

Case Number: 2013-0440

Hearing Officer: [REDACTED]

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

RECEIVED

SEP 30 2013

SPECIAL EDUCATION  
SERVICES

## Impartial Due Process Hearing Decision Cover Page

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

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

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

### Date and Timelines

Date of Written Request: 05/01/2013  
Date of Pre-hearing Conf: 08/13/2013

Date of Hearing: 09/20/2013 to 09/20/2013  
Date of Decision: 09/30/2013

### Summary of Decision

ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING

---

[REDACTED]  
Student,

v.

Case No: 2013-0440  
Patricia Marino  
Impartial Hearing Officer

[REDACTED]  
School District

---

**FINAL DETERMINATION AND ORDER**

**BACKGROUND**

Student is a six (6) year old first grade female with an Orthopedic Impairment.<sup>1</sup> Student was a kindergarten student at School B for the 2012-2013 school year and is currently in first grade. She was accepted into the gifted, selective enrollment school based on test results. The curriculum is challenging and all students are working at least one grade level above their actual grade. In kindergarten, Student was working on a first grade curriculum and as a first grader, she is working on second grade curriculum.

In May of 2013, during her triennial reevaluation, the Individualized Education Program (IEP) team determined that Student was no longer eligible for an IEP and her needs could more appropriately be met under a 504 Plan.<sup>2</sup> Parent objected to this determination and requested an Independent Educational Evaluation (IEE) at District expense. In response, on May 1, 2013, District requested a due process hearing to show that its evaluation of the child was appropriate. 34 CFR § 300.502(b)(2)(i). Parent then filed a due process complaint on May 14, 2013, , alleging, among other things, denial of a Free Appropriate Public Education (FAPE). Both cases were consolidated with District carrying the burden of proof in defending its evaluation and Parent carrying the burden in allegation of all other matters. *Schaffer v. Weast*, 546 U.S. 49 (2005)

This Impartial Hearing Officer (IHO) was appointed on May 9, 2013 and has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* and the Illinois School Code, 105 ILCS 5/14-8.02a *et seq.*

---

<sup>1</sup> District uses the terminology [REDACTED]; however under IDEA the category is listed as "Orthopedic Impairment"

<sup>2</sup> § 504 of the Rehabilitation Act of 1973

A prehearing conference (PHC) was held on August 13-August 14, 2013. Parent (a pro se attorney), her co-counsel, and District's counsel all participated via teleconference. The previous counsel for the District also briefly participated.

One of the reasons for delay in this case resulted from Parent's claim that the District failed to provide documents needed to prove, among other things, a predetermination that resulted in the decision to terminate eligibility. District maintained all student records had been provided but that Parent was seeking internal documents, including staff schedules, daily sign-in sheets for staff, etc. that are not part of Student Records. The Parent believes District created policy designed to reduce eligibility of all District students. She has been engaged in an ongoing battle with the District regarding Freedom of Information Act (FOIA) requests, policy documents, etc. and has filed complaints with a number of regulatory agencies. She alleged that denial of eligibility for her daughter was retaliation against Parent. Parent's witness list initially contained fifty (50) witnesses, with most of them expected to testify about policy and procedures, communications and records. The Impartial Hearing Officer (IHO) was concerned throughout the process that the very specific issues related to Student's rights under the Individuals with Disabilities Education Act (IDEA) were being obscured by the battle over records. The IHO has no punitive powers to demand District change its policies and continuously asked Parent to focus on Student, eliminating proposed witnesses, including a school clerk, and a number of District attorneys, none of whom had direct knowledge of the special education status of Student. If District policies and procedures resulted in denial of FAPE for Student, those issues would speak for themselves, resulting in a ruling against the District.

Further complicating this case was the issue pertaining to the two (2) year Statute of Limitations, in which a complaint can be made under IDEA. 34 C.F.R. § 300.507(a)(2). Parent acknowledges Student is in a "good school" and had a successful 2012-2013 school year and most of her complaints pertain prior to May 14, 2011, beyond the acceptable timeline. Many of the witnesses and documents listed for the PHC were beyond the allowable time. Parent stated District withheld records, thus providing an exception to the timeline. 34 C.F.R. § 511(F)(2). However, the records she was seeking were things she believed existed but the District denied. Parent's request to waive the Statute of Limitations was denied.

IDEA requires a final decision be issued no later than 45 days after receipt of a due process complaint. 34 C.F.R. § 300.515. However, the IHO may grant a continuance, requested by either party if good cause is shown. Parent initially requested a continuance to allow time to secure additional documents. This was granted, as was a continuance that would allow the hearing to be held during the school year, obviating the need for costly issuance of subpoenas for District employees. The 45 day timeline was extended accordingly.

Parent did not want the hearing held at School B, because she did not want to create any negative feelings with staff, all of whom she holds in high regard. The first four days of the hearing (September 10-13, 2013) were held at a local high school and the last two days of the hearing (September 17-18, 2013) were at the District Office. Written closing arguments were presented on September 20, 2013.

Prior to the hearing, Parent filed a motion to rule inadmissible any evidence that had not been provided to her under her FOIA request. The IHO directed Parent to object if and when such evidence might be introduced. There was no such evidence.

Parent filed a motion objecting to District's addition of co-counsel two days before the hearing. Motion was denied.

Parent filed a motion objecting to the addition of new documents and witnesses. This motion was denied, as information was disclosed within 5 business days of the hearing.<sup>3</sup>

Parent filed a motion objecting to the use of documents/testimony beyond the statute of limitations. IHO requested Parent object at the time such evidence was introduced. An exception to the statute of limitations had been afforded Parent, for purposes of the historical value of previous evaluations. The same standard applied to the District. Services provided or not provided, goals, and IEP's would not be allowed.

The hearing was closed and witnesses were sequestered. Originally scheduled for four days, the hearing ultimately required 6 days, usually lasting 10 hours.

To protect the identity of Student, neither the schools nor witnesses will be identified in the body of this decision. Names will be recorded in the Addendum.

The following witnesses testified for the Parent:

1. Parent
2. RN, Division of Special Care for Children (DSCC)
3. Specialized Service Administrator (SSA) for District
4. Teacher Assistant, School A
5. Director of Early Childhood Program, School A
6. Kindergarten teacher, School B
7. Speech/Language Therapist, School A
8. School Nurse, School B
9. Private Psychologist
10. Occupational Therapist (OT) School A (2010-2011)
11. SSA, Case Manager at School B
12. Classroom Assistant, School A
13. Private OT
14. Special Education Teacher, School A
15. Pediatrician
16. Art Teacher, School B
17. Music Teacher, School B
18. P.E. Teacher (Male), School B
19. Spanish Teacher, School B
20. P.E. Teacher (Female), School B
21. Nanny
22. Pre-K Teacher, School A
23. SSA/Counselor, School A

---

<sup>3</sup> 105 ILCS 5/14-8.01a(g)(50)

The following were District witnesses:

1. Physical Therapist (PT), School B
2. District psychologist
3. OT, School B (Interim)
4. OT Manager for District
5. OT, School B
6. PT Peer Mentor
7. Transportation Supervisor for District
8. OT, School A (2011-2012)

Parent introduced documents labeled P 1-28. This included 3 letters from physicians who were unable to either appear in person or participate via phone. Over the objection of District, these documents were allowed into evidence, with the proviso they would be given less weight, due to the inability of District to cross-examine.

District introduced documents labeled D 1-15.

### ISSUES

A number of issues and remedies originally presented by Parent were stricken at the prehearing conference for being beyond the authority of the IHO.

The issues to be determined are as follows:

1. Whether District provided a meaningful (appropriate) evaluation of Student
2. Whether District denied FAPE by failing to develop and implement an appropriate IEP.
3. Whether District denied Parent meaningful participation in developing the IEP and whether there was a predetermination of eligibility and services.
4. Whether District addressed non-academic and extra-curricular needs.

The remedies requested by Parent are as follows:

1. Any relief IHO deemed appropriate.
2. That District reimburse Parent for an Independent Educational Evaluation (IEE)
3. That District reimburse Parent for:  
2011 ESY at [REDACTED] School  
2011 ESY transportation'  
2012 ESY at [REDACTED] School

2013 ESY Transportation

2012-2013 – private musical instrument instruction

2012-2013 – Youth Guidance Programming

4. Compensatory education to replace lost educational opportunities for all of 2011-2012, as well as failure to provide extra-curricular and recreational needs.
5. IEP goals for writing, fine and gross motor skills.
6. District reimbursement for private therapy, Parent's professional time, related expenses involved in securing special education and related services and transportation costs.
7. That District provide weekly e-mails from related service providers, regarding consultation and direct service.
8. That District work with Parent to hire consultant for Student's IEP meetings and throughout the year to consult with District staff.

### FINDINGS OF FACT

After considering all the evidence, as well as the arguments of counsel, this Hearing Officer's Findings of Fact are as follows:

1. Student is a 6 year old girl, who was described by all witnesses with direct knowledge of her, as brilliant, social, engaging and well-liked by peers, kind, creative, motivated, and independent. From the testimony, this IHO would add "spirited".
2. Student suffered a perinatal stroke, which resulted in right side hemiplegia, cerebral palsy (CP). CP is on a spectrum, with some individuals experiencing physical or intellectual disabilities, while others may not. In the case of Student, there is clearly no intellectual impact, as her Intelligence was tested at 131, which places her in the very superior range. Physically, Parent described the disability as "hidden" because others might not recognize the impairment. She runs, plays, and is able to do a great many things; however, although the disability might not be apparent to untrained observers, it still impacts Student's activities. Expert witnesses, including her physician, described plasticity and automaticity. In the concept of plasticity, when there is brain injury, other parts of the nervous system can take over, which explains the emphasis on providing as many opportunities as possible for Student's still developing brain. Automaticity was described quite well by the Occupational Therapists (OT's). Experienced drivers shift gears, apply brakes, accelerate speed, etc. without thinking about it. It seems to come quite naturally. As young children learn to write, they painstakingly form letters, using all their concentration to stay between the lines, form a nice round "O", and not pressing too hard. Concentrating on these developing skills interferes with the ability of the child to concentrate on the content of what he/she is writing. When a child has developed sufficient automaticity, the expectation is he/she can concentrate on the content of the writing,

somewhat oblivious to the mechanical aspect. Further concern for any child with CP is the negative role it often plays on executive functioning, even with children at Student's high level of intellect. It can involve difficulty with organization, concentration, and on-task behavior.

3. Parent describes herself as a single mother of one child. She has clearly devoted her life to her daughter and has attempted to provide her with as much stimulation, access, and opportunity as possible, with the expectation Student will be a successful, happy, independent, fully-functioning adult.
4. Parent has been actively involved with all aspects of Student's education, frequently contacting teachers and related service providers. She follows up on recommendations by her private OT and PT and asks the school staff to implement these recommendations. If they don't, Parent believes she is not being listened to or allowed "meaningful participation" in the education of her daughter. The problem is that the private OT's have not observed Student in her classroom. They have relied on the reports of Parent, which might not reflect what a trained observer would see. And they do not have the advantage of observing her with her classmates.
5. Student attended School A for pre-school and pre-kindergarten during the 2010-2011, and 2011-2012 school year. She then tested for admission and was accepted into an elite, gifted school that ranks number 6 in the state of Illinois and top 286 in the nation. Called a Classical Program, the rigorous curriculum includes instruction in literature, mathematics, language arts, world languages, and humanities. All students in the Classical Program are working one grade level above their grade. As a kindergarten student, Student was working on 1<sup>st</sup> grade curriculum and for 1<sup>st</sup> grade, she is currently being instructed in 2<sup>nd</sup> grade curriculum.
6. For purposes of this hearing, the IHO gave the greatest weight to the testimony of the teachers and related service providers at School B, because Parent consistently stated she had nothing but respect and admiration for the job they do. Parent insisted the hearing not be held at School B, because she did not want to draw attention to the conflict with District. Cross-examination of these witnesses was challenging for Parent, as she did not want to offend them or appear ungrateful. She mentioned this repeatedly. During testimony, it was clear the staff were exceptional educators, with advanced degrees, national board certification, and advanced training in gifted education.
7. Although the 2012-2013 school year was a very successful one for Student, the factor that resulted in the issues before us was the IEP team decision that Student was no longer eligible for an IEP. Previously eligible under the classification of Orthopedic Impairment<sup>4</sup>, the team believed that

---

<sup>4</sup> Parent correctly pointed out the District uses the term "physical disability", while IDEA uses "Orthopedic Impairment"

while she was no longer eligible for special education, her continuing related service needs could be met with a 504 Plan. Parent disagreed.<sup>5</sup>

8. All of Student's education for 2012-2013 took place in the rigorous general education classrooms. Her homeroom/classroom teacher<sup>6</sup> described a happy, sweet, humorous, gifted child with strong self-advocacy skills. On the first day of kindergarten, she explained her disability to her classmates, who thereafter tried to help her with everything. When asked to describe challenges Student faced in her class, teacher stated: following two-part directions, stabilizing her paper, taking off boots to put on gym shoes, and sometimes needing help with her backpack. Peers would help with some tasks, like putting on boots. Teacher stated she consulted regularly with Student's OT, who had many suggestions to address each of the challenges. For issues related to attention, she would use proximity, softly snap her fingers, point to a book or paper and generally bring Student's attention back in focus. Parent pointed out that in her reading group, Student was described as an "emergent" reader. There was a reading group higher than Student's; however, all students were working in curriculum one year advanced from their designated grade.

In writing, Student was focused on the formation of her letters and would forget capitalization and punctuation. She tried to form the letters just as the OT had showed her. Regarding difficulty with following 2-step directions, the teacher said that is a big skill to learn for many students in kindergarten. During lunch, Student was able to carry her own tray. She had difficulty with opening her milk and putting in the straw, similar to many other kindergartners. She could put on her coat but had difficulty with zippers.

One of the most serious concerns related to an accident Student had in class, in which the teacher noticed a large puddle of urine under her desk. While not unusual for students at that age to have accidents, the volume of urine was not something she had witnessed before, Parent consulted with a urologist who identified weak muscle related to the CP as the cause. He provided recommendations, which were followed by the teacher. Teacher began frequent restroom breaks for the entire class, made sure Student used the restroom before leaving school at the end of the day, and provided assurances to Student that she was free to leave the room whenever necessary. These strategies were shared with each of Student's other teachers.

---

<sup>5</sup> Under cross-examination, Parent stated she preferred an IEP for procedural protection and the right to file for a due process hearing.

<sup>6</sup> Of all the witnesses, the testimony of this individual was given the greatest weight. Parent consistently expressed high regard for her, she spent the greatest amount of time with Student, was responsible for implementing accommodations and modifications, had a grasp of Student's needs and strengths, and was unwavering under direct and cross examination.

A non-slip dycem or clipboard was recommended to stabilize her paper. (Student is not able to stabilize the paper with her right hand, while writing with her left). These were recommendations offered by the private OT and utilized within the school. It is important to point out that because an accommodation is recommended, it does not mean a Student will always use it. She would sometimes refuse the devices, unless it was a preferred activity, such as coloring. The OT from School B testified Student did not like using the clipboard. Teacher also said that at the beginning of kindergarten, Student would take a great deal of time getting ready for tasks, which again is very typical for all kindergartners. However; by the end of the school year, she showed definite growth.

Teacher frequently e-mailed all parents about whatever challenges students might be experiencing so they could help students at home. It wasn't an indication of weakness, simply an expectation for kindergarten. Student showed progress throughout the school year, including in writing, where she was able to keep up with her classmates. While she struggled initially, again this is typical for all kindergartners. She stressed that while Student clearly had difficulty paying attention, this was not unusual for that age and as a teacher, she uses many strategies to refocus all her students. When asked under cross-examination if her disability hindered her ability to make progress, Teacher stated "no". When asked if Student needed special education services, Teacher said "no".

The music teacher described a student who tries everything and succeeds. She sings and moves to the music. She is happy, confident, smiling and smart. While she does not have complete use of her right arm, it does not impact her in music class. Teacher saw no mobility issues. Student did not need any accommodations in music class. She earns all A's and is able to access the curriculum.

The art teacher stated Student had no difficulty accessing the curriculum and did not require any special accommodations. All students at that age might need their art project taped to the table. She participated in all activities the same as her typically developing peers. There were no concerns and Student make good progress.

The Spanish teacher stated Student was a happy, smart, motivated student, with normal interactions with peers. She progressed at the accelerated grade level. Teacher was aware of the disability because her homeroom teacher shared the information with her. The only recommendation she utilized was extra breaks for writing to reduce fatigue. Student made progress commensurate with her typically developing peers.

Student had two P.E teachers in kindergarten, a male and female. Both testified. A Physical Therapist (PT) consulted with the teachers a number of times, observing Student in PE and recommending accommodations.,

when appropriate. One of the accommodations was the use of a larger ball (easier to catch). While Student might struggle with loco-motor movement, so do many of her typically developing peers. Her disability did not effect her progress. When asked if he would recommend Adaptive P.E. teacher said "no, I don't know how I would better adapt or modify the curriculum. She does well within the class and curriculum." The female co-teacher, a National Board Certified teacher, who has taught at School B for 11 years, previously taught special education. This teacher stated that no special instruction was needed, that Student was able to participate and access the curriculum the same as her typically developing peers. She added that Student earned A's for all 4 quarters and that every student who needs accommodations gets them and this is no different for Student.

Student's science teacher was on Parent's list of witness but Parent chose to strike her as a witness.

The issue becomes whether or not Student requires specialized instruction, from a special education teacher in either her classroom or physical education class. Each of the teachers, all of whom were Parent's witnesses, answered "no". Student's pediatrician testified Student needs specialized instruction in P.E. so she can practice and participate like her peers. However, her P.E. teachers testified that she *is* participating like her peers.

9. The subject of related services is a key issue regarding FAPE. There are three very separate issues: 1) whether the services were appropriate, 2) whether the evaluation was appropriate, and 3) whether District denied FAPE by failing to provide the services as indicated in Student's IEP.

Regarding the appropriateness of services, there are a number of conflicting opinions. There are clear differences between school based therapists and clinical (medical) therapists. This became a battle of witnesses, with Parent witnesses testifying about what the school should be doing and District witnesses defending their practices and decisions.

One issue is how and when services are provided. Student was not in any special education class, nor was there a special education teacher assigned to her in general education classes. Related services can be either direct service or consultative, in which the service provider observes the Student, talks to the teacher about any concerns, and then makes recommendations for modifications and/or accommodations. Whether talking about automaticity or ADHD related problems, the intervention can't be and shouldn't be direct OT services. Interventions, to be effective, need to be ongoing and continuous and therefore need to be implemented by the classroom teacher, with the OT providing guidance and recommendations. The level of distractibility can be a serious impediment to Student's success and certainly needs to be addressed but how is that done? It appears that direct services were included in the IEP based on demands of Parent.

Goals were written at the suggestion of outside clinical OT's (based on reports by her mother) that were considered by District OT's to be unnecessary. This was done to be responsive to Parent's requests. In some cases, recommended goals were for skills above the grade (age) level of Student. It is also important to note that more is not always better and sometimes it is actually worse. In October, 2012, a PT went to Student's class to provide Direct services. It was during math class and the teacher asked the PT to return during recess. When the PT approached Student on the playground, she had a temper tantrum, refusing to work with her. Student wanted to run and play with her friends, not work 1:1 with a therapist; however, her IEP required the direct instruction. Regarding automaticity in writing, the OT Manager testified Parent wanted a handwriting goal to address automaticity but this is inappropriate for kindergarten or 1<sup>st</sup> grade, where students are still learning the mechanics of writing.

Direct versus consultative services is an important factor to consider because of the allegation of Parent that District failed to provide FAPE. A great deal of testimony was devoted to the issue of "duration minutes" as recorded in the Service Records Log, received by Parent under her FOIA request. In the column recording minutes, it might say "30 minutes" and in the next column, it might say "Student was absent". Parent interpreted that to suggest therapists were fraudulently recording service minutes that were not provided. In fact, testimony explained that all service minutes are recorded, whether the student is seen or not. This is for monitoring case load issues and also to ascertain the number of minutes to be made up when sessions are missed. According to the Parent, 17 direct service sessions were missed. A number of sessions were missed because of Student absences, including a vacation during school days. Mother reports that many of the absences were due to medical appointments and Student returned to school later in the day. This does not recognize that other students were scheduled for those times. Additionally, some of the absences were due to OT/PT therapists attending IEP's for other students. The therapists and OT/PT therapists were asked to explain how sessions are made up. They stated that, although they are not required to make up missed sessions due to student absences, they don't consider the reason for the missed session. Instead, they consider the needs of each student and if the missed session results in loss of benefit to student, the session is made up.

Further complicating the issue of missed OT sessions is the situation at the beginning of the 2012-2013 school year. School B did not have an OT and District was in the process of hiring someone. It was not until early October that an interim OT was assigned to School B. When she examined the Student's file, she noticed that a physician's script, ordering OT was outdated.<sup>7</sup> Within two days of being contacted, Parent presented the updated script. The SSA at School B testified that she downloaded the IEP's of all students transitioning from pre-school, prior to the beginning of the school year. The kindergarten teacher was given a copy of the accommodations and modifications and these were shared with all the teachers, in a timely manner. Therefore, although the teachers were

---

<sup>7</sup> District policy is that a yearly updated physician's prescription be on file before direct services are provided.

aware of her needs in their classrooms, she did not receive direct services for the first month of school.

10. The evaluation completed by the District resulted in a determination at the eligibility conference in May 2013 that Student was no longer eligible for an IEP and would instead receive OT and PT through a 504 Plan. The burden is on the District to defend the appropriateness of this evaluation.

On March 6, 2013, Parent signed Consent for Reevaluation, agreeing that only two areas were relevant for the triennial assessment to determine ongoing eligibility. One domain was Academic Performance. Existing information referred to the fact there were no academic concerns; however, attention was an issue to be considered. Behavioral functioning would be determined from informal testing, observation, interviews, and file review. The second domain was Motor Abilities and agreed upon assessments listed were: student observation, teacher interview, informal OT assessment, record review, current physician referral form, and a PT evaluation.

Parent questioned the OT and PT, who completed the District evaluation, about why they did not complete a Parent Interview as part of their evaluations. Although not a required component of such an evaluation, it would certainly seem helpful. However, the witnesses testified they had frequent communication with Parent, via e-mail and were well aware of her concerns.

The instrument used by the psychologist was the Behavior Rating Inventory of Executive Functioning (BRIEF). This assessment addressed planning, organization, behavioral regulation, and inhibitions. There were concerns in all areas. The District psychologist testified that these concerns are addressed through modifications and accommodations. Clearly, the psychological assessment addressed the concerns expressed during the domain meeting. The team believed Student had difficulty with executive functioning and the assessment verified this concern.

Parent's private psychologist challenged the District evaluation. One of her criticisms was that they did not complete a full IQ test, and this witness stated a full battery should be given every three years. Given the fact Student has an IQ in the very superior range and is making very good progress in a gifted program where she is working one full year above grade level, the necessity of a full battery of IQ testing is questionable at best. In challenging the District evaluation, Parent's psychologist made recommendations beyond her area of expertise, specifically speech and occupational therapy, suggesting IEP goals, without having spoken to any school staff and not having observed Student in school. Her knowledge of Student's school performance came exclusively from the mother's description. She did not hear the teacher's description of Student's success in her gifted program. She did not hear that the IEP team was well aware of problems with attention and were addressing those

concerns in all her classes. Although she did not talk to either of Student's 2 P.E. teachers, and did not observe her in PE class, she testified that Student needed specialized instruction in P.E. The private psychologist was not familiar with the curriculum, had not observed Student in class, and did not talk to her teachers, yet she felt qualified to determine the appropriateness of District's evaluation and whether or not they were providing FAPE.

Finally, the witness criticized District for failing to complete an Assistive Technology (AT) evaluation as part of the triennial assessment. Under cross-examination, she acknowledged that an AT assessment is not done before the age of 6. Student was five years old at the time of District's evaluation.

The District PT has a doctorate in physical therapy. Her evaluation reported that Student is able to access and perform all functional mobility tasks throughout her classroom environment independently. The report was comprehensive and detailed. The PT described Student's limitations and adaptations. She is able to navigate the school, participate well with her peers during recess and PE. She can ambulate throughout the school building independently, at a pace comparable to her peers. She is able to keep pace with her peers when negotiating stairs, using a handrail for safety. Student functions independently in the lunchroom, occasionally needing help opening packages and containers. Student is independent in the bathroom, able to manage clothing and personal care. Regarding transportation, Student is able to negotiate up and down the school bus steps with distant supervision, demonstrating good stability, technique, and safety awareness. She requires increased time to navigate school bus steps due to her modified gait pattern.

At the request of parent, but not part of the reevaluation, PT completed a comprehensive assessment of playground equipment. She determined that Student was able to access every piece of self-selected equipment, taking into account the variety of means of accessibility. To reach the top of a slide, a student might climb stairs or climb a rope. Although Student could not use all of the means of access, she could use every piece of equipment she chose to utilize. While Student might not be able to do everything her peers can do, she can participate in all the same activities. It should be noted that the playground is not part of the PE curriculum.

The OT evaluation was a comprehensive assessment that included a description of the educational environment, classroom expectations, and current modifications and accommodations. Her strengths and needs were addressed. Self-help activities were described in detail. The evaluation addresses challenges with writing, as well as with attention, where she recommends frequent verbal reminders from the classroom teacher, preferential seating, and a visual checklist. As part of her evaluation, OT completed three tests: Beery VMI, DTVP, and a Sensory Profile. Beery

addresses visual/motor integration. (ability to hold pencil, write within lines), while DTVP is a test of visual perception.

The OT Manager reviewed the assessment completed by the OT. This witness is currently working toward a doctorate in occupational therapy and has 10 years experience as an OT. She explained that the purpose of an OT evaluation is to determine if additional support is necessary to access education. She stated that Adaptive PE significantly modifies the curriculum and is an intervention for students with significant physical disabilities. Student was performing successfully in the general education curriculum and would not be appropriate for the modified curriculum that is part of Adaptive PE.

Regarding writing, the OT Manager testified that while mother insisted on a handwriting goal, this was not necessary. Parent's expressed concern was related to automaticity, and this comes over time, with practice. She testified that automaticity is not an appropriate goal for a first grader, when children are still learning about thinking and writing. There are no standards regarding penmanship and handwriting assessments are not done until mid first grade, while Student was in kindergarten at the time of the assessment. It would be appropriate that an accommodation of extended time for writing assignments be provided.

The OT Manager stated that the OT evaluation completed by the OT at School B provided recommendations which included a clipboard to stabilize Student's paper, a mouse on her left side, self-help skills, and a classroom job (to address ADHD concerns) There were no issues regarding regression and Student had surpassed her goals, indicating strategies had been successful.

Much of the testimony presented by Parent criticized District's evaluation for failing to consider ADHD as a disability. However, the OT from School B testified that Parent did not agree with the ADHD "label" and did not want it on Student's IEP.

At her eligibility conference on May 6, 2013, after review of the evaluations that were deemed relevant during her domain meeting, the IEP team determined that Student was no longer eligible for special education services. District witnesses testified that, although Student has a Physical Disability (Orthopedic Impairment), it does not adversely affect her educational performance, and she is therefore not eligible for special education. No one questioned her need for occupational therapy and physical therapy but decided that, given her ineligibility for an IEP, those services would be appropriately provided for in a 504 Plan.

11. Parent alleges she was denied meaningful participation in the reevaluation process and that there was a predetermination of ineligibility. Parent has been a strong advocate for her daughter. She volunteers at the school, communicates regularly with teachers via e-mail and attends all meetings. She also

communicates with related service staff and case managers. She frequently provides suggestions from Student's private therapists. There is no question she has attended all IEP meetings. One such meeting lasted the entire school day and was still not concluded and had to be continued to another day. Testimony from many witnesses described meetings that lasted much longer than normal – two to four hours for meetings that typically last 45 minutes. According to testimony from the Case Manager at School B, a domain meeting lasted 4 hours, with Parent insisting that only the OT, PT, and teacher participate. Parent often insisted on goals with which other members of the IEP team disagreed. In some cases they acquiesced to the Parent's request, particularly in regards to the provision of Direct Service.

Parent introduced into evidence documentation that, on its face, appears to be indicative of predetermination. Found in the Service Record Log<sup>8</sup>, the note reads "Consult with teacher and team re: IEP meeting. Tried to come to consensus among team members on how long meeting should last, anticipated Parent's concerns and demands, and what services would be continued and/or reduced". The date of this entry is May 3, 2011, beyond the two year statute of limitations (May 14, 2011), however; it was allowed because it was part of the upcoming IEP. Under cross-examination, the OT from School A explained that Parent was insisting on a writing goal for a 4 year old student who was presenting with skills commensurate with her typically developing peers. Consultation with colleagues was related to the continuous and lengthy meetings, in which Parent insisted on goals and Direct services which the therapists considered inappropriate, given Student's age, level of functioning, and needs. Rather than a predetermination, it was the need to set some guidelines to avoid a day long meeting, which results in lost services to all students who would be seen on that day. It is also important to note there was no finding of ineligibility until 2 years later.

Parent asked OT Manager if she instructed OT and PT to refrain from discussing goals until eligibility was determined. OT Manager responded that goals are not supposed to be discussed at the eligibility meeting, until after eligibility is determined, at which point the eligibility meeting transitions to the IEP meeting, at which time present levels of performance, goals, and accommodations are discussed.

Testimony by numerous witnesses, as well as evidence presented by both Parties, demonstrated that Parent was very actively involved with the IEP process, which included the participation of several private service providers, over a two year period of time.

12. During one meeting, the team wanted to bring in the PE teacher to address some of Parent's concerns; however, the Parent refused to allow

---

<sup>8</sup> P -6 (page 12 of 40)

him to attend. As his name did not appear on the IEP notice<sup>9</sup>, his participation was denied. Given her concerns regarding Student's needs within PE, it would seem his participation would be welcomed. Parent explained that she did not want the teacher to hear the discussion about ADHD, as she considered there to be a stigma attached to such a label.

13. Transportation was another issue presented by Parent. There are two types of transportation provided for students at School B. One is transportation for students in the gifted program, who live a distance away from the school, and the other is Special Education transportation, available to students with an IEP, if the need is determined at the IEP meeting. There was never any question about Student's eligibility for Special Education transportation, but Parent had always refused service, not wanting Student to be transported with special education students. One IEP indicates that Student was not eligible but that appears to be an error, not reflecting that Student was eligible but Parent declined service. The Supervisor of Transportation for the District testified that she spoke with Parent who wanted an aide for her daughter on the gifted program bus. The witness testified that Parent said she did not want her daughter classified with special education students.

The Case Manager at School B testified that before the 2012-2013 school year began, Parent called her to inquire about transportation. She wanted an Aide on the school bus, but did not want her with special education students. Parent said she had CP but did not need anything special – no special education class – she only needed special transportation accommodations. The case manager checked with the principal and then confirmed that the only way she could have an Aide would be on special education transportation. Parent declined this service.

14. Extended School Year (ESY) is a determination made at the IEP meeting when there is a concern regarding regression of skills. District witnesses explained that ESY is provided to students who have not made progress on their IEP goals and and there is concern about regression. They would not recommend it for Student, who was exceeding her goals. One of the remedies Parent is requesting is ESY at a camp at [REDACTED] School. She is making this request based on one of two things: a determination that she is eligible for ESY or to use [REDACTED] camp as compensation for missed OT sessions.

In relation to Compensatory Education, the OT Manager explained that such services are assessed based on the following criteria: when there is a break in services, an assessment of potentially lost skills is completed. Best practice would result in a clinician making up lost minutes. If there were lapsed services (for whatever reason) but no loss in skills, there is no compensatory education provided. Her OT report indicated Student was doing well and had met her goals.

---

<sup>9</sup> IDEA requires written notice of an IEP meeting, which includes who will be in attendance. CFR § 300.322(b)(i)

15. Student did not have a special education teacher assigned to her. She received no specialized instruction. Parent never requested such assistance, as Student was functioning at a very high level of performance, within a gifted program, with a curriculum accelerated one full grade level.
16. Parent maintains that Student needs Adaptive Physical Education, which would qualify as specialized instruction.
17. Parent alleges District failed to address non-academic or extra-curricular needs, However, Student freely played with her peers on the playground and was active in specially designed after school programming.
18. Witnesses for the District testified that incorrectly identifying a student as eligible for special education services was a denial of his/her rights.
19. Parent's private psychologist stated Student needed direct OT and PT. The District PT Peer Mentor stated that Student functions at a very high level in the school setting. She is mobile in all areas, keeps up with peers, and is very independent. Still, ongoing monitoring is recommended, as Student is still a youngster and her needs will change. The witness discussed the difference between a school-based PT and the medical model. A school based PT is concerned with movement around the school environment – gross motor skills, while private PT's attend to more specific components, such as strength and endurance. Their emphasis is on more than is needed in the school setting, where the law requires PT to allow access to the school environment.
20. After the due process complaint had been filed, Parent engaged Student's private OT to conduct an independent evaluation. This evaluation was not available for consideration at the eligibility meeting that occurred the previous month. District, in its closing argument, stated the private OT's evaluation was inappropriate, criticizing the OT for limited observations of Student. While it is accurate to say the observations were limited it certainly was not due to oversight on the part of the OT. It was the beginning of June and school was winding down. PE was not held in the gym, due to 8<sup>th</sup> grade graduation practice. Assemblies were scheduled and the OT had little opportunity to observe Student in the school setting. This was not due to refusal by the District, nor to failure by the OT. It was just too late in the school year. Parent unfairly accuses District of failing to allow observation and District unfairly accuses the OT of failing to observe.
21. Much of the testimony of Parent, and her private providers, expressed concern regarding "potential" problems. The concern, which appears quite valid to this IHO, is that as school becomes increasingly more challenging, Student's CP (particularly attending ADHD issues) will interfere with her progress.

### CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

**Whether District provided a meaningful (appropriate) evaluation of Student**

Parent did not agree with the IEP team decision to terminate eligibility and requested an Independent Educational Evaluation (IEE) at District expense. In response, District filed a request for a due process hearing, maintaining that its evaluation was appropriate. 34 CFR § 300.502(b)(1)-(2). The District has the burden of proof to demonstrate that its evaluation is appropriate.

In order to find a child has a disability, an evaluation must be completed to determine if a child has a disability and to determine the nature and extent of the special education services that the child needs. 34 CFR § 300.15. Every three years the District is required to complete a reevaluation. 20 USCS § 1414 (a)(2)(B).

The purpose of a reevaluation is to determine "whether the child continues to have such a disability, and whether the child continues to need special education" 34 C.F.R. § 300.305. Finding a child eligible for special education when he/she is not is not in keeping with the intent of IDEA and its strong emphasis on the least restrictive environment. 34 CFR § 300.114

In conducting an evaluation, the evaluator should consider existing information, including evaluations provided by the Parent. 20 USCS § 1414 (b)(2)(A). In this instance, the private evaluations were completed after the eligibility meeting, not for the purpose of consideration by the IEP team. Private evaluators testified they were asked by Parent to complete the evaluation for use at the due process hearing, not for the triennial reevaluation. Parent alleged District failed to provide an opportunity for the private OT to observe Student as required in such situations. *Letter to Wessels*, 16 IDELR 735 (OSEP 1990) However, the request came at the end of the school year and regular schedules were not being followed. The gym was being used for graduation practice and there were assemblies, rather than the regular schedule. There was no procedural lapse by the District in this regard.

In questioning witnesses, Parent asked whether they had considered other areas of eligibility, including Developmental Delay and Other Health Impairment. Parent, in her closing argument, stated that after gathering scores consistent with ADHD, the District found Student ineligible for special education. No one disagreed that Student had challenges consistent with ADHD, which Student's expert witnesses attributed to the CP. However; these are non-issues, as the special education category is irrelevant. The test for eligibility applies to all categories and requires the existence of an impairment, accompanied by the need for special education and related services. 34 CFR § 300.8(a)(1). Student did not need special education services. While Student clearly needed related services of OT and PT, under IDEA, when a child needs related services but not special education, the child is not a child with a disability. 34 CFR

§300.8(a)(2)(i). The District evaluation was consistent with the requirements as specified in CFR 34 § 300.304 and provided a meaningful and appropriate evaluation.

Student's private providers all stated Student needed an IEP because her disability *could* affect her educational performance.<sup>10</sup> The 7<sup>th</sup> Circuit addressed this issue in *Marshall Joint Sch. Dist. No 2 v. C.D.*, 616 F.3d (7<sup>th</sup> Cir. 2010) whereby it stated "It is not whether something, when considered in the abstract, *can* adversely affect a student's educational performance, but whether in reality it *does*. The fact patterns are very similar to Student, where the IEP team in both cases determined the health conditions did not have an adverse affect on the educational performance.

The determination by the IEP team that Student was not eligible for special education because her disability did not have an adverse affect on her educational performance is consistent with IDEA and the case law of the 7<sup>th</sup> Circuit.

District's evaluation was meaningful and appropriate.

### **Whether District denied FAPE by failing to develop and implement an appropriate IEP**

In addition to the issue of whether Student was appropriately evaluated in May 2013, Parent alleges that during the two year period of time prior to the finding of ineligibility, Student was denied FAPE.

IDEA ensures that all children with disabilities have access to a "free appropriate public education". 20 U.S.C. § 1400(c); *Brd of Educ, v. Rowley*, 458 U.S. 176, 203 (1982). A child with a disability is defined as one who meets one of the 13 eligibility categories<sup>11</sup> and who, by reason thereof, needs special education and related services. 20 U.S.C. §1401(3)(ii).

The crux of this case is the District's claim that although Student clearly has a qualifying disability, she fails to meet the second criteria; namely, the need for special education. That brings us to the need to define "special education". Special education is defined as "specially designed instruction ...to meet the unique needs of a child with a disability". This instruction includes the classroom and physical education. *Id.* § 1401(a)(16). Clearly, Student has never needed special education classroom instruction. During the previous two years, all her instruction was in the general education environment. She did not even have a resource teacher with whom to check in. The only teachers she saw were general education teachers. In physical education, she was also in a general education gym class, where her teachers reported she did very well. Both of her PE teachers rejected the idea that she would need Adaptive PE. If Student does not need specialized instruction in the classroom or in PE, then she is not eligible for special education. Related services, in this case OT and PT, are provided to assist a student with a disability to benefit from special education. 34 CFR §300.34(a) The need for OT and

---

<sup>10</sup> See Findings of Fact # 2, 8, and 10

<sup>11</sup> In this case, the category is Orthopedic Impairment

PT (for which Student clearly is in need) does not qualify Student for special education, absent the need for specialized instruction.<sup>12</sup> District's determination that Student is not eligible for special education is affirmed.

Parent alleges that in the two years prior to the finding of ineligibility, District failed to provide FAPE. The standard established by the Court for determining FAPE is an educational program reasonably calculated for the student to receive an educational benefit. *Rowley v. Board of Education of Hendrick Hudson Central School District, Westchester County*, 458 U.S. 176 (1982). District stated they provided Student Cadillac service, while Parent demanded a Mercedes Benz. Rowley requires neither.

There can be little question Student was making very good academic progress and benefiting from the school program. In actuality, her progress had nothing to do with special education, as she was not receiving special education support. Her entire day was in the general education environment. The only special education support she was receiving was that of related services (OT and PT).

Goals are the essence of what drives the IEP. Staff must first consider the student's present level of performance and write goals that are measurable in terms of achievement. Progress on goals is indicative of successful implementation. There has been clear documentation by staff as to progress in Student's goals. Some goals, developed out of consideration to Parent's wishes, were questionable. A goal for engaging a zipper is a goal that might be particularly problematic.<sup>13</sup> Parent believed Student's difficulty engaging a zipper was indicative of regression of skill and failure to meet goals. Writing goals is not an exact science and it is not infrequent for staff to write a goal and then decide it is not practical, realistic, or warranted. The IHO determined goals to be clearly written, measurable, appropriate, responsive to Parent's wishes, and appropriately implemented.

Parent states Student was denied FAPE because services listed on her IEP were not provided due to a number of missed sessions.<sup>14</sup> The question then becomes whether this resulted in a deprivation of educational benefit.<sup>15</sup>

While a parent might think that more service is preferable, that is not always the case and clearly not keeping within the intent of the least restrictive environment (LRE). 34 C.F.R. § 300.114. Although both the OT and PT believed direct instruction was unnecessary, it was included in the IEP at Parent's insistence. Student worked hard in the classroom and wanted to run and play with her classmates during recess. The intrusion (on the playground) of a therapist, required to provide direct service, was the direct result of Student's significant temper tantrum.<sup>16</sup>

---

<sup>12</sup> *Yankton School Dist v. Schram*, 93 F.3d 1369 (8<sup>th</sup> Circuit 1996)

<sup>13</sup> Testimony indicated the type of zipper made a definite difference, with nylon zippers being the most difficult to engage. The age of Student is another issue to consider. A modification of Velcro instead of a zipper was also suggested.

<sup>14</sup> See Findings of Fact #9 and 14

<sup>15</sup> 20 U.S.C. § 1415(f)(3)(E)(ii), 34 C.F.R. § 300.513(a)(2), *Winkelman v Parma City Sch. Dist.*, 550 U.S. 516 (2007)

<sup>16</sup> See Findings of Fact #9 (page 10)

While direct services require the therapist to work individually with the student, the testimony from all the District OT's and PT's stated that Student needed consultative rather than direct services.<sup>17</sup> In a consultative model, the therapist identifies the specific needs of the student and then consults with the classroom teacher, who implements the recommended modifications and accommodations. Student needed frequent reminders (to remain on task, to use the clipboard when writing, to use the washroom regularly, etc.) Testimony was that direct services were added, not because the therapists believed they were necessary, but because Parent insisted. The teachers and OT and PT from School B, the testimony of each of whom was given the greatest weight,<sup>18</sup> testified Student responded well to the recommendations provided by the therapists during consultation and did not need direct service. The witnesses stated Student did not suffer a loss in educational benefit when direct service minutes were missed. Absent a loss in educational benefit, there is no denial of FAPE.<sup>19</sup>

The IEP indicated direct OT/PT minutes be provided. When determining whether a student has received FAPE, one looks to the IEP. Minutes listed under related services are to be provided accordingly. In this case, a number of sessions were missed, for a variety of reasons, including student absences, field trips, therapist absences, and IEP meetings for other students.<sup>20</sup> The 2<sup>nd</sup> Circuit Court also provides opportunity for comparison.<sup>21</sup> In this case, student's IEP included a teacher's aide. Although there was no aide throughout the entire school year, the court determined there was no denial of FAPE as student made improvements in his grades and social and organizational skills.<sup>22</sup> Given the fact services were missed that this IHO deems to have been unnecessary and which were only included in the IEP at Parent's insistence, there is no denial of FAPE.<sup>23</sup> If there is no denial of FAPE, compensatory education becomes a non-issue.

While the private service providers who testified all indicated Student needed direct OT/PT services,<sup>24</sup> IDEA differentiates between medical OT/PT vs services needed to allow student to participate in the educational environment. It is an issue of access versus treatment. The 7<sup>th</sup> Circuit<sup>25</sup> deferred to the classroom teachers, stating "the child's physician is not a trained educational professional and had no knowledge of the subtle distinctions that affect classifications under the IDEA and warrant the designation of a

---

<sup>17</sup> See Findings of Fact #9 (page 10) and 19

<sup>18</sup> See Findings of Fact #6

<sup>19</sup> Winkelman

<sup>20</sup> See Findings of Fact #9

<sup>21</sup> Powers v. Woodstock Bd of Ed, 370 FedAppx.202 (2<sup>nd</sup> Cir. 2010)

<sup>22</sup> School made additional efforts to compensate for lack of aide, with special education teacher volunteering to help with supports that would have otherwise been provided by the aide.

<sup>23</sup> in Catalan v. Dist of Columbia, 478 F. Supp.2d 73 (D.D.C. 2007) found that missed therapy sessions were to be viewed under the totality of circumstances and did not amount to failure to implement the student's IEP.

<sup>24</sup> See Findings of Fact #9

<sup>25</sup> Marshall Joint Sch.Dist. No. 2 v. C.D., 616 F.3d (7<sup>th</sup> Cir.2010)

child with a disability and special education...Nor was the physician familiar with the curriculum and what the child needed to do in gym.”

Case law has established that a student with disabilities is entitled to an extended school year (ESY) program when the combination of regression and recoupment time needed to regain lost skills is excessive. *Armstrong v Kline*, 476 F.Supp.583 (E.D.Pa 1979). ESY services must be provided only if the IEP team, on an individual basis and in accordance with the District’s IEP procedures, determines that ESY services are necessary to insure FAPE. 34 CFR § 300.309. None of the members of the IEP team, other than Parent, believed Student was eligible for ESY. The IHO finds no evidence of the need for ESY.

District developed and implemented an IEP that provided clear benefit to Student, with no denial of FAPE.

**Whether District denied Parent meaningful participation in developing the IEP and whether District engaged in Predetermination**

Parental participation in the IEP and educational placement process is central to the IDEA’s goal of protecting disabled students’ rights and providing each disabled student with a FAPE. 20 U.S.C. § 1400(d), *Doug C. ex rel. Spencer C. v. State of Hawaii, Dep’t of Educ*, 113 LRP 25045 (9<sup>th</sup> Cir. 06/13/13), *Bd. Of Ed v Rowley*, 553 IDELR 656 (US Sup Ct (1982)

Evidence, both testimony and documentation, overwhelmingly indicates a high level of meaningful parental participation, including situations in which the IEP team, acceded to Parent’s requests, even when they were in conflict with therapists professional judgment.<sup>26</sup> These include writing goals and the inclusion of direct services , both of which the IEP team (except for the Parent) deemed unnecessary. The OT from School A testified that he considered direct services to be more than necessary and violating the requirement for the least restrictive environment (LRE).<sup>27 28</sup>This resulted in unnecessary and potentially intrusive direct services, and goals that the professional OT and PT considered unrealistic and premature, given the age of student.<sup>29</sup>

Parent involved private service providers in the IEP process. Parent testified that an accommodation suggested by her private OT was incorporated into the accommodations. This demonstrates clear meaningful participation in the spirit of IDEA. In *Board of Education of Township High School Dist #211 v. Michael and Diane Ross*, 486 F3d 267 (2007) the court stated: “The fact that parent’s position was not adopted in the meeting does not lead to the conclusion that they were denied input in the placement decision”.

---

<sup>26</sup> See Finding of Fact #9 (page 10)

<sup>27</sup> See Findings of Fact #18

<sup>28</sup> 34 CFR § 300.114(a)(2) states “the use of supplementary aids and services” must be offered in the regular education environment in an attempt to satisfactorily achieve integration before segregating the student.

<sup>29</sup> See Findings of Fact #9 (page 10)

Parent was very involved with the school, its program, staff, and administration. She was in regular contact via e-mail, she participated in all IEP meetings, she occasionally brought outside therapists to IEP's, the team incorporated many of her suggestions into the development of the IEP and she was a tireless advocate for her daughter. The IHO sees no evidence of denial of meaningful participation.

Regarding predetermination, Parent believed District administrators directed the IEP team to determine Student to be ineligible. Witness after witness, those whose testimony was offered the greatest weight, testified no one directed them to find Student ineligible. Rather, they expressed the lack of eligibility because there was no need for special education services. Student was very high functioning, and used accommodations when necessary to access the curriculum. More often than not, she required no more accommodations than her typically developing peers. The IHO found no evidence of predetermination.

#### **Whether District addressed non-academic and extra-curricular needs**

Student was very active with her classmates during recess. She ran, jumped and played. After school, Student participated in extra-curricular activities as offered by the School.<sup>30</sup> There were no limitations to her participation and thus no need for this to have been addressed in the IEP.

---

<sup>30</sup> See Findings of Fact #17

**ORDER**

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

1. District's evaluation of Student is deemed appropriate and Parent's request for an Independent Educational Evaluation (IEE) at public expense is denied.
2. All claims of denial of FAPE, including denial of meaningful parental participation, predetermination, and failure to address extra-curricular and non-academic activities are dismissed.
3. All Parent's requests for relief are denied.

In accordance with 105 ILCS 5/14-8.02a(h), within twenty (20) school days of receipt of this Order, the District shall submit proof of compliance to:

Illinois State Board of Education  
Program Compliance Division

100 North First Street  
Springfield, IL 62777-0001

**NOTICE OF RIGHT TO REQUEST CLARIFICATION**

Pursuant to 105 ILSC 5/14-8.02a(h) either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification shall specify the portions of the decision for which clarification is sought. A copy of the request shall be mailed to all other parties and Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777. The right to request 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.

**NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i), any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within one hundred and twenty (120) days from the date the decision is mailed to the party.

Dated: September 30, 2013

---

Patricia Marino  
Impartial Hearing Officer

[REDACTED]