

Case Number: 2013-0030

[Redacted] vs. [Redacted]
Hearing Officer: W. David Utley

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 [Redacted]

Date and Timelines

Date of Written Request: 07/25/2012
Date of Pre-hearing Conf: 09/11/2012

Date of Hearing: 10/29/2012 to 10/29/2012
Date of Decision:

Summary of Decision

The Parent initiated a due process hearing request seeking a determination whether the Student's change of placement to a district research based self-contained classroom developed for students with [Redacted] was the appropriate placement for the Student. The Parents also contested whether the Student's nutritional deficits, elopement and video-monitoring concerns were appropriately addressed in the School District's proposed placement. In addition, even if this program was the appropriate placement, the parents contested whether the transition and transition period was appropriate. The parent suggested relief was placement at a different program and changes to address their various concerns.

The Student had been determined eligible under [Redacted]. As the School District did not have an appropriate placement for the Student in Kindergarten, she was placed at a therapeutic day school for students with [Redacted]. About a year and one-half later, the School District developed their own program (called the CASTLE program) for students with [Redacted]. The School District conducted an IEP meeting and determined that the CASTLE program was appropriate for the Student. This was a research based program which incorporated ABA therapy, social stories, STAR curriculum, Discrete Trial Training, a curriculum language based program, Teach Town (computer based program which deals with both academic and social issues and provides significant feedback) and Teach Town Social as well as data collection for fidelity and efficacy. All staff in the CASTLE program have been trained in Safe Crisis Management which focuses on de-escalation of behaviors.

The Hearing Officer found that the CASTLE program was appropriate for the Student and that the developed transition plan was appropriate at the time that it was developed. The School District did not need to find an alternative placement for the Student, did not need to provide continuous video-monitoring and did not need a "back-up" plan in the event that the CASTLE program proved ineffective for the Student. However, the current IEP failed to adequately address the Student's need for goals and objectives for her nutritional issues at school and failed to adequately address the Student's flight risk. The Student and School District were each represented by counsel.

The Parents initiated the request

DECISION

The Hearing in the above captioned matter took place on October 24, 25 and 29, 2012 at the Administrative offices of the [REDACTED]. The parties had been advised of their rights under Section 14.08.02 (a) of the School Code, 34 CFR 300.512 and 23 Illinois Administrative Code 226.625. The undersigned Hearing Officer has jurisdiction to hear and decide this case under 105 ILCS 5/14-8.02 (a) of Illinois School Code, 23 Illinois Administrative Code 226.600 et seq., and the Individuals with Disabilities Education Act 20 USC 1415. The Student was represented by [REDACTED] of [REDACTED] & [REDACTED] and the School District was represented by [REDACTED] & [REDACTED].

A. Procedural Background

The Parent's Request for an Impartial Due Process Hearing was dated July 25, 2012 and submitted on the Student's behalf by attorney [REDACTED]. The School District, by its Attorneys, responded to the Parent's Due Process Request on August 8, 2012. An initial Status Conference was held over the telephone on August 7, 2012 and by joint request, a Pre-Hearing Conference was set on September 11, 2012. The Pre-Hearing Conference was convened and the parties agreed to set this matter for Hearing on October 24, 25 and 29. At the Hearing, procedurally, the parties agreed and stipulated to admission of the Parent document book [Tabs 1 - 15] and the School District document book [School District (hereinafter SD) SD 001 - 736] and for admission of all the documents contained therein. Based upon the agreement, all documents in the parties document books were admitted into evidence.

On the last day of Hearing, the Parents' requested leave to supplement their documents with an evaluation completed on October 26, 2012. The School District objected. After argument and based upon 34 C.F.R. 300.512 (a) (3), 34 C.F.R. 300.512 (b) (1) and (2) and 105 ILCS 5/14-8.02a (g-50), this request was denied. However, the Hearing Officer allowed the Parent to mark this as an exhibit (Parent's Proffered Exhibit # 1 offered 10-29-12) for inclusion in the record for

purposes of any post hearing relief. The Hearing Officer will not consider this in ruling on any of the issues herein.

The parent called the following witnesses: the Student's mother and father; Illinois Center for [REDACTED] (hereinafter [REDACTED] Special Education Teacher [REDACTED] Education Services Director [REDACTED] Speech Therapist [REDACTED] Family Liaison [REDACTED] Kindergarten/CASTLE Teacher [REDACTED] Social Worker and Program Co-ordinator [REDACTED] Psychologist [REDACTED] and [REDACTED] Principal [REDACTED]. The School District included all of the above on its witness list and also the following: CASTLE Speech/Language Pathologist [REDACTED] CASTLE Occupational Therapist [REDACTED] Special Education Co-Ordinator/School Psychologist [REDACTED]; and Southern Illinois University - Edwardsville Assistant Professor [REDACTED], Department of Psychology.

B. Issues Presented

1. Whether the removal of the Student from [REDACTED] to [REDACTED] will cause a severe emotional problem for the Student and cause regression of the Student's behavior;
2. Whether the transition time would be too short if the Student is required to transfer to [REDACTED] School.
3. Whether there should be a back-up plan to accommodate the Student if the move to the new school ([REDACTED]) can't be accomplished because of the previous interaction between the Student within the school.
4. Whether videotaping at [REDACTED] should be provided to determine the source of the problem behaviors;
5. Whether the Student will experience a nutritional deficit and not be able to have enough energy to finish the school day.
6. Whether there should be a plan in place in the event the Student walks away from the school;
7. Whether an alternative placement (such as [REDACTED]) should be offered to accommodate the known problems presented by the Student.
8. Whether [REDACTED] has credentials to qualify as an expert in applied behavioral analysis.

C. Relief Requested

1. A gradual program in place to attempt to move the Student to a neighborhood school closer to home (for anticipated problems).
2. Allow a delay of at least six months to transition to a new school.
3. Develop a definite back up plan in the event the anticipated change to [REDACTED] cannot accommodate the Student and the school.
4. Installation of cameras as [REDACTED] for the specific areas where the Student would be located during the day.
5. Develop a plan that will successfully address the Student nutritional needs at school or, in the alternative, shorten the school day.
6. Assignment of one person to be with the Student at all times.
7. Investigate other schools available for the same purpose.
8. Production of document-degree from accredited school demonstrating the qualifications of [REDACTED].

D. Findings of Fact

The Student

1. The Student was born on September 28, 2004 and currently is in 2nd grade. [Hearing Document - SD 366]
2. She has been determined eligible for Special Education Services under the primary eligibility of [REDACTED]. [Hearing Document - SD 366] In the beginning of the 2010 - 2011 school term, the School District determined that it could not appropriately address the Student's behavioral issues. The Student was placed at the [REDACTED]
3. For the School Years 2010 - 2011 and 2011- 2012, the Student was attending the [REDACTED] [REDACTED] ([REDACTED]) [Hearing Testimony - [REDACTED]] Shortly after placement at [REDACTED], the Student started doing better in terms of her behavior. [Hearing Testimony - Student's Father]
4. The Student can communicate in 3 and 4 word sentences [Hearing Testimony - [REDACTED]] [REDACTED] She can communicate using complete sentences [Hearing Testimony - [REDACTED]] [REDACTED]
5. The Student is able to respond to verbal requests. She is verbal which not all [REDACTED] children are. She has a talent for drawing. She is creative and thinks creatively. She responds to

yes and no questions which is huge - it is an emergent step for her to answer higher level "WH" (what, when, who, etc.) questions. She is not far off the mark to do double digit addition. She is a sight word reader and thus decoding may be more difficult for her. [Hearing Testimony - ██████████]

6. She does go down to the lunch room for lunch but does not each lunch. She would unpack her lunch and then re-pack it later in the day. [Hearing Testimony - ██████████]
[Hearing Testimony - ██████████]

7. The Student does well with peers but if she doesn't like someone, she will tell them to get away from her. [Hearing Testimony - ██████████]

8. The Student can do parallel play with a couple of students she likes - sitting next to another student. She improved over the year. [Hearing Testimony - ██████████][Hearing Testimony - ██████████] In the classroom (██████████) during choice time, she has sought someone out if interested in interaction. She will interact until she is finished and then may invite them to play with her or leave the situation entirely. [Hearing Testimony - ██████████]

9. She is below grade in language arts, science and math and far below in social studies. She has made improvement in language arts and math. She has done very well in learning money and counting. Reading was getting better with the Student forming sentences. [Hearing Testimony - ██████████]

10. This year, the Student has shown an increase in her social language skills. [Hearing Testimony - ██████████]

11. The Student has had problems in behavior, especially as to aggression. In 1st grade, there was improvement as to her aggression. She was better at verbalizing when she was upset. [Hearing Testimony - ██████████]

12. Student has tantrums in the classroom for various reasons. [Hearing Testimony - ██████████]
██████████ [Hearing Testimony - ██████████] ██████████ has video monitoring equipment which allows the school to observe the Student's behavior and the antecedents to that behavior. [Hearing Testimony - Mother]

13. The School District requested that they chart the Student's aggressions. [Hearing Testimony - ██████████] Student is being tracked for aggression. [Hearing Testimony - ██████████][Chart of Student Aggressions - Appendix "A" based upon SD 433 - 449]

14. Aggressions typically come when the Student moves from a highly structured activity to less structured activity and then back to highly structured activity. [Hearing Testimony - ██████████]
██████████

15. Examples of her tantrums include throwing herself on the floor, pulling her hair and kicking. She would physically hit other students but did not hurt them. She did not attack the 1st grade teacher or aide. [Hearing Testimony - ██████████] The Student would not hurt herself intentionally [Hearing Testimony - ██████████] [Hearing Testimony - ██████████] During her tantrums, she verbally screams, cries, drops her body to floor, kicking her feet around on floor and throwing her arms around. [Hearing Testimony - ██████████] In addition, she might flail her arms/feet, have an upset voice and keep repeating a phrase. [Hearing Testimony - ██████████] She is not always aware of danger to herself. [Hearing Testimony - ██████████]

16. The Student's physical strength is very strong. It may take 2 or 3 adults to restrain her. From August 2011 to May 2012, physical restraint was used 1 time at ██████████. If she is over-stimulated, she can't handle the pressure. [Hearing Testimony - ██████████] [Hearing Testimony - Father] The Student is not a danger to peers though. [Hearing Testimony - ██████████]

17. The Student's threshold for frustration depends on what she is doing. If it is something she likes, she will do it forever. If not something she likes, i.e. ".2 seconds of tolerance", she will push it off the desk or verbalize "no". Re-direction back to task may take awhile. [Hearing Testimony - ██████████]

18. Goals and Objectives were developed for the Student's aggression on January 25, 2011. Progress reports of her IEP goals and objectives from 01-25-11 to 01-25-12 show that goal # 26 (decrease her aggressions) showed reduced aggressions. Incidents of hitting, kicking, biting and hair pulling was an average of 28 in January, 2012 and now shows 12 aggressive acts which is a decrease. The trend in behaviors was decreasing. The goal was decreasing to 20 which showed that she mastered this goal. [Hearing Testimony - ██████████] [Hearing Documents - SD 353 -354]

19. At ██████████ request, ██████████ has been tracking her behaviors. The Student was exhibiting (a) light slapping, hitting or kicking and (b) out of seat behaviors. These two behaviors are ones that they are currently tracking. [Hearing Testimony - ██████████] Out-of Seat Behaviors: Although they tracked out-of-seat (OOS) experiences at ██████████ she cannot determine if there is a correlation between OOS experiences and aggression. OOS behaviors typically are behaviors for escaping work that a Student does not like. [Hearing Testimony - ██████████]

20. The Student has never run away/taken off. [Hearing Testimony - ██████████] The ██████████ Family Liaison official hasn't seen that she might elope and does not recall discussing this with the parents. [Hearing Testimony - ██████████] Student is not in category called "flight risk". In terms of the fear of elopement, every room at ██████████ has one door that is barred but has a second exit which is not barred. So far, this has been a non - issue with her. She has been told that the Student has attempted to elope several times but she did not witness this herself. The only attempt that she noted was when the Student was frustrated by waiting for the

bus and was inching away. She was re-directed to the appropriate spot. [Hearing Testimony - [REDACTED]]

Evaluations

21. Psychoeducational Report - Triennial Re-evaluation- April 18, 2012 [Hearing Documents SD 325 - 331]

A. During the 2010 – 2011 school year, the Student attended [REDACTED] School in its Communication Disorders program. She demonstrated significant tantrums and meltdowns including hitting, kicking and self injurious behavior which led to her placement at the [REDACTED]. Currently, the [REDACTED] staff reports that the Student engages in 12 occurrences of physical aggression per day to include hitting, kicking and hair pulling and averages eight occurrences of out of seat (leaving the group) behavior per day. Previous test results were reviewed including the Stanford – Binet intelligence scales-5th edition (SBV); the Weschler Preschool and Primary Scale of Intelligence-3rd Edition (WPPSI – III); the Gillian [REDACTED] Rating Scale- 2nd edition (GARS – II) and the Child's [REDACTED] Rating Scales for (CARS). [Hearing Documents SD 325 - 326]

B. For this re-evaluation, the school psychologist administered the Stanford Binet Intelligence Scales-Fifth Edition (SB5), the Bracken Basic Concept Scale (Receptive)-Third Edition (BBCS - III) and the [REDACTED] Spectrum Rating Scales ([REDACTED] 2-5 Years) Parent/Teacher Ratings. In terms of these tests, the examiner noted that due to language delays and difficulty conditioning to certain tasks, the current evaluation results were not accurate and valid estimates of the Students true cognitive abilities and therefore the results should be interpreted with caution. [Hearing Documents SD 327]

C. On the Stanford Binet Intelligence Scales-Fifth Edition , the Student's overall intellectual ability fell in the mildly impaired or delayed range with significant difference noted between verbal and nonverbal skills. The Student perform better on nonverbal tests than verbal tests. On non-verbal IQ, she was borderline delayed and in verbal IQ and full scale IQ, she was mildly delay. She was considered borderline delayed in fluid reasoning, knowledge, quantitative reasoning and visual spatial processing. She was considered moderately delayed in working memory. [Hearing Documents SD 328]

D. On the Bracken Basic Concept Scale - Third Edition Receptive, as the Student's age was outside of the norm, information gathered here was purely for qualitative purposes. Trial items were completed with success. [Hearing Documents SD 29]

E. In the School Readiness Composite dealing with colors, letters, numbering/counting, sizes and shapes, she performed anywhere from 84% to 100%. [Hearing Documents SD 329]

F. On the [REDACTED] Spectrum Rating Scales - 6 – 18 years, the Student scored an elevated score in social/communication scales and DSM – IV – TR scales, a slightly elevated score in

unusual behaviors and an average score in self regulation. Her total score was an average score. Accordingly, this indicates characteristics of an [REDACTED] Spectrum Disorder consistent with her current diagnosis. [Hearing Documents SD 329 - 330]

G. In the evaluators opinion, the Student would benefit from a highly structured, language rich educational environment that would provide close supervision in a small setting where she has access to related services with frequent opportunity to practice/use functional language in addition to structured/leisure social opportunities with same age peers; her expressive/receptive and social language should be supported by visual or picture cues and/or sentence strips; she would benefit from the use of a visual daily schedule and visual schedules for specific work; structured observations of the student and the learning environment would be beneficial in determining whether the previous function of the Student's behaviors and behavior action plan are relevant to extinguish undesired behaviors and to reinforce appropriate replacement behaviors such as physical aggression and out of seat behavior. In addition to therapy sessions, the Student should be introduced to replacement phrases to verbally communicate asking for help, verbally protesting activity or indicating she is finished; and work tasks should be presented in the first/then format with the Student requiring frequent breaks to engage in preferred activity during work tasks. [Hearing Documents SD 330 - 331]

Testimony: The Student went willingly and was accompanied by her classroom teacher. She engaged in tasks with only a couple of prompts. She enjoyed manipulative activities. She had good verbal skills. Although she might have a distraction, she was easily able to transition back to the activity. There was no disruptive behaviors during evaluation. She recommended a highly structures language program. She also noted a handwriting problem and developed goals for this including a writing component on her IEP and use of a computer. [Hearing Testimony - [REDACTED] or] [Hearing Documents - SD 325 - 331]

22. Occupational therapy evaluation report - April 16, 2012 [Hearing Documents SD 320 - 323]

A. Observation: The social worker observed the Student at the [REDACTED] on April 16, 2012. She was seen in her music and science classrooms. During both lessons, she was observed to sit in her chair throughout although movement such as constantly putting her feet on the desk and propping them on her chair while bending her knees was observed. Upon redirection, she would place them appropriately. She followed directions during each lesson with minimal verbal cues to increase her visual attention. Her visual attention appeared to improve when engaged in class work or the science lesson on the computer. When transitioning from music to science, she did so without difficulty. She demonstrated greater difficulties with behaviors during unstructured times. During snack time, the Student was observed finishing a snack. [Hearing Documents SD 320]

The mother reported limited attention span, decreased safety awareness, difficulty transitioning from preferred activities, and a limited diet among other things.[Hearing Documents SD 321]

B. Sensory Profile Teacher Questionnaire: The Student scored in the typical performance range on registration, seeking, sensitivity, avoiding, auditory, visual, movement, and touch. She scored in the probable difference range for behavior and school factors (measurement of the student awareness and attention within the learning environment). Observation also noted these concerns. Although her writing was legible, she used a fist grip to write her first name. [Hearing Documents SD 321 - 322]

Testimony: The Occupational Therapist observed the Student both at [REDACTED] and at [REDACTED]. She was at [REDACTED] for 4 hours during the morning block. The students were brought into classroom and she was introduced to class and had each child introduce self. She sat down next to the Student and asked if she wanted any help with her assignment. The Student was very welcoming. The Student then transitioned to physical education in the gym. The Student was seeking her out. They played dodge ball and riding around on a scooter. While there, she did not observe the Student engage in any disruptive or maladaptive behaviors. The Student would speak in 2 - 3 word utterances and would respond appropriately. She transitioned from class to PE and back with no difficulty. She then observed the Student the next day at [REDACTED]. She greeted the Student as she got off of bus. The Student ran to playground. It was hot out - 105 degrees. Ms. [REDACTED] and she escorted them around and gave a quick tour of gym, commons and classroom. The Student called the school a "super school". She responded to questions but did not initiate discussion. They then all walked back to bus and said good-bye. During both of these times, she made no observation that the Student was anxious or upset. There was no problem transitioning back to bus. [Hearing Documents SD 421 - 422]. [Hearing Testimony - [REDACTED]]

23. Health and medical review – April 16, 2012

Although, in general, her health status is uneventful, the parents reported that although her appetite is good, she doesn't eat meat, fruit or vegetables and that she tends to get "stuck on one food". The parents expressed their concern about the Student's transition back to [REDACTED] School in that they are concerned she may try to run away. Additionally, they shared it's extremely difficult to get her to go somewhere when she doesn't want to go. [Hearing Documents SD 324]

24. Social Developmental Studies Summary – Reevaluation – April 16, 2012 [Hearing Documents - SD 316 - 319]

Educational history: The Student was enrolled in the [REDACTED] School in the Communications Disorder program in Kindergarten. A Behavior Intervention Plan was designed for the student targeting tantrums and meltdowns which included self injury and aggression towards others. Due to these tantrums and meltdowns and the intensity of them, she was placed at the [REDACTED] in September 2010 where she completed her kindergarten and first grade years. Currently, the [REDACTED] staff was reporting 12 aggressive acts towards other daily and incidences of out-of-seat behavior. [Hearing Documents SD 316 - 317]

The Student struggles adapting to new environments, becomes anxious in crowds and around new people. Wide open spaces seem to be anxiety provoking for the Student according to the mother. The parents report tantrums and meltdowns when the Student is asked to go somewhere that she does not want to go and has, on location, run away from environments during behavioral episodes. [Hearing Documents SD 317]

The Behavioral Assessment System for Children, 2nd edition, (BASC - II) was clinically significant for aggression and negative emotionality. She was considered at risk for withdrawal, anger control, emotional control and executive functioning. The Adaptive Behavior Assessment System, 2nd edition, (ABAS - II) has its primary relevance for a child's functioning in a school setting. The Student was found to be average in the conceptual composite, borderline in the social composite and below average in the practical composite and the general adaptive composite. [Hearing Documents - SD 318]. However compare this to the October 15, 2010 adaptive behavior assessment system, 2nd edition, (ABAS - II) wherein the Student was considered average in conceptual composite scale and on the GAC composite scale but above average in the social composite scale and practical composite scale. [Hearing Document SD 21]

In summary, the Student is an intellectually curious young girl who excels in artwork and enjoys animals. Novel environments and social situations seem to produce anxiety for her and she may react aggressively when presented with situations which make her feel uncomfortable. Changes in her school routine have resulted, at times, with an adverse reaction. She demonstrates weakness in the area of social interaction and emotional self control. She would benefit from a highly predictable environment both within the home and academic contexts in an effort to minimize anxiety while helping the student to develop academic and social skills. She should be presented with this systematically delivered method of self - regulation/coping strategies in an effort to increase tolerance for environmental variance coupled with systematic instruction/exposure to social expectations in an effort to develop social/leisure skills. [Hearing Documents SD 319] [Hearing Testimony - ██████████]

CASTLE Program

25. The ██████████ staff worked with ██████████ and the Southern Illinois University - Edwardsville (SIU - E) Department of Psychology in setting up the CASTLE program. They reviewed research to design the program elements that comprise the program. The program elements (after review of research) reviewed how to address ██████████ based upon behavioral principles in the learning process. This involved implementing a specific learning skill, task or stimulus with a very specific skills and responses with data collection. (Currently, SIU - E gives them feedback on their Discrete Trial data collection. They are looking at praises to see how consistent the staff is in providing appropriate re-enforcers.) [Hearing Testimony - ██████████]

26. Students with ██████████ have common needs: social skills deficit/difficulty, communication difficulty, language issues with some being non-verbal, anxiety in/with social situations and routine ritual behaviors. [Hearing Testimony - ██████████]

27. Critical program elements with [REDACTED] involve: 1) a highly structured, highly predictable program; 2) behavior challenges have to be planned for; 3) consideration of antecedent events that might trigger behavior, i.e. fire drill, assembly and have to be planned for and taught to the Student ahead of time; determination of problem behavior as attention seeking (re-direction), getting away from task, activity, etc.. [Hearing Testimony - [REDACTED]]

28. The CASTLE program addresses these through a use of visual schedules, the use of social stories for unique needs of students directed to a specific need, visual prompts throughout the day, and sensory components and feedback. The classroom is student needs based involving monitoring and sensory feedback. A Speech/Language pathologist will spend the majority of day with the students developing language skills. One focus in the classroom is on social skill development with built in social times, i.e. morning meetings working on social script; lunch and recess time are also development times. [Hearing Testimony - [REDACTED]]

29. In the CASTLE program, they will use ABA therapy, social stories, STAR curriculum, Discrete Trial Training, a curriculum language based program, Teach Town (computer based program which deals with both academic and social issues and provides significant feedback). As an important part of the program, there is data collection. All staff in the CASTLE program have been trained in Safe Crisis Management which focuses on de-escalation of behaviors. [Hearing Testimony - [REDACTED]]

30. In developing the CASTLE program, [REDACTED] in conjunction with SIU - E looked at materials and programs that correspond to the program elements (above) and are based upon [REDACTED] research. Among those selected are:

A. Pivotal Response Training (PRT) which correlates with Discrete Trials (teacher presenting stimulus) and observing the response.

B. STAR program which has positive findings in research. It has 3 levels - a specific hierarchy of skills with guides for teachers so they know where the child is and make sure that there were no gaps in learning. It includes (1) social and play/leisure type of domain, (2) a spontaneous language domain moving the child to more spontaneous levels of response, and (3) rotations from station to station with educational component being delivered by teacher, paraprofessional and speech/language pathologist. The key component is that the speech/language instructor is in class all/most of day which allows for an intense delivery in a 1 on 1 basis. The Student is engaged and re-enforcement is provided through a token board or penny system.

C. Teach Town - Technology which can be very motivating for student. This program is computer based with specific prompts which allow the Student to work on new skills as well as maintenance issues. Characters navigate the Student through tasks. Skills introduced through Teach Town are then re-enforced through the teacher. Communication skills and academic achievement are broken down into domains. It also allows for social and emotional issues such

as rules that govern friendships. There is an adaptive domain using coins, time, etc. There is also a self help domain for such items as social skills. It also covers academic achievement such as rhyming, sight words; phonemic awareness in language arts, and a cognitive domain

D. Teach Town - Social Skills – Using the same characters, this program uses video modeling to introduce skills such as following rules, interpersonal relationships, self-regulation and coping skills, and friendships;

E. There is also a reverse main streaming/access component to typically developing peers. This is introduced in ways that is not overwhelming in a controlled facilitated way. The staff identifies students who are great supports in the general education population. After training, they have them work with the CASTEL student's in art, music and PE in CASTLE program. [Hearing Testimony - ██████████]

F. Training There was/are intensive training sessions. There was a 2 day training session for the STAR program which goes over explicit methods of delivery including (a) to use natural reinforcers through PRT and (b) specific data collection. Other training: areas with separate training sessions/days included understanding behavioral/discrete trials; ██████████ and Teach Town Social; Social Stories; data collection and measures for progress monitoring; and Safety Crisis Management. [Hearing Testimony - ██████████ ██████████ the classroom teacher, attended a 5 full day training in the Spring, 2012 in Safe Crisis Management. She had a 2 hour training in Teach Town, a ½ day session on ABA - Applied Behavioral Analysis therapy and Discrete Trial Training, and the 2 full day training session in the STAR program noted above. There was a ½ day training in social Stories. [Hearing Testimony - ██████████]

31. In terms of the physical layout of the program, all rooms are in same hallway. The classroom is centrally located with the multipurpose room at one end of the hallway and the de-escalation room at the other end. Physical Therapy and Occupational Therapy are in between. Rest rooms are in the hallway, not quite directly across hall. Someone will accompany the student to the bathroom. There is an alarm on the outside door. The Student can get into playground but there is a fence to completely close it in so no one can leave the playground. [Hearing Testimony - ██████████]

32. The ██████████ program currently has 3 students with 4 staff members - the teacher, aides, the speech/language pathologist, the school psychologist and help from the occupational and physical therapists, art and music teachers and a P.E. Teacher. The current expectation is a total of 4 students which allows for a 1-on-1 environment. [Hearing Testimony - ██████████]

33. The protocol is that the bus will drop the students off at the sidewalk which leads to the side door so the students will go directly from bus to the hallway. No other students enter this way. The teacher or an assistant will meet the students and walk hand in hand to the class. If the student(s) needs the same person each time, the program will accommodate this. [Hearing Testimony - ██████████]

34. The template for the class room schedule might look like the following: (1) 9:00 - 9:40 - breakfast or engaged in a host of activities; (2) 9:40 - 11:00 - transition to the class room and start with a song (encourage eye contact, clapping, physical interaction between students; review of the visual calendar; a Discreet Trial block rotation where the teacher, the speech/language pathologist and the classroom aide (s) work with students; maintenance trials of previously mastered skills; (3) 11:00 - Gross motor break where the Students will go outside followed by a social skills activity facilitated by the school psychologist and speech/language pathologist; (4) Lunch followed recess (a gross motor block); (5) an academic block - working with the students individually; (6) 20 min PRT time which looks like play time but facilitates specific skill; (7) snack time in multi-purpose room (8) singing and music/social language practice followed by a Discrete block in the multi-purpose room; (9) an extension of [REDACTED] (10) iPad use involving a Discrete format (this is good at the end of the day when the students are tiring out; and 3:10 - 3:30: technology room to use interactive white board for summary of day. [Hearing Document - SD 720] [Hearing Testimony - [REDACTED]]

35. The structure of [REDACTED] program would be beneficial to the Student. It's predictability would/could provide soothing for the Student. Student's issues with social interaction could be targeted in this environment, i.e. engage with peers in facilitated play in structured manner. The staff-student ratio would allow her to develop coping skills in moment of agitation. [Hearing Testimony - [REDACTED]]

36. The [REDACTED] program can accommodate the Student's need for behavior support. The Student would benefit from participation due to staff - student ratio and "in house reverse mainstreaming" program. The [REDACTED] program can fill holes in social gaps and hopefully re-integrating her into larger classroom as some point. With the staff ratio being higher and additional space of classroom, this will allow them to handle the Student's behaviors. [SD 366][Hearing Testimony - [REDACTED]] [Hearing Testimony - [REDACTED]] Her speech/language goals in the IEP can be implemented in the [REDACTED] program. Social skills can be taught through the [REDACTED] segment. Specific skills i.e. nouns, etc. are part of STAR curriculum which will meet her needs. The Student would benefit from [REDACTED] program as it is a very strong curriculum and well supported. [Hearing Testimony - [REDACTED]]

37. In the [REDACTED] program, they will be able to work on aggression in the classroom. Even though the progress report shows a decrease in aggression, they will still need to address this. When the Student is in crisis and unable to calm in the classroom, the de-escalation room or the "blue room" is a place where she can sit as long as she is not causing harm to self. It is supervised with a teacher or assistant. There are balls and bean bag chair which can be moved about into room. There is a tent there where the student can go to feel safe. They will always try to have two (2) people in room. Typically, the Student is not there any longer than 10 minutes but the Student need(s) will dictate how long she is in room. It's called the blue room as the lights are blue which have a calming effect. [SD 734][Hearing Testimony - [REDACTED]]

38. To prevent elopement, the teacher/staff/student ratio is important. She would not be out on playground with fewer than three (3) adults. There is an alarm system on the door (locally

and [redacted] office). The small playground for the [redacted] program is fenced completely. The contractors were finishing the fence during the Due Process Hearing. [Hearing Testimony - [redacted]] Given the parent's concerns for elopement, they would need to determine the antecedents for this and plan for it. [Hearing Testimony - [redacted]]

39. If necessary, there is physical intervention in the [redacted] program based upon the Safe Crisis Management program. The teachers and staff are trained on specific goals and transports if the Student is harming self or others. If they couldn't calm her down, they will use specific methods to restrain her as taught by the Safe Crisis Management. They are trained to do multiple person restrain as a last resort. This involves one of two transports (1) hooking under arms with two adults - one on each side [holds are age specific] and (2) a cradle transport. [Hearing Testimony - [redacted]]

40. Based on [redacted] observations, the [redacted] program can provide for the Student as (1) it is highly structured with awareness of the Student's needs as to problem behaviors and how to respond; (2) utilizes the knowledge of how students changes can affect behavioral adaptation; and (3) the methods of instruction such as providing Discrete Trial Training and PTR. All of these are appropriate for this Student. [Hearing Testimony - [redacted]]

July 16, 2012 IEP [Hearing Documents SD 366 -418]

41. The elements of the [redacted] program were brought to IEP team. [redacted] presented the schedule and an explanation of the [redacted] block and the [redacted] program. [redacted] spoke about STAR instructional delivery. They reviewed where the Student was. The [redacted] staff indicated that they were using Touch Math (also within [redacted] program so there should be a smooth transition into the [redacted] math program). All team members, both those at [redacted] and those at the school district thought it sounded like a promising program and concluded that it was a great program relative to the Student needs. All felt that it would be a good program match for Student. The only concern was the physical transition from [redacted] to [redacted] program. The Parents stated that one of their main concern was about the Student's ability to transition from [redacted] to the [redacted] program, i.e. getting her from the house to the bus. There was also concern around the length of day vis a vis the Student's lack of eating at school. [Hearing Testimony - [redacted]]

42. They do not write goals for sensory needs of the Student as they fluctuate on a day to day basis. They do use a sensory diet/strategies that are affective for each individual student. These are not addressed through goal but through diet or strategy and would be in modifications/accommodations in the IEP. In her opinion, the Student would benefit from [redacted] program in terms of its sensory supports. The Student would have sensory strategies meant to address her issues. [Hearing Testimony - [redacted]] [Hearing Document SD 410: page 4-b sensory issues]

43. Sensory supports are included in the [REDACTED] classroom. A sensory diet/sensory option is built into the day and within the discrete trial training times. For example, there is a sensory folder which has pictures or phrases such as "I need _____" and 15 pictures to get them to a calming state. This approach wants the student to chose from what they will benefit. Once the student picks a card, the teacher will work with them. This is more pro-active instead re-active. [Hearing Testimony - [REDACTED]]

44. The IEP team discussed the Student at the July 16, 2012 IEP and made the recommendation to change the Student's placement from [REDACTED] to the [REDACTED] program at [REDACTED] School. [Hearing Documents SD 366 - 418]

A. The IEP team reviewed the social history, occupational therapy evaluation, psychological evaluation and speech/language and communication evaluation relative to the Student. The health history review noted that the Student does not eat at school. The current level of performance at [REDACTED] was reviewed. The District 7 [REDACTED] program was reviewed including the [REDACTED] (five hours weekly) and the instructional materials associated with this block. They also discussed the [REDACTED] Social Skills component. As the Student was currently Using Touch Math and that program is used in the [REDACTED] program, it would contribute to a smooth instructional transition in math. The district [REDACTED] program will allow for daily integration with a small number of typically developing peers from the general education setting in art, music and PE. As such, the team recommended placement in the general education school building which will allow for exposure to typically developing peers as well as access to research-based instruction for students on the autism spectrum in a less restrictive program. The team felt that the instructional program elements were of such positive significance that a transition plan would be worth the effort to transition from the Student's current setting. The goal of the plan would allow for the gradual removal of the Student from the current setting at [REDACTED] to the district [REDACTED] program at [REDACTED]. In the IEP teams opinion, the transition would be a significant component of the current IEP plan.

B. The Student was found eligible with a diagnosis of autism with sensory integration deficits, fine motor delays and language deficits. Specialized instructional formats with significant structural, visual and behavioral supports was necessary for the Student. It was important to focus on communication, speech/language and occupational therapies and instructional modalities to focus on increasing her social and pragmatic competencies.

C. In her prior attendance at [REDACTED] School in the Communication Disorders classroom, she exhibited elevated incidence of aggression and tantrumming which extended between five and 55 minutes with the average being 15 minutes. At her current placement at [REDACTED] she engages in an average of 12 acts of aggression daily which was considered clinically significant. The recommendation was for a highly organized predictable environment to address this. The Student also had delays in receptive/expressive communication and social/pragmatic language which impacted her understanding and ability to function. Fine motor skills also impact her independence with adaptive skills and writing skills. Sensory processing delays also impact her ability to self regulate in order to attend and participate in the educational setting.

D. The parents remain concerned about the critical risk of elopement/fleeing from a safe learning environment. The IEP team noted that this should be addressed with systematic steps.

E. Based upon the evaluations and the discussion at the IEP meeting, the IEP team determined that a special education self-contained classroom would be the recommended placement for the student. As such, the IEP team was making a recommendation for a placement change to the School District [REDACTED] program. The Student would be provided language arts, math, social studies, science/health, art music and PE in that setting. There would be a therapeutic communication program which would provide 1875 minutes per week. Included in this would be the follow: a push in counseling program which provides for 150 minutes per week of counseling, speech and language therapy on pull out basis for 40 minutes per week and occupational therapy on a pull out and push in basis for 30 minutes per session.

45. The family was not able to come to the School District's presentation to parents about the [REDACTED] program so the School District sent a Power Point via e-mail to the parents and then held a phone conference (either March/April 2012) so the parents could visually look at it as they went through the Power Point presentation. They reviewed all components. [REDACTED] and [REDACTED] participated and spoke with [REDACTED] [Hearing Testimony - [REDACTED]] [Hearing Document - SD 425 - 428]

Transition

46. The parents are very concerned about the transition and the program at [REDACTED]. They are concerned that the Student may feel worse and more frustrated. There is a regression concern. One of their major fears is that the Student will run away (elopement). There is also the concern for her nutrition as she does not eat lunch at school. They are also concerned that her aggressive behaviors will get worse and that the de-escalation room at [REDACTED] will only increase her aggressive behaviors. They are also concerned that there is no back up plan if the transfer to the [REDACTED] program at [REDACTED] is not successful. They feel that there should be video cameras as at [REDACTED] to determine the Student's antecedent behaviors. [Hearing Testimony - Mother and Father]

47. The parents expressed concerns about the program being a [REDACTED]. She did not recall that the parents were unhappy with program but rather that the program was at [REDACTED]. [Hearing Testimony - [REDACTED]]

48. The Student has transitioned to a new building this year at the [REDACTED]. It was not a gradual transition. Rather, she went from the main campus to the other campus without a transition period. They did conduct an open house to bring the Student in and to meet new teachers. The family did bring her to open house. The Student did very well with this. [Hearing Testimony - [REDACTED]]

49. The Student will need transitional supports for the transition from [REDACTED] to the [REDACTED] program as this is more than going from one bus to a new bus. [REDACTED] was involved in writing the transition plan. Minimally, it should take a month to make the transition. She would evaluate the transition plan at the conclusion and if more time was needed, she would advocate for additional supports. [Hearing Documents - SD 368] [Hearing Testimony - [REDACTED]]

50. The [REDACTED] team was very collaborative in their role in transitioning the Student back to [REDACTED] program. During the summer, they planned on having (1) the Student experience the grounds, (2) systematically introducing the Student to staff members at [REDACTED] and (3) meeting her in a comfortable setting with the teacher and parents at natural setting. [Hearing Testimony - [REDACTED]] They did not develop dates at this point. Dates and actual activities were determined later.[See Hearing Documents - Sd 4240 - 424]

51. The actual transition during the school year was to occur over a period of 4 weeks. The elements involved: 1) a functional behavior assessment for a clear understanding and consensus regarding the Student's presenting target behaviors; 2) a behavior action plan which involved speech/language personnel visiting the [REDACTED] campus to see what visual support [REDACTED] was using with Student so they could establish the same type of supports; 3) reviewing what language scripts/supports the Student was comfortable; 4) the Student was to visit the [REDACTED] program/class on small visits to build trust and having someone the Student is comfortable with from [REDACTED] visit with her and be involved with her at the [REDACTED] program and then gradually fading out of the picture; 5) as the Student is creativity, they were going to have her create a mural using the collaboration of [REDACTED] and [REDACTED] art teachers. This would be started at [REDACTED] by providing mural paper and then bringing it to the [REDACTED] program. The Student would have a piece of art work started at [REDACTED] and now integrated into the new learning program at [REDACTED] which would be an extension of something started at [REDACTED] [Hearing Testimony - [REDACTED]]

52. There was a discussion of transitional supports to [REDACTED]. Initially the [REDACTED] staff would visit her at [REDACTED] and then having her and the [REDACTED] staff visit [REDACTED]. [Hearing Testimony - [REDACTED]] [Hearing Document - SD 420 - 424]

53. The Student came to [REDACTED] over the summer with her classmates and teacher from [REDACTED]. She rode bus with her peers from [REDACTED]. She had no difficulties getting off bus. [REDACTED] and the Speech/Language pathologist met her and watched her play on playground. They walked around building and walked to her classroom and cafeteria. At that time, there were no [REDACTED] students present - only those with her from [REDACTED]. There were no behavioral outbursts and no anxiety. She was smiling. She made utterances such as "this is such a beautiful school" and "what a great school". There was no change of demeanor when she entered building and walked around. No problems getting back on bus. Later, the staff at [REDACTED] did not share that the Student had any difficulty with visit. [Hearing Testimony - [REDACTED]]

Disclaimer: Hearing Officer was not provided the transcript in this case and had no access to it as it has not yet been transcribed. The recitations of the facts of this case were gleaned from a

review of the documents and the Hearing Officer's notes as to the facts elicited or facts that could have been inferred from the testimony of the witnesses herein.

E. Burden of Proof

The Supreme Court in *Schaffer v Weast*, 546 U.S.49 (2005) has held that the party filing the request for due process bears the burden of persuasion. "The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief" *Id.* at 537. However, per *Schaffer*, the states may, if it wishes, put the burden on the school district.

In Illinois, "the IDEA framework ... provides that 'the school district shall present evidence that the special education needs of the child have been appropriately identified and that the special education program and related services proposed to meet the needs of the child are adequate, appropriate and available'. 105 ILCS 5/14 - 8.02 (h) states only that a district's obligation is to present evidence, it does not place a burden of proof on the district. See *Schaffer*, *Id.* at 533-534 (distinguishing burden of production from burden of persuasion). As such, section 8.02(h) does not contain the explicit burden of proof language necessary to override the default rule the plaintiff, as a party challenging the IEP, bore the burden of proof." *Kerry M & Kristine M v Manhattan Sch. Dist. # 114*, 106 LRP 58547, 46 IDELR 194 (7th Circuit, No. Dist. IL, 2006).

Putting it in different fashion, it is the parent's burden to present sufficient evidence to support their allegations and entitled to such relief as they are seeking.

F. Conclusions of Law

- 1. Whether the removal of the Student from [REDACTED] to [REDACTED] School will cause a severe emotional problem for the Student and cause regression of the Student's behavior.**

The parents have filed their due process complaint relative to various issues surrounding the most current IEP of July 16, 2012 which provides for the transition of the student from the [REDACTED] to the [REDACTED] program. The student has been in attendance at the [REDACTED] program for her kindergarten and first grade years. [Findings of Fact - 3] At the time that her IEP provided for her placement at [REDACTED] the district did not have a program that could deal with the student's behaviors. [Findings of Fact - 2, 21 & 24] She was experiencing tantrums and meltdowns which lasted anywhere from five minutes to 55 minutes an average 15 minutes. [Findings of Fact - 44] During her time at [REDACTED] the parents have noted a significant change in the student's behavior and progress in her academic pursuits. [Findings of Fact - 3] The parent is concerned given the student's diagnosis of [REDACTED] and the behaviors exhibited by the student previously at the [REDACTED] School [REDACTED] program as well as those exhibited at [REDACTED] over the past two years that the student will display increased emotional problems and experience a regression of her progress at [REDACTED] upon the transition to the [REDACTED] program. [Findings of Fact - 44, 46]

Although the student has made progress on her goals and objectives at [redacted] [Findings of Fact - 9 - 11], there are still considerable instances of the students aggression, characterized by kicking and hitting others as well as pulling hair. [Findings of Fact - 12 - 15] More recently, in August of 2012, there were 101 instances of aggression and in September, 2012 there were 25 instances of aggression. Dependent upon how one calculates the average for these whether by number of attendance days or number of days where aggressive behavior is noted, in August she averaged either 12.62 incidents per day if we count only the days that this behavior was noted or 7.6 if we include all attendance days. Improvement was noted in September where the average per aggressive day would be 6.25 and the average for attendance days 1.47. [Appendix "A"] [Hearing Documents - SD 433 - 471]

The School District implemented a new program at the [redacted] School called the [redacted] program. [Findings of Fact - 25] This program was developed in conjunction with the [redacted] University - [redacted] [redacted] psychology department and particularly [redacted], an expert in learning and behavioral analysis. The School District reviewed research to design the program elements that comprise program. The program elements reviewed how to address [redacted] based upon behavioral principles in the learning process. This involved implementing specific learning skill, task or stimulus with a very specific skill and response with data collection. They looked at materials and programs that correspond to those program and are based upon autism research. [Findings of Fact - 25 - 30]

Addressing issues of placement, the Seventh Circuit in *Heather S v. State of Wisconsin*, 125 F. 3d 1045 (7th Cir., 1997) stated that

“the issue is whether the Richmond placement was appropriate, not whether another placement would also be appropriate or even better for that matter. The school district is required by statute and regulations to provide an appropriate education, not the best possible education. *Board of Educ. of Community Consol. Sch. Dist. 21 v. Illinois State Bd. of Educ.*, 938 F. 2d at 715 ... or the placement the parents prefer. *Lachman v. Illinois State Board of Educ.* 852 F. 2d 290, 297 (7th Cir. 1988) This is not to say that the Richmond placement is not the best available. Indeed, there likely is more than one solution to the problem of best educating Heather. Each would have its strength; each would have its weaknesses. The court is particularly incapable of making such judgments, which is why it must defer to train educators and not substitute “[its] own notions of sound educational policy for those of the school authorities which they review.” *Board of Educ. of Community Consol. Sch. Dist. 21 v. Illinois State Bd. of Educ.*, 938 F. 2d at 715 ... *Heather S v. State of Wisconsin*, 125 F. 3d 1045 (7th Cir., 1997)

Likewise, here the issue under the IDEA is not what is the best available placement for the student, but rather is the placement for this particular student appropriate. The IEP team, which brings together a variety of persons familiar with the needs of the student (34 C.F.R. 300.321), is a mechanism designed by the IDEA to provide for the student's placement. It is charged with considering

“all significant facets of the students disability, both academic and behavioral. *CJN v. Minneapolis Pub. Schs.*, 323 F. 3d 630, 642 (8th Cir. 2003). That is why a school district IEP team is required to assess whether the students disability – related behavior impedes his or her learning *or that of others*’ in the classroom. 20 U.S.C. Section 1414 (d) (3) (B) (I) (emphasis added). An IEP that fails to address disability related actions of violence and disruption the classroom is not ‘reasonably calculated to enable the child to receive educational benefits.’” *Alex R., ex rel. Beth R. v. Forrestville Valley Community Unit Sch Dist. # 221*, 375 F. 3d 603 (7th Cir. 2004)

In the instant case, the school district included a number of people including staff from the [REDACTED] as well as its own staff. Those attending the July 16, 2012 IEP included four members from the [REDACTED] staff, eight members from the [REDACTED] district staff and the parents and a parent advocate. [Hearing Document - SD 366] The team reviewed a number of the items including the evaluation results of the school psychologist, social worker, the occupational therapist, the nurse and the speech/language pathologist. [Findings of Fact - 21 - 24] [Hearing Documents - SD 369 - 377] They considered the students present levels of academic achievement and functional performance. [Hearing Document - SD 378 - 381] They developed extensive goals and objectives for the student dealing with her specific disability. [Hearing Document - SD 381 - 409]. Although the parents declined to sign a consent for a new behavioral evaluation, the IEP team, based on the information available, adopted the behavioral intervention plan previously developed on January 19, 2012. [Hearing Documents - SD 413 - 416]. Based upon all of this, the IEP team concluded that the [REDACTED] program at the [REDACTED] School would be the appropriate placement for the student in the least restrictive environment. [Findings of Fact - 41, 44]

Among the issues as to an appropriate placement for the Student is a consideration of the Least Restrictive Environment (LRE). This Student’s placement must also be considered in this light. The IDEA is the appropriate starting point for this analysis. IDEA (34 CFR Section § 300.114, 2006) instructs that:

- (2) Each public agency must ensure that –
 - (I) To the maximum extent appropriate, children with disabilities including children in public or private institutions or other care facilities are educated with children who are nondisabled; and
 - (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature of the severity is such that education in a regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily.

Here, prior to the school year 2012 - 2013, there was no dispute as to the appropriate placement for the Student. The [REDACTED] District was unable to provide an appropriate

placement and determined that the [REDACTED] was the appropriate placement for the student for that time. [Findings of Fact - 24] As such, placement at the [REDACTED] was the appropriate placement for the student based on her unique needs at that time. However, the [REDACTED] is a therapeutic day school geared specifically to the needs of children with [REDACTED]. It does not provide a general education to the general population. Rather its mission is to assist with the education of students that have been diagnosed on the [REDACTED] spectrum

In Letter to Wessels, 16 IDELR 735 (OSEP 1990), OSEP stated,

“ In making placement decisions, the placement team must “[d]raw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior” and ensure that such information “is documented and carefully considered.” 34 CFR § 300.533(a)(1)-(2). In addition, under 34 CFR § 300.533(a)(4), the placement decision must be “made in conformity with the least restrictive environment rules in §§ 300.550-300.554.” These least restrictive environment (LRE) provisions require, among other factors, that a child’s placement be determined at least annually, based on his or her IEP, and made in the school or facility “as close as possible to the child’s home.” 34 CFR § 300.552(a)(1)-(3). EHA-B’s LRE requirements also mandate that public agencies make available a continuum of alternative placements, or a range of placement options---including “instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions”---to meet the needs of children with handicaps for special education and related services. 34 CFR § 300.551(a) and (b)(1). Further, under 34 CFR § 300.552(b), public agencies must ensure that these placement options are made available to the extent necessary to implement each child’s IEP.

The Department of Education via the 2006 regulations “strongly encouraged public agencies to place a child with a disability in the school and classroom the child would attend if the child did not have a disability”. Analysis of Comments and Changes to 006 IDEA Part B regulations, 71 Fed. Reg. 46576 (August 14, 2006). If there are two or more locations that could provide the appropriate services for the unique needs of the student, that Analysis indicated that the administrators should have the flexibility to assign a student to a particular school.

Here the [REDACTED] might continue to be able to provide services for the student but the [REDACTED] District’s [REDACTED] program can provide not only an appropriate educational and academic placement for the student but can also provide some experiences appropriate with general education peers in their reverse mainstreaming component as required. [Findings of Fact - 25 - 40]

The parents, as noted above, have expressed their concerns about the students emotional status as well as regression based upon the change in placement. [Findings of Fact - 44] Detrimental effects to a change in placement is a factor to be considered. In the unpublished case of *J.E. v.*

Boyertown Area Sch. Dist., 452 Fe. Appx. 172 (3rd Cir., 2011), the School District must consider the impact of the proposed changes. The parents in this instant case have expressed their concerns to the School District about varying topics including the students emotional status and potential regression. In addition, they had also expressed their concerns about transition, elopement/running away, and crisis management. [Findings of Fact - 44, 46 and 47] The School District has responded with a transition plan that was developed to assist the student in the transition from the [REDACTED] to the [REDACTED] program. [Findings of Fact - 46 - 53]

In terms of the emotional behavioral concerns of the parents, the [REDACTED] program can accommodate the Student's need for behavior support. According to the School District's staff, the Student would benefit from participation due to the staff - student ratio and "in house reverse main-streaming" program. With the staff - student ratio of approximately 1 to 1 and additional space in the classroom, this will allow them to handle the Student's behaviors. [SD 366][Hearing Testimony - [REDACTED]e] [Hearing Testimony - [REDACTED]] Social skills can be taught through the Teach Town segment. [Hearing Testimony - [REDACTED]] [Findings of Fact - 29, 30, 35 - 37]

At [REDACTED] a total of 825 recorded incidents of aggression has taken place over the last year and a half. {Appendix "A"} [Hearing Documents - SD 433 - 471] This aggression can take many forms including kicking and hitting, pulling hair, throwing herself on the ground, injuring other students and teachers etc. [Findings of Fact - 15, 17 - 19] Statistically, dependent upon the method of calculation, this averages out to anywhere from .12 at the low end to 12.62 at the high-end in terms of average aggressions in the course of a day. [Appendix "A"] Although the parent has noted that, in their opinion, [REDACTED] has done a wonderful job in terms of decreasing the students behavioral challenges including meltdowns and tantrums, empirical data suggests that these meltdowns and tantrums persist and at a frequent basis. [Findings of Fact - 3]

The [REDACTED] program will address these emotional behaviors, social skills deficit/difficulty, communication difficulty and anxiety in/with social situations and routine ritual behaviors (kicking and hitting pulling hair etc.). The [REDACTED] program addresses these through a use of visual schedules, the use of social stories for unique needs of students directed to a specific need, visual prompts throughout day, and sensory components and feedback. One focus in the classroom is on social skill development with built in social times, i.e. morning meetings working on social script; lunch and recess time are also development times. [Hearing Testimony - [REDACTED]] [Findings of Fact - 28 - 30, 35 - 37]

If necessary, and the Student is not able to be calm through verbal re-direction, the [REDACTED] staff has been thoroughly trained to handle crisis management under the Safe Crisis Management program. For an example of a de-escalation techniques etc., the Student can be escorted, if necessary, by means of physical restraint to the de-escalation room which provides a safe location for the student to calm themselves. There is a tent there for them to be alone if they wish. [Findings of Fact - 37] The school psychologist is available on a needs basis in addition to being in the classroom one on one at various times. [Findings of Fact - 37] At all times, two (2) school staff from the [REDACTED] program he will be present and will report and record what

transpires. [Findings of Fact - 37] Although the Parents have indicated that the Student's placement at [REDACTED] have reduced the incidence of behaviors and emotional meltdowns, the statistics and frequency of the Student's tantrums and meltdowns is still not insignificant. [Hearing Documents - SD 433 - 471]

In terms of regression of the Student's abilities, [REDACTED] the special education program coordinator and one of the program developers for the [REDACTED] program, testified that the instructional models used in the [REDACTED] program are systematic and individualized. Therefore, if the Student begins to regress in academic and cognitive skills, the program will adequately address this. This would be predominately in the [REDACTED] program which is a computer based program which provides for both progress and maintenance. [Findings of Fact - 37] [Hearing Testimony - [REDACTED]]

The consensus of the July 17, 2012 IEP team was that the placement at the [REDACTED] program at the [REDACTED] School would be a good fit and appropriate program for the Student. The Student would benefit from the various programs that are being utilized in the [REDACTED] program to address not only her academic and instructional needs but also her emotional needs and behaviors. [Findings of Fact - 41, 44]

In a similar case wherein the school district had recently established a self-contained classroom and program for autistic children which utilized, as one component, the educational technique known as [REDACTED] and [REDACTED] ([REDACTED]), the First District Court of Appeals noted that "[REDACTED] is very difficult for parents, as well as teachers, to handle, and there are divergent theories as to the best treatment." The parent wanted a technique known as Discrete Trial Training to be used with their [REDACTED] child. The school district provided through their program the [REDACTED] strategies to assist autistic children. The court found that there were many elements of the [REDACTED] [REDACTED] within the [REDACTED] program and declined to order a different program from that proposed by the school district. *LT, TB and EB v. Warwick Sch Committee*, 361 F.3d 80 (1st Circ., 2004).

Similarly here, the [REDACTED] program is a research-based program that incorporates multiple strategies and multiple options for dealing with [REDACTED] children. At its core is a low staff to student ratio of typically no more than 1 to 1. It utilizes components of the [REDACTED] [REDACTED], the [REDACTED] program and other programs noted above to provide a structure and academic education for the [REDACTED] children which includes [REDACTED]. It provides many components that can allow the Student to be successful - both academically and emotionally. And unlike the [REDACTED] program, at some point in the future, it has the opportunity to expose the Student to her non-disabled peers. [Findings of Fact - 30]

As such, this issue is found in favor of the School District. The School District need not find other schools closer to home. The Student's placement is the [REDACTED] program at the [REDACTED] School.

2. Whether the transition time would be too short if the Student is required to transfer to ██████ School.

The Parents have voiced concerns, as noted above, as to the transition from the ██████ program to the ██████ program. However, separate and distinct from the overall transition is the Parents' concern about the actual method of transition and transportation services. As the Parent has noted, in the morning, on various dates, they have difficulty getting the Student onto the school bus or into their van in order for the Student to be transported even to the ██████ program. The Student is noted to be very stubborn relative to this. At times the stubbornness is so severe that the parents are not able to have the Student attend school for that day. [Findings of Fact - 46, 47] [Hearing Testimony - Father]

At the beginning of this academic year, the Student transitioned from the main campus at ██████ to a satellite program without significant difficulty. The transition was not considered a gradual one.. The only activity undertaken to ease the transition was an open house for the Student to meet the new teachers. In fact, the Student did very well with this. [Findings of Fact - 48]

According to testimony, the Student needs extensive transitional supports for the transition from ██████ to the ██████ program. It may take a month or more for her to make the transition. [Hearing Testimony - ██████] Various activities were planned to allow the Student to make the transition with as little difficulty as possible. [Hearing Testimony - ██████] [Hearing Document SD 420]. Several of the activities have already been undertaken including a play date and observation of the ██████ facilities. [Hearing Documents - SD 421 - 424] However, in terms of the actual transition from ██████ to ██████, due to the stay put, this is not taken place yet. Part of that plan was for an ██████ teacher to accompany the Student to the ██████ program and spend a portion of the day with her there gradually fading out of the picture over time when the Student adapted to their program. [Findings of Fact - 50, 51]

Going forward, the transition plan will still be a major component of the Students transition from ██████ to the ██████ program at ██████ School. In the case of *West New York Board of Education*, 50 IDELR 239 (N.J. State Ed. Agency, 2008), the school district there was presented with a similar factual scenario. The school district determined that an in district program was the appropriate placement in the least restrictive environment for the student. The student's mother objected to the transfer as it was not appropriate for her son, expressed concerns about safety and concerns about regression. The hearing officer in that case denied the parents request to maintain the student's out of district placement and determined that the school district's proposal not only was an appropriate education but one that educated the student in the least restrictive environment. As part of the discussion, the hearing officer there noted the transition plan allowed the student for the first two weeks to spend one day in the new placement and four days in the old. On the following two weeks, the student was to spend two days in the new placement in three days in the old. Eventually the student would transition full-time to the new placement. In that case, the transition was going to be completed in time for the start of the school year.

Likewise here, the School District developed a transition plan to address the Student's needs for predictability and safety. Several of the steps proposed were undertaken during the summer with moderate success. [Finding of Fact 50 - 53] More steps were to follow but for the stay put. The School District appropriately identified the physical transition from the [REDACTED] to the [REDACTED] program and developed a plan to assist the Student in transitioning. The plan allowed the Student to gradually be introduced into and acclimated to the [REDACTED] program. [Findings of Fact - 51 53]

Due to the stay put and the due process hearing, this transition process will need to start over again. The School District will still need to put in place an appropriate transition plan developed by the [REDACTED] staff in conjunction with the District 7 staff to address a new transition given the delays.. Due to the delay in transition because of the stay put and this due process hearing, the School District through its IEP team does need to plan and begin for a successful transition for the Student to the [REDACTED] program at the [REDACTED] School. However, this is merely *dicta* as I find that the School District transition plan was appropriate when developed.

Accordingly, this issue is found in favor of the School District.

3. **Whether there should be a back-up plan to accommodate the Student if the move to the new school ([REDACTED] can't be accomplished because of the previous interaction between the Student within the school; and**
7. **Whether an alternative placement (such as [REDACTED]) should be offered to accommodate the known problems presented by the Student.**

Issues Three and Seven will be considered together as both of them ask, in essence, the question "what if". The IDEA does not require alternative contingency plans. What the IDEA does require is that a student be provided a Free and Appropriate Public Education (FAPE). The Supreme Court has referenced that this term, Free and Appropriate Public Education, means special education and related services which have been provided at public expense and include appropriate education provided in conformity with the individualized education program as set forth in section 20 USCS 1414 (a.) (5). The Supreme Court identified two prongs to determine whether a school district has provided a FAPE. The first deals with procedural requirements (not involved in this matter) and the second is the development of an IEP consistent with the statute that is calculated for a student to receive educational benefits. *Board of Education of the Hendrick Hudson Central School District, Westchester County et al v. Rowley*, 458 U.S. 206, 102 S. Ct 3034 (1982).

This second prong requires the District provide an IEP that is calculated to allow the student to benefit from his educational experience *T. H. v. Bd of Ed of Palatine Comm Consol. Sch. Dist.* 55 F Supp. 830 (N.D., Ill. 1999); See *J. P. Ex rel. Mr. and Mrs. P. V Newington Bd. of Ed.*, 546 F. 3d 111. An IEP needs to contain goals and objectives which are measurable. *Independent Sch. Dist. No. 701, Hibbing Pub. Sch. v. J. T.*, 45 IDELR 92 (Minn., 2006). As noted therein,

“The instruction and services must meet the state's educational standards, must approximate the grade levels used in the state's regular education, and must comport with the child's IEP. Id. The objective of the criteria set out in federal law is ‘the achievement of effective results -- demonstrable improvement in the educational and personal skills identified as special needs -- as a consequence of implementing the proposed IEP.’ *Town of Burlington v. Dept. of Educ. for Com. of Mass.*, 736 F.2d 773, 788 (1st Cir. 1984) (citations omitted).”

Under 20 U.S.C. Section 1414 (d) (A)(i)(I - IV), the IEP must include a statement of the child's present level of academic achievement and functional performance; a statement of measurable annual goals, including academic and functional goals; a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports will be provided; and a statement of the special education and related services and supplementary aids and services needed. This the Student's July 16, 2012 IEP does. [Findings of Fact 44]

Nowhere in the statute or in the case law is there a provision for a contingency if the IEP or the instructional program for the student does not work. What is provided for is the opportunity for parents to request an IEP meeting to deal with concerns that they may have and/or re-evaluation (34 C.F.R. 300.303), to provide new and/or updated evaluations, to have an annual review of the students program (34 C.F.R. 300.324) and to have a triennial re-evaluation of the student (34 C.F.R. 300.303).

This issue must be viewed in the context of the July 16, 2012 IEP which is the IEP that changed the Student's placement from ICA to the CASTLE program at [REDACTED] School. As noted in *Roland M. v. Concord Sch. Comm.* 910 F. 2d 983, 992 (1st Cir. 1990), “An IEP is a snapshot, not a retrospective. In striving for ‘appropriateness’, an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated.”

Likewise, here, the July 16, 2012 must take into account what was and was not reasonable at that time. To assume the Parents' position, one must presume that the proposed plan will fail. However, the IEP team which consisted of multiple people from various disciplines from both [REDACTED] as well as the School District felt that it would be appropriate for the Student. The July 16, 2012 IEP was reasonable at that time for the Student. [Findings of Fact - 44]

In addition, the Parents have various opportunities for input into the IEP program for their Student. They have the availability of various opportunities as noted above to request re-evaluations, independent educational evaluations and provision for annual reviews and triennial re-evaluation's, There is no need for alternative contingency plans. Whether there should be a back-up plan to accommodate the Student if the move to the new school [REDACTED] can't be accomplished because of the previous interaction between the Student within the school and/or whether an alternative placement (such as [REDACTED]) should be offered to accommodate the known problems presented by the Student cannot be determined at this time. Until the [REDACTED] program can be given an opportunity to work with appropriate reporting and documentation as to the Student's progress on her IEP goals, the Parents' request for a backup plan and/or alternative

placement is premature. The appropriate time to deal with this after the Student's transition into the [REDACTED] program at [REDACTED] and after the Student has the opportunity to participate in the District's program. Until such time as there is data to suggest the need for either of these two alternatives, this request is premature.

As such, these issues are found in favor of the School District. The School District does not have to develop a "back up" plan in the event that the anticipated change to [REDACTED] cannot accommodate the Student and the School District need not investigate other schools/programs for the Student as requested.

4. Whether videotaping at [REDACTED] should be provided to determine the source of the problem behaviors;

On behalf of the student, the parent has observed that the [REDACTED] School and particularly the [REDACTED] program do not have videotaping/monitoring equipment to determine the source of problem behaviors. The parents point to [REDACTED]s having video cameras monitoring the classroom. [Findings of Fact - 12] Their understanding is that this provides video evidence of what transpires with the student particularly at times of crisis/tantrums/meltdown and also provides valuable information for the antecedents to the student's behavior. The parents also reference the potential for liability issues in which the video monitoring may make valuable¹. [Hearing Testimony - Mother] The school district admittedly does not have any video monitoring equipment as that at [REDACTED]. However, the [REDACTED] program's emphasis on monitoring and recording behaviors in the classroom obviates the need for the video monitoring equipment. [Findings of Fact - 25] In addition, at times when the student is in crisis and needs to be removed physically from the classroom or other location and transported to the multipurpose room, at least two adult staff members will be present at all times with one monitoring and recording what transpires. [Findings of Fact - 37] Although this does not rise to the level that the parents seek, there is nothing in the IDEA or the school code that provides for continuous visual monitoring of the student population even in a special education setting.

The IDEA does provide for related services but video monitoring is not considered a related service. Rather related services encompasses such activities as transportation and such developmental, corrective or other supportive services as are required to assist a child with a disability to benefit from special education. Such services may include speech/language pathology, audiological services, psychological services, counseling services, etc. No mention or reference at all is made to continuous video monitoring. See 34 CFR 300.34 Related Services.

During the pre-hearing conference, the Parents attorney was advised that the Hearing Officer was unaware of any statute or regulation that required the School District's installation of continuous visual monitoring of a special education setting and requested, for purposes of the hearing, any statute and/or case citation where this is allowed or mandated. No such statute or case has been cited or brought to the attention of the hearing officer to support such a claim. On the hearing officer's own research, although

¹ Although liability litigation may be a concern, it is not the focus and is irrelevant to any consideration under the IDEA.

there are various cases which have dealt with the issue of videotaping in the context of a specific student for a specific purpose (see *Burke v. Amherst Sch. Dist.*, 51 IDELR 220 (Dist.Ct., New Hampshire, 2008)), there were no cases found that deal in the context as suggested by the Parent.

Accordingly, this issue is found in favor of the School District. The School District does not have to install video monitoring equipment as requested.

5. Whether the Student will experience a nutritional deficit and not be able to have enough energy to finish the school day.

Currently, the student does not eat lunch at school. Although she unpacked her lunch while at school, she will then re-pack it and carried it home. To date, from the parents description, the student is a particularly picky eater. [Hearing Testimony - Mother] Although there are anecdotal notes that suggests that she will eat a snack at school [Findings of Fact - 22], there's been no indication that the student eats her lunch at school. The concern is that the longer school day at the [REDACTED] program will adversely affect her nutrition and ability to work at optimum performance towards the end of the day. Although the school district is aware of this issue (and it has been ongoing at [REDACTED] for the last two years) and has developed a goal and benchmarks/objectives to address it, the goal and benchmarks/objectives drafted to address this situation are too vague and indefinite.

The IEP conference goals and objectives noted that the Student's present level of performance was that she was able to eat her lunch without assistance but refuses to do so. The goal statement developed for the Student was that "she will eat her lunch at school and follow a lunch routine". In furtherance of this, the benchmarks or short-term objectives include that the "student will eat her lunch at school with no more than two verbal prompts" and she "will dispose of their trash and place her tray in the corresponding bin when finished with lunch with no more than two verbal prompts".[Hearing Documents - SD 403]

These goals and short-term objectives fail to address the question of just how the School staff will encourage or change the Student's behavior so that she will eat her lunch at school. Merely saying that she will does not show how the Student will be encouraged or her behavior changed so that she will eat lunch at school. It is important that annual goals describe what can be reasonably expected to be accomplished. *Letter to Butler*, 213 IDELR 118 (OSERS 1988). The goals and short term objectives/benchmarks must be specific enough for the educational provider and those reviewing the IEP to determine if the progress is being made. See, e.g., *In re: Student with a Disability*, 50 IDELR 236 (SEA NY 2008). Short term objectives – those steps taken during the course of the year to reach the annual goal – should serve as a measuring device to show progress towards meeting the goal. They should be sequential, starting with smaller steps and progressively adding additional steps to reach that annual goal. See, e.g. *Pocatellow Sch. Dist.* 25, 18 IDELR 83 (SEA ID 1991)

Here, although the goal may be acceptable and laudable, the short-term objectives/benchmarks do not provide specific enough information with how the Student's behavior will change or what the School District will do in its programming to bring about this change. As such, the objectives to support the goal are inappropriate.

The School District needs to draft identifiable and specific steps and adequate programming to accomplish the goal of having the Student eat her lunch at school.

As such, this issue is found in favor of the Parent. The School District is to convene a IEP meeting within twenty-one (21) days to formulate specific short term objectives and benchmarks as to how the School District will meet the goal that the Student will eat her lunch at school and follow a lunch routine.

6. Whether there should be a plan in place in the event the Student walks away from the school.

The July 16, 2012 did address this issue [SD 377] albeit in a *de minimus* approach - "parents remain concerned about the critical risk of elopement or fleeing from the safe learning environment. IEP team addressing issue with systematic steps". The School District did more that was not documented. The School District has assured the parents that there are alarms installed on the door to alert staff if it is opened and that a fence has been placed around the entire playground so as not to allow a student to leave the area denominated as the [REDACTED] program. [Findings of Fact - 31] The parents were shown that the classroom and the multipurpose room are situated in its own hallway with only two other consultant rooms available. The Parents have been assured that the [REDACTED] staff will meet the Student at the bus and will walk them into the program area, holding hands if necessary. The same procedure will be utilized in the afternoon. [Findings of Fact - 33] In addition to the external modifications and accommodations for the students, the design of the physical space of the classroom and the multipurpose room were considered with the students physical and emotional needs in mind. [Findings of Fact - 31] [Hearing Documents - SD 727 - 736]

Historically, [REDACTED] testified that the Student has never taken off. The [REDACTED] School Family Liaison, [REDACTED], also has not seen that the Student might walk away or elope from the premises and, in fact, did not recall discussing this with the parents. [REDACTED] the [REDACTED] Director, opined that the Student is not in a category called "flight risk". [Findings of Fact - 20] She also noted that every room at [REDACTED] has a second door/exit which is not barred. In her opinion, this is a non-issue. [Findings of Fact - 20] The Student's mother indicated only one instance where the Student came home with a rose in her backpack which could only been acquired from outside of the school in the mother's opinion. [Hearing Testimony - Mother] [REDACTED] found nothing in her review of the Students records which suggests that she is a flight risk. [Hearing Testimony - [REDACTED]] Unlike the [REDACTED] program at the [REDACTED] School, the student's first year at [REDACTED] was at a facility which was not fenced.

This is a real concern of the parents. So much so that the School District did much to address this generically as noted above. However, it also concurred with the Parents and noted in the Student's July 16, 2012 IEP that it should be addressed in systematic steps. [REDACTED] testified that given this behavioral concern, it would need to be planned for and the antecedents determined. [Findings of Fact - 38]

As the School District has already agreed that this is an issue that needs to be addressed (but did not do so in the IEP) and the School District's expert has indicated that this

behavior needs to be addressed and planned for, this issue is found in favor of the Parent. The School District is to convene a IEP meeting within twenty-one (21) days to formulate systematic steps to deal with this concern.

8. Whether [REDACTED] has credentials to qualify as an expert in applied behavioral analysis.

Although the parent raise the issue of whether or not [REDACTED] has credentials to qualify in applied behavioral analysis, no challenge was made to her professional background at the hearing. By way of testimony, [REDACTED] testified that she is an Assistant Professor of Psychology at Southern Illinois University – [REDACTED]. She did her undergraduate work at Tulane University and holds a doctorate degree from the University of Florida in school psychology with a specialization in behavioral analysis. She has taken advanced course work in behavioral analysis with [REDACTED]. Her doctoral dissertation was done on performance data collection and feedback. While at Florida, she was involved in federal grants relative to behavioral intervention and support for children with autism and served as the project coordinator for four years. In addition to her educational background, she worked at the Round Rock School District in Texas both as a school psychologist and then as a post doctoral intern. While at [REDACTED] she worked with students with [REDACTED] [Hearing Testimony - [REDACTED]]

Among her current consultative projects is the [REDACTED] program. In that project, she was initially involved in the development of the program in conjunction with [REDACTED] and other staff members of the [REDACTED]. She also was involved in providing a training session to the staff members that would be involved. Currently they are observing the teachers and staff members as well as the students during [REDACTED] events and tracking the performance so as to provide feedback to the teachers. Research has shown that there can be a more positive outcome as the level of accuracy in reporting increases with the teacher and staff and the students responses will be made with a higher level of accuracy and more consistency. [Hearing Testimony - [REDACTED]]

She is familiar with the [REDACTED] curriculum. Use of the [REDACTED] curriculum in conjunction with [REDACTED] and the [REDACTED] as well as the [REDACTED] curriculum saw strong gains across most domains and reduced behavioral issues based on her experience with them in the [REDACTED] [Hearing Testimony - [REDACTED]] The literature also supports the types of programs used by the [REDACTED] program [Hearing Documents - SD 669 - 700].


Given Dr. McKenney's strong background in behavioral analysis and autism, this issue is found in favor of the School District.

G. ORDER

1. The Student's placement is at the [REDACTED] program at the [REDACTED] as determined in the Student's IEP of July 16, 2012 and subsequent documents. The School District need take nor action in terms of other programs as requested by the Parents.

2. The School District transition plan as set out in the July 16, 2012 IEP and subsequent documents was appropriate at the time that it was drafted. The School District need take no action as to that transition plan for the commencement of the school year 2012 - 2013.
3. The School District does not have to prepare a "back-up" or contingency plan as requested. The School District need take no action on this item as requested by the Parents.
4. The School District does not have to install video monitoring equipment in the [REDACTED] program. The School District need take no action on this item as requested by the Parents
5. The School District shall convene an IEP meeting within 21 calendar days (November 30, 2011) of this order to formulate specific short term objectives and benchmarks as to how the School District will meet the goal that the Student will eat her lunch at school and follow a lunch routine.
6. The School District shall convene an IEP meeting within 21 calendar days (November 30, 2011) of this order to formulate systematic steps to deal with the Parent's concern as to the elopement/walking away from the School setting.
7. The School District does not have to determine an alternate placement to accommodate the Student as requested. The School District need take no action on this item as requested by the Parents.
8. [REDACTED] testimony as to her qualification is sufficient. She is qualified as an expert in learning behavior and behavioral analysis. The School District need take no action on this item as requested by the Parents.
9. The School District shall provide proof of compliance with this Order to the Illinois State Board of Education, Compliance Division, no later than December 15, 2012.

It Is So ORDERED.


W. DAVID UTLEY
Impartial Hearing Officer
Dated this 8th day of November, 2012

450 West Schaumburg Road - 681487
Schaumburg, IL 60168

(847) 321-1044

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Appendix "A"
Aggressions Towards Others - Chart [Hearing Documents - SD 433 - 450]

Month	Number of Aggressions	Average Aggressions per Attendance Number/ (Attendance Days)	Average Aggressions per only days of Aggression Number/(Aggression days)	Day without Aggression
7-11	89	6.84 (13)	7.41 (12)	1
8-11	85	6.53 (13)	7.08 (12)	1
9-11	36	1.89 (19)	3.6 (10)	9
10-11	78	4.3 (18)	7.8 (10)	8
11-11	63	3.31 (19)	6.3 (10)	9
12-11	33	4.71 (7)	5.5 (6)	1
01-12	64	4.0 (16)	5.81 (11)	5
02-12	40	2.35 (17)	4.44 (9)	8
03-12	26	1.62 (16)	3.25 (8)	8
04-12	93	8.45 (11)	10.3 (9)	2
05-12	51	3.40 (15)	8.5 (6)	9
06-12	1	.12 (8)	1.0 (1)	7
07-12	33	2.23 (15)	8.25 (4)	11
08-12	101	7.76 (13)	12.62 (8)	5
09-12	25	1.47 (17)	6.25 (4)	13
10-12	7	2.33 (3)	7 (1)	2
	825	(220)	(121)	99

FINALITY OF DECISION

FINALITY OF DECISION

This Decision and Order shall be binding upon all parties.

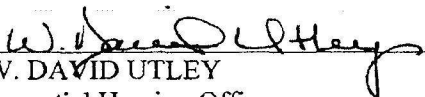
RIGHT TO REQUEST CLARIFICATION

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned Hearing Officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought and a copy of the request shall be mailed to the party and to the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, Illinois 62777. **The right to request such a clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.**

RIGHT TO FILE A CIVIL ACTION

This decision shall be binding upon the parties unless a civil action is commenced. Any party to this hearing aggrieved by this decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14.8.01 (I), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision was mailed to a party.

THE EFFECTIVE DATE OF THIS DECISION IS THE DATE OF RECEIPT OF ANY CLARIFICATION OF THIS DECISION. THE REQUEST SHALL OPERATE TO STAY IMPLEMENTATION OF THOSE PORTIONS OF THE DECISION FOR WHICH CLARIFICATION IS SOUGHT, PENDING ACTION ON THE REQUEST BY THE HEARING OFFICER, UNLESS THE PARTIES OTHERWISE AGREE. (105 ILCS 5/14-8.02)


W. DAVID UTLEY
Impartial Hearing Officer
Dated this 8th day of November, 2012

450 West Schaumburg Road - 681487
Schaumburg, IL 60168

(847) 321-1044

CERTIFICATE AND AFFIDAVIT OF DELIVERY BY MAIL

Under penalties as provided by law, pursuant to 735 ILCS 5/1-109, the undersigned certifies that he/she served the foregoing document by mailing a copy certified to the above named attorney(s) at the address(es) indicated above and to the Illinois State Board of Education, 100 N. First Street, Springfield, IL 62777-0001 by depositing the same in the U.S. Mail at the United States Postal facility at Schaumburg, IL on November 8, 2012.

[REDACTED]

Via First Class Mail – Certified Only

[REDACTED]
Attn: [REDACTED]
[REDACTED]

Via First Class Mail – Certified Only

Illinois State Board of Education
Attn: Andrew Eulass, Esq.
Office of the Due Process Coordinator
100 N. First Street
Springfield, IL 62777-0001

Via First Class Mail – Certified Only


W. DAVID UTLEY
Impartial Hearing Officer

450 West Schaumburg Road - 681487
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