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**SPECIAL EDUCATION  
SERVICES**

Case Number: 2013-0468

[REDACTED] vs. [REDACTED]  
Hearing Officer: Michael Rosen

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

**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: 815-568-6511  
Superintendent [REDACTED]  
Address [REDACTED]  
Represented by [REDACTED]

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

Date and Timelines

Date of Written Request: 07/02/2013  
Date of Pre-hearing Conf: 08/26/2013

Date of Hearing: 09/12 and 09/13/2013  
Date of Decision: 09/20/13

Summary of Decision

The preponderance of the evidence supported a ruling in favor of the Parents on all three issues. The Parents prevailed on the issue of the District's failure to properly conduct the MDR, expelling the Student for conduct that may have been a manifestation of the Student's disability, and failing to provide the Student with specialized and related services during the expulsion period. The IHO ordered the reinstatement of the Student at [REDACTED] the District to conduct an IEP team meeting and implement the Student's IEP that existed prior to the expulsion with the addition to the IEP the recently completed FBA and BIP developed for the Student and 30 hours of compensatory education to be provided in the form of one to one tutoring for the Student by a certified special education teacher. The IHO ordered that the IEP team determine the best use of the 30 hours of compensatory education.

ILLINOIS STATE BOARD OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)  
) **ISBE CASE NO. 2013-0468**  
)  
) **Michael Risen**  
) Impartial Due Process  
) Hearing Officer

**FINAL DETERMINATION AND  
ORDER**

**BACKGROUND**

This hearing involved a male student who was 16 years and seven (7) months old at the time of the hearing. The Student's most recent IEP identified the Student's disabilities as: specific learning disability (SLD) in reading and writing and Other Health Impaired (OHI) for attention deficit hyperactivity disorder (ADHD). In a letter dated July 2, 2013, the Parents' representative, [REDACTED] Esq., (Parent) filed the due process complaint on behalf of the Student and his Parents. The Illinois State Board of Education (ISBE) appointed a hearing officer July 9, 2013 who subsequently had to recuse herself. The (ISBE) then appointed this impartial hearing officer (IHO) on August 13, 2013. The appointed IHO has jurisdiction to hear and

decide this matter under 105 ILCS 5/14-8.02a et seq., 23 Illinois Administrative Code §226,600 et seq., and the Individuals with Disabilities Education Act 20 USC 1400 (IDEA), and 34 CFR §300.507 et seq.

On August 26, 2013, the parties completed a recorded status call to review information necessary to complete the due process hearing. The parties completed the same process as typically followed during the pre-hearing conference for non-expedited due process hearings. The District did not file a response to the Parent's DPCN.

On August 29, 2013, the District filed an objection<sup>1</sup> seeking to have the third issue identified during the status call bifurcated and heard under 105 ILCS 8.02a. The IHO overruled the District's objection

<sup>1</sup> See District's objection at IHO exhibit 11.

on the grounds that the Student's expulsion amounted to a change in placement and Parent's Issue #3 dealt with the services provided during the change in placement. By statute, a change in placement for disciplinary reasons<sup>2</sup> must be heard under the provisions defined for expedited hearings. The District also filed a motion<sup>3</sup> seeking to limit the Parent's requested relief on the grounds that the Parent failed to timely file the Parent's required clarification of relief. The District argued this tardiness prejudiced the District by preventing the District from fashioning a settlement offer in time to avoid the 10 day timeline for avoiding the potential award of attorney's fees. The IHO denied<sup>4</sup> the motion indicating the Parent had filed the required clarification in a timely manner and noted the District had every opportunity to independently work with the Parent to develop a settlement offer in a timely manner.

The following witnesses testified:

[REDACTED], Assistant Principal, [REDACTED]  
[REDACTED] the Student's special education

teacher, [REDACTED] District social worker, the Student, [REDACTED] Superintendent of Schools, [REDACTED] Father, [REDACTED] Director of Special Education, [REDACTED] [REDACTED] Mother, [REDACTED] High School Counselor. The IHO did not have a copy of the transcript when writing the decision.

The exhibits included a binder of documents submitted by the Parent and numbered "P1 thru P123," a binder of documents submitted by the District and numbered "D1 thru D147," and a binder of documents from the impartial hearing officer with exhibits 1-23 and numbered "[REDACTED] HO 1 thru [REDACTED] HO 126. The IHO documents included documents organized and submitted by the first assigned IHO, Mary Schwartz. IHO Schwartz documents were bound and tabbed 1-8.

### ISSUES

During the recorded status call, the IHO and the parties discussed and clarified three issues:

- i. Did the District deny the Student a FAPE by failing to convene an IEP team meeting and conduct an

<sup>2</sup> See 34 CFR §300.536(a-b).


<sup>3</sup> See District's motion at IHO exhibit 17.

<sup>4</sup> See IHO ruling at IHO exhibit 19.

adequate manifestation determination to determine if the Student's conduct resulting in expulsion was related to and/or a manifestation of the disability?

- ii. Did the District deny the Student a FAPE by expelling the Student based upon conduct that was a manifestation of the Student's disability?
- iii. Did the District deny the Student a FAPE by failing to provide the Student with special education services after the Student's expulsion from the District?

**PROPOSED REMEDIES**

- i. Reinstatement of the Student at 
- ii. Removal of the expulsion from the Student's temporary and permanent school records;
- iii. Modification of the Student's current IEP to adequately provide necessary services and a behavioral modification plan to the Student.
- iv. Compensatory services to compensate the Student for inadequate services provided previously by the District as well as the District's failure to provide

special education services after the Student's expulsion.

Subsequent to the PHC, the Parent filed required clarification of the proposed remedies. The Parent clarified the requested remedies included: "the Parents would seek as a remedy the increase of minutes, over and above what would already be required by the Student's IEP, should the Parent prevail. For instance, under the last IEP before the expulsion, the Student was receiving 250 minutes, 5 times per week of Practical English and 250 minutes, 5 times a week of Resource Study Skills. As well, the Student was receiving four minutes per week of Social Service Work. To compensate the Student for the denial of services, the Parents would be asking for the increase of these services in the Student's IEP by the above amounts upon his return to the District for the period for which the Student was denied a FAPE, over

and above the services being provided to the Student under his IEP. Alternatively, the Parents would also accept one-on-one tutoring services with a certified special education teacher for seven and one half hours a week for the period for which the Student was denied a FAPE, again in addition to any services provided to him under his IEP.”<sup>5</sup> The IHO deemed this clarification as both timely and acceptable.

**FINDINGS OF FACT**

After considering the evidence, as well as the arguments of both counsel, the IHO made these Findings of Fact:

- 1) In 2005, the Student was in the third grade. During that 2004-05 school year, the Student was identified as a student with a disability. The IEP team found the Student had a specific learning disability (SLD) as primary and other health impairment (OHI) as secondary

with attention deficit hyperactivity disorder (ADHD).<sup>6</sup>

- 2) In May, 2008, the [REDACTED] IEP team discontinued special education services for the Student.<sup>7</sup> The Mother removed the Student from the public school and enrolled the student in a private school for grades 6 and 7.<sup>8</sup>
- 3) In August, 2010, the Student enrolled in [REDACTED] and struggled academically. The [REDACTED] suspended the Student during the 8<sup>th</sup> grade year for five days for fighting.<sup>9</sup>
- 4) On August 8, 2011, the Parents requested that the District evaluate the Student for special education services. The Parent expressed concern regarding the Student’s academic performance and behavioral concerns.<sup>10</sup>
- 5) On September 14, 2011, the District’s school psychologist completed a record review of the Student and reported the

<sup>5</sup> See IHO Exhibit 21.

<sup>6</sup> See testimony of [REDACTED] Mother.

<sup>7</sup> See PD p. 7.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> See PD pp. 5-6 and testimony of [REDACTED].

Student's SLD in reading and writing and suspected ADHD.<sup>11</sup>

- 6) On October 4, 2011, the IEP team determined the Student eligible for special education services and identified SLD as the primary eligibility and OHI as secondary.<sup>12</sup> In spite of the Mother's expressed concerns regarding the Student's behavior, the IEP team concluded that the Student's behavior did not interfere with the Student's learning or the learning of others.<sup>13</sup>
- 7) On September 28, 2012 the IEP team completed the Student's annual review and reported the Student made appropriate progress in the normal curriculum with the accommodations and modifications implemented in the Student's IEP. The Student's IEP team reported the Student's grades: Geometry [B], Foods II [A], Health [A-], Practical English II [D], Intro to Manufacture [B], Biology [C], and Resource Study Skills [A].<sup>14</sup> The IEP

team also added a goal for the Student that read: "[The Student] will reduce his alcohol/substance abuse to not using."<sup>15</sup>

The Student began using cannabis around this time and was arrested for drug paraphernalia possession during non-school hours. The Student agreed to participate in a drug/alcohol counseling program known as "[REDACTED]" in order to reduce his co-curricular suspension time. The IEP reflected the Student's participation in the program.<sup>16</sup>

- 8) On December 19, 2012, the District filed an amendment to the Student's IEP. The Amendment called for the Student to move from Practical English II [specialized educational services with special education teacher "[REDACTED]" to regular education English II beginning January, 2013. The Parent agreed to the amendment as discussed in a phone conference between Teacher "[REDACTED]" and the Mother.<sup>17</sup>

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<sup>11</sup> See PD p.7.

<sup>12</sup> See PD p. 8.

<sup>13</sup> See testimony of "[REDACTED]" and PD p. 37 [Special Factors].

<sup>14</sup> See DD p. 47.

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<sup>15</sup> See Goal 4, DD p. 52.

<sup>16</sup> See Parents' testimony, testimony of the Student, testimony of special education teacher "[REDACTED]" and DD p. 52.

<sup>17</sup> See Parent's testimony and the testimony of "[REDACTED]" and DD p. 60.

9) On March 23, 2013, the Mother called Mr. [REDACTED] and reported that she hospitalized the Student for taking Adderall at school that another student gave to the Student. The Mother also expressed concern that other students may have taken the drug while at school. This date marked the first day of the District's spring break. The Student remained hospitalized for drug treatment and counseling during the entirety of the school's spring break.<sup>18</sup>

10) On April 5, 2013, the District filed a Parent/Guardian Notification of Conference for the Manifestation Determination Review (MDR) to be conducted on April 8, 2013. Both Parents testified they did not receive the notice. Testimony by the Director of Special Education, Ms. [REDACTED] and both Parents reflected stark disagreement on whether the Parents received the notice prior to the MDR. The evidence submitted by both parties failed to fully illuminate the contradicting testimony. However, if

<sup>18</sup> See testimony of the Mother, [REDACTED] and DD p. 65.

the District mailed the notice as described by the Director on April 5, 2013, the IHO finds that the mailing falls considerably short of the 10 day notice requirement as defined in the ISBE Procedural Safeguards for Parents. Further, the IHO finds that the District failed to secure from either Parent a waiver of the 10 day notice.<sup>19</sup>

11) On April 8, 2013 the District conducted three meetings with the Parents and the Student. In addition to the Parents and Student, the participants in the first meeting included Mr. [REDACTED] the Assistant Principal and the school's Resource Officer [REDACTED]. In order to provide the Student with due process prior to suspension/expulsion, Assistant Principal [REDACTED] and Officer [REDACTED] reviewed the results of the investigation with the Parents and the Student.<sup>21</sup> The Assistant Principal informed the Parents and Student of the Student's six day suspension and pending expulsion by

<sup>19</sup> See DD p. 65, testimony of [REDACTED]

<sup>20</sup> See testimony of [REDACTED] both Parents and the Student.

<sup>21</sup> Id.

the board of education.<sup>22</sup> Following that meeting, the school nurse, [REDACTED] the Parents and Student, a nurse from the Student's hospital stay and the Student's [REDACTED] counselor [both the hospital nurse and [REDACTED] counselor participated by phone] met and reviewed the Student's recent hospital stay.<sup>23</sup> The District then conducted the (MDR). The participants in the MDR included Mr. [REDACTED] the Assistant Principal, Ms. [REDACTED] HS Guidance Counselor, the Parents and Student.<sup>24</sup> The MDR did not include the special education teacher, [REDACTED] the District's social worker, or a regular education teacher.<sup>25</sup> The Parents did not have an understanding of the purpose of the MDR or their rights pertaining to the MDR.<sup>26</sup> The District maintained the Parents should have known their rights on the basis of the Student's IDEA

eligibility since the third grade and the Student's sibling also received special education services, and therefore, the District asserted that the Parents should have been well aware of their rights under the IDEA. The IHO finds that the District did not insure that the Parents' understood their rights pertaining to the MDR, did not properly explain the purpose of the MDR, and failed to inform the Parents of the implications of any decisions made during the MDR. The IHO finds that the District's decision to conduct the expulsion due process meeting, the hospital intake meeting and MDR all back to back on the same day overwhelmed the Parents and resulted in a state of confusion that constituted the Parent's state of mind during all three meetings, including the MDR. The Parents and the Student acknowledged the Student behaved inappropriately. The Student accepted full responsibility for the misbehavior. The Parents and Student told the District they did not believe the Student's SLD caused the Student's behavior. The

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<sup>22</sup> Id.

<sup>23</sup> See testimony of [REDACTED] both Parents and the Student.

<sup>24</sup> See DD p. 66.

<sup>25</sup> See testimony of [REDACTED] both Parents and the Student and DD p. 66.

<sup>26</sup> See testimony of both Parents. The IHO determined both Parents testimony on this topic to be credible.

Parents believed the Student's ADHD caused the Student's actions, but the Parents did not express this to the District during the MDR.<sup>27</sup> The IHO finds that the Parents did not have the opportunity to have input into the members of the MDR, nor did the Parents have the opportunity to properly prepare for the MDR. The IHO found that both Parents and the Student provided credible testimony.<sup>28</sup> The Parents' testimony revealed the Parent would have likely invited the social worker who treated the Student during the Student's recent hospitalization and the Parent would have brought the

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<sup>27</sup> See testimony of both Parents and the Student.

<sup>28</sup> The IHO wanted to acknowledge the Student for the mature approach the Student took during his testimony and the adult level of responsibility the Student presented in owning the Student's mistakes. The Student was forthright and testified truthfully about the Student's use of Adderall and the Student's other struggles with substance abuse. The IHO believes the Student deserves to be acknowledged and hopefully supported for his willingness to share these serious behavior issues during a stressful examination under oath and in front of strangers and the Student's Parents. The IHO wants to encourage the Student to continue his efforts to rehabilitate and for the Student to recognize he has real talents and the potential to be very successful in life. The IHO recognizes this information is atypical for a due process hearing decision but believes it is both appropriate and important for the Student to be acknowledged for his efforts to be truthful and work towards resolving these important issues in the Student's life.

Parents' attorney to the MDR.<sup>29</sup> Finally, and of particular importance, the Student's IEP contained a goal to address the Student's drug and alcohol abuse. The goal contained quarterly bench marks to monitor the Student's progress on the goal. The District alleged the information needed to measure the quarterly bench marks was privileged and confidential. However, the evidence reveals the District never made an effort to secure permission from either the Student or the Parent to access this information. The Parents' and Student's testimony support a finding by the IHO that the District could have secured permission if the District had sought permission from either the Parents or the Student.

12) On April 11, 2013, the board of education considered the evidence against the Student as presented by the District's administrative team and voted to expel the Student for the remaining four weeks of the 2012-13 school year and the first semester of the 2013-14

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<sup>29</sup> See testimony of [REDACTED]

school year. The Board of Education passed a resolution holding the expulsion in abeyance provided the Student satisfactorily completed an alternative placement [as yet, not determined by the District].<sup>30</sup> The Administration did not transmit the Student's special education records "for consideration" by the Board of Education as required and reflected in the paper work for the MDR.<sup>31</sup> After the expulsion decision, the Director of Special Education, [REDACTED], discussed outside educational placements with the Student's Mother via telephone.<sup>32</sup>

13) On April 17, 2013, the District sent the Parents a notice of IEP Conference to be conducted on April 18, 2013 via phone conference to discuss the Student's placement.<sup>33</sup> The IHO finds the notice of the April 18, 2013 IEP meeting failed to meet the notice requirements as required

by the ISBE Procedural Requirements for proper notice.

14) On April 18, 2013, the District filed an amendment to the Student's IEP. The only participants included the Mother and the special education teacher [REDACTED].<sup>34</sup> The District changed the Student's placement to "home instruction for the remaining 4 weeks."<sup>35</sup>

15) On April 23, 2013, the Student's special education teacher discussed with the Student's Mother the possibility of utilizing the District's [REDACTED] program [computer/internet credit recovery program] as homebound instruction for the Student during the final four weeks of the 2012-13 school year.<sup>36</sup> In addition, [REDACTED] the Student's Father, met with [REDACTED] in the Director's office. The Father expressed frustration that another student posted on Facebook that the other student's parents had hired an attorney and the student could return to school the next day. The District expelled the returning

<sup>30</sup> See testimony of [REDACTED] Mother, [REDACTED] Director of Special Education and DD pp. 106-126.

<sup>31</sup> See PD p. 67 and the testimony of [REDACTED] and [REDACTED].

<sup>32</sup> See testimony of [REDACTED] and DD p. 102.

<sup>33</sup> See DD p. 69.

<sup>34</sup> See DD p. 71.

<sup>35</sup> Id.

<sup>36</sup> See testimony of [REDACTED] the Mother, and the Student.

student for the same infraction as the Student in this DPCN. The Director also discussed with the Father in this meeting the District's plan for the Student to finish the remaining four weeks of school on homebound instruction.<sup>37</sup> Testimony also revealed that no one asked the Student why he sought to take and ultimately took Adderall (one pill each of three days). The Student testified that he committed the violation to assist him with his ADHD and help him concentrate to pass an upcoming Geometry test. The Student further testified that the Student passed the Geometry test and decided he did not need to take any more of the Adderall and gave the remaining pill in his possession to another student who asked for the pill. He did not sell the pill to the student.<sup>38</sup> The MDR team did not consider any of the following: the reasons for the Student's use of the Adderall, the Student's prior drug use,

the Student's IEP, or the Student's recent hospitalization.<sup>39</sup>

16) On April 30, 2013, the Parents agreed to implement the [REDACTED] program for the Student's remaining days of the 2012-13 school year.<sup>40</sup>

17) On May 1, 2013, the Student's special education teacher met with the Student and the Student's Father on campus to explain the [REDACTED] program.<sup>41</sup>

18) On May 7, 2013, the special education teacher spoke on the phone with the Student to resolve issues the Student had with the [REDACTED] program.<sup>42</sup>

19) On May 8, 2013, the special education teacher spoke with the Student regarding problems the Student experienced with the [REDACTED] program and scheduled a home visit.<sup>43</sup>

20) On May 9, 2013, the special education teacher made a home visit to check on the Student's progress and resolved

<sup>37</sup> See testimony of [REDACTED] and DD p. 105.

<sup>38</sup> See the uncontradicted testimony of the Student.

<sup>39</sup> See testimony of the Student, [REDACTED]

<sup>40</sup> See DD p. 101.

<sup>41</sup> Id.

<sup>42</sup> Id.

<sup>43</sup> Id.

issues the Student experienced with log-in to the [REDACTED] program.<sup>44</sup>

21) On May 10, 2013, the special education teacher followed up with the Student via the telephone to monitor the Student's progress with the [REDACTED] program.<sup>45</sup> The District certified that the Student successfully completed the [REDACTED] program by the end of the 2012-13 school-year and further certified that the Student finished the 2012-13 school-year with the appropriate number of credits required for graduation.<sup>46</sup> The Student and Parents questioned the value of those credits. The Student and Parents testified the Student failed to learn anything from the computerized program and questioned the value of the program and any resulting credits.<sup>47</sup> The computerized program did not address the Student's social work goal and related services minutes listed in the

Student's IEP or the Student's goal related to the reduction of drug and alcohol abuse.

22) On July 2, 2013, the Parent filed a due process request notice (DPCN) for an expedited hearing.<sup>48</sup>

23) On July 17, 2013, the District sent the Parent a Notification of Conference for an IEP team meeting to occur on July 29, 2013. The District scheduled the IEP team meeting to occur after a scheduled mediation in the recently filed DPCN.<sup>49</sup> The IEP team meeting did not occur due to the Parent's cancellation of the IEP team meeting after mediation failed to resolve the issues in the DPCN.<sup>50</sup>

24) On August 9, 2013, the District sent a Notification of Conference form to the Parents regarding an August 22, 2013 IEP team meeting.<sup>51</sup> The District previously tried to schedule the IEP team meeting August 19, 2013 in order to have an IEP in place for the Student

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<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> See testimony of [REDACTED] [the IHO notes that the Student believed that the Student did not work hard enough and the work assigned was not challenging enough to warrant the credit given] and [REDACTED]

<sup>47</sup> See testimony of both Parents and the Student.

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<sup>48</sup> See IHO Exhibit I.

<sup>49</sup> See DD p. 72.

<sup>50</sup> See testimony of [REDACTED]

<sup>51</sup> See DD p. 74.

prior to the start of the school year. The Parent's representative authorized the delay in the IEP team meeting to enable the Parent's to visit the proposed placement for the Student prior to an IEP team meeting and discussion of the proposed placement.<sup>52</sup>

25) On August 22, 2013, the District conducted an IEP team meeting with the Parents, the Student, and the Parents' and District's legal counsel present at the meeting. The Student's present levels of performance reflected the Student made appropriate progress in the normal curriculum.<sup>53</sup> The goals for the Student reflected three goals to address the Student's SLD in reading and writing and a goal to address the Student's history of drug and alcohol abuse.<sup>54</sup> The Student's Parents and the Parent's attorney participated in the development of a functional behavior assessment (FBA) of the Student<sup>55</sup> and then developed a behavior intervention

plan (BIP) for the Student.<sup>56</sup> The IEP team, in conjunction with the Parents, the Student, and the Parent's attorney identified a private therapeutic day school as the appropriate placement and least restrictive environment (LRE) for the Student's placement for the first semester of the 2013-14 school- year.<sup>57</sup>

The IEP identified 1600 minutes per week of specialized educational services for the Student.<sup>58</sup> The IEP included the continuation of the counseling services provided by the ██████████ program.<sup>59</sup> The IEP team selected the ██████████ private therapeutic day school [as preferred by the Parents] and included a contingency of the SEALs private therapeutic day school pending acceptance/denial from ██████████. Subsequent to the IEP team meeting, ██████████ denied the Student admittance and the Student began attending the SEALs program. The Student expressed concern that the program at SEALs repeated work the

<sup>52</sup> See testimony of Julie Amendt, ██████████ and DD p. 44.

<sup>53</sup> See DD p. 77.

<sup>54</sup> See DD pp. 78-83

<sup>55</sup> See DD p. 91 and testimony of Julie Amendt and ██████████

<sup>56</sup> See DD pp. 92-93.

<sup>57</sup> See DD p. 86.

<sup>58</sup> Id.

<sup>59</sup> See DD p. 82.

Student completed the previous year.<sup>60</sup>  
The Student's IEP included a transition plan.<sup>61</sup>

### CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, this section includes the Conclusions of Law as it relates to the issues identified during the pre-hearing conference.

- i. Did the District deny the Student a FAPE by failing to convene an IEP team meeting and conduct an adequate manifestation determination to determine if the Student's conduct resulting in expulsion was related to and/or a manifestation of the disability?

A. The first issue involves the District's decision-making process that resulted in the Board of Education decision to expel the Student for both using and distributing an illegally possessed prescription drug on campus. The statutes that cover this decision include

the statutes related to interim alternative educational setting (IAES),<sup>62</sup> manifestation determination review (MDR),<sup>63</sup> proper notice as it relates to IEP team meetings to consider a change of placement, and proper notice to provide parents the opportunity to prepare to participate<sup>64</sup>, and the make-up of an IEP team.<sup>65</sup> The IHO concludes the District acted consistent with the requirements of the statutes covering IAES when the District placed the Student in homebound instruction for the remaining four weeks of the 2012-13 school year. The District failed to meet the requirements of proper notice and mandated participants when the District conducted the MDR. The District failed to provide the required 10 day notice for the MDR or secure a waiver of same from the Parent. The District failed to include in any notice sent that the purpose of the meeting included a change in placement for the Student. The District did not have a special

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<sup>60</sup> See testimony of the Student.

<sup>61</sup> See DD pp. 94-95.

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<sup>62</sup> See 34 CFR §300.530(g).

<sup>63</sup> See 34 CFR §300.530.

<sup>64</sup> See 34 CFR §300.503(a)(1).

<sup>65</sup> See 34 CFR §300.321.

education or regular education teacher in attendance at the MDR. The Parents and the Student attended the MDR and all acknowledged the belief that the Student's SLD did not manifest itself in the Student's decision to take the Adderall at school. The Parent had the opportunity to speak up at the MDR and suggest the Student's conduct may have been a manifestation of the Student's ADHD, but the Parent acknowledged under oath that neither Parent used the opportunity to raise that concern. Both Parents testified that the Parents did not speak up at the MDR due to the Parents' confusion as to the purpose of the MDR, their fragile mental state as a result of the previous meetings that day, and their belief they came to the MDR unprepared to properly participate. The District's failure to provide proper notice and to properly explain to the Parents' their rights under the IDEA violate the first prong of the *Rowley* analysis.<sup>66</sup> The District's failure to

follow the rules deprived the Parents' of any meaningful opportunity to prepare for the MDR. If the notice (dated April 5, 2013<sup>67</sup>) had been proper in terms of timelines, the notice still failed to include required components (a description of the action to be taken, the rationale for the action, other options to be considered, and a description of the reasons underlying the decision). The District failed to provide any such notice prior to placing the Student on homebound instruction. The District argued that the District had yet to determine the Student's placement prior to the District's conducting the MDR. However, in the first meeting the day the District completed the MDR, the District informed the Parents of the Administration's intentions to recommend expulsion of the Student. If expelled, the District knew the Student required a change of placement. Since the District had to at least consider a change in placement for the Student, the IDEA regulations require that the

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<sup>66</sup> See *Rowley vs. Board of Education of Hendrick Hudson School District*, 458 U.S., 102 S.Ct at 3051.

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<sup>67</sup> See DD p. 65.

District provide proper notice of that consideration. The District failed to do so.

B. The District committed several procedural errors. Under the IDEA, a hearing officer can only find a procedural defect denied a student FAPE if the error: · impeded the child's right to FAPE, significantly impeded the parents' opportunities to participate in the decision-making process regarding the provision of FAPE to the child, or caused a deprivation of educational benefits.<sup>68</sup> In this case, the IHO concludes that the District's failure to provide proper notice and the District's failure to properly notify and explain to the Parents the rights of the Student and the Parents under the statutes rendered the Parents unprepared for the MDR. Further, as required by the statutes, since the district contemplated a change in

placement, the District failed to discuss any other alternative placements at the MDR or any subsequent IEP.<sup>69</sup> The courts have also ruled that when a district fails to provide proper notice and explain to parents their procedural rights under the statutes the result is the parents were "deprived of any meaningful ability to participate in the conference with regard to the issue of changing (the student's) placement and what services should be provided."<sup>70</sup> Thus, the District's assertion that the Parents agreed to the placement of homebound instruction fails to cure the District's procedural errors. Essentially, the District forced the Parents into agreement as no other placements

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<sup>68</sup> See 34 CFR§300.513 (2)(i-iii).

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<sup>69</sup> The April 18, 2013 IEP cannot be considered as a duly called IEP team meeting as notice was only given 24 hours prior to the meeting, the meeting was really a conference between the Mother and the special education teacher, and the purpose of the meeting was to consider a change in placement and the statutes require a full IEP team meeting be held whenever a change in placement is to be considered.

<sup>70</sup> *Community Consolidated School District # 93 v. John F.*, 33 IDELR 210 (D.Ill. 2000).

were offered or even considered. Thus, the IHO concludes that the District failed to properly convene the IEP team meeting and, therefore, failed to conduct an adequate manifestation determination to determine if the Student's conduct that resulted in the expulsion was related to and/or a manifestation of the disability. As a result, the preponderance of the evidence supports a finding for the Parents on Issue #i.

- ii. Did the District deny the Student a FAPE by expelling the Student based upon conduct that was a manifestation of the Student's disability?

A. The MDR is an evaluation of a *child's misconduct* to determine whether that conduct is a manifestation of the child's disability. It must be performed when a district proposes disciplinary measures that will result in the change of placement for a child with

a disability.<sup>71</sup> The MDR analysis must be performed within 10 school days of the change in placement that stemmed from an IDEA-eligible child's violation of the code of conduct.<sup>72</sup> A change in placement occurs when the removal is for more than 10 consecutive school days. The MDR should be conducted by the district, the parent, and relevant members of the IEP team (as determined by the parent and the district).<sup>73</sup> The student's conduct must be found to be a manifestation of the child's disability if: The conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or the conduct in question was the direct result of the [district's] failure to implement the IEP.<sup>74</sup> The MDR must involve a review of "all the relevant information in the [child's] file, including the child's IEP, any teacher observations, and any relevant information provided by the parents."<sup>75</sup> However, that list of relevant information is not

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<sup>71</sup> See §34 CFR §300.530(e)

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> See §34 CFR §300.530 (e)(i-ii),

<sup>75</sup> See *Supra* Note 63.

exhaustive.<sup>76</sup> While parents have the right to invite additional participants to the MDR, they do not have the right to veto a district's choice of team members or the MDR team's determination that the child's misconduct is unrelated to his disability.<sup>77</sup>

- B. If the district determines that a child's misconduct was not related to his disability, then the child is subject to the same sanctions for misconduct as a child without a disability. However, the child must continue to receive education services that allow the child to progress toward the goals set forth in the IEP.<sup>78</sup> IDEA 2004's criteria for conducting a MDR marks a return to the causality formula.<sup>79</sup> Under IDEA 2004, the key question is whether the child's conduct was caused by or had a direct or substantial relationship to his disability.<sup>80</sup> Evidence of a direct connection between the student's misconduct and disability should

<sup>76</sup> See 71 Fe. Reg. 46,719 (2006). See also *In re: Student with a Disability* 52 IDELR 39 (SEA WV 2009); and *San Diego Unified Sch. Dist.*, 52 IDELR 301 (SEA CA 2009).

<sup>77</sup> See *Fitzgerald v. Fairfax County Scho. Bd.*, 50 IDELR 165 (E.D. Va. 2008).

<sup>78</sup> See 34 §CFR 300.530 (d).

<sup>79</sup> See *Doe v. Maher*, 557 IDELR 353 (9th Cir. 1986)

<sup>80</sup> See *Philadelphia City Sch. Dist.*, 47 IDELR 56 (SEA PA 2007) and *MaST Cmty Charter Sch.*, 47 IDELR 23 (SEA PA 2006).

result in a finding that the student's misconduct was a manifestation of the student's disability.<sup>81</sup>

- C. Parents provided sufficient evidence that the District failed to allow the Parent the opportunity to determine who the Parents would like to invite to participate in the MDR.<sup>82</sup> The Parents also provided sufficient evidence to establish that the MDR team failed to review all the relevant information in the Student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents. The Parents provided sufficient evidence to support that the Parents were woefully unprepared to attend the MDR, and thus, unprepared to

<sup>81</sup> See, *Manteca Unified Sch. Dist.*, 50 IDELR 298 (SEA CA 2008) (finding that a teenage girl's misconduct -- kicking a male schoolmate in the groin -- was directly related to the post-traumatic stress she suffered as the result of a sexual assault); and *Swansea Pub. Schs.*, 47 IDELR 278 (SEA MA 2007) (finding that a child's emotional and oppositional behavior "spiraled out of his control" when an assistant principal confronted the child rather than allowing him to back off as provided in his BIP). See, *Manteca Unified Sch. Dist.*, 50 IDELR 298 (SEA CA 2008) (finding that a teenage girl's misconduct -- kicking a male schoolmate in the groin -- was directly related to the post-traumatic stress she suffered as the result of a sexual assault); and *Swansea Pub. Schs.*, 47 IDELR 278 (SEA MA 2007) (finding that a child's emotional and oppositional behavior "spiraled out of his control" when an assistant principal confronted the child rather than allowing him to back off as provided in his BIP).

<sup>82</sup> See *Supra* FF #11.

provide information to be considered that may have produced a different outcome. It is unknown what the MDR may have concluded had the Student been asked why he took Adderall, or considered what the hospital social worker may have offered, or how the meeting would have been conducted had the Parents been represented by legal counsel. Further, the IHO must consider whether a different determination may have been reached had the MDR included a regular education teacher and the special education teacher and then all participants considered the foregoing information in light of the Student's recent history of drug abuse and other information in the Student's IEP. The IHO concludes that it would have been particularly important for the MDR team to consider the Student's present levels of performance with his [REDACTED] drug and alcohol abuse counseling. At no time did the District seek permission from the Parents or Student to access this information, even though the Student's IEP required the District to provide quarterly assessments on the Student's progress toward the goal of reducing the Student's drug and

alcohol use. Since the District failed to address the Student's quarterly bench marks on the drug/alcohol abuse goal, the District could not consider the information at the MDR. The IHO concludes the District made procedural errors by failing to meet the statutory requirements related to parental input and the consideration of required information to make an informed decision at the MDR. As in Issue #1, in order to find for the Parent, the evidence must support that the procedural violations committed by the District constituted a denial of FAPE to the Student. When considered in tandem with the conclusions reached in relation to issue #i, the IHO concludes that the procedural errors committed by the District were of such a nature and severity, that "alone and in the aggregate, resulted in a denial of FAPE"<sup>83</sup> to the Student and must result in a ruling in favor of the Parent on Issue #ii.

- iii. Did the District deny the Student a FAPE by failing to provide the Student with special education services after the Student's

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<sup>83</sup> See *Supra* Note 70, p. 11.

expulsion from the District?

A. The evidence reflects that the educational benefit received by the Student from the [REDACTED] program was at best *de minimus*. The evidence supports that the District failed to provide the Student with the social work minutes required in the Student's IEP during the entire period the Student was out of school as a result of the expulsion. The evidence supports that the District failed to make any effort to monitor the Student's progress on the IEP goal related to the Student's drug and alcohol abuse. The District's failures occurred during the period preceding the Student's misconduct that led to the expulsion, the period leading up to the MDR, and the period the District placed the Student in the IAES. This failure resulted in the District deciding on an inadequate homebound placement that failed to provide the Student with the required

"special education" and "related services" as detailed in the Student's IEP. The statutory definition of FAPE requires school districts to provide both "special education" and "related services."<sup>84</sup> Thus, to meet both prongs of the *Rowley* standard, the District must provide the Student with both special education and related services that are *individually* (emphasis added) designed to provide the Student with educational benefit. The evidence supports the District failed on both prongs of the analysis. The student's grades might suggest that the Student made progress toward the mastery of IEP goals and participated effectively in the normal curriculum. In this instance, the Student's grades were awarded while on homebound instruction. Thus, the District awarded the grades when the Student was not mainstreamed with other

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<sup>84</sup> See 20 U.S.C §1401(9).

non-disabled students, so the presumption that his grades reflect an appropriate education does not apply.<sup>85</sup> The District did not implement the [REDACTED] program during the Student's IAES until May 10, 2013. The expulsion occurred on April 11, 2013. Thus, the Student went without any instruction for 20 school days. The Student received the computerized instruction through the [REDACTED] program for only seven of the final 27 school days of the 2012-13 school-year. The District argued that the Student successfully completed the [REDACTED] program and earned enough credits to advance from his sophomore to his junior year. However, the court in *John F.*<sup>86</sup> ruled that "...the fact that a child is advancing from grade to grade in a regular public school system does not automatically lead

to the result that child is receiving a 'free appropriate public education.'" The IHO concludes that the District failed to provide the Student the required "special education" and "related services" since the District only delivered the computerized program during a seven (7) day period of a 27 day expulsion. Further, the IHO finds that the time provided by the Student's special education teacher to help the Student begin the computerized program amounted to a technological service and not any type of "specialized instruction" anticipated and required by the statutes. The District acknowledged the Student did not receive any of the social work minutes required in the Student's IEP. Further, the statutes require that placement in an IAES must ensure that the Student is able to continue to receive the services and modifications, including those listed

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<sup>85</sup> See *Supra* Note 70.

<sup>86</sup> See *Supra* Note 70.

in the Student's IEP, that will enable the Student to meet the goals of the IEP, and courts have ruled that the placement must address the behavior that led to the IAES.<sup>87</sup> The IHO concludes the homebound instruction utilizing only the [REDACTED] program for seven (7) school days failed to accomplish any of the requirements. Clearly, the computerized [REDACTED] program was not "specifically designed to meet [the Student's] unique needs," nor "supported by such services as [we]re necessary to permit [the Student] to benefit from the instruction."<sup>88</sup> The homebound placement also failed to address the behavior that resulted in the IAES. The District failed to secure any information from the outside counseling services provided by either the Alexian Brothers Hospital placement or the counselor in the

[REDACTED] program. This failure resulted in the Student sitting at home for all 27 of the remaining school days without any services related to goal number 4 in his IEP that addressed his drug and alcohol abuse issues, the very behavior that led to the IAES. Thus, the preponderance of the evidence supports a ruling in favor of the Parents that the District failed to provide the Student with special education services after the Student's expulsion from the District. As a result, the IHO rules completely for the Parents on Issue #iii.

#### **B. COMPENSATORY EDUCATION**

In order to award the Parents' requested compensatory education, the foundational element must be a finding of a denial of FAPE.<sup>89</sup> Both the OSEP, the IDEA administering agency<sup>90</sup> and

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<sup>87</sup> See *Supra* Note 70. p. 12.

<sup>88</sup> See *Supra* Note 70.

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<sup>89</sup> See, e.g., *Board of Education of Oak Park, District 200 v. Illinois State Board of Education*, 79 F.3d 654 (7th Cir. 1996). *Petrina W. v. Chicago Public School District 299*, 53 IDELR 299 (N.D. Ill. 2009).

<sup>90</sup> See, e.g., Letter to Anonymous, 21 IDELR 1061 (OSEP 1994) (advising that a SEA and a

Student's IEP prior to the expulsion on April 11, 2013. The IEP must also reflect the newly designed FBA and BIP for the Student. A copy of the completed IEP must be sent to Mr. Andrew Eulass, Esq., Due Process Coordinator, 100 N. First St., Springfield, IL. 62777 no later than 5:00 PM on October 22, 2013.

4. As a result of the District's denial of FAPE during the period of the IAES, the IHO awards the Student 30 hours of compensatory education. The IHO orders the District to provide the Student with 30 hours of one to one tutoring by a certified special educator to address the Student's SLD in reading and writing and the Student's OHI that results in the Student's struggling in his other classes. The IHO orders the District to have the IEP team convene and identify how the 30 hours of compensatory education (one to one tutoring) will best impact the Student for the remainder of the 2013-14 school year. A copy of the plan to implement the 30 hours of compensatory education must be sent to

Mr. Andrew Eulass, Esq., Due Process Coordinator, 100 N. First St., Springfield, IL. 62777 no later than 5:00 PM on October 22, 2013.

#### **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 the 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.

**IT IS SO ORDERED:**

**Dated: September 20, 2013**

  
Impartial Hearing Officer

222 E Surrey Lane, East Peoria, IL 61611

[mikerisen@msn.com](mailto:mikerisen@msn.com)

309-694-4864 phone

309-694-2295 fax

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the Final decision was sent via 1<sup>st</sup> Class USPS, prepaid and as an attachment via electronic mail (attorneys and ISBE only) and directed to:

Mr. & Mrs. [REDACTED]  
Parents

[REDACTED]

And

And

[REDACTED]

[REDACTED]

And

And

Mr. Andrew Eulass, Esq., Due Process  
Coordinator

@: [aeulass@isbe.net](mailto:aeulass@isbe.net)

On September 20, 2013

[REDACTED]

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