ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

In the Matter of:

[redacted], by his parents/guardians,
[redacted],

&

[redacted],
Local Education Agency .

ISBE Case No.: **2013 - 0040**

W. David Utley
Impartial Hearing Officer

DECISION

The Hearing in the above captioned matter took place on October 16, 17, 18, 2012 and November 12, 2012 at 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] and the School District was represented by [redacted]

A. Procedural Background

The Parent's Request for an Impartial Due Process Hearing was dated August 8, 2012 and submitted on the Student's behalf by Equip for Equality through its attorney, [redacted] The School District, by its Attorneys, responded to the Parent's Due Process Request on August 24, 2012. The Hearing Officer received his appointment in this matter on August 17, 2012. An initial Status Conference was held over the telephone on August 28, 2012 and by joint request, a Pre-Hearing Conference was set on September 18, 2012. The Pre-Hearing Conference was convened and the parties agreed to set this matter for Hearing on October 15, 16, 17 and 18, 2012. Due to the Hearing Officer's illness on October 15, 2012, the first day of Hearing proceeded on October 16, 2012 which necessitated an additional day of Hearing which, due to the Hearing Officer and attorneys schedules, was set for November 12, 2012. The School District submitted a Motion to Dismiss on September 25, 2012 and the Parent responded on October 1, 2012. Hearing Officer entered an Interim Order - School District Motion to Dismiss Requested Relief denying the School District's Motion.

At the Hearing, procedurally, the parties agreed and stipulated to admission of the parent document book [PD 01 - 001 to PD 01 - 598] and the school district document book [SD 001 - 594] and for admission of all the documents contained therein. Both document books were admitted into evidence.

The parents called the following witnesses: the Student's mother; [redacted] EdD., Educational Consultant; [redacted] Pyschologist; [redacted]

[redacted] Director of Special Education; [redacted] Social Worker; [redacted] Homebound Instructor; [redacted] Homebound Instructor; [redacted] MD, Ph.D. Psychiatrist; [redacted] Englist Teacher, [redacted] Therapist; [redacted], M. D., Director, [redacted] former Director of Special Education; [redacted] Guidance Counselor; [redacted] Teacher; [redacted] Homebound Tutor; [redacted] Guidance Counselor

The School District included all those listed in bold in the Parent's list as well as following: [redacted] Principal, [redacted]; [redacted] Admissions Director, [redacted]

B. Issues Presented

Whether District 233 violated the Student's right to FAPE by:

a. failing to provide educational placement from December 7, 2010 to the present;

b. failing to provide appropriate IEP goals, accommodations, modifications and related services from December 7, 2010 to April 3, 2012;

c. failing to provide an appropriate education placement in a private residential facility from April 3, 2012 to the present; and

d. failing to implement the April 3, 2012 IEP, including not implementing goals or providing psychological services, psychiatric services, school health services, transportation services, acquisition of daily living skills and the provision of an aide.

C. Relief Requested

a. Place the Student at the [redacted] or another appropriate residential program that provides specialized instruction for students with OCD, including exposure response prevention therapy;

b. Pay for transportation for the Student to and from the [redacted] for his initial placement and for holidays and recesses;

c. Provide appropriate compensatory education services outside of the regular school day when the Student is able to access the education services so that he may graduate from high school with his peers.

D. Findings of Fact

1. The student entered the [redacted] High School for his freshman year in 2010. SD 201 - 209

2. Prior to enrolling, the student's mother contacted the school district relative to the students condition Tr :1422: 11 to 1424:9

3. **August 9, 2010 504 Eligibility Determination/Review** He was diagnosed in first grade but his condition has gotten more severe since mid-eighth grade As puberty kicked in, things have become magnified. Issues noted with the student included symmetry, walking certain ways and rituals. The most severe at this point is contamination/bathroom issues. In the previous year, he had kept everything in and used a codeword "migraine" to exit school. It was important to note that his condition changes every day. Medication did not seem to be appropriately addressing his OCD. He was having shaking, night terrors, digestion issues and passing out in the shower with his previous medications. When agitated, he will twist himself into a pretzel, wrapping his arms and legs. Things that calm him included origami and drawing PD 01 - 0004. Teacher feedback noted that he was very intelligent, inquisitive and an excellent student. He participates in class and wants to get involved. He is a "model student". He does have some dissection issues. PD 01 - 0004 The team found that the students disability substantially limited major life activities PD 01 - 0005. Accommodations included (1) seeing [redacted] for guidelines as to drug testing; (2) extended time for tests and quizzes; (3) multiple day testing; (4) second set of textbooks; (5) PE waiver; (6) bathroom pass and access to the bathroom in the nurses office; (7) preferential locker assignment; (8) codeword "migraines" for a safe place; will be allowed to go to [redacted] or [redacted] office when needed; (9) access to shuttle bus; (10) parents will email teachers weekly to inquire about updates, missing assignments and current grade; (11) copies of teachers notes upon return from absences; and (12) student may go to an office and call his parent upon request. PD 01 - 0006

4. His fear of contamination and need for symmetry continued to grow PD 592; Tr 537: 17 - 21

5. As the student's condition worsened, the parents and the school district agreed to evaluate the student for special education P D-292

6. **October 25, 2010 Consent for Initial Evaluation** The parents signed an initial consent for evaluation on October 25, 2010. The domains for evaluation included functional performance via teacher report; health via a health history update and a social emotional status to be conducted by the psychologist. PD 01 - 0012

7. The student's therapist spoke with the Director of Special Education and provided information about the students OCD Tr 86: 11 - 12

8. **November 10, 2010 Letter from Therapist** The student's therapist confirmed that the student suffers from obsessive compulsive disorder. His symptoms are considered in the severe range. He is often overwhelmed with anxiety and is grossly preoccupied with performing his compulsions and rituals including avoidance of school. However this is not a school refusal but a compulsive avoidance. The student's treatment has been tentative and slow. At this point, the student was unable to tolerate being on campus and he recommended homebound instruction. PD 01 - 0013

9. **November 18, 2010 Social Developmental Study - Initial** The study noted that the student's OCD and anxiety disorder manifests with issues regarding symmetry, balance, contamination issues and other behavioral rituals. The student had participated in three different inpatient OCD programs since the summer and has also been on many different combinations of medicine. The mother felt that the current medication names were not pertinent to the evaluation but advised that the student was under the care of [redacted] and [redacted] PD 01 - 0041 [redacted] the school social worker felt that the student's adaptive behavior was not commensurate with his chronological age due to his OCD diagnosis and its impact on his daily function PD 01 - 0041 - PD 01 - 0042.

9a. Before the student was eligible for an IEP, the parents signed a release so the district could speak with the student's therapist and psychiatrist regarding his OCD. PD-304.

9b. Although the school district had been advised that they could contact the outside professionals, the school psychologist and the school social worker did not. Tr. 685:10 - 18; 636: 9 - 11

9c. The student's psychiatrist attended the first IEP meeting and was available to answer questions about OCD and student. Tr 90: 9 - 16 She did not refuse to answer any questions Tr. 899: 5 - 7

9d. The student's psychiatrist participated in the December 7, 2010 IEP meeting Tr. 137: 7- 9

10. **Homebound Requests**

11-18-10 – 90 day request. [redacted] PD 01 - 0044
03-29-11 – Extension of homebound status through June 30, 2011. [redacted] PD01 - 0072; Tr. 207:20 - 24; SD 150

11. **December 7, 2010 - Initial eligibility and Initial IEP** Per the social/emotional status/social functioning evaluation, the student's OCD can cause him difficulty to function in class at times. He has missed a significant amount of school in relation to his OCD PD 01 - 0054. He was found eligible for special education services under Other Health Impairment PD 01 - 0056. The specific condition was a diagnosis of Obsessive Compulsive Disorder PD 01 - 0057. Under Educational Accommodations and Supports, the team did not consider assistive technology devices and services for communication needs relative to the student. They did consider supplementary aids, accommodations and modifications to include three items: (1) Codeword is "migraine"; (2) URGENT - CONFIDENTIALITY due to needs of the student, please consider sensitivity/privacy when discussing needs; and (3) sensitivity to family lifestyles and eyeballs PD 01 - 0059. No supports for school personnel were included. PD 01 - 059. The Student did require accommodations to participate in classroom - based assessments and was to participate in entire district wide assessments and ISAT/PSAE/IMAGE with accommodations. The accommodations included extended time (time and a half), alternate setting, one-on-one testing, multiple day, and breaks as needed PD 01 - 060 His special education services - outside general education was considered as homebound as a temporary interim placement - starting on 11/16/2010 or 90 days. PD 01 - 0061 The student's educational placement was in a

separate school or removal from the regular school environment as the nature and severity of the student's disability is such that his education in general classes was unsatisfactory due to his diagnosis of Obsessive Compulsive Disorder which adversely affected school. The intensity of the student's OCD this time makes it impossible to attend school. Placement consideration was homebound as a temporary interim placement starting on November 18, 2010 for 90 days PD 01 - 0062. The only transition outcomes referenced were on graduation in terms of a career. The school district noted that he had been placed in general education classes within the college prep and honors level. Accommodations for district and state testing have been in place. He receives social work services. The parents signed the consent or initial provision of special education placement and related services on December 7, 2010 PD 01 - 0066 The social work notes show that the student could not function in class due to his OCD. Sometimes they were able to work through it and getting back to class and other times they were basically not able. The IEP team was to reconvene to discuss the Student's transition back to school and asked that the Student be present as he would be the best barometer as to when he can come back to school. The goal was to have the student back in his classes that he has been in. The student's psychiatrist noted that the student's OCD is as severe as she has seen. Although there has been a modest decrease with medication, she cannot predict how things will go. She explained compulsions and obsessions for the IEP team. The doctor shared the. problems that the student has as well as the medication used. The mother also shared the problems that he was experiencing PD 01 - 0069. At this point, the parent prefers the Student's social/emotional needs be addressed through the outside social/emotional support SD 180.

12. The parents declined the school provided social work services as they were utilizing their own professionals. Tr. 316: 10 to 317: 11; SD - 180

13. The student was placed on homebound instruction in December 7, 2010 IEP. The student has been on homebound since his December, 2010 IEP. PD - 149 - 159 Tr. 228: 11-12; 234: 20 - 24

14. His IEP from December 7, 2010 contained no goals or accommodations PD - 49-70

15. After the homebound plan was put place, the team determined that the homebound instruction was not successful Tr. 240: 2-3; Tr. 844:14

16. The student's homebound teachers were not provided with his IEP and did not receive training or support regarding the student's OCD Tr. 374:20; 597:11-12; 829:8

17. During this period, the student's needs grew significantly worse. Tr. 859: 17-23; 861: 11 - 14

18. The school district's retired former Director of Special Education did not envision homebound instruction to be a long-term solution. Tr. 238: 5-6

19. The student's homebound teachers did not received copies of the student's IEP's and had no knowledge of the accommodations that were listed. Tr. 379: 9; 789:15.

20. One of the student's homebound instructors with 33 years of experience did not receive information about the student's severe OCD Tr. 380:4 - 5

21. It was difficult to work with the student due to his OCD Tr. 380: 9 - 16

22. The student could have received goals while receiving homebound instruction. Tr. 644: 4-11; Tr. 99: 22 - 24.

23. Although the former Retired Director of Special Education advised the parents that there was assistive technology that could support the student with voice recognition, no referral was made for assistive technology evaluation PD-321; Tr. 248:22

24. Because the student was receiving homebound instruction between December 7, 2010 and May 23rd 2011, the IEP team did not develop goals or objectives . Tr. 98: 2 - 13

25. The team was focused on the student's needs in getting him placed so that they could meet his needs as this was a unique situation. Tr. 99: 14; 297: 21 - 24

26. Most of the things that the student needed at that time were medical. Tr. 99: 18 - 21

27. The student's mother did not ask the IEP team to develop goals or objectives for her son. Tr. 1526: 12 - 21

28. The IEP team determined at the May 23rd 2012 IEP meeting that the homebound placement was not successful. Tr 844: 12-14

29. **May 23, 2011 IEP Meeting - IEP Revision/review and Review Home** The Student's Present Level of Academic Achievement and Functional Performance noted that the student was currently working towards a high school diploma and has four credits. He is to graduate in 2014. His grade point average was 1.0 and he ranked 639 out of 680. The parent had concerns about his integration regarding his return to high school PD 01 - 80. The transition services were a mirror of the prior IEP PD 01 - 0082. Although the educational accommodations and support page indicated that he needed consideration of transition services, there were no effective transition services for his return to the high school curriculum from his homebound services PD 01 - 0083 Similarly, the assessment page mirrored that of the prior IEP PD 01 - 0084. The only indication of the education services and placements to be provided to the student was homebound as a temporary interim placement starting on November 18, 2010 for 90 days . PD 01 - 0085. The educational services and placement also was the same as before PD 01 - 0086. The additional notes/information page reference the student's work at home and the problems that the student was experiencing relative to his homebound courses. He was withdrawn from algebra 2/trig and Viking male choir. The Director of Special Education noted that he had no goals in place. She was proposing a private day program, possibly at Sonia Shankman or the Mansion. Homebound services were extended to June 30. The student's mother was present and indicated she was not ready to make a decision prior to speaking to her doctors. She was to get back to the Director of Special Education by that Friday. He was apparently recommended for the ESY summer

program PD 01 - 0092. Authorization for exchange of confidential information was provided to the parent PD 01 - 0093

30. On May 23rd 2011 the IEP team recommended a therapeutic day school placement. SD 149 - 159

31. Within 30 days of a private therapeutic day school placement, goals and objectives would have been drafted for him. Tr.320: 2- 15

32. The parents refused to sign consent forms authorizing the release of records to a private therapeutic day school. Tr. 321:9 - 16; 322: 5 - 13

33. Rather, the student's mother with the assistance of the student's therapist contacted each of the suggested therapeutic day school's (14 in total) PD - 42; Tr. 549:13 to 550:13

34. If the parents would have authorized the release of referral packets, more than likely a private therapeutic day school would have accepted the student. Tr. 324: 7 - 12

35. The mother was unable to give a concrete example of how the lack of a goal or objectives in the first two IEP summaries were detrimental to her son. Tr. 1528: 14 - 17

36. At the May 23rd, 2011 IEP meeting, the school district recommended cessation of homebound services and recommended that the student be placed in a therapeutic day school SD 149 - 151

37. Homebound instruction was designed to be temporary in nature Tr. 827: 4 -12; 844: 12 - 20

38. **December 6, 2011 Letter from Psychiatrist** The student's psychiatrist, in response to a November 30, 2011 letter, wrote that it was not in the student's best interest to release his entire psychiatric records and such records contain confidential material not relevant to his school placement. She also noted that any decision regarding the student's placement should not be deferred until hospital records can be obtained. She indicated that she would be happy to provide a treatment summary and medical history relative to the student. PD 01 - 0105

39. When she asked the parents for a release for the school district, the parents said no. Tr. 197:20 to 198:3

40. **February 2, 2012 Letter from Psychiatrist** The student's psychiatrist wrote that the student suffers from severe disabling obsessive compulsive disorder. His main symptoms relate to contamination, need for symmetry and more recently fear that his dog will die. These fears and compulsive behaviors associated with them currently occupy nearly every waking moment with lengthy rituals around washing, hygiene and other miscellaneous compulsions. Interference with the compulsions causes the student to become agitated with severe panic attacks. **Homebound status was recommended until his illness could be stabilized.** From December 2010, his symptoms have continued to worsen and he has made little academic progress due to

frequent panic due to lack of symmetry or other contamination associated with the tutors. She also noted he had been unable to make progress in outpatient psychotherapy and has not responded significantly to any trials of psychotropic medications due to the severity of his symptoms. It was the doctor's opinion that the student required residential placement in the therapeutic facility to deal with his educational needs as well as to treat and manage his OCD. Without adequate therapeutic care, it is highly unlikely that the student will make any progress in reaching his academic or treatment goals. She suggested the [redacted] which offers a specialized residential treatment program for adolescents with OCD. The method of treatment would be Exposure Response Prevention therapy (ERP) (Emphasis added) PD 01 - 0120. An addendum to the letter noted his inpatient psychiatric hospitalizations at [redacted] from June 20, 2010 through July 9, 2010; [redacted] August 8, 2010 to August 13, 2010 and September 20, 2010 through September 27, 2010 and then at [redacted] on February 17, 2011 and March 10, 2011 to March 14, 2011.

41. **Change of IEP Meeting Dates** An email of April 3, 2012 deals with the issue as to the changed IEP meetings starting back in December 2011. PD 01 - 0134

42. **April 3, 2012 IEP Meeting - Alternative Education Setting and Residential Placement with Related Services** The Student's Present Level of Academic Achievement and Functional Performance reflected that he is an extremely bright individual but that his diagnosis of OCD adversely affects his school performance. The team felt that he needed to learn tools and strategies to manage his OCD. Even though a year later, the last section of that page was the same as before. PD 01 - 0129. Under Goals or Objectives/Benchmarks, the team found that due to the student's severe OCD, he needs a specific evidence-based therapeutic approach. Goals were formulated at this point to support his goal of learning tools and strategies to manage his OCD including that he should be able to hold a book, turn pages and read from it and be able to read unassisted; able to use a keyboard; able to read material required by science and literature regardless of the content of the material; able to hold a pencil; able to utilize a calculator; able to sit in the classroom fully dressed; able to utilize a three ring binder without going through his ritual; able to shower; able to use the restroom PD 01 - 0132 to PD 01 - 0134. The IEP team still found no need for assistive technology devices or communication. However, they determined that his behavior impedes the student's learning and therefore a functional behavioral assessment and/or behavioral intervention plan would have been appropriate. The team though reduced his supplementary aids, accommodations and modifications PD 01 - 0135. The recommendation was to place the student at a residential facility with related services outside of general education to include psychological services, psychiatric services, school health services, transportation, acquisition of daily living skills and an aide PD 01 - 0137. The team determined that a private residential facility, out-of-state would be the appropriate placement. In addition, extended school year services were warranted PD 01 - 0138. This IEP noted the prior recommendation of the therapeutic school placement which also included the parental research of various other facilities PD 01 - 0143. The Director of Special Education reviewed the student including the steps the school has taken in terms of traditional school, homebound tutoring as well as Ombusdman. The student's needs are so severe that they are considering a residential program which the parents concur. She explained each of the methods of placement including the Illinois Care Grant, the court system or the Illinois Board of Education. In two years, the student has received five academic credits three of which were from Junior high school in French, Algebra and Geometry.

The student's mother shared the amount of time the student needs for his rituals which are time-consuming. Going to the bathroom and eating sometimes takes the entire day. The mother also was concerned about the lack of materials that have been received after the student completed the work. One of his homebound service providers describe the student's difficulties in doing his schoolwork. Part of her commentary was contained within [redacted] comments. His psychiatrist explained to the team problems that the student has including his self-esteem for not getting credit for work that he has done. His condition is very severe and not responding to standard treatments or medications. He has severe anxiety in his rituals can take up to five hours and can be triggered by his schooling. PD 01 - 0144

43. The student continued the same difficulties in his homebound instruction during the 2011 - 2012 school year that prohibited him completing his school assignments in the prior year. Tr. 859:17 -23.

44. The student's psychiatrist explained at the April, 2012 IEP meeting that a residential placement that used ERP in order to instruct the student in his IEP goals would be necessary. Tr. 164: 2-3; 164: 10 - 14 The student's psychiatrist testified that the student needed intensive ERP therapy in his IEP goals which needed to be implemented using ERP. Tr. 154:13 - 17; 163 - 23 to 164: 3

45. **May 8, 2012 Letter from Therapist** The student's therapist wrote the Director of Special Education relative to residential placement. The student was evaluated in the fall of 2010 using patient interviews, collateral historian reports clinical observation and scores on the Yale-brown Obsessive Compulsive Scale and was diagnosed with pubertal onset OCD. The student was referred to [redacted] for psychiatric evaluation and treatment. Therapist noted that the student had been hospitalized various times. In his opinion, the severity of the student's condition cause significant social disequalibriation. Biweekly supportive consultant interventions have remediated many significant negative effects of illness on his family but the same cannot be said of the results of his academic accommodations. The therapist had undertaken a thorough investigation of available therapeutics schools in Illinois but none were found to be able to treat the student's specific needs. Homebound instruction in tutoring also proved to be ineffectual for the same reasons and invariably precipitated decompensation. His condition has worsened dramatically and not responded to vigorous outpatient, intensive outpatient, partial hospital inpatient hospital intervention. As such, with no therapeutic day school available, it was his opinion that residential placement was indicated in that there was only one residential program in the country at [redacted]er specifically designed to treat adolescents with OCD while maintaining them academically. PD 01 - 0567 to PD 01 - 0568

46. **October 2, 2012 Letter from Therapist** As a follow-up to his prior letter, he noted that a specialized behavior therapy regime developed for OCD was implemented with the student with less than robust results. The student's sessions with contamination and symmetry as well as his compulsions to wash and balance have increased in duration, frequency and intensity to the point that they take the majority of each day to perform. Inexactitude, for whatever reason, results in panic or prompts to start his compulsions. He had been hospitalized twice during therapy. His global assessment of functioning scale score was 35/100. Although therapy has

remediated some of the significantly negative effects of his illness on the family, academically he is not functioning whatsoever. Accommodations arranged by the district were inadequate. Even his homebound instruction, tutoring and online instruction turned out to be ineffectual and invariably precipitated decompensation. He reviewed various therapeutic schools, as noted in the letter, but none of them were designed to deal with the student's severe OCD and would not meet his needs. As the student's illness has dramatically worsened and not responded to vigorous outpatient, intensive outpatient, partial hospital inpatient and hospital intervention, a residential placement is indicated. Recommendation was made to the [redacted] OCD program which is specifically designed to treat adolescents with OCD while maintaining them academically PD 01- 0592 to PD 01 - 0593

47. **October 4, 2012 Letter from Psychiatrist** As an update to the status and treatment of the student, he is almost 100% confined to his home other than visits to therapist and his psychiatrist. He has not attended school since his referral to homebound services in December 2010. He has no visits with friends over a year and rarely sees his extended family. He has made no fundamental progress in his schooling due to the interference of his obsessions and compulsions. She notes that the student has not had a visit from a homebound tutor since the spring 2012 in that those visits often needed to be terminated when the student had a severe panic attack over some perceived contamination or contact that was not balanced. At the present time, the student can spend 10 hours a day participating in rituals related to his OCD. As to his homebound tutoring, the student stated that his OCD greatly interferes with the process as set out in the letter. Online school work also is difficult due to his need for balance. A dictation program was tried but couldn't be successfully trained to the student's voice. As to the therapeutic day school, he would be unable to tolerate riding a school bus and unable to use the washroom at school as he would have to disinfect himself after use and change his clothes. He also could not be near other children or teachers because he sees all of them as contaminated. The doctor noted that the student has one of the most severe cases of OCD that she has ever worked with. He has failed to improve despite multiple medication trials, regular therapy in the hands of a highly experienced professional and trials of intensive outpatient therapy and inpatient hospitalizations. He has made no progress in this education for nearly 2 years although intellectually gifted. Any residential placement would have to have considerable expertise in the treatment of obsessive compulsive disorder PD 01-056

Psychiatric - Obsessive Compulsive Disorder (OCD) Issues

48. The student's symptoms interfere with all aspects of his life. Tr. 202: 4 - 6 The acquisition of daily living skills would be necessary for him to access education Tr. 166: 5 - 8 The student had intensive outpatient therapy, hospitalization programs and intermittent therapy without significant success Tr. 523: 3 - 10 The student had previously gone to [redacted] Tr. 581:7 - 13 Currently, the student spends approximately 10 hours a day related to rituals associated with his OCD Tr. 190: 18 - 21 The duration, frequency and intensity of the symptoms have increased to the point that they take the majority of the day to perform Tr. 543: 20 - 23 By April, 2012 the student's situation was dire. He was making no progress's on his OCD. Tr. 147: 12 - 16

49. Initially the therapist was seeing the student a couple times a week. However, he was overwhelmed by this and there were logistical problems so it was changed to weekly and then every two weeks. Tr. 535: 4 - 13 The student was receiving ERP therapy with the therapist but that was insufficient to assist him due to the severity of symptoms Tr. 130: 8 - 15 The student tried valiantly to continue his studies but his compulsions and obsessions got in the way of this. Tr. 539: 22 to 541: 19

50. [redacted] does not call working with a adolescent with the severity of this student. Tr. 138: 14 - 17 [redacted] observed that the student is one of the most severe individuals with OCD that he has worked with. Tr. 523:1 - 10 The student's score on the Children's Yale -Brown Symptom Severity Rating Scale was 38 out of 40 which would be the highest ranking of severity and extreme. Tr. 191: 24 to 192:16

51. As the student's illness progressed, he could not tolerate a daily commute aspect of dealing with a therapeutic day school based upon his anxiety and rituals regarding getting up in the morning as well as getting on a school bus Tr. 132 - 19 to 133: 9 As of April, 2012, the current state of homebound was not working and he could not return to general education Tr. 164: 17 - 21 Even if the student had graduated, with the current symptoms he potentially would still need placement at a facility like [redacted] Tr. 219: 1 - 11

52. The focus of the OCD Center at [redacted] s really on the entire life of the person including education. It's integration of both daily life and educational treatment. Tr. 4 - 12 Cognitive behavioral therapy emphasizes something known as exposure and ritual prevention, which is the key ingredient to overcoming OCD. Tr. 1026: 13-16 The student needed to receive intensive ERP in order to make progress as less intensive methods failed. Tr. 523: 1 - 10 The student needs to have targeted exposure response prevention intervention regarding goals both outside in the classroom. Tr. 186: 24 to 187:5 The student would be at Rogers Hospital an estimate of three months minimum to six months maximum. Tr. 203:15 - 18

53. The student does not require a special education teacher. Rather he requires regular education with assistance with his OCD. Tr. 205: 13 - 16. The student is not going to be any different with a tutor sitting next to him in terms of his needs to avoid, wash, balance and such. Tr. 551: 14 - 18

54. The student's prognosis is mixed. Childhood onset is not a positive prognostic indicator and his level of severity is not a good indicator either. But he has social support and is motivated. Tr. 587: 3 - 18

Proposed Placements

55. [redacted]

[redacted] is primarily for students with psychiatric diagnosis that is approved by the Illinois Purchased Care Review Board. Tr. 1141: 7 - 13 and 1146: 17 - 21 It has a fully licensed and accredited school and campus and is licensed by the Office of Public Instruction Tr.1148: 2 - 5 All classes are taught by licensed credentialed teachers and special individual teachers with the

expertise to meet the goals of an IEP Tr. 1148: 8 - 13 There is a full-time, 24 hour medical clinic that houses a full-time psychiatrist, psychologist and nurses. Tr. 1149: 22 - 24 The average length of stay is 8 to 10 months Tr. 1154: 17 - 19

The school's psychiatrist has deemed that [redacted] would be an appropriate placement for the student. Tr. 1157: 16 - 21 Per [redacted], the school's psychiatrist, the school uses ERP therapy Tr. 1162: 6 - 20 The student would also receive intensive therapeutic services that incorporate ERP therapy. Tr. 1156:11-13 The student would receive 350 minutes of instruction each day. Tr. 1151: 7 - 10

Currently, [redacted] has two students that have OCD. She is unable to state the severity of the OCD Tr. 1143:, 24 to 1144, 9 The current students with OCD do not have symptoms similar to the student such as an inability to hold a writing instrument. Tr. 1166: 8 - 12 They also do not have rituals that might keep them the bathroom for as much is five hours at a time. Tr. 1161: 8 - 14 In her 10 ½ years that [redacted], she was unaware of anyone who had the dis abilities that the student has related to OCD. Tr. 1169:1 - 4

The Student's treating psychiatrist spoke with the psychiatrist at [redacted] who reported that he was not aware of anyone how had training in OCD and ERP. Tr. 176: 17 - 18 He also advise that [redacted] use systematic desensitization or progressive desensitization. Tr. 176: 22 to 177:22

56, [redacted]

[redacted] can serve students with severe OCD Tr. 730: 2 - 4 There is a full-time psychiatrist on staff and the teacher-student ratio would be 1 to 12 with the mental health ratio of 1 to 5. In addition, the student would be assigned a therapist on a 1 to 13 basis. T733: 9 - 15; 737: 22 to 738: 10 The student would receive 360 minutes of instruction for six hours per day taught by certified teachers Tr. 741: 12-15 He assumed that their Medical Director and Their Clinical Director would be familiar with ERP. Tr. 751: 20-24 He has not spoken to the Medical Director or the Clinical Director as to the basis for the admission of the student. Tr. 754: 5 - 16 He denied knowing the student's balance and symmetry issues. Tr. 758: 10 - 12 He did not have sufficient information to start developing strategies for the student Tr. 759: 7 - 8 Everyone would provide ERP for the student Tr. 760: 23 to 761: 7 He denied any knowledge of who has received specific training in ERP therapy. Tr. 761: 15 - 19 He denied knowing who has received specific training in ERP. He did not understand that it required specific training Tr. 761: 15 - 19 The teacher in the classroom, the mental health aide, the case manager, and the admissions representative did not have any expertise in working with student's with severe OCD. He was not aware of anyone who have specific training in working with student's with severe OCD. Tr. 762: 5 to 763: 18 He was unable to state how their charges are determined and was unable to break out the charges between room and board, tuition etc. Tr. 767: 1 to 770: 7

57. [redacted]

[redacted] is a specialized psychiatric residential treatment center that provides sensitive, age-specific intensive psychiatric care for children and teens ages 12 to 18

dealing with a broad spectrum mental health concerns. It is licensed as a psychiatric hospital by the [redacted] and accredited by the Joint Commission. The 21 bed treatment center is located in the main hospital facility at [redacted] PD 01 0238 though PD 01 0240 [redacted], the clinical director of the center, testified that the primary goal of the [redacted] was not academic instruction Tr 1068: 24 to 1069: 3 Although [redacted] testified that the [redacted] was an accredited educational facility, he was uncertain this. There is nothing in any of the promotional materials concerning the [redacted] or [redacted] that suggests that it has accreditation through any state educational agency.

[redacted], described the program provided at the [redacted] as providing cognitive behavioral therapy emphasizing as exposure and ritual prevention, which is the key ingredient to overcoming OCD. Tr. 1026: 13 - 16 ERP therapy is approximates 85% of the program at [redacted] Tr. 1029: 19- 23 Each individual participates in a three-hour block of daily ERP therapy. Tr. 1029: 24 to 1030:3 In addition, students also participate in a classroom setting for 90 minutes each day. Tr. 1044: 1 - 6 The Student would receive 30 hours per week of therapy Tr. 1032: 1 - 8

58. **Residential Placement Daily Schedules**

[redacted] [PD 01 - 0229]
[redacted] Daily Schedule 2012 - 2013 [PD 01 - 0230]
[redacted] Schedule - [PD 01 - 0231]
[redacted] Schedule – [PD 01 - 0279 to PD 0281]

59. **Residential placement – synopsis of program**

[redacted] [PD 01 - 0232 to PD 01 - 0233]
[redacted] [PD 01 - 0232 to PD 01 - 0233]
[redacted] – Child and Adolescent Centers [PD 01 - 0232 to PD 01 - 0233]

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 that the school district failed in its obligation to provide the student with a free appropriate public education (FAPE) and such other relief as they are seeking.

F. Conclusions of Law

1. Whether the School District failed to provide educational placement from December 7, 2010 to the present.

The parents claim that the school district failed to provide an educational placement from December 7, 2010 through the present time. [Findings of Fact 1] The student was at the [redacted] starting his freshman year. Prior to his freshman year, the parents met with the school district including the Director of Special Education to discuss the student's obsessive compulsive disorder (hereinafter "OCD"). [Findings of Fact 2] At that time, a 504 plan was developed for the student which provided for accommodations for his OCD. [Findings of Fact 3] Within a short period of time after his initial entry into the [redacted], the student began having significant symptoms related to his OCD which initially caused him embarrassment and difficulties in classroom settings and ultimately led to his withdrawal from attendance at the high school. [Findings of Fact 5] Shortly after the student's entry at [redacted] his symptoms were so severe that he was unable to participate in the high school curriculum via attendance at the high school. At that point, the school district sent a consent for initial evaluation to the parents for October 25, 2010. On that date, the team reviewed the various domains and requested evaluations from social worker relative to the student's health, the nurse relative to the student's hearing and vision and the school social worker and the schools psychologist relative to the student's social and emotional status. [Findings of Fact 6]

An IEP meeting was held on December 7, 2010 and in attendance at that meeting were the parents, the student's psychiatrist, the Director of Special Education, a general education teacher, a special education teacher, the school psychologist, the school social worker, the guidance counselor, staffing facilitator as well as the assistant principal and another school social worker.[SD163]. Given the information provided from the social developmental study, and the documentation evaluation results, the IEP team determined that homebound tutoring for a limited period would be appropriate for the student [SD180]. The school district's started a program of homebound instruction for the student and provided homebound instructors to assist the student with his education. Given the student's ongoing difficulties with his OCD – particularly in the nature of contamination, balance and symmetry – this program of homebound instruction was at best, only minimally successful. Although the homebound instructors were caring and compassionate relative to the student's OCD, oftentimes, they were unable to provide any educational instruction to the student due to the severity of his condition. [Findings of Fact 8, 15]

Having determined that the student was not succeeding with homebound instruction, the school district reconvene an IEP meeting on May 23, 2011 to review the current status. At that meeting, the student's parents were in attendance as was theDirector of Special Education. In addition, a general education teacher, special education teacher, a transitions teacher, the guidance

department chair and a guidance counselor were in attendance [Findings of Fact 29] [SD 149]. They again reviewed the information that was available and recommended a private therapeutic day school to assist the student. At that conference, several authorizations for exchange of confidential information were provided to the parents [Findings of Fact 29] [SD154 - 155]. Ultimately, the parents opted not to sign these forms, preferring instead to perform their own investigation. After a thorough search, the parents with assistance from their therapist and psychiatrist determined that none of the many private therapeutic day programs could address the student's severe OCD needs. [Findings of Fact 33] During this period, homebound services were continued. [Findings of Fact 10] In October 2011, the parents requested an IEP meeting to review the student's progress and placement. Due to various reasons, ultimately this meeting was not held until April, 2012. The delays were documented by the Director of Special Education. [Findings of Fact 41]

During this period, the school district in cooperation with the parents explored various alternatives educational programming for the student including voice recognition software and various computer related educational services including the Ombudsman program. [Findings of Fact 23] For whatever reason, including computer viruses, and even though the student's father was a information technology expert, they were unable to have the programs appropriately loaded on the computer and had difficulty the voice recognition program recognizing the student's voice. As such although no assistive technology goals or accommodations were provided for the student, the school districts attempt at providing assistive technology for the student was a failure.

The school district held an IEP meeting on April 3, 2012. In attendance at that IEP meeting were various members of the high school staff including the school psychologist, the school social worker, the guidance counselor, a tutor and the Director of Special Education as well as the parents and the student's psychiatrist. The purpose of that meeting was to review the IEP and to discuss placement in transition. At that time, the school district determine that the student needed more than a private therapeutic day school and reaffirmed that the homebound instruction was not providing the student with sufficient opportunities as to his education. At this point, the student had only earned several credits over a almost two-year period. As such, given the severity of the student's needs due to his OCD, the IEP team determined that an appropriate placement for the student would be at a private residential facility focusing on his functional rather than his academic need. [Findings of Fact 42] Throughout this time, it was undisputed that the student's intelligence was quite high measuring 160 IQ according to at least one document.. When he was able to do work, it was of a high quality. Unfortunately over the prior year plus, the student's OCD interfere dramatically with his ability to function in almost any aspect with his schoolwork. [Findings of Fact 40, 45, 49]

At this point, the school district investigated placements for the student and provided information relative to placement at [redacted] and [redacted] [Findings of Fact 55, 56] By this point, with the assistance of the student's and parents' attorneys, medical records were provided to the school district and packets of information were prepared to send to these facilities. Initially, the parents declined again to sign these authorizations and later upon advice of their attorneys, did provide appropriate authorizations and information relative to these applications. Ultimately and within a short time

of receipt, [redacted] and [redacted] accepted the student unconditionally

Throughout this entire process, the school district was attempting to come to grips as to the student's needs. At various times, the school district requested the student's medical records from the parents, the student's psychiatrist and the student's therapist. Given concerns about the confidential nature of these records, the parents declined to sign any authorization for the medical records which in reality were psychiatric records and declined to authorize the student's psychiatrist to release her records. However, the student's mother provided the school district with extensive notes as to the issues that her son struggling with OCD. She also allowed contact with the student's psychiatrist and therapist to discuss his condition and had the student's psychiatrist attend at least two IEP meetings. [Findings of Fact 6, 8, 11]

The parent cites to *T.H. v. Bd of Educ of Palatine Community Consolidated School District 15*, 55 F. Supp. 2s 830, 843 (N.D. Ill 1999) for the proposition that a school district must provide sufficient instruction to support the child's "latent potential for learning" and that "the child needed sufficient instruction so as to prevent foreclosure of his opportunity for 'meaningful access to education'". The school district cites to the Seventh Circuit's decision in *Hjortness v Neenah Joint Sch. Dist.*, 48 IDELR 119 (7th Cir. 2007), *aff'd* 507 F.3d 1060 (7th Cir. 200), *cert. denied,* 128 S. Ct 2962 (2008), albeit a slightly different context but still relevant hereto this point.

As the Seventh Circuit noted:

> " ... Considering that medical professionals have demonstrated difficulty pinpointing Joel's disorders, it is unreasonable to expect the school district to do better in determining Joel's predominant or existing medical disorders. The school district properly consider the various medical diagnoses and educational assessment in determining that Joel met the criteria for autism and other health impairments. Joel's 'present levels of education performance' did not reflect his current performance because current data was unavailable. Joel has not been attending school at the school district for almost a year and [Sonia Shankman] was still in the process of observing Joel to gain insight on his behaviors."

Similarly here, there is no doubt that the student has great potential but also no doubt that his severe OCD has significantly and adversely affected his ability to access education and to learn. Moreover, even his treating psychiatrist and therapist have expressed the opinion that their therapies and medication have not provided the student with any significant improvement and, in fact that his condition has worsened over time.

In terms of placement, although the school district might have been more timely in his IEP meetings, the school district was working through a continuum of placement in order to address the student's severe symptoms in an educational context. From the December, 2010 IEP meeting, the district has placed the student on homebound instruction, next proposed private therapeutic day schooling and ultimately proposed residential placement for the student. As noted in

Hjortness, supra, as the medical and psychiatric professionals were having difficult in addressing his needs, it would be unreasonable to expect the school district to do any better.

Accordingly, this issue is found in favor of the school district

2. Whether the School District provided appropriate IEP goals, accommodations, modifications and related services from December 7, 2010 to April 3, 2012

From the starting point of the school district's December 10, 2010 IEP meeting, the parents now complain that the student's IEP's, both that of December 10, 2010 as well as a subsequent IEP of May 23, 2011 do not contain any goals and insufficient accommodations and modifications. In addition, they are totally lacking in related services to assist the student. The school district does not disagree that either of these IEP's contain goals and objectives. In fact they would be hard pressed to denied this as the IEP documents themselves are silent and devoid of any goals as well as short-term objectives/benchmarks. Likewise, there is no provision for related services for the student in either of these IEP. Both IEP's do though contain accommodations although the sufficiency of these accommodations is questionable. [Findings of Fact 11, 29]

Although the initial December 7, 2010 IEP and the subsequent May 23rd, 2011 IEP correctly listed the student's eligibility and his difficulties, no attempt was made to include any goals, objectives/benchmarks or modifications. [Findings of Fact 11, 29] Although initially, the district did not focus on assistive technology, even though there was no related service provision made for it, the school district ultimately attempted to provide assistive technology services for the student to allow him to meet some of his educational needs and to assist with his OCD behaviors.[Findings of Fact 23]

The social developmental study prepared by the school social worker also identified the student's problems including his OCD and issues with symmetry, balance, contamination issues and other behavioral rituals. The examiner further noted that he had been in three different inpatient OCD programs during the summer and has been on a number of different combinations of medications with difficult side effects. She further noted that he was under the care of a psychiatrist and a therapist. On his initial evaluation by the school psychologist, utilizing the BASC - II assessment, several areas were noted including depression, somatization, attention problems, atypicality, adaptability and internalizing problems. The psychologist testified that goals could have been written to address these items. [Findings of Fact 9] At this initial IEP in December, 2010, even though homebound services were considered the appropriate placement for the student, no goals or objectives were written to assist the homebound teachers to deal with his OCD.[Findings of Fact 11]

Additionally, no modifications were noted to assist the student. The only accommodations listed were to directed to sensitivity and privacy when discussing the student's needs, sensitive to the families lifestyles and eyeballs and utilizing a codeword "migraine" in order to leave the classroom. Given the severe nature of his obsessions and compulsions as they were developing at this time and school district's knowledge relative to this, these accommodations hardly are reasonable as a student was now placed on homebound instruction. [Findings of Fact 11]

Moving forward in time to the May 23, 2011 IEP, the classroom accommodations remain the same without change even though the student has been on homebound for almost 6 months. Further, in neither of the IEP's are supports for school personnel noted nor is there any indication that any assistive technology device and service is requested or required. [Findings of Fact 29]

In response, the school district counters that the failure of the IEP's to contain goals and objectives did not deprive the student of FAPE or otherwise cause a deprivation of educational benefit to the student. The school district points to the actions of the retired former Director of Special Education who was more focused on his needs in getting him placed so that they could meet his needs. Additionally, the parents did not ask the IEP team to develop goals or objectives for her son at either of these meetings and did not object to either of the IEPs. However, it is the school district and not the parent that has the obligation to design an IEP that meets the student's unique needs. See 20 U.S.C. 1414 (d) (2) (A).

Additionally, the school district notes that the parents failure to provide the medical records as well as their declining to authorize the release of referral packets to any private therapeutic day school frustrated the ability of the team to develop goals and objectives for the student. [Findings of Fact 12, 32, 29] In addressing this issue, although the parents did decline to authorize the release of the student's confidential medical records and did not sign consents for seeking private therapeutic day placement or initially for residential placement, the parents actively provided information to the school district. Unlike the case of *Roland M. v. Concord Sch. Comm.*, 16 IDELR 1129 (1st Cir. 1990) *rehearing denied*, 110 LRP 65965 (1st Cir. 09/14/90), *cert. denied*, 499 U.S. 912, 110 LRP 66026 (1991), the mother supplied, at various times, commentary as to the student's problems and difficulties. The parents agreed to provide access to the student's psychiatrist and therapist at times requested by the school district. They also provided for the student's psychiatrist to be present at two IEP meetings. They provided letters and opinions from these experts as to the student's problems. [Findings of Fact 7, 8, 9, 9a - 9d, 38, 40, 45 - 47] So although the medical record might have provided some more insight into the student's condition, the school district cannot say that they were not on notice as to the student's condition both from the information provided orally from the parents and medical providers as well as in writing on behalf of the student from the medical providers and also from their first hand contact with the student through their school personnel and homebound instructors.

The District noted that the most compelling testimony regarding this came from the mother who did not know how to answer how the lack of goals and objectives in those first two IEP's harmed the student [Findings of Fact 35] but it is not the parents responsibility to formulate a/the goal(s) or assess the validity of that/those goal(s).

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.

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 it is laudatory that the retired former Director of Special Education was focusing on the needs of the student in terms of placement given the student's severe issues [Findings of Fact 25], the IEP's developed during her tenure do not meet the standard set for goals and objectives/benchmarks. See *Jacari J. v. Bd. Of Educ. Of City of Chicago*, 690 F. Supp. 2d 687, 702 (N.D.Ill. 2010). Understanding that the student was very difficult to deal with, primarily in terms of the homebound instructors ability to access him for instruction, the fact that there were no goals or objectives did not focus them on the steps that could have allowed him to reach an annual goal nor allow them to measure his success as to those goals.. Even if the goals were academic such as administering his course work, there should have been some goals and some objectives. Many of the teachers, staff and homebound instructors have so testified that goals could have been developed to assist them. [Findings of Fact 22]

Even though the IEP's were deficient, and significantly deficient, the question remains whether that deprived the student of any educational benefit. Given the student's severe OCD and his inability on many occasions to not even be able to meet with his homebound instructors, it is doubtful that the district could have done more even with goals and objectives for the student. The school district did not have any obligation to treat the student's underlying OCD. Until such time as the student's underlying OCD was brought under better control, the homebound instructors would continue to have difficulty having access to the student to have him work on his school and course work. Even if they were able to be with him, his issues with balance and symmetry would often frustrate them as a student would take significantly long to accomplish even the simplest of tasks.

The parent requests that the student be provided with compensatory education for the school district's denial of FAPE. This will be considered below under section 4.

The student's education here, as in *Mary Courtney T v. School District of Philadelphia*, 52 IDELR 211 (3rd Cir. 2009) was impeded by his medical condition, not by a lack of education services. The [redacted] "could not prevent the onset of such a condition nor control when it would subside". As I noted above, see *Hjortness, supra*, as the medical and psychiatric professionals were having difficult in addressing his needs, it would be unreasonable to expect the school district to do any better.

Even though the IEPs were deficient in terms of devising goals and objectives, modifications as well as accommodations and supports, the school district's failure to do this was not substantive

"hospitalization was not an attempt to give her meaningful access to public education or to address her special education needs within her regular school environment. This was not a case in which the disabled student needed medical assistance to remain in her regular school ... Her inpatient medical care was necessary in itself and was not a special accommodation made necessary only to allow her to attend school or to receive education." 225 F. 3d at 894.

The Seventh Circuit again addressed this same issue in the case of *Dale M. v. Bd. of Educ.*, 237 F. 3d 813 (7th Cir. 2001) - the seminal case in the 7th Circuit. The student in that case was disruptive in class and often truant. He was placed in a therapeutic day school designed to deal with disruptive and truant student's but was still often truant. Ultimately he was sent to jail where he was examined by a psychologist who found that he had a learning disability. The school district determined that a therapeutic day school was his appropriate placement but the mother placed the student at a private residential school and sought reimbursement from the school district. The court noted that the student had "psychological problems that interfered with his obtaining an education, even though he has no learning disability or retardation." The private school did not supply psychological services - "only confinement" 237 F. 3d at 816. The court noted that "the essential distinction is between services primarily oriented towards enabling the disabled child to obtain an education and services oriented more toward enabling the child to engage in noneducational activities. The former are 'related services' within the meaning of the statute, the later not. *Butler v. Evans*, 225 F. 3d 887 (7th Cir. 2000)." In essence, the school district was being asked to pay for confinement and not education. As a court further noted, the student's "problems are not primarily educational. He has the intelligence to perform well as a student and no cognitive defect or disorder such as dyslexia that prevents him from applying his intelligence to the acquisition of an education, without special assistance." ... This is not a case like *Kurelle v. New Castle County School District*, 642 F. 2d 687 (3d Cir., 1981) where a residential placement was necessary for educational reasons."

More recently, in 2009, both the Third Circuit Court and the Fifth Circuit have addressed this issue.

In *Mary Courtney T v. School District of Philadelphia*, 52 IDELR 211 (3rd Cir. 2009), a student suffered from emotional disturbances which required crisis intervention and management. In discussing whether or not the student was entitled to reimbursement for certain portions of the residential placement, the Third Circuit Appellate Court noted that while many programs can be called a residential program, that in and of itself was insufficient to warrant reimbursement. Only those residential facilities that provide special education qualified for reimbursement. In *Mary Courtney T.*, she was enrolled in a disorder group, a psychotic disorders group, a medication and psycho-educational group, an anxiety disorders group, a psychological skills group, a life skills training group, and medication group. Those "programs were predominantly designed to make her aware of her medical condition and how to respond to it ... However, because both programs are an outgrowth of the student's medical needs and necessarily teach the student how to regulate her condition, they are neither intended nor designed to be responsive to the child's distinct 'learning needs'. The student's education was "impeded, not by a lack of education services or specific kind of placement, but by a complex and acute medical condition. The School District could not prevent the onset of such a condition nor control when it would subside .... she required medical intervention including psychiatric treatment and drug therapies

to address the biological pathology underlying the medical condition. This is far beyond competency and responsibility of the school district."

In talking about the facility itself, the Court found it "far more similar to the hospital than a school or even a residential educational facility .... it addressed the student's condition through a combination of 'assessment, diagnosis, psychotherapy and medical management' as well as a number of group therapy offerings. Additionally, the facility was not accredited with or regulated by educational authorities. There were no educators on site and it offered no educational services.

And in *Richardson Independent School District v. Michael Z*, 580 F. 3d 286 (5th Cir 2009), the Fifth Circuit Court of Appeals, in commenting on the nature of the placement, stated that "[I]n order for a residential placement to be appropriate, placement must be: (1) essential in order to the disabled child to receive a meaningful educational benefit and (2) primarily oriented toward enabling the child to obtain an education."

The Fifth Circuit further clarified the difference between the Third Circuit and the Seventh Circuit by noting that the "Third Circuit's test (*Kruelle, supra*) focuses on whether a child's medical, social, or emotional problems are 'inextricably intertwined' with the learning process, while the Seventh Circuit test focuses on whether the private residential placement is 'primarily education'." 580 F. 3d at 298. The *"Dale M* test differs markedly from the *Kruelle* test in that the focus is not on whether the child's medical, social or emotional problems are segregable from the learning process, but rather on whether the services provided at the residential facility are geared primarily toward helping a child's education. Under this standard, courts have drawn a distinction between those services that are primarily for treating a child's medical or behavioral problem and those services that are primarily for enabling educational instruction. See, e.g. id. at 817; *People v D.D.*, 212 Ill. 2d 410, 429 - 430 ... (Ill. 2004)" The "IDEA does not require school districts to pay for private residential placements that are not essential for a disabled child to receive an education ... By requiring courts to undertake the Solomonic task of determining when a child's medical, social, or emotional problems are segregable from education, *Kruelle* expand school district liability beyond that required by IDEA." 580 F. 3d at 299.

The Fifth Circuit developed a two prong test in *Michael Z, supra.* The first prong determines whether the private placement was appropriate, that is, "whether it was essential ... for the child to obtain meaningful education benefit". The second prong, primarily based upon *Dale M., supra*, "focuses on the appropriateness at a more specific level, asking whether the particular treatments that the private facility provided were primarily oriented towards enabling the child to receive a meaningful educational benefit. As the Seventh Circuit observed in *Dale M.*, the 'primarily oriented' test is another way of determining whether the child's 'problems ... are primarily educational'. See *Dale M*, 237 F.3d at 817. Thus a court reviews the purpose of the private placement as a proxy for understanding the nature of the child's problems, along the way to determining whether the private placement was appropriate. This "second prong ... is necessarily a fact intensive inquiry." Factors that a court can consider "include, but are not limited to: whether the child was placed at the facility for educational reasons and whether the child's progress at the facility is primarily judged by educational achievement."

Regardless of the circuit, the initial inquiry is whether the Individualized Education Program calling for placement was appropriate. Given the student's problems at school during his first two months and his increasingly difficult time accessing his education even through a homebound tutor program for the next almost 2 years, the school district and the private therapist and experts all determined that the student' s appropriate placement is residential. As such, there is no disagreement that as of April, 2012, the appropriate placement for the student was a residential facility.

The student's April, 2012 IEP provided for a specific evidence-based therapeutic approach. Based upon the student's disability, residential placement with related services was determined to be the appropriate placement consideration. The goal established for the student was that he "will learn tools and strategies to manage his OCD." To implement this functional goal, the short-term objectives/benchmark included the following: the student should be able to hold a book, turn pages and read from it and be able to read unassisted; able to utilize a keyboard; be able to read material required by science and literature regardless of the content of the material; able to hold a pencil; able to use a calculator; able to sit in the classroom fully dressed; able to use a three ring binder without going through his ritual; able to shower; and be able to use the restroom. No academic goals were identified for placement. In light of the student's intelligence, the IEP team felt that the functional goal was necessary in order to ultimately enhance the student's ability to succeed on his academics. Crucial here is that the IEP team felt that the student needed functional goals rather than academic goals. [Findings of Fact 42]

Typically, methodology is not a a determining criteria for assisting a student. See *Lachman v ISBE*, 852 F.2d 290, (7th Cir.), *cert denied*, 288 U.S. 925 (1988) From the testimony adduced at the hearing, it is uncontroverted that the appropriate treatment for the student is Exposure Response Prevention (ERP) therapy. Not only is it the appropriate therapy for the student but also that it is the only therapy for the student. All of the parents' professionals, [redacted] and [redacted] clearly testified that ERP is the only therapy that can assist the student with his OCD.. The school district has not brought forth any testimony or evidence to dispute this. As such, any residential facility must provide this form of therapy to assist the student. As the witnesses testified, ERP therapy is a scientific-based therapeutic approach.

The next factor for consideration is whether the school district's proposed placement at [redacted] were appropriate placement for this student. The school district submitted packets to various residential facilities and the student was accepted at both of these locations. Presumably, the student would not have been accepted at these facilities if they did not believe that they were competent and qualified to handle his OCD. However, merely perceiving competence is not necessarily competence in actuality.

[redacted]

[redacted], the principal of [redacted], testified that [redacted] can serve students with severe OCD. The student would be placed with a teacher to student ratio of 1:12 and a mental health aide ratio of 1:5. He would also be assigned a 1:13 therapist. He would receive 360 minutes of instruction for six hours per day taught by certified teachers. Importantly for the student, exposure response prevention (hereinafter ERP) would be used. [Findings of Fact 56]

However, under examination from the parent's attorney, he testified that he was "not very familiar with ERP". He assumed that their Medical Director and their Clinical Director would be familiar with ERP but he has not talked to them specifically about this. He has not spoken to the Medical Director or the Clinical Director as to the basis for the admission of the student. He denied knowing the student's balance and symmetry issues. He did not have sufficient information to start developing strategies for the student. According to [redacted] everyone would provide ERP for the student. He denied knowing who has received specific training in ERP and did not understand that it required specific training. To his knowledge, the teacher in the classroom, the mental health aide, the case manager, and the admissions representative did not have any expertise in working with student's with severe OCD. He was not aware of anyone who have specific training in working with student's with severe OCD. He was unable to state how their charges are determined and was unable to break out the charges between room and board, tuition etc. [Findings of Fact 56]

In contrast, the student's treating psychiatrist talked to the clinical director at [redacted] and specifically discussed the use of ERP therapy there. She was informed that [redacted] does not use ERP therapy. [Tr. 17: 14 - 18]

Although [redacted] is an accredited facility, overall, the testimony was preponderant that Montana cannot assist the student. There is no indication on their website materials as submitted that ERP therapy is used at [redacted] Given the current extent and severity of the student's OCD, without this therapy, whether the program was offering him 60 minutes or 360 minutes of education would be irrelevant since he cannot access that education. How would the school accommodate the student with a 1 to 12 student teacher ratio? The student has not been able to attend school for almost 2 years. Even homebound tutoring on a one to one basis has proven difficult due to the various rituals that the student encounters based upon his issues with symmetry and balance. So whether the school is offering no minutes or 360 minutes is irrelevant to the student until such time as he is able to better control his OCD and access education by being able to hold a book, hold a pencil, type on a computer and other activities integral to the education experience. As such, although the student was accepted at [redacted] I do not find it an appropriate placement for this particular student.

[redacted]

[redacted] is a residential placement that accepted the student. [redacted]s admission director testified that [redacted] is a residential education facility for students with psychiatric diagnosis that is approved by the Illinois Purchased Care Review Board. It has a fully licensed and accredited school and campus and is licensed by the Office of Public Instruction. All classes are taught by licensed credentialed teachers and special education teachers with the expertise to meet the goals of an IEP. There is a full-time, 24 hour medical clinic that houses a full-time psychiatrist, psychologist and nurses. The student would receive 350 minutes of instruction each day. The average length of stay is 8 to 10 months.

Currently, [redacted] has two students that have OCD although the admissions director did not know the severity. The Student would receive intensive therapeutic services that incorporate ERP therapy. The school's psychiatrist has deemed that [redacted] would be an appropriate placement for the student. The current students who have OCD do not have rituals that might keep them in the bathroom for as much is five hours at a time. Those students also do not have symptoms as severe as that of the student. On examination from the parent's attorney, she was unaware if any staff members have training in ERP or severe OCD and was not aware whether any of the general education or special education teachers were trained to work with student's with severe OCD. [Findings of Fact 55]

Here, unlike [redacted] the question is much closer. The affirmative testimony is that there are currently two student's with OCD at [redacted] The testimony further is that they are using ERP therapy with the student's. Although it is disputed whether [redacted] uses ERP therapy, there certainly is credible evidence to support this. As the parents have been burden of proof and persuasion on this issue, I cannot say that [redacted] is an inappropriate facility for the student. It is a residential treatment facility that provides both educational and psychiatric care for the student's. It is certified by the state board as an education facility. Accordingly, it meets the requirements as an appropriate placement that can provide services for the student.

However, in determining that the [redacted] is an appropriate placement, the school district is required to provide evidence that, in fact, [redacted] uses Exposure Response Prevention therapy and has staff that are trained in that therapy. The evidence is an affidavit and/or certification or other appropriate paperwork as to the individual or individuals that have received training in ERP, where they received the training and the extent of that training including all certifications relative thereto as well as a copy of their curriculum vitae. In the event that there are no individuals that have received sufficient training in ERP, the school district is required to provide a licensed and/or certified therapist trained in ERP therapy to provide this therapy to the student. In order to approximate the extent of treatment necessary for the student as suggested by the evidence, this student should be provided up to 30 hours per week of ERP therapy based upon the testimony elicited. [Findings of Fact - 57]

In addition, under both the IEP as well as IDEA 34 C.F.R. 300.34 (c) (16), the school district is responsible for providing transportation for the student to [redacted] Given the severe difficulties as related by the mother and the student's therapist with traveling, it is the school district's responsibility and not the parents to make sure that the student is able to get to [redacted] It is incumbent upon the school district to make sure that they have someone available that can make sure that the student is able to access his transportation needs and, if necessary, provide special transportation and for the necessary trained personnel to assist the student from his home in the [redacted] area to [redacted] and back each time required.

Even though this would the end the inquiry under the *Dale M. supra*, and *Michael Z., supra*,, the parents vigorously claim that the [redacted] (hereinafter "[redacted] is the only residential placement that is appropriate to provide the student with the instruction required for his IEP. According to the material submitted, the [redacted] is a specialized psychiatric residential treatment center that provides sensitive, age-specific intensive psychiatric care for children and

teens ages 12 to 18 dealing with a broad spectrum of mental health concerns. The 21 bed treatment center is located in the main hospital facility at [redacted] which is licensed as a psychiatric hospital by the state of [redacted] and accredited by the Joint Commission. This may well be true in terms of providing the student the optimal program to treat his OCD, but it is primarily oriented towards medical/psychiatric treatment. [Findings of Fact 52, 57]

[redacted] the clinical director of the center, described the program provided at the [redacted] as providing cognitive behavioral therapy emphasizing something known as exposure and ritual prevention, which is the key ingredient to overcoming OCD. ERP therapy is approximates 85% of the program at [redacted] Each individual participates in a three-hour block of daily ERP therapy. In addition, students also participate in a classroom setting for 90 minutes each day.

In Illinois, the Seventh Circuit has adopted the test as set out in *Dale M, supra*, with its focus on whether the placement is "primarily educational". In that context, the *Michael Z.* decision, *supra*, of the Fifth Circuit is instructional as a roadmap for determining the *Dale M* standard and whether the student's placement at the [redacted] is for educational purposes or is primarily a medical treatment. Undoubtedly, the [redacted] can provide for dealing with the medical/psychiatric issues dealing with the student's OCD. It also provides some educational component. However, it is also primarily a psychiatric residential treatment center which focuses on psychiatric diagnoses. The treatment at the [redacted] would necessarily have to commence with dealing with the student's contamination and rituals issues, particularly those dealing with his hygiene and activities of daily living. As was noted by the student's various medical providers and parent, the student often requires more than five hours to take a shower. Any number of things can cause contamination issues throughout the house as well as any place where the student might go. As such, although the student's educational needs at some point might be met at [redacted] prior to getting to the educational matters, the student would first have to deal with the various daily obsessions and compulsions.

Even though there is a potential educational component, the critical inquiry under *Michael Z., supra, Mary Courtney T., supra, and Dale M., supra* is whether or not the facility is primarily oriented towards enabling a disabled child to obtain an education. As the court in *Michael Z., supra*, noted: factors that a court can consider "include, but are not limited to: whether the child was placed at the facility for educational reasons and whether the child's progress at the facility is primarily judged by educational achievement."

In applying the *Dale M., supra,* test in the context of the *Michael Z, supra,* two prong analysis, I reach the decision that the [redacted] would not be an appropriate residential treatment facility since is primarily a medical/psychiatric facility and progress is not judged by educational achievement.

4. **Whether the school district failed to implement the April 3, 2012 IEP, including not implementing goals or providing psychological services, psychiatric services, school health services, transportation services, acquisition of daily living skills and the provision of an aide.**

At this point, the school district has yet to implement either the goals or the related services as set forth in the current IEP. Even though the IEP was drafted on April 3, 2012, the school district allegedly did not contact any residential facilities until June 2012. Between the IEP date and the present date, the school district has still not provided the related services included within the student's IEP. As the parent pointed out, the school district was presumably waiting for the medical records of the student as well as the signed authorization for exchange of confidential information so they could not submit these referrals until such time as the medical records were received. Although not directly dealing with the related services and implementing the goals for the student, the clear purpose of the April 3, 2012 IEP meeting was at a residential placement would be found for the student and that these related services and goals would be implemented at that point. However, the parent did not sign the authorization for the [redacted] and the [redacted] until June 14, 2012. Within a short period, the student was accepted at [redacted] in at [redacted] It was at this point on August 8, 2012 that the parents filed for due process.

It is clear that the school district has not yet provided the related services nor worked on the goals that were established for the student. Even if we put aside the failure of the parents to timely return the authorizations and overlooked that the parents have been advocating for a certain residential placement, the comments to section 2 above are still equally valid from April 3, 2012 through the present time. The student is receiving both psychiatric and psychological services through his own providers as he has been for the past several years. Both the psychiatrist and therapist have testified that the student has been on a downward spiral for a period of time. The medication regime for the student has been difficult including numerous side effects. The psychological counseling and use of ERP with the student's psychologist has seen more recent regression then progression in the treatment of the student. These are substantial reasons why each of them was advocating for placement of the student at the [redacted] This then asks the question already answered above as to what more the school district can do for the student that his own private psychiatrist and therapist have not already provided.

As a student is currently placed on homebound instruction, a particularly restrictive placement, there is little need for transportation services. Although not stated, these transportation services were directed to the student's transport from home to the residential facilities. Since there has been no acceptance by the parent of the school district's suggested placements, no transportation services are needed at this point. As to the school health services and the acquisition of daily living skills, this was to be one of the areas to be addressed at the residential placement. At this point in time, given the student status as homebound and given the student's severe OCD, there is little that the school district can do relative to these issues. Given the parents struggles with the student, there is little that an aide could do at this point. [Findings of Fact 53]

As I noted above, the student's education here, as in *Mary Courtney T v. School District of Philadelphia*, 52 IDELR 211 (3rd Cir. 2009) was impeded by his medical condition, not by a lack of education services. The [redacted] "could not prevent the onset of such a condition nor control when it would subside." As the medical and psychiatric professionals were having difficult in addressing his needs, it would be unreasonable to expect the school district to do any better.

Compensatory education

Although there were violations of FAPE by the school district's failure to develop goals and short-term objectives/benchmarks for the student, as I noted above, there was no substantive violations that warrant compensatory education for the student. Given the student's severe OCD, there was little that the school district could have done to have provided for any goals and short-term objectives/benchmarks that would substantially enhance or assist this student with his education. As the school district notes, compensatory education must be "reasonably calculated to provide the educational benefits that likely would have accrued from the special education services the school district should supplied in the first place" *Petrina v. City of Chicago Public Sch Dist. 299,* 53 IDELR 259 (N. D. Ill. 2009). The student herein was a high functioning and highly intelligent young man until the onset of his OCD. Therefore, even assuming that the parents had provided sufficient basis to calculate a compensatory education award, there would be no basis to award it. The student's lack of progress toward graduation was not a result of any inappropriate educational services but by his OCD. The student's education was impeded by his medical condition and not by any lack of education services.
Accordingly, I find in favor of the school district on these issues. The school district need take no further action as to this.

G. ORDER

1. The School District has provided sufficient and appropriate placements for the Student from December 7, 2010 to April 3, 2012. This issue is found in favor of the School District. The School District need take no further action as to this.

2. Although there were violations in the preparation and content of the IEP's from December 10, 2010 and May 23, 2011, the School District's failure to do this was not substantive and did not deprive the student of any educational benefit. According this issue is found in favor of the School District. The School District need take no further action as to this.

3. The School District's recommended placement for the student at the [redacted] is considered an appropriate placement under the *Dale M., supra,* and *Michael Z., supra,* test. If the student elects to go there, the School District must:

    a. Provide an affidavit and/or certification or other appropriate paperwork as to the individual or individuals that have received training in ERP, where they received the training and the extent of that training including all certifications relative thereto as well as a copy of their curriculum vitae;
    b. In the event that there are no individuals that have received sufficient training in ERP, the school district is required to provide a licensed and/or certified therapist or other appropriate person with training in ERP therapy to provide this therapy to the student;
    c. Make sure that the School District provide trained personnel in OCD behaviors that can make sure that the student is able to access his transportation needs and, if necessary, provide special transportation and for the necessary trained

personnel in OCD behaviors to assist the student from his home in the [redacted] area to [redacted] and back each time required.

4. The Parent's suggested placement for the student at the [redacted] is not considered an appropriate placement under the *Dale M., supra*, and *Michael Z., supra*, test.

5. The School District does not have to provide Compensatory Education to the student. This issue is found in favor of the School District. The School District need take no further action as to this.

6. The School District shall provide proof of compliance with this Order to the Illinois State Board of Education, Compliance Division, no later than January 15, 2012.

It Is So ORDERED.

W. DAVID UTLEY
Impartial Hearing Officer
Dated this 29th day of November, 2012

450 West Schaumburg Road - 681487
Schaumburg, IL 60168

(847) 321-1044

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 29th day of November, 2012

450 West Schaumburg, IL - 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 below 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 29, 2012.

[redacted]

Via First Class Mail – Certified Only

[redacted]

Via First Class Mail – Certified Only

Illinois State Board of Education
[redacted]
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

Post Office Box 681487
Schaumburg, IL 60168
(847) 321-1044