as a result of the inadequate assessments. The undersigned bases this inference on the fact that it is nearly impossible to determine the extent of Student's disabilities, Student's educational needs, to formulate goals and PLOP's for Student; and to determine an appropriate location of services without accurate, valid assessments.

100. The undersigned finds that Student's IEPs (in March, 2012 and October, 2012) were inappropriate as a result of the inappropriate evaluation in the areas of occupational therapy; speech and language services; assistive technology; written expressions, phonics instruction; social work services.

101. The undersigned makes an inference that an appropriate comprehensive evaluation would have led to an IEP which incorporated the recommendations of Parent Speech Language Pathologist, Independent Appointed Evaluator, and Parent Social Worker in order for Student to receive FAPE. The undersigned therefore finds the District could have reasonably known of the defects in Student's IEP if the District had appropriately evaluated Student. The undersigned further finds that Student was therefore directly denied FAPE as a result of the District's failure to evaluate.

102. Independent Appointed Evaluator's recommendations for Student to receive FAPE are located at IHO Ex. 9, pp. 15-19. The undersigned adopts those recommendations as needed accommodations, services, goals, and location of services, in order for Student to receive FAPE (with the exception of the occupational therapy recommendation- which is already being provided). In summary, the Student needs a more structured learning environment, a predictable learning environment, a consistent approach to peer conflict resolution, group and individual therapy (120 minutes per week), a crisis plan for severe behavioral incidents with appropriately trained staff; evidence based reading and writing instruction; speech and language services; an updated FBA and BIP; updated goals as set forth in the report; goals in written expression, oral expression, emotional and behavioral regulation.

103. The undersigned also adopts the Independent Appointed Evaluator's opinion that Student needs a small student to teacher ratio of approximately 10:1 (Independent Appointed Evaluator Testimony) based on the fact that the undersigned adopted the recommendations of Independent Appointed Evaluator.

104. The undersigned makes an inference that the physical location of services (Altgeld) was/is inappropriate due to the discipline structure and bullying at [REDACTED] as well as the lack of a crisis plan for Student. The undersigned adopts the opinion of Independent Appointed Evaluator as justification for the inference and the inappropriateness of the physical location of services. The undersigned also relies on the fact that the behavioral interventions have been unsuccessful thus triggering a need to revise the IEP by January, 2013.

105. The undersigned finds the decision of the District as to the design of behavioral interventions and physical location of service unreasonable for the reasons set forth in this decision and the report of Independent Educational Evaluator.

106. The undersigned finds the Parent did not provide any evidence that the District could not provide Student with FAPE pursuant to this order, and the undersigned finds there is no evidence the District will refuse to provide Student FAPE under the terms of this order. Therefore, the undersigned finds that an order for a private placement would be inappropriate.

The Parent's Request for Records

107. Parent's Counsel has admitted on the record that she received all records as of the last day of hearing, and Parent's true issue is the fact that the District failed to create certain records (as discussed above in the form of anecdotes.).

IV. Conclusions of Law

Burden of Proof, Evidentiary Issues, and The Authority of The Hearing Officer

108. The Federal and State Special Education Laws are set out in the Individual with Disabilities Education Act, 20 U.S.C.A. 1400 *et seq.* ("IDEA") and Article 14 of the Illinois School Code, 105 ILCS 5/14-8.02a. In enacting IDEA, Congress intended to establish a "cooperative federalism." *Evans v. Evans*, 818 F.Supp.1215, 1223 (N.D. Ind. 1993). Compliance with minimum standards set out by the federal act is necessary, but IDEA does not impose a nationally uniform approach to the education of children with a given disability. *Id.* Thus IDEA does not preempt state law if the state standards are more stringent than the federal minimums set by IDEA. *Id.*

109. In regard to the burden of proof in a special education proceeding, the Supreme Court has held that the ultimate burden of persuasion lies with the party filing the due process complaint. *Schaffer v. West* 546 U.S. 49 (2005). However, the Illinois School Code has placed a heightened burden on school districts. 105 ILCS 5/14-8.02a (g-55). In a due process proceeding, the school district has the initial burden of production to show that the special education needs of the student are identified and that the special education program and related services proposed are adequate, appropriate and available. *Id.* After the District meets its initial burden of production, the ultimate burden of persuasion then shifts to the the filing party to prove his/her/its case. The parties must prove their cases by a preponderance of the evidence.

110. In determining whether a placement is proper under IDEA and the School Code, the hearing officer does not need to defer to the school district witnesses. *School District of the Wisconsin Dells v. Z.S.*, 295 F.3d 671, 676 (7th Cir. 2002)(like Wisconsin ALJ's, Illinois Impartial Due Process Hearing Officers are presumed to be experts on special education and special education law, see 105 ILCS 5/14-8.02c); *Board of Education of Murphysboro Community Unit School District No. 186 v. Illinois State Board of Education*, 41 F.3d 1162, 1167 (7th Cir. 1994)(hearing officer characterized as expert witness in determining whether placement is proper).

Therefore, even though a medical expert witness cannot prescribe educational placements (See e.g. *Marshall Joint School District No. 2. v. C.D. ex rel Brian D.*, 616 F.3d 632, 638-642 (7th Cir. 2010), a hearing officer can override a school district's proposed placement after hearing pertinent medical testimony. Specifically, a hearing officer can use his/her special expertise regarding special education and special education law to draw inferences as to the appropriate placement under the law—after taking into account the physical and psychological manifestations and symptoms of any given disability as testified to by a medical expert. *School District of the Wisconsin Dells v. Z.S.*, *supra*; *Board of Education of Murphysboro Community Unit School District No. 186 v. Illinois State Board of Education*, *supra*. See also *Heather S. v. State of Wisconsin*, 125 F.3d 1045, 1053-1054 (7th Cir. 1997)(hearing officer characterized as having special expertise in special education law). See also *Marshall Joint School District No. 2. v. C.D. ex rel Brian D.*, 616 F.3d 632, 640 (7th Cir. 2010) (a medical expert's diagnosis is important evidence and should be considered by the IEP Team and, by extension, hearing officers, in determining a student's special education placement).

111. In administrative proceedings, hearsay is admissible as long as it is relevant and material. *Otto v. Securities and Exchange Commission*, 253 F.3d 960, 966 (7th Cir. 2001). To the extent hearsay is admitted without objection, the evidence can be given its natural weight. *Abbott Industries, Inc. v. Department of Employment Security*, 2011 Ill.App.(2d) 100,610 (2nd Dist. 2011); *Sykes v. District of Columbia*, 518 F.Supp.2d 261, 49 IDELR 8 (D.D.C. 2007).

112. The trier-of-fact in administrative adjudications generally should accept uncontradicted factual testimony as true. *Crabtree v. Illinois Department of Agriculture, Division of Agricultural Industry Regulation*, 128 Ill.2d 510, 518 (1989). Thus, for the undersigned to disregard factual testimony, it should be contradicted by positive testimony or circumstances, the witness proffering the testimony must be impeached, or the testimony must be inherently improbable. *Bucktown Partners v. Johnson*, 119 Ill.App.3d 346, 351 (1st Dist. 1983).

113. Admissions by counsel during opening and closing argument may be treated as judicial admissions and may be treated as binding on the party making the admissions. *Lowe v. Kang*, 178 Ill.App.3d 772, 776 (1988).

114. Inferences are conclusions of fact derived from the evidentiary facts introduced at hearing. *Smith v. Tri-R Vending*, 249 Ill.App.3d 654, 661 (1993). Hearing officers can make reasonable inferences from the evidence adduced at trial. However, like in all administrative adjudications, the inferences must be supported by facts proved or admitted. *National Labor Relations Board v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 814-815 (1990)(Scalia, j. dissenting). The inferences must be drawn from facts through a process of logical reasoning. *Id.*

Thus, the hearing officer must draw an accurate and logical bridge between the evidence and result. *Frobes v. Barnhart*, 467 F.Supp.2d 808, 817 (N.D. Ill. 2006). Moreover, any inference a hearing officer makes must be supported by substantial evidence. Substantial evidence means relevant evidence that a reasonable mind might accept as adequate to support his/her conclusions. *Frobes v. Barnhart*, 467 F.Supp.2d 808, 817 (N.D. Ill. 2006).

115. Expert opinions are admissible if the experts are considered qualified under a relaxed standard similar to the *Daubert* standard used in the federal courts. *Pasha v. Gonzalez*, 433 F.3d 530, 535 (7th Cir. 2005). To the extent the hearing officer relies upon expert opinions, the expert opinions must be inferred ultimately from facts in the record, and the inferential process by which an expert reaches his/her conclusions must be fully explained. *Zamecnik v. Indian Prairie School District No. 204*, 636 F.3d 874 (2011) (expert testimony must be grounded by material facts in the record and the inferential process by which an expert reaches his/her conclusions must be fully explained in the record); *Mid- State Fertilizer Co. v. Exchange National Bank of Chicago*, 833 F.2d 1333, 1339-1340 (7th Cir. 1989)(in litigation, expert opinions must be grounded in facts and inferred from a process of logical reasoning).

116. Hearing officers are entitled to and often need to make credibility findings. However, in such cases, hearing officers should provide reasons for why they found testimony credible or not credible. *Marshall Joint School District No. 2. v. C.D. ex rel Brian D.*, 616 F.3d 632, 638 (7th Cir. 2010)

117. Illinois law also imposes upon all administrative hearing officers the obligation to properly make an administrative record. *Meneweather v. Board of Review*, 249 Ill.App.3d 980, 984-985 (1992). As in most state administrative proceedings, Illinois administrative hearing officers have an obligation not only to listen to evidence presented by the parties, but to affirmatively find facts necessary to properly to determine which party should prevail under the law. *Meneweather, supra*; See also, Frank Cooper, State Administrative Law, Vol. 1, Bobbs-Merrill Company, Inc. (1965), pg. 336 Cite DC IDEA case Sykes .

In administrative litigation, the hearing officer must be concerned with not only ensuring a fair process wherein the parties can present evidence, but also a proper result under the law because there is a significant public interest in properly having the law carried out. Landis, John, "The Administrative Process," Yale University Press (1938) excerpted in Foundations of Administrative Law, Schuck, Peter (ed.) Foundation Press (2004), pp. 13-14. For this reason, administrative hearing officers are constitutionally permitted to depart from the adversarial model and independently obtain evidence and develop an administrative record while remaining a neutral and impartial decision maker. *Sims v. Apfel*, 530 U.S. 103, 110-11 (2000); *Richardson v. Perales*, 402 U.S. 389, 400-401 (1971) (social security administrative law judges constitutionally permitted to develop the record to determine all facts necessary whether benefits should be granted under law).

For this reason, the General Assembly provided impartial due process hearing officers with significant powers to independently compel the production of evidence necessary to reach a correct determination. Specifically, impartial due process hearing officers in Illinois are empowered to: (1) compel production of any evidence prior to the close of the administrative evidentiary record, 105 ILCS 5/14-8.02a(g-55); (2) order independent evaluations at school

district expense, 105 ILCS 5/14-8.02a(g-55); and (3) question party witnesses during due process hearings, 23 IL ADC 226.660(b).

Conclusions of Law Related to Child-Find, RTI, and the Need to Evaluate

118. Child find is the affirmative, ongoing obligation of states and local districts to identify, locate, and evaluate all children who have or are suspected of having disabilities and need special education as a result of those disabilities. 34 CFR 300.111. Even children who are only suspected of having a disability, although they are progressing from grade to grade are protected. 34 CFR 300.111(c).

119. In order to demonstrate a child find violation, a parent must show that either: (1) school officials overlooked clear signs of disability and were negligent in failing to order testing; or (2) there was no rational justification for deciding not to evaluate. *Board of Education of Fayette County, Kentucky v. L.M.*, 47 IDELR 122, 478 F.3d 307 (6th Cir. 2007).

120. A District's failure to comply with its child find obligations is a procedural violation of IDEA, and thus a student must lose an educational benefit or the parent's right to participate in the IEP creation process in order for a hearing officer to find against the district. *Id.*

121. Under IDEA, a child with a disability is one who has one of the impairments listed by statute; and the impairment must adversely affect the child's educational performance. 34 CFR 300.8; *Marshall Joint School District No. 2 v. C.D.* 616 F.3d 632 (7th Cir. 2010).

122. When determining whether a student is a child with a disability, the undersigned must consider the adequacy of accommodations which the student is receiving in the classroom without special education. *Hood v. Encinitis Union School District*, 486 F.3d 1099 (9th Cir. 2007). Nothing within IDEA forbids a school district from modifying its regular education curriculum so that a student who would otherwise qualify for special education under IDEA can succeed in a regular classroom. *S.C. v. State of Hawaii Department of Education*, 47 IDELR 65 (D. Hi. 2007). In such a circumstance, the student who is progressing in the classroom would not be eligible for special education under IDEA. *Id.*

123. Response to intervention ("RTI") is a process that allows for early detection and responses to learning and behavioral difficulties; provides instruction tailored to addressing those difficulties; and conducting data-based monitoring to evaluate the effectiveness of the instruction. *Questions and Answers on Response to Intervention and Early Intervening Services*, 47 IDELR 196 (OSERS 2007). The elements of RTI are: (1) universal screening of all students in order to identify students making progress and those who need more supports; (2) continuous progress monitoring to monitor when a student needs an increased level of support; (3) a continuum of evidence-based interventions that increase in intensity as needed; (4) data based decision making and problem solving wherein instruction is based on student growth and performance; and (5) detailed documentation of the particular interventions and student progress. Essential Components of RTI- A Closer Look at Response to Intervention (2010). National Center on Response to Intervention.

124. A district may and often is expected use the data obtained from a RTI program to determine whether a student is eligible for special education. 23 Ill.Admin. Code 226.100(a)(2); 23 Ill.Admin. Code 226.110(b)(2). Part of the purpose of RTI is to differentiate between students with true learning disabilities who need special education and those who can succeed in the classroom with scientifically based, general education interventions. 71 Fed. Red. 46,647 (2006).

125. A district may attempt RTI general education interventions prior to referring a student for an IDEA evaluation. *Montgomery County Board of Education*, 51 IDELR 259 (SEA AL 2008). However, a district cannot rely on the existence of RTI interventions rather than evaluate the student for special education. *El Paso Independent Shool District v. Richard R.*, 50 IDELR 256 (WD 2008), *aff'd in part and rev'd in part on other grounds* 53 IDELR 175; *Memorandum to State Directors of Special Education*, 56 IDELR 50 (OSEP 2011).

126. If a parent requests an evaluation, a district must either evaluate the student or send out a prior written notice informing the Parent of the district's decision and the reasons for the decision. 34 CFR 300.503(a,b); *Memorandum to State Directors of Special Education*, 56 IDELR 50 (OSEP 2011). The parent may then challenge the district's determination through a due process hearing. *Id.*

127. Evaluations must be completed within 60 school days of the parent request. 23 Ill.Admin. Code 226.110(d).

Conclusions of Law Related to Evaluations

128. The District has the responsibility to conduct a full and individual initial evaluation in accordance with pertinent regulations before the provision of special education and related services. 34 CFR 300.301(a). The District has the burden of showing that its evaluation was "appropriate." *Board of Education of Murphysboro Community Unit School District No. 186 v. Illinois State Board of Education*, 41 F.3d 1162, 1167, 1169 (7th Cir. 1994). An appropriate evaluation is one which complies with the pertinent federal and state regulations. *Krista P. v. Manhattan School District*, 255 F.Supp.2d 873, 887 (N.D.Ill. 2003)(federal and state regulations "provide the minimum requirements for an evaluation").

129. An evaluation must assess a student in all areas related to the suspected disability, 34 CFR 300.304(c)(4); and be sufficiently comprehensive to identify all of the Student's special education and related services needs, whether or not linked to the disability category(ies) in which the child has been classified. 34 CFR 300.304(c)(6).

130. The District's evaluation must be "comprehensive" to be appropriate. 34 CFR 300.304(c)(6). This means that the District must evaluate: (1) all areas of disability or suspected disability; (2) to the extent necessary to identify the needs of the child to special education and related services. 34 CFR 300.305(a)(2)(i)(A). As part of determining the nature and extent of the special education services and related services a child needs, the School District must determine the extent of the student's disability. *In Re Yuba City (CA) Unified School District*, 22 IDELR 1148 at 4 (OCR 1995)(in determining whether evaluation under Section 504 complaint was

adequate, School District failed to properly evaluate Student by not determining the extent of the disability- Section 504 evaluation standards are essentially the same as evaluation standards under IDEA see e.g. 34 CFR 104.35). The District must determine the cause of Student's behaviors to the extent necessary to classify Student's disability(ies) as defined by IDEA and provide Student with special education and related services. 34 CFR 300.301(c)(2). The District must conduct assessments necessary to allow the IEP Team to properly determine the content of Student's IEP. 34 CFR 300.304(b)(1)(ii), 304(b)(7).

131. In evaluating a student, the district must also consider: (1) the present needs of the child; (2) whether the child needs special education and related services; and (3) whether any modifications or accommodations are required. 34 CFR 300.305(a)(2)(i)(B)(i-iv).

132. During an evaluation, the District must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child. 34 CFR 304(b)(1). Moreover, a school district must properly administer tests it does use to evaluate students. 34 CFR 300.304(b)(3),(c)(iii), (c)(iv). The District is not allowed to use any single measure or assessment as the sole criterion for whether a student has a disability. 34 CFR 300.304(b)(2).

133. In addition, during an evaluation, the District must review existing evaluation data on the child, evaluations and information provided by the parents; current classroom based assessments and classroom based observations; and teacher and service provider observations. 34 CFR 300.305(a)(1)(i-iii). The School District must then determine what additional data, if any, is needed to determine whether: the child has a disability and the needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child continues to need special education and related services and whether additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP. 34 CFR 300.305(b).

134. The District must also choose assessments which are selected and administered so as not be discriminatory on a racial or cultural basis. 34 CFR 300.304(c)(1)(i). The assessments must be provided in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to provide or administer. 34 CFR 300.304(c)(1)(ii), (c)(3). The assessments must be administered by trained and knowledgeable personnel; used for the purposes for which the assessments are valid; and are administered in accordance with any instructions provided by the producer of the assessments. 34 CRF 300.304(c)(1)(iii-v).

135. The District must administer assessments which assess specific areas of educational need and not merely to provide a single general intelligence quotient. 34 CFR 3300.304(c)(2).

136. Although the School District must evaluate properly and according to the OSEP regulations, hearing officers are entitled to make a finding against the District only if the procedural inadequacies impeded the Student's right to a free appropriate public education or otherwise denied the student some educational benefit. 20 U.S.C.A. 1415(f)(E)(ii)(I-III); *Taylor*

v. District of Columbia, 770 F.Supp.2d 105 (D.D.C. 2011); *Capistrano Unified School District*, 108 LRP 40490 at 29 (Cal. SEA, 2008).

Conclusions of Law Related to IEP Design and the Definition of FAPE

137. A District must develop an IEP which is reasonably calculated to provide the student with an educational benefit. *Alex R. v. Forrestville Community Unit School District No. 221*, 375 F.3d 603, 41 IDELR 146 (7th Cir. 2004). An IEP must be reasonably calculated to produce progress, not regression or trivial academic advancement. *M.B. v. Hamilton Southeastern Schools*, 112 LRP 6281 (7th Cir. 2011). In determining whether IEP designs are reasonable, a hearing officer need not accept school district claims as true regarding the reasonableness of IEP design, but neither should the hearing officer substitute his/her judgment for that of the school officials who have designed the IEP as the hearing officer determines whether the District provided an IEP reasonably calculated to provide an educational benefit. *School District of the Wisconsin Dells v. Z.S.*, 295 F.3d 671, 37 IDELR 34 (7th Cir. 2002).

138. In determining whether an IEP provides FAPE, the District must develop an IEP reasonably calculated to provide an educational benefit as defined by the standards of the state educational agency. 20 U.S.C.A. 1401(9); *Winkelman v. Parma City School District*, 550 U.S. 516 (2007).

139. In determining whether IEP design is reasonable, a student's academic progress under the proposed IEP is evidence a hearing officer must consider. *T.H. v. District of Columbia*, 52 IDELR 216, 620 F.Supp.2d 86 (D.D.C. 2009). *Hunter v. District of Columbia*, 51 IDELR 34 (D.D.C. 2008). However, a lack of academic progress is not dispositive of whether the IEP has been reasonably designed to provide a student with FAPE. *Lessard v. Wilton Lyndeborough Cooperative School District*, 518 F.3d 18, 29 (1st Cir. 2008); *Shroll v. Board of Education of Champaign Community Unit School District No. 4*, 48 IDELR 155 (C.D. Ill. 2007).

140. Specifically, when a hearing officer determines whether an IEP is reasonably designed to provide a student with FAPE, the hearing officer must judge the district based upon what the district knew or reasonably could have known at the time the IEP was drafted—not solely on whether academic progress occurred. *M.B. v. Hamilton Southeastern Schools*, 668 F.3d 851 (7th Cir. 2011); *Thompson RJ-J School District v. Luke P.*, 540 F.3d 1143 (10th Cir. 2008); *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999); *Fuhrmann v. East Hannover Board of Education*, 993 F.2d 1031, 1041 (3rd Cir. 1993); *Roland M. v. Concord School Committee*, 910 F.2d 983, 992 (1st Cir. 1990).

141. Related services are developmental, corrective, and other supportive services necessary for a student with a disability to benefit from special education. 34 CFR 300.34(a).

142. Under certain circumstances, a district must provide extended school year services to provide a student FAPE. 34 CFR 300.106. ESY generally is only necessary if the student faces a significant risk of having the gains of a school year jeopardized if the student is not provided with ESY. *Alamo Heights Independent School District v. State Board of Education*, 790 F.2d 1153 (5th Cir. 1986). Regression-recoupment problems triggering the need for ESY occur when:

A child suffers an inordinate or disproportionate degree of regression during the summer break; and it takes an inordinate or unacceptable length of time for the child to recoup the lost skills upon returning to school. *Alamo Heights Independent School District v. State Board of Education*, 790 F.2d 1153 (5th Cir. 1986). Other factors in determining whether ESY is necessary include the degree of impairment, ability of child's parents to maintain a child's level of skills, whether the service extraordinary to the child's condition, and the child's rate of progress, retrospective data such as past regression and rates of recoupment skills; and consideration of a student's emerging skills. *Johnson v. Independent School District No. 4 of Bixby*, 921 F.2d 1022(10th Cir. 1990); *Cordrey v. Euckert*, 917 F.2d 1460 (6th Cir. 1990).

143. The provision of ESY is the exception, not the rule under the regulatory scheme. *Board of Education of Fayette County, Kentucky v. L.M.*, 478 F.3d 307 (6th Cir.2007). Thus, the parent must demonstrate in a particularized manner relating to the individual child, that an ESY is necessary to avoid regression so severe that the child would not be able to catch up during the following school year. *Id.*

144. The concept of FAPE is not limited to whether a student is succeeding academically. *Mary P. v. Illinois State Board of Education*, 919 F.Supp. 1173, 1179-1181 (N.D. Ill. 1996). In order to provide a student FAPE, a school has to meet SEA educational standards. 20 U.S.C.A. 1401(9); *Winkelman v. Parma City School District*, 550 U.S. 516 (2007). See also *Rowley v. Board of Education of Hendrick Hudson Central School District, Westchester County*, 458 U.S. 176, 203 (1982). Thus, the concept of FAPE must be viewed through: state standards and definitions of education, See *L.I. v. Maine School Administrative District No. 55*, 480 F.3d 1, 47 IDELR 121 (1st Cir. 2007) for an extensive discussion on how state standards affect the definition of "educational performance" for purposes of federal law.

145. Illinois requires all school districts to teach students to manage emotions and behavior for both academic and life success. 405 ILCS 49/5, 15. Students must be taught: social and interaction skills; how to manage emotions and behavior; how to develop self-awareness and self-management skills; how to use social awareness and interpersonal skills to establish and maintain positive relationships; to develop skills to prevent, manage, and resolve conflicts in constructive ways; to consider ethical, safety, and societal factors in making decisions.

146. A District must address all of a student's unique social-emotional needs like low self-esteem, anxiety, lack of trust, inability to socially interact with peers, and depression with specific goals and short term objectives/benchmarks. *Sarah D., supra; Los Angeles Unified School District*, 39 IDELR 257 (Cal. SEA 2003). A District must have goals which directly address a child's unique needs and feelings/behaviors. *Id.*

147. As part of the IEP Team's responsibilities, it must determine the safety and health needs of a child in order to provide accommodations designed to protect the child in his/her educational environment, and design an IEP which protects the safety needs of a child. *Lillbask v. State of Connecticut Department of Education*, 397 F.3d 77, 42 IDELR 230 (2nd Cir. 2005). To fail to protect a disabled child's safety (especially a medically fragile child) through accommodations constitutes a denial of FAPE. *Id.* The physical and psychological safety of the child is also an

important factor (mandated by regulation) in determining the LRE of the disabled child. 34 CFR 200.116(d).

148. Parents must participate in the IEP creation process in good faith and cooperate with District efforts to provide a student with FAPE. *Friedman v. Vance*, 24 IDELR 654 (D.MD. 1996). This duty to cooperate continues after the due process complaint has been filed. *Lesesne v. District of Columbia*, 44 IDELR 250 (D.D.C. 2005) *affirmed* 447 F.3d 828 (D.C. Cir. 2006). Thus, the parties should and must continue with the IEP review and revision process in order to provide a child FAPE during the course of the due process hearing proceedings. *Id.*

149. An IEP is a continuing program as well as a document, *O'Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692 (10th Cir. 1998), and thus an IEP thus must be revised as appropriate as the IEP Team learns more about the student in order to provide FAPE to the student. *M.M. v. Special School District No. 1*, 512 F.3d 455, 49 IDELR 61 (8th Cir. 2008).

150. A Student's IEP must contain a statement of the child's present levels of academic achievement and functional performance including how the child's disability affects the child's involvement and progress in the general education curriculum. 34 CFR 300.320(a)(1). The statement of present levels must be accurate so that the IEP Team can use the present levels as a baseline for developing goals, measuring future progress, and designing educational programming. *Bakersfield City School District*, 51 IDELR 142 (SEA CA 2008). The present levels must be all-encompassing so as to provide a baseline that reflects the entire range of the child's needs both academic and nonacademic. 34 CFR 300.324(a). The statement should encompass a student's needs, strengths, interests, and learning style. *Id.* In order to fully comply with the pertinent regulation, the statement should include: the child's academic achievement level; testing scores and an evaluation of scores; the child's physical and psychological condition including any physical impairment which could affect instruction; the child's emotional maturity, self-help skills, social adaptation, functional behavior, and development; and a statement of the child's prevocational and vocational skills. *Id.*

151. The IEP must comply with the requirements set forth in 20 U.S.C.A. 1414(d) in order to provide FAPE. 20 U.S.C.A. 1401(9). Section 1414(d) requires measurable goals designed to meet the child's educational needs that result from the student's disability. *SS v. Howard Road Academy*, 585 F.Supp.2d 56 (D.D.C. 2008); *Sarah D. v. Board of Education of Aptakisic-Tripp Community Consolidated School District No. 102*, 642 F.Supp.2d 804, 52 IDELR 281 (N.D. Ill. 2009).

152. Thus, in order to provide substantive FAPE, an IEP must establish goals which respond to all significant facets of a student's disability, both academic and behavioral. *Sarah D., supra*. When a student has a learning disability, the goals must address the student's learning disability. *Pennsbury School District*, 48 IDELR 262 (PA SEA 2007). When a student has deficits related to attention and behavior in the classroom, the District must have goals to address those aspects of the student's disability. *Bellflower Unified School District*, 54 IDELR 66 (Cal. SEA 2010).

153. A District must address all of a student's unique social-emotional needs like low self-esteem, anxiety, lack of trust, and depression with specific goals and short term objectives/benchmarks. *Sarah D., supra; Los Angeles Unified School District*, 39 IDELR 257 (Cal. SEA 2003). A District must have goals which directly address a child's unique needs and feelings/behaviors. *Id.*

154. A behavioral intervention plan contains accommodations and/or related services which are (whether the school district calls it such or not), part of the student's IEP. 34 CFR 300.324(a)(2). Generally, a BIP is designed after a functional behavior assessment has been conducted.

155. Failure to design an IEP with an appropriate BIP can be a denial of FAPE like any other design failure in an IEP. *Neosho R-V School District v. Clark*, 38 IDELR 61, 315 F.3d 1022 (8th Cir. 2003). When behavior problems interfere to an extent that a child loses academic benefits due to behavior problems, a district needs to provide a cohesive plan to address the child's behavior problems. *Id.* To fail to formulate a BIP in such a circumstance is unreasonable, and thus results in a denial of FAPE. *Id.*

156. An IEP must be revised "as appropriate" when a district knows or should know that the IEP is clearly failing. 34 CFR 300.325(b); *M.M. v. Special School District No. 1*, 512 F.3d 455, 49 IDELR 61 (8th Cir. 2008).

157. A hearing officer need not accept school district claims as true regarding the reasonableness of IEP design, but neither should the hearing officer substitute his/her judgment for that of the school officials who have designed the IEP. *School District of the Wisconsin Dells v. Z.S.*, 295 F.3d 671, 37 IDELR 34 (7th Cir. 2002). The hearing officer determines reasonableness, not, what in a hearing officer's judgment, would be the best placement for a student. *Id.*

Conclusions of Law Related to Appropriate Locations of Services and Placements

158. A district generally has discretion to choose a location of services to provide special education to a child. *White v. Ascension Parish School Board*, 343 F.3d 373 (5th Cir. 2003); *Concerned Citizens and Parents for Continuing Education at Malcolm X School (PS 79) v. New York Board of Education*, 629 F.2d 751 (2nd Cir. 1980) *cert denied*, 449 U.S. 1078; *Brad K v. Chicago Public School District 299*, 787 F.Supp.2d 734 (N.D. Ill. 2011). However, a location which cannot implement large portions of the child's IEP amounts to a change of placement, a material failure of implementation of the IEP, and denial of FAPE. *Lunceford v. District of Columbia Board of Education*, 745 F.2d 1577 (D.C. Cir. 1984); *Brad K, supra; Savoy v. District of Columbia*, 844 F.Supp.2d 23 (D.D.C. 2012).

159. Moreover, when there are aspects of the physical location of services affect the provision of FAPE for the student and/or prevent the disabled student from receiving FAPE, this is a violation of IDEA for which a hearing officer can grant relief- whether or not the defects in the physical location of services are forbidden by the four corners of the IEP. *See Charlie F. v.*

Board of Education of Skokie School District 68, 98 F.3d 989 (7th Cir. 1996) (malicious behavior by classroom teacher in a physical location can be a violation of FAPE); *Shore v. Regional High School Board of Education v. P.S.* 41 IDELR 234, 381 F.3d 194 (3rd Cir. 2004)(bullying by fellow students in a physical violation is a violation of FAPE which a hearing officer has jurisdiction to remedy); *See also A.K. v. Alexandria City School Board*, 484 F.3d 672 (4th Cir. 2007) (when physical location can cause a deprivation or dilution of educational benefit, an inappropriate physical location constitutes a denial of FAPE and inappropriate placement for which a hearing officer can provide a remedy); *Madison Metropolitan School District v. P.R.*, 598 F.Supp.2d 938 (W.D.Wis. 2009) (same); *Eley v. District of Columbia*, 59 IDELR 189 (D.D.C. 2012)(same); *TK v. New York City Department of Education*, 779 F.Supp.2d 289 (E.D.N.Y. 2011) (culture of bullying in a physical school is a violation of FAPE and IDEA for which a hearing officer can provide a remedy); *McKenzie v. Smith*, 771 F.2d 1527 (D.C. Cir. 1985) (changes of location to a student who may be harmed by a transfer from one physical location to another can be a denial of FAPE which a hearing officer can remedy); *Block v. District of Columbia*, 748 F.Supp. 891 (D.D.C. 1990) (same); *Holmes v. District of Columbia*, 680 F.Supp. 40 (D.D.C. 1988) (same); *Z.W. v. Smith*, 210 Fed.Appx. 282 (4th Cir. 2006). (district changes of physical location of services mid-year or in the final year of high school can be a denial of FAPE).

160. IDEA requires an IEP to contain a location of services as part of Student's placement. *See* 20 USCA 1414(d)(1)(A)(i)(VII). The Department of Education has interpreted that section of the law to mean not the physical location of services, but rather a more general statement of where a student will be placed (i.e. a resource room, a self-contained classroom etc.), *Brad K, supra*. However, that interpretation alone does not preclude a claim for denial of FAPE based on the inappropriateness of the physical location of services. Nor does the interpretation mean that a disabled student or parent of a disabled student cannot challenge a physical location to the extent the physical location can/will cause harm or the dilution of educational benefit to a child. *Batterton v. Francis*, 432 U.S. 416 (1977); *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944); *Metropolitan School District of Wayne Township v. Davila* 969 F.2d 485 (7th Cir. 1992) (agency interpretations of statutes when not promulgated by legislative rule entitled to deference based on an agency's expertise and reasoning, but not binding on reviewing courts. A court can reject an agency interpretation of a statute when not promulgated by legislative rule). Impartial hearing officers have commensurate authority with courts in due process proceedings, *Cocores v. Portsmouth*, 779 F.Supp. 203 (D.N.H.), *S-1 v. Spangler*, 650 F.Supp. 1427 (M.D.N.C. 1986). Thus impartial hearing officers are able to reject erroneous agency interpretations of statutes when such interpretations are unreasonable.

161. Therefore, to the extent the Department of Education is interpreting IDEA to preclude a claim of denial of FAPE for failure to provide an appropriate physical location of services (whether or not the complained-of defects in the physical location of services are forbidden by the four corners of the IEP), the undersigned rejects that interpretation as unreasonable- based upon the cases set out above. The court in *Brad K*, did not hold that a claim for the inappropriateness of a physical location of services is barred under IDEA, and only set forth dicta to that effect. Therefore, the holding in *Brad K* is not binding precedent as to this issue either. Therefore, the undersigned holds that an inappropriate physical location of services can

be a denial of FAPE whether or not the defects in the proposed physical location of services are contained within the four corners of the text of the IEP.

162. Bullying in a given school is generally a problem of school culture. *TK v. New York City Department of Education*, 779 F.Supp.2d 289 (E.D.N.Y. 2011). When bullying causes a disabled student to be prevented from receiving a substantial educational benefit, it renders a location of services inappropriate and amounts to a denial of FAPE. *Charlie F. v. Board of Education of Skokie School District 68*, 98 F.3d 989 (7th Cir. 1996), *See also Shore v. Regional High School Board of Education v. P.S.* 41 IDELR 234, 381 F.3d 194 (3rd Cir. 2004) and *TK, supra*. In general, pervasive verbal abuse, repeated indignities, stealing of property, coupled with a failure of the District to ameliorate the effects of the bullying amounts to a denial of FAPE. *TK, supra*.

Conclusions of Law Related to Parent's Remedies

163. A hearing officer is required to determine a remedy in a given case based upon equitable factors including the conduct of the parties prior to and during the due process hearing proceedings. *Branham v. the Government of the District of Columbia*, 427 F.3d 7, 44 IDELR 149 (D.C. Cir. 2005); *Reid v. District of Columbia*, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005).

164. Compensatory education is an equitable remedy hearing officers can award to parents and students. The purpose of compensatory education is to replace lost educational opportunity. *Board of Education of Oak Park, District 200 v. Illinois State Board of Education*, 79 F.3d 654 (7th Cir. 1996). Compensatory education, if awarded, should compensate Student for the District's failure to provide FAPE. *Petrina W. v. Chicago Public School District 299*, 53 IDELR 299 (N.D. Ill. 2009); *See also Branham v. the Government of the District of Columbia*, 427 F.3d 7, 44 IDELR 149 (D.C. Cir. 2005); *Reid v. District of Columbia*, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005). In determining whether compensatory education, the award should be based upon the equitable factors present in each case (including the conduct of the parties). *Id.* A hearing officer's decision should set forth a reasoned way in which the compensatory services will make the student whole for loss of FAPE. *Id.* A hearing officer does not need to provide compensatory education when there is no proof in the record provided to calculate compensatory education. *Gill v. District of Columbia*, 56 IDELR 129, 770 F.Supp.2d 112 (D.D.C. 2011).

165. An order for a private service provider to provide compensatory education services is proper if such an award is more likely to compensate a student for a district's failure to provide FAPE. *Draper v. Atlanta Independent School System*, 518 F.3d 1275 (11th Cir. 2008).

166. The undersigned is also entitled to place a student in a private placement/location of services as compensatory education or if the equities of a situation require such a finding when a district failed to provide a student with FAPE. *Branham v. District of Columbia*, 44 IDELR 149, 427 F.3d 7 (D.C. Cir. 2005). *See also Draper v. Atlanta Independent School System*, 49 IDELR 211, 518 F.3d 1275 (11th Cir. 2008), if a District cannot or will not provide a Student with FAPE, a hearing officer is able to place Student in a private location of services/private placement. *Id.* However, hearing officers should generally not place a child in a private school

prospectively unless: (1) the parent can demonstrate that no public school in the District can provide FAPE to the student in a given case. *N.T. v. District of Columbia*, 839 F.Supp.2d 29 (D.D.C. 2012), *Savoy v. District of Columbia*, 844 F.Supp.2d 23 (D.D.C. 2012); or (2) the district has failed so badly that the hearing officer makes a finding that the district will never actually provide the student with FAPE and the additional services necessary to compensate the student for lost educational opportunity, *Id.*, see also, *Draper v. Atlanta Independent School System*, 49 IDELR 211, 518 F.3d 1275 (11th Cir. 2008). Moreover, a hearing officer can place a student in a private placement/private location of services for purposes of compensatory education if the private placement will compensate a child for past denials of FAPE. *Gill v. District of Columbia*, 56 IDELR 129, 770 F.Supp.2d 112 (D.D.C. 2011).

167. In making decisions to award a prospective placement at a private locations of services, the undersigned must weigh the equitable factors in each case *Branham, supra*.

V Application of Law to Fact

168. The undersigned finds that the District did not meet its burden of proof that its evaluations were comprehensive and appropriate. The District's psychological assessment, social-emotional assessment; speech and language assessment; and occupational therapy assessments are found to be deficient for the reasons set forth in this order. The District's evaluation was also inappropriate because it failed to conduct an assistive technology assessment. The Student lost FAPE as a result of the inappropriate assessments for the reasons set forth in this order. However, the undersigned will not order reimbursement for a full independent psychological assessment as one was done at the District's expense as part of this hearing. Rather, the District must only reimburse Parent for a new, independent functional behavior analysis, behavioral intervention plan, occupational therapy assessment (in the areas of sensory processing, organizational skills, and executive functioning), and assistive technology assessment (done by providers chosen by the Parent). The District must also reimburse Parent for the speech and language assessment and social work assessment already completed. There will be no reimbursement for record reviews under this order as only a court can order reimbursement for record reviews.

169. The undersigned finds the Parent has not met her burden of proof on her child find claim (Issue 2b from the pretrial order); and failure to timely evaluate (Issue 2c from the pretrial order).

170. The undersigned finds that the Parent met her burden of proof in that the District failed to provide an appropriate placement and appropriate location of services (Issue 2e from the pretrial order);

171. The undersigned finds that the Parent met her burden of proof (as to Issue 2f of the Pretrial order) in that the District failed to develop an appropriate IEP in the following ways: by failing to address academic delays in written and oral expression, fails to provide speech and language services to address documented weakness in communication skills; fails to provide adequate levels of social work and psychological counseling to Student.. The Parent did not prove Student needed a 100% out of general education LRE.

172. The undersigned finds that the Parent should receive declaratory relief; reimbursement for some assessments; but not a private prospective placement or compensatory education.

VI. Order

173. By this order, the Student's IEP is amended as follows:

- (a) The portions of the recommendations of [REDACTED] located in IHO Exhibit 9, pp. 15-19, are to be included in Student's IEP moving forward: Recommendations 1 a, b, c, and d are to be included as accommodations in Student's IEP. Those recommendations are incorporated by reference by this order.
- (b) The portions of the recommendations of [REDACTED] located in IHO Exhibit 9, pp. 16-17, are to be included in Student's IEP moving forward. Student's goals are amended to include the goals contained in Recommendations 3a,b, c, d, and g of IHO Exhibit 9, pp 16-17. Those recommendations are incorporated by reference by this order.
- (c) Student shall receive two hours per week of group and individual therapy using evidence based strategies to teach anger management and social problem solving skills;
- (d) Student shall receive evidence based reading and writing instruction including reading interventions designed for students with learning disabilities
- (e) Student shall receive one hour per week of speech and language therapy to increase verbal short term and working memory capacity for verbal tasks; develop narrative sequencing skills to age appropriate levels; and develop phoneme letter association for appropriate grade level

174. Within thirty days of this order, the District shall convene an IEP meeting wherein the IEP Team shall develop goals which address Student's deficits in written expression and oral expression. The IEP Team shall also determine an appropriate physical location of services for Student which can implement the accommodations and services required by this order.

175. Within thirty days of this order, the District shall reimburse Parent for the independent speech and language assessment in the amount of \$1,390.00 and the independent social work assessment in the amount of \$2,900.00.

176. The District shall pay for independent occupational therapy assessments in the areas of sensory processing, organizational skills, and executive functioning. The District shall pay for an independent assistive technology assessment. The District shall pay for an independent functional behavior analysis and behavioral intervention plan. The District shall make payment within 21 days of being presented invoices from the Parent.

177. The District shall provide proof of compliance with this order to the Illinois State Board of Education, Compliance Division, by June 15, 2013.

178. Parent's other requests are denied.

VII. Right to Request Clarification

179. Section 14-8.02a(h) of the 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. I shall issue a clarification of the specific portion of the decision or issue a partial or full denial of the request in writing within ten days of receipt of the request and mail copies to all parties to whom the decision was mailed.

VII. Finality of Decision

180. This decision shall be binding upon all parties.

IX. Right to File Civil Action

181. 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(I) that civil action shall be brought in any court of competent jurisdiction within 120 days after this decision was mailed.

/S Joseph P. Selbka

Joseph P. Selbka Impartial Due Process Hearing Officer

Date: March 14, 2013

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