

Case Number: 2012-0310

[Redacted] vs. [Redacted]

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 pro se

Parent Name [Redacted] Phone [Redacted]  
Address [Redacted]

**Date and Timelines**

Date of Written Request: 02/13/2012

Date of Hearing: 11/02/2012 to 11/02/2012

Date of Pre-hearing Conf: 04/09/2012

Date of Decision: 11/12/2012

**Summary of Decision** The Parent filed for due process claiming that the District failed to take into account their concerns; failed to provide an appropriate notice to a February, 2012, IEP meeting, failed to provide a placement in the Student's least restrictive environment; and that District staff bullied Student. The hearing officer found for the District on all issues. The District was represented by [Redacted]. The Parents proceeded pro se.

ILLINOIS STATE BOARD OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)  
) ISBE CASE NO. 2012-0310  
)  
) Joseph P. Selbka  
) Impartial Due Process  
) Hearing Officer

**FINAL HEARING OFFICER DETERMINATION AND ORDER**

**I. Introduction and Procedural History**

1. [REDACTED] ("Student") is a fifteen year old child who is eligible for special education and did attend at the school building at [REDACTED] ("District").
2. The District proposed an IEP for Student on February 3, 2012. For purposes of this case, the important aspect of the proposed IEP was the location of services at [REDACTED].
3. Student has not attended school since November, 2011.
4. Student's Parents, [REDACTED], and [REDACTED] (collectively "Parent") and filed their due process complaint, pro se on February 10, 2012.
5. The previous hearing officer appointed in this case conducted a prehearing conference on April 9, 2012, and issued a prehearing report on April 9, 2012.
6. The undersigned was appointed hearing officer in this matter on May 8, 2012, when the previous hearing officer recused herself. The undersigned conducted a second prehearing conference and prepared a second follow-up order on June 20, 2012.
7. The issues for hearing were set forth in Sections 1a-1g of the second prehearing follow-up order.
8. A mediation session occurred on August 16, 2012, wherein two issues were ultimately resolved. The Parent withdrew Issues 1a and 1b of her complaint as set forth in the June 20, 2012, prehearing order (D.Ex. A197-200).
9. This matter was originally set for hearing on May 24, 2012. Pursuant to requests for continuance by the District and then the Parent, the matter was continued to October 9 and 10, 2012. The hearing was heard at the [REDACTED]. The parties requested closing briefs, and pursuant to several requests for continuance, closing briefs were due on November 2, 2012. Both parties filed closing briefs with the undersigned hearing officer.

10. At the hearing, the following witnesses testified: [REDACTED], [REDACTED]  
W [REDACTED] ("Educational Director"), [REDACTED]  
[REDACTED]

11. At the hearing, the following exhibits were admitted into evidence: District Exhibits A-J; Parent Exhibits 1-2, and 4-36 were admitted over the objection of the District. The Parent failed to comply with the five day disclosure rule. However, the undersigned admitted the Parent's documents under my authority set forth in 105 ILCS 5-15/8.02a(g-55) of the School Code to require and obtain any information necessary to make my decision, and/or the Parent Exhibits were legal authority which are not in the nature of evidence. The District presented no legal authority that I exceeded my authority under the School Code.

12. At the prehearing, the parties agreed that the District has a burden of production to show that Student was provide FAPE. The Parent has the ultimate burden of proof on all issues in their complaint.

**II. Issues to Be Decided**

13. The issues initially set to be heard as set forth and numbered in the prehearing order are as follows:

1a. Whether the District failed to properly design the Student's current IEP to provide Student with FAPE. Specifically, the Parents contend: (i) that the Student's IEP does not contain a measurable goal in reading comprehension; a measurable present level of performance; and is not aligned with an Illinois learning standard; (ii) that the District is not providing Student with sufficient assistive technology to improve Student's reading and organizational skills; (iii) that the District is not providing Student with sufficient classroom supports and accommodations related to the Student's diagnosis of Asperger's Syndrome.

1b. Whether the District failed to provide an appropriate assistive technology evaluation as part of its statutory responsibility to fully evaluate Student.

1c. Whether the "[REDACTED] behavioral day program is the least restrictive environment appropriate for Student. Specifically, Parent contends that Student can be mainstreamed in the District's regular school with proper accommodations.

1d. Whether the District failed to adhere to written notice obligations required by 34 CFR 300.503 and whether this is a procedural violation of IDEA. Specifically, the Parent contends that the notice sent prior to IEP meetings in January and February, 2012, were not specific enough to inform Parent of the proposed decision to transfer Student to [REDACTED]

1e. Whether the District failed to incorporate Parent's input into determining Student's placement pursuant to 34 CFR 300.321-322.

1f. Whether the District denied Student FAPE in implementing Student's IEP. Specifically, Student contends that staff bullied and harassed Student in response to manifestations of Student's disability.

14. Pursuant to a mediation agreement, Issues #1A and 1B were withdrawn.

15. The Parent also requested as a remedy that the undersigned order training of all school staff in teaching children with autism. However, the undersigned dismissed this request as hearing officers in due process proceedings do not have jurisdiction to require systemic changes to a school district unrelated to the placement of the child at issue in this case. *Alex R. v. Forrestville District No. 221*, 375 F.3d 603, 41 IDELR 146 (7<sup>th</sup> Cir. 2004). The Parent also requested that the undersigned make a finding against the District for not finding Student eligible for special education under the disability term of autism. However, this is irrelevant as Student is eligible for special education. Once a child is found eligible for special education, placement and services must be based on a child's unique strengths, weaknesses and needs—regardless of the disability term for which Student is found eligible. 34 CFR 300.320; 34 CFR 300.324.

### **III. Findings of Fact**

16. Student is a fifteen year old who has had a history of learning and behavioral problems. Student has been diagnosed with ADD, anxiety, social anxiety phobia, and Asperger's Syndrome (P. Ex. 28, 38). Student may have been misdiagnosed and thus had problems with inappropriate medications in the past with schizophrenia (P.Ex. 37). Student also has been diagnosed with depression (SD Ex. B111).

17. Student was initially referred for evaluation in September, 2007 (S.D.Ex. B1-6), and was found eligible for special education soon thereafter.

18. Student was hospitalized for psychological problems in February, 2010 (Parent Closing Argument ##8-10, SD Ex. E42). In the general education classroom, Student has been unable to function in a way to obtain an educational benefit (Tr. 121, 135). Student has been placed in a partially mainstreamed placement, but failed to sustain effort despite numerous interventions (Tr. 121,135).

19. After his hospitalization, Student was placed in the [REDACTED] prior to living with his mother because his father was in the [REDACTED] Parent Closing Argument #11-13).

20. From late October, 2009, to February, 2010, Student was placed in an alternative school, the "[REDACTED]." (SD Ex. E29-42). Student was able to learn and succeed in this highly structured program, and was able to make some academic progress in this placement (SD Ex. E29-42). This placement ended when Student was hospitalized (Parent Closing Brief ##8-10). In February, 2010, the Illinois Department of Children and Family Services took Student into protective custody for medical neglect (Parent Closing Brief, #9).

21. After being released from hospitalization in March, 2010, Student transferred to [REDACTED] (SD Ex. E47; Parent Closing Brief, #11, 12). Student was not able to succeed at [REDACTED], and that District eventually suggested [REDACTED] (Tr. 51, Parent Closing Brief #13). Rather than accept a placement at [REDACTED], Parent transferred Student back to the District in November, 2010 (SD Ex. F11).

22. Student was unsuccessful at the District after returning in November, 2010 with problems in attendance (SD Ex. F18-30) and academically (SD Ex. F22). In his first semester, Student failed every academic class (SD Ex. F22). According to the Parents, Student's medications prevented Student from being able to learn (Parent Closing Brief, #17).

23. Parent withdrew Student from the District on March 24, 2011 (SD Ex. F39) and began homeschooling Student from March, 2011 until mid-September, 2011, when Student re-enrolled at the District (S.D. Ex. F43). No evidence was provided that Student made substantial (or any) academic progress from March, 2011, to September, 2011, when he was homeschooled.

24. Student made little to no academic progress in the two month period from September, 2011, to November, 2011 (Tr. 48-49, 100, 143, 155-159, SD Ex. G78), and was removed by Parent from the District main school in November, 2011 (Tr. 36).

25. Student has not attended school since November, 2011 (Tr. 49).

26. Student received homebound services pursuant to an interim placement set forth in a mediation agreement for approximately three months prior to hearing (P Ex. 6-9). However, all parties agree that Student has been unable to maintain attention and unable to learn in the interim homebound placement (Tr. 42, 49-51).

27. Student has been taught by different special education teachers in the September, 2011-November, 2011 placement and the interim homebound placement (Tr. 51).

28. Parent initially believed this lethargy and inability to sustain attention was caused by medication (Parent Closing Argument #17). However, even after Student was diagnosed with Asperger's and was being provided appropriate medications, Student could not maintain attention in school (Tr. 162).

29. Student had a functional behavior assessment and behavioral intervention plan in November, 2010 (SD Ex. B130-133), and a second functional behavior assessment and behavioral intervention plan in October, 2011 (SD Ex. B178-181). Parent provided no evidence that the functional behavior assessments were inadequate or inappropriate. The behavioral intervention plans attempted to address Student's behavioral issues in the classroom; to move Student towards better study habits in the classroom; and to carefully chart Student's progress (or lack thereof) (Tr. 85-91, SD Ex. B132, 133, 181). The behavioral intervention plans completely failed to deal with Student's behavioral problems in the classroom, and thus failed to allow Student to be educated in the District's main school (Tr. 91-92). The behavioral intervention plans failed largely due to Student's lack of motivation (Tr. 91-92).

30. Student's behaviors were tracked in the classroom (SD Ex. G19.1 to 92.15). Student often left class, put his head down, ignored redirection, drew in class, and otherwise refused to complete work (SD Ex. G19.1-92.15). Student was also often absent from class and/or spent time in the principal's office (*Id.*). Student often also refused to take exams and do homework (*Id.*). For physical education, on many days, Student wouldn't even dress for gym (*Id.*).

31. The District also attempted to accommodate Student during emotional shut-downs and meltdowns by allowing Student to go to the resource room or the Principal's Office (Tr. 97, 168, Parent Closing Brief, ##32-33); and by attempting to teach Student replacement and coping behaviors (Tr. 109-110).

32. The District attempted to prompt and redirect Student, offer behavioral contracts, and offer other positive rewards (Tr. 85-91, 98, 134, 156). The District attempted 1:1 services; extended time with Student; educational computer programs, and communications with the Parents to try and provide Student with an educational benefit in the classroom (Tr. 121, 156, 157, 169).

33. The accommodations in the classroom were ineffective (Tr. 95, 175, 321). Parent presented no expert testimony or report that District personnel were improperly trained and/or that different training would have allowed Student to obtain an educational benefit from a placement in the District's main school. Based upon this lack of expert testimony, the undersigned makes a credibility finding that District personnel were appropriately trained and that lack of training did not cause Student's placement in the main District school to fail.

### **Student's Disability**

34. Student has extreme difficulty maintaining concentration (P. Ex. 51-52). Student has multiple problems with sensory processing (P. Ex. 52). Touch, sounds, and smells can overwhelm Student (*Id.*). Touching from another student, excessive noise, and other sensory stimuli can cause emotional difficulties and cause meltdowns, rages, or emotional shut downs (*Id.*).

35. Student also has a learning disability in the area of reading and reading comprehension (SD. Ex. B113-116). Student's learning disability makes it difficult for him to learn reading in the same way as most other students (Tr. 307). Student needs multimodal (multisensory) and researched based techniques necessary for Student to learn reading (Tr. 304-307).

36. Student also has significant problems with executive functioning (P. Ex. 51). Student has difficulty, planning, organizing, shifting attention in class, and multitasking (P. Ex. 51). Student has difficulties in determining how to complete complex assignments, including long term homework assignments, research, preparations for writing papers (P. Ex. 51). Student does not know how approach and break down a complex task and complete it (P. Ex. 51). Student then develops anxiety over completing the complex task which further complicates his ability to complete the task (P. Ex. 51-52). Student also has problems in the classroom with shifting his attention when the teacher changes subjects of instruction (P. Ex. 52). Student also has

difficulties in developing a system to keep track of homework assignments and school supplies (P. Ex. 52).

37. Student also has significant behavioral challenges in the classroom (P.Ex. 53). Student has problems understanding rules and routines in the District's main school (*Id.*). Student desires friendships but does not have the social skills to appropriately develop friendships (*Id.*). Student cannot defend himself emotionally from being teased and bullied in the main school (*Id.*). Student also experiences anxiety resulting from his poor executive functioning, and stress from the overwhelming sensory input in the main school (*Id.*). As part of the manifestations of his disability, Student has problems with changes in his environment which occur in the district's main school (*Id.*).

38. Student is also consistently noncompliant in completing homework and schoolwork (Tr. 87-88). He kept his head down to avoid work and often doodles in class rather than completing work (Tr. 88, 155-156). He left class and would not return (Tr. 114). Student has significant maladaptive behaviors associated with his lack of motivation; desire to avoid schoolwork; and a desire to control his environment (SD. Ex. B178-179).

39. As a result, Student may have emotional meltdowns or have explosive episodes resulting from frustration with the school environment (P.Ex. 47).

#### The District's Main School and Proposed Placement and Location of Services at [REDACTED]

40. The District's main school does have a "resource room", for special education eligible children to be educated out of the general education curriculum, but the District currently does not have any student who spends more than 40% of the school day in the resource room (Tr. 146). The District does not have related services providers in the District's main school on a daily basis (Tr. 149).

41. The District's main school can be a noisy place as are its classrooms at times. Generally, there are 25-26 students in each regular education class in the District's main schools (Tr. 47). The resource room generally has 2-10 students at any one time (Tr. 146).

42. [REDACTED] has approximately 10 students per classroom with three school personnel in each classroom (Tr.298). The classrooms are generally more quiet than in a typical school (Tr. 309). [REDACTED] is approximately 15 miles from the District's main school (Tr. 297). [REDACTED] is run by a cooperative of school districts of which District is a member (Tr. 240). Small school districts enter cooperatives to pool their resources in order to provide a continuum of placements and services for eligible students with disabilities (Tr. 240).

43. [REDACTED] is much more structured than the District's main school (Tr. 93, 101, 105-106). A trained teacher or teacher's assistant is always within 10 feet of each student (Tr. 318). Instructors at [REDACTED] are constantly able to and do redirect students (Tr. 93, 339-340). The teachers first attempt redirection in a quiet manner, and then move to more intense interventions (Tr. 314-315). Instructors at [REDACTED] are also trained in therapeutic crisis intervention and are better able to deescalate students with disabilities than teachers in the

District's main school (Tr. 311). Instructors are trained to determine the exact reason why students are acting out or shutting down (Tr. 314), and then determine how to address the students' actions (Tr. 314-315). If students spend too many weeks at a lowest behavioral level, the staff attempts to intervene further and determine how to reach the child (Tr. 315-316).

44. [REDACTED] has a seclusion room and sensory area for students who need time apart due to emotional meltdowns (Tr. 322, 323, 329). The sensory area contains various devices where students can work through manifestations of their disability including anxiety (Tr. 324). [REDACTED] is in the process of preparing a whole room with various sensory stimulation technology (Tr. 341).

45. [REDACTED] has a number of staff who work with children on the autism spectrum and currently, approximately 20% of the children attending [REDACTED] are on the autism spectrum (Tr. 297). The Cooperative has an autism team which [REDACTED] can call upon when needed (Tr. 194). [REDACTED] has programs and accommodations are designed specifically to ameliorate the effects of autism (Tr. 209-210).

46. [REDACTED] uses multimodal teaching techniques and research based methodologies and programs to teach reading. For the most part, these reading techniques cannot be used in a general education classroom given the specialized nature of the instruction (use of manipulatives, use of kinesthetic components, and use of assistive technology) (Tr. 303-308).

47. [REDACTED] has social workers on staff and related services providers available more than once per week (Tr. 298). All of the students at [REDACTED] have counseling, and students receive social skills training (Tr. 302). [REDACTED] also has crisis counseling available if needed at any time (Tr. 302). Group counseling is also provided to students (Tr. 302-303).

48. [REDACTED] has a "PBIS" Program which provides a highly structured program of positive reinforcement (Tr. 300-301). While the District's main school has a program with similar objectives, the District's main school program cannot match the PBIS Program at [REDACTED]. The [REDACTED] program has a highly structured positive reinforcement system wherein students earn rewards for good behavior and giving students more freedom as the students move from level to level through learning to manage their own behavior (Tr. 299-300, 317-319).

49. [REDACTED] also uses other techniques designed for students with attention and motivational needs (Tr. 315-316). Students can be taught at their own pace (Tr. 95). [REDACTED] uses "late stays" wherein students are required to remain after school hours if they refuse to do their work (Tr. 316-317). [REDACTED] late stay policy is modified so as to be effective for students on the autism spectrum (Tr. 330-331). Eventually, students learn to work in class as a result of negative reinforcement of the late stays (Tr. 317).

50. [REDACTED] only uses restraints on students when the students pose a danger to themselves or others (Tr. 312-313). There was no evidence presented at hearing that Student currently poses a danger to himself or others. [REDACTED] personnel are also trained to

use restraints in a way to maximize students' safety (Tr.311-313). Restraint is only used as a last resort (Tr. 311-313). Seclusion is only allowed if students are observed by multiple staff members (Tr. 329).

51. As students learn to control the manifestation of their disabilities, [REDACTED] works to integrate students into classrooms in the [REDACTED] main school buildings or their home schools (Tr. 322, 328).

52. There are sometimes opportunities for art at [REDACTED] and shop may be available at the [REDACTED] main school or, eventually, at the District's main school (Tr. 327-328).

53. Parent has obtained prescriptions from medical providers that Student should be on homebound (Tr. 37-38). Parent provided hearsay testimony that medical providers recommend a homebound placement for Student (Tr. 61-62). However, the medical providers' reasoning was not admitted into evidence (with one exception, TR. 63), and no expert report was admitted into evidence.

54. Moreover, there was no current recommendation of a homebound placement admitted into evidence—all written recommendations submitted were months old at the time of hearing (P. Ex. 37). Moreover, there was also no evidence that any medical provider knew anything about [REDACTED] and the District's proposed placement there (Tr. 66).

55. Parent presented no medical evidence or expert testimony that travel to [REDACTED] would harm Student in any way.

56. Based upon the testimony of [REDACTED] Educational Director, the undersigned makes an inference that [REDACTED] can provide appropriate services for Student despite the fact that Student is not violent and is not aggressive. The undersigned bases this inference on: (1) the extensive testimony on specialized modes of instruction and assistive technology; (2) the specialized staff who are able to find appropriate accommodations; (3) the highly structured environment and trained staff are able to address Student's attention, executive functioning, and motivational problems. The undersigned rejects Parent's contentions that [REDACTED] art is not appropriate for Student because it is designed only for children with violent behavioral problems. The programs testified to by Educational Director clearly would be appropriate for Student in light of the manifestations of Student's disabilities testified to at hearing.

57. The undersigned rejects Parent's claim that because Parent will not cooperate with a placement at [REDACTED] [REDACTED] is inappropriate. More to the point, Parents have been unable or unwilling to cooperate in any proposed placement for Student. Parent has pulled her child out of school on multiple occasions in response to reasonable actions by the District to provide Student with an educational benefit. Parent has been unable to make computer programs function in the homebound placement. Parent has been unable to make Student available to complete a District reevaluation for months. Moreover, Parent has repeatedly accused the District of bullying for District actions which constituted legitimate attempts to change Student's behavior in the classroom (as addressed below). In light of this continuing pattern of

uncooperative behavior by the Parents and/or an inability to cooperate in Student's education, the undersigned makes an inference that Parent will ultimately be uncooperative in any proposed placement, and that the District must attempt to provide FAPE despite Parent's failure to cooperate in Student's education. Therefore, the mere fact Parent will not cooperate in a placement at [REDACTED] does not disqualify said location of services-- as this will be a problem in any placement and any location of services for Student.

**The Parent's Input in the Determination of Student's Placement and The IEP Team's Determination as to Student's Least Restrictive Environment**

58. The District staff at the February, 2012, IEP meeting took into account the parents suggestions and requests for a location of services at the District's home school (Tr. 92-93,122, 135-137, 158, 160, 171,177). District staff took into account Parent's accommodation suggestions and requests for an art or shop class, but the District could not provide these classes on a regular basis. There was no evidence presented to the contrary (other than Parent's accusations).

59. The District members of the IEP Team had and have considered less restrictive placements than [REDACTED] (Tr. 115-116, 149-150). The District members of the IEP team however, all unanimously believed that [REDACTED] was an appropriate location of services containing the proper accommodations, supports, and milieu for Student to learn- especially in light of the failure of other options the District tried (Tr. 93, 123, 137, 175, 321-322).

60. Contrary to Parent's assertions, the District at multiple IEP meetings also took into account Student's diagnosis of Asperger's Syndrome (SD Ex. B185; B200; B201, Tr. 287). The District has attempted to obtain additional information and conduct an evaluation of Student by a trained autism consultant (Tr. 287, SD Ex. B201). The District's efforts to conduct the evaluation were repeatedly thwarted (either by circumstances or the actions of Parent) (Tr. 250, SD Ex. G183-189). The District was only able to conduct part of Student's reevaluation in September, 2012 (SD Ex. J1-6). Part of the reason [REDACTED] was recommended was [REDACTED] expertise in dealing with students on the autism spectrum (Tr. 3221-322)

61. Parent has never provided the District with medical evidence that Student needs a permanent, homebound placement (SD Ex A116, P Ex. 37). Rather, according to one of Student's physicians, Student needed homebound as an interim measure until a program could be set up to address Student's sensory problems (SD. Ex. A116). A second physician stated without providing reasoning that homebound services were needed "now." (in December, 2011) (P.Ex. 37). Similarly, the testimony presented at hearing was that Student's need for homebound services was temporary (Tr. 63).

62. Student's medical providers recommended accommodations and related services such as cognitive behavioral therapy, social skills instruction, short term rewards for completing school work; class participation, possible medication changes (SD Ex. A115-116). These services are available at [REDACTED] as discussed above.

63. The undersigned makes a credibility finding in favor of the District that the District members of the IEP took into account Parent's concerns and communications during the February, 2012, IEP meeting based upon the uncontradicted evidence of the District witnesses and the reasoning provided by the District witnesses as to why Parent's requests were not granted.

64. Moreover, the undersigned makes a factual inference that a structured program like [REDACTED] is necessary for a placement reasonably calculated to provide Student with an educational benefit. The undersigned bases this inference on: (1) the failure of regular accommodations to provide Student with an educational benefit in several schools with multiple special education teachers; (2) the fact that Student only did reasonably well in a highly structured program (the Tristar Program); (3) the Student is not obtaining an educational benefit from his current homebound placement; (4) the opinions of the school district personnel that [REDACTED] is an appropriate placement; and (5) the testimony of [REDACTED]'s Director regarding the services and programs at [REDACTED].

65. The undersigned makes an inference that the District cannot replicate the accommodations and programs available at [REDACTED] in a general education classroom. Specifically, the reading programs, sensory accommodations, structural supports, trained staff, and availability of related services cannot be replicated by the District. The undersigned bases this inference on the uncontradicted testimony that every conceivable accommodation in the District's general education classrooms were tried-- to no avail.

66. The undersigned finds that the programs and supports at [REDACTED] constitute reasonable methodologies to address Student's learning disability and the behavioral manifestations of Student's disability based upon the testimony of [REDACTED] principal and the failures of less restrictive options the District attempted in the District's main school.

67. The undersigned rejects the Parent's contentions that Student should be educated in a homebound placement in that this would be an extremely restrictive placement in violation of the District's duty to educate Student in the least restrictive environment appropriate for Student. Specifically, [REDACTED] is a less restrictive placement along the continuum of placements. To the extent that [REDACTED] is appropriate for Student, the District must place Student at [REDACTED] over a homebound placement.

68. The undersigned makes an inference that there are no nonacademic benefits from mainstreaming Student at this time- because Student cannot tolerate being in the District's main school and main school classrooms for any length of time. Specifically, Student hasn't even been in school since November, 2011. Student's inability to tolerate the main school building means that Student is incapable of receiving either academic or nonacademic benefits from mainstreaming at this time. The undersigned rejects Parents' claim that Student can be accommodated in the main classroom by properly trained staff as there was no expert testimony to that effect presented at hearing.

69. The undersigned makes an inference that there is no danger of harm to Student through a placement at [REDACTED] greater than the danger of harm to Student at any other placement.

In making this inference, the undersigned relies upon the following factors: (1) the Parent produced no evidence other than assertions that Student would be subject to restraints at a greater frequency than at any other placement; (2) the Parent presented no evidence other than assertions that late-stays or time in a sensory room would put Student in physical or psychological danger; (3) the Parent presented no credible evidence that Student would be subject to seclusion and/or that seclusion as practiced at [REDACTED] would be harmful to Student; (4) Parent presented no expert testimony or evidence that Student would be harmed by the behavior of his classmates at [REDACTED] and no evidence of any kind that the staff at [REDACTED] could not accommodate Student's reactions to the behavior of his classmates at [REDACTED]; and (5) Parent presented no evidence of any kind that use of restraints or use of seclusion at [REDACTED] would be used negligently or in any manner other than as a last resort, including Student. On the other hand, Educational Director testified credibly that restraints and seclusion are used in a way to maximize safety to the students at [REDACTED] and that negative consequences are used responsibly.

#### **The Sufficiency of the Prior Written Notice Provided to Parent.**

70. Parent contends that the notice prior to the February, 2012, IEP Meeting was insufficient. Specifically, Parent contends that she was not given sufficient notice that [REDACTED] was being considered as a location of services and placement for Student at the February, 2012, IEP meeting. The notice states that a change of placement was to be considered at the IEP meeting (Dist. Ex B204). Parent was aware that a change in placement was a possibility upon receiving the notice (Tr. 204).

71. Parent had toured [REDACTED] in the past while Student attended [REDACTED] (Tr. 320). At the IEP meeting in February, 2012, the District offered to continue the IEP meeting to another date when Parent expressed her concerns regarding her preparation for the meeting (Tr. 209). Parent filed her due process complaint within 10 days of the IEP meeting thus preserving her rights to Student's "stayput" placement (Dist. Ex. A1-7).

72. In light of the above stated facts, the undersigned makes an inference that Student suffered no loss of educational benefit as a result of any alleged defects in the notice and that Parent's ability to contribute to the IEP creation process and ability to protect her rights under IDEA were not harmed by any alleged defects in the notice. Specifically, the District mitigated any effects of Parent's misunderstanding of the notice by offering to continue the IEP meeting. Moreover, Parent was clearly able to use her stayput rights to prevent any placement from being implemented thus mitigating any harm arising from the allegedly defective notice.

#### **Parent's Allegations of Bullying and Harrassment**

73. Parent alleges that one of Student's teachers (Donetta Martin) stated that she wished she could use a taser on Student (Tr. 35-36). There was no testimony that any such comment or action was made directly to Student (Tr. 140, 150). The teacher denied making the comment in relation to Student, and stated that she joked to other teachers that she wished she could jolt her students (Tr. 35-36, 140-141, 178-179).

74. There is no evidence any teacher or staff member ever threatened Student in any way with physical harm (See e.g. Tr. 150, 163-164).

75. The District has attempted to prevent Student from doodling in class (Tr. 35-36). However, this is a behavior which Student often (although not exclusively) uses to avoid working and avoid being available to learn (SD Ex. B178-179). The District identified Student's doodling as a behavior to change in the Student's behavioral intervention plan (SD. Ex. B178-179).

76. Student was also prompted to keep his head up in class, but this was part of his behavioral intervention plan and was a method for redirection of Student (SD. Ex. B178-181).

77. Student has also been taken to the principal's office and the resource room when he was not following directions and/or when he needed a break (Tr.168; SD Ex. B181). However, again, a negative consequence is part of his behavioral intervention plan (SD Ex. B181). Specifically, Student was given a place and a person where he could feel comfortable and attempt to reestablish control over his emotional state (Tr.168). When Parent expressed concerns, the District changed the behavior intervention plan to make the consequences less visible (SD Ex. B200).

78. Other than Parent's assertions, there is no evidence which suggests that the above stated actions were taken to isolate or punish Student. Rather, the undersigned makes a credibility finding that the actions were taken in order to attempt to address Student's maladaptive behaviors in the classroom. The undersigned bases this credibility finding on the clear language of the BIP; the rationale for the actions of the District as set forth in the FBA; and the credibility of District witnesses who testified that they did not act to bully Student in any way. The undersigned further makes an inference that the District personnel actions were reasonable choices based upon the language of the BIP and the purpose of the interventions set forth in the BIP-- as determined by the District and memorialized in Student's FBA).

79. Parent also alleged that School Psychologist and School Social Worker inquired as to why Student was depressed and whether Student should be hospitalized again (Tr. 36). The undersigned makes a credibility finding that this was not meant to be bullying or harassment. This is a student who had recently been hospitalized and who had been diagnosed with depression in the past. District personnel were correct to be concerned about Student. The undersigned therefore makes an inference that the District's actions were not bullying, but a correct concern for Student's welfare (as well as the District's responsibilities under the special education laws. The District has a responsibility under child find, its duty to reevaluate, and its duty to revise IEPs to monitor Student. This requires monitoring Student's well-being and the effect of Student's disability in the school environment).

80. District staff testified that Student was never bullied or harassed because of his disability (Tr. 128-129, 178-179). The Parent presented no direct evidence to the contrary, and generally presented only evidence of stray remarks and/or insinuations as to District motives. The undersigned makes a credibility finding that there was no bullying as that term is traditionally

understood, and that the few stray remarks caused no harm to Student—based on the lack of evidence to the contrary.

#### **IV. Conclusions of Law**

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

81. 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.*

82. 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. Weast* 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 parent as the filing party to prove her case. The parents must prove their cases by a preponderance of the evidence.

83. 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 (7<sup>th</sup> 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 (7<sup>th</sup> 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 (7<sup>th</sup> 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 (7<sup>th</sup> 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 (7<sup>th</sup> 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).

84. 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 (7<sup>th</sup> 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 (2<sup>nd</sup> Dist. 2011); *Sykes v. District of Columbia*, 518 F.Supp.2d 261, 49 IDELR 8 (D.D.C. 2007).

85. 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 (1<sup>st</sup> Dist. 1983).

86. 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).

87. 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).

88. 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 (7<sup>th</sup> 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 (7<sup>th</sup> Cir. 1989)(in litigation, expert opinions must be grounded in facts and inferred from a process of logical reasoning).

89. 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 (7<sup>th</sup> Cir. 2010)

90. 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.

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).

Similarly, the focus of special education litigation is the educational requirements of the child. *A.G. v. District of Columbia*. 57 IDELR 9, 794 F.Supp.2d 133 (D.D.C. 2011), *Gill v. District of Columbia*, 751 F.Supp.2d 104 (D.D.C. 2010). Therefore, the litigation process must be structured in a way so as to maximize the chance that the disabled student will receive FAPE.

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 and other information 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).

91. In general, a settlement agreement conclusively resolves all issues fairly considered and meant to be included within the agreement's terms. *Vole, Inc. v. Georgacopolous*, 181 Ill.App.3d 1012, 1017 (1989). A mediation agreement is a settlement agreement and is binding and enforceable against the parties. Specifically, a mediation agreement is binding on the school district and parent(s) and enforceable in court. 34 CFR 300.506.

### **Conclusions of Law Related to Parents' Right to Notice and Parental Input into IEP Team Decisions**

92. Prior to proposing a change in placement, the District must provide a notice containing the description of the proposed change as well as an explanation of the reason for the proposed change and a description of the evaluations or other reasons the District is relying upon in deciding to undertake the change. 34 CFR 300.503.

93. A district must take into account and consider a Parent(s)' opinions and information regarding the student's placement and the nature of the student's disability. 34 CFR 300.322, 300.324(a)(ii). However, the regulations do not require that the District accept every request of a Parent in regard to placement, accommodations, or services. In general, every school district is required to have a continuum of placements available to mainstream every special education eligible student to the greatest extent possible. 34 CFR 300.115(a). However, every school district does not need to have every conceivable combination of rooms, class sizes, and facilities to accommodate every possible methodology for providing special education and related services in order to comply with the regulation. *Hough v. Indiana Board of Special Education Appeals*, 50 IDELR 131 (N.D. Ind. 2008). Moreover, ultimately, the district is entitled to make the ultimate determination as to the appropriate methodology to educate the student. *Lachman v. Illinois State Board of Education*, 852 F.2d 290, 297 (7<sup>th</sup> Cir. 1988)

94. Although the School District must comply with the procedural requirements of IDEA, hearing officers can only enter an order against the District if the procedural inadequacies: (1) impeded the Student's right to a free appropriate public education; or (2) denied the student some educational benefit; or (3) significantly impeded the parents' ability to participate in the decisionmaking process regarding the provision of a free appropriate public education. 20 U.S.C.A. 1415(f)(E)(ii)(I-III).

#### **Conclusions of Law Related to Whether Student is Being Educated in the Least Restrictive Environment**

95. Under IDEA, the School District has an obligation to educate Student to the greatest extent appropriate with his nondisabled peers. 20 U.S.C.A. 1412(a)(5)(A); *Board of Education of Township District No. 211 v. Ross*, 486 F.3d 267, 277 (7<sup>th</sup> Cir. 2007). Placements which require "special classes, separate schooling, or other removal of children with disabilities from the regular educational environment may occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." *Id.* The Seventh Circuit has declined to adopt any sort of multi-factor test for assessing whether a child must remain in a regular school. *Ross, supra*. See also *Beth B. v. Van Clay*, 282 F.3d 493, 499 (7<sup>th</sup> Cir. 2002). The ultimate question is whether the education in the conventional school was satisfactory, and, if not, whether reasonable measures would have made it so. *Id.*

96. In determining whether Student is receiving a satisfactory education, some factors which the undersigned will use to evaluate the placement in this case are: (1) whether a segregated placement is superior, and if so, whether the services which make the segregated placement superior can be replicated in the classroom, *Board of Education of Township No. 211 v. Michael R.*, 2005 WL 2008919 (N.D. Ill. 2005) citing *Roncker v. Walter*, 700 F.2d 1058 (6<sup>th</sup> Cir. 1983) *affirmed* 486 F.3d 267 (7<sup>th</sup> Cir. 2007); (2) whether there are educational benefits to mainstreaming, *Michael R. supra*, citing *Sacramento v. Rachel H. by Holland*, 14 F.3d 1398 (9<sup>th</sup> Cir. 1994); (3) whether there are non-academic benefits to mainstreaming, *Id.*; (4) whether there are other costs to the school district, *Id.*, See also *Z.S., supra*, 295 F.3d at 672.; (5) whether there

is a danger that the student is in danger of being physically harmed in the proposed classroom placement, 23 Ill.Admin.Code. 226.330, 34 CFR 300.116(d).

97. In general, hearing officers should defer to the district on issues of methodology as long as use of the proposed methodology is reasonably calculated to providing the student with an educational benefit. *Lachman v. Illinois State Board of Education*, 852 F.2d 290, 297 (7<sup>th</sup> Cir. 1988). Moreover, when a district's decision as to least restrictive environment is connected to implementing a reasonable methodology for educating the student, the hearing officer's deference should extend to the District's LRE determination (to the extent necessary for the District to implement its educational methodology)- as long as the District considered less restrictive alternatives. *Lachman, supra, Beth B. v. Van Clay*, 282 F.3d 493, 499 (7<sup>th</sup> Cir. 2002).

98. A school district must take intermediate steps whenever appropriate in determining a student's least restrictive environment. *Oberti v. Board of Education of the Borough of Clementon School District* 995 F.2d 1204, 19 IDELR 908 (3<sup>rd</sup> Cir. 1993).

99. It is not reasonable for a district to continue to implement a failing IEP without enacting significant revisions and attempting new methodologies to try and provide disabled children with a reasonable educational benefit. *O'Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692 (10<sup>th</sup> Cir. 1998).

100. Moreover, a District must revise an IEP when the IEP is obviously failing to produce progress or in any other situations when it would be appropriate to do so. *M.M. v. Special School District No. 1*, 512 F.3d 455, 49 IDELR 61 (8<sup>th</sup> Cir. 2008).

101. In determining whether an IEP is appropriate, 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. *M.B. v. Hamilton Southeastern Schools*, 668 F.3d 851 (7<sup>th</sup> Cir. 2011); *Thompson RJ-J School District v. Luke P.*, 540 F.3d 1143 (10<sup>th</sup> Cir. 2008); *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9<sup>th</sup> Cir. 1999); *Fuhrmann v. East Hannover Board of Education*, 993 F.2d 1031, 1041 (3<sup>rd</sup> Cir. 1993); *Roland M. v. Concord School Committee*, 910 F.2d 983, 992 (1<sup>st</sup> Cir. 1990).

### **Conclusions of Law Related to Harassment and Bullying Causing the Failure to Implement an IEP**

102. Material violations of a student's IEP will be a denial of FAPE and a violation of IDEA for which a parent and student can obtain redress in a due process hearing. *Sumter County School District 17 v. Heffernan*, 642 F.3d 478 (4<sup>th</sup> Cir. 2011); *Van Duyn v. Baker School District 5J*, 502 F.3d 811, 822 (9<sup>th</sup> Cir. 2007); *Neosho R-V School District v. Clark*, 315 F.3d 1022, 1027, nt. 3 (8<sup>th</sup> Cir. 2003); *Houston Independent School District v. Bobby R*, 200 F.3d 341, 349 (5<sup>th</sup> Cir. 2000).

103. A district must comply with the terms of the IEP to deliver FAPE. *Board of Education of the City of Chicago v. Illinois State Board of Education*, 55 IDELR 133, 741 F.Supp.2d 920 (N.D. Ill. 2010). Therefore, “. . .The materiality standard does not require that the child suffer

demonstrable educational harm in order to prevail in an implementation failure claim, although the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided." *L.J. v. School Board of Broward County, Supra*, See also, *Board of Education of the City of Chicago, supra*. The reason for this rule is to prevent a district from drafting an elegant IEP and then ignoring it until the parents can prove an educational harm. *Board of Education of the City of Chicago, supra*.

104. The District must implement the IEP as written, and cannot change the written requirements of the IEP without an amendment of the IEP by the IEP Team. *Independent School District No. 281 v. Minnesota Department of Education*, 48 IDELR 222, 107 LRP 56347 (Minn. Ct. App. 2007).

105. Relying upon a since rescinded regulation, the Seventh Circuit also noted in dicta that the school district must also act in good faith to achieve the goals and objectives of the student's IEP. *Alex R. v. Forrestville District No. 221*, 375 F.3d 603, 41 IDELR 146 (7<sup>th</sup> Cir. 2004).

106. In implementing an IEP, the school district has the right to choose methodology, so long as the methodology chosen is reasonably calculated to achieve educational benefit as defined by the terms of the IEP. *Lachman v. Illinois State Board of Education*, 852 F.2d 290, 297 (7<sup>th</sup> Cir. 1988). Thus, the School District personnel must be given latitude in exercising where and how to implement modifications and accommodations. *Belvidere Community Unit School District No. 100*, 108 LRP 32811 (Ill. SEA 2008). Similarly, the undersigned should also defer to the reasonable methodological determinations of day-to-day discretionary decisions of district personnel. *Independent School District No. 281 v. Minnesota Department of Education*, 48 IDELR 222, 107 LRP 56347 (Minn. Ct. App. 2007).

107. When harassment and bullying causes harm to a disabled student or prevents a disabled student from learning, this can cause a denial of FAPE for failure to implement the IEP. *Shore Regional High School Board of Education v. P.S.*, 41 IDELR 234, 381 F.3d 194 (3<sup>rd</sup> Cir. 2004). Obviously, a district is not using a reasonable methodology of instruction to disabled students when staff harasses and bullies children with disabilities thus denying a student FAPE. *Lachman, supra*. Bullying or harassment or failing to intervene to prevent bullying and harassment of disabled students is obviously bad faith in implementing the IEP as well, and under Seventh Circuit law, constitutes a failure to implement the IEP appropriately, *Alex R., supra*.

#### **V. Application of Law to Fact**

108. The undersigned finds that Issues 1a and 1b were withdrawn and settled during a mediation. The undersigned holds that I therefore no longer have jurisdiction to rule on them.

109. The undersigned finds that I must consider the District's decisions in light of the information the District had in February, 2012, and currently has, due to the fact that the District was unable to conduct full evaluations. Taking said limitations on the District into account, the undersigned finds the District correctly determined that [REDACTED] is an appropriate location of services for Student. In making that finding, the undersigned makes the following

findings: (1) given the programs and related services available, [REDACTED] is a superior placement to a placement at the District's main school. Specifically, Student is much more likely to obtain an academic benefit and social skills training at [REDACTED] art; (2) the programs available at [REDACTED] constitute reasonable methodologies to provide special education and services to Student; (3) Student is obtaining no academic or nonacademic benefit from mainstreaming given that he cannot tolerate the District's main school at this time; (4) the services at [REDACTED] cannot be replicated in the District's main school given the trained personnel and physical facilities available at [REDACTED] and some of the services and programs at [REDACTED] cannot be replicated in a classroom at all; (5) there is no credible evidence [REDACTED] would be more dangerous than any other placement for Student; and (6) [REDACTED] is a less restrictive placement than a homebound placement, and therefore [REDACTED] is an appropriate intermediate step before a homebound placement is necessary.

110. The undersigned finds that even if the notice provided to Parent was deficient under the pertinent regulations, that Parent suffered no harm from the lack of notice due to the District's offer to continue the IEP meeting and the fact that Parent was able to preserve their stayput rights before the proposed placement was implemented. Similarly, Parents' right to participate in the IEP creation process was not hampered given the District's efforts to reschedule if Parent chose.

111. The undersigned finds that the District took into account Parent's concerns and input in deciding Student's placement and location of services.

112. The undersigned finds that the District did not bully or harass Student. In making this finding, the undersigned finds that most of the things which Parent complains of were allowed or required by Student's BIP. It is not harassment or bullying to impose negative consequences for Student's behaviors. Moreover, there is no evidence the actions taken by District personnel in implementing Student's BIP were unreasonable, and so Parents have not met their burden of proof that the District's actions constitute a material violation of the IEP. Furthermore, the undersigned finds that the Parents have not met their burden of proof that stray comments were material violations of Student's IEP.

## **VI. Order**

113. Parent's requests in their due process complaint and otherwise are denied. The District is not required to take any action as a result of this order and may implement its proposed IEP.

## **VII. Right to Request Clarification**

114. 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**

115. This decision shall be binding upon all parties.

**IX. Right to File Civil Action**

116. 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: November 12, 2012

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