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ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

[REDACTED]
Student

vs.

Case No. 2014-0189

[REDACTED]
Local School District

ANN BREEN-GRECO, Hearing Officer

DECISION AND ORDER

This matter is before the undersigned Hearing Officer for a due process hearing concerning the Parent's assertion that the District denied the Student a free, appropriate, public education (FAPE). The Hearing Officer has jurisdiction to hear and decide the matter under 105 ILCS 5/14-8.02a, 34 C.F.R. 300.506-509, 23 Ill. Admin. Code 226 Subpart G, and the Individuals with Disabilities Education Act, as amended, 20 U.S.C. 1415 et seq. ("IDEA"). The parties were informed of their rights pursuant to these statutes.

BACKGROUND

This matter involves an [REDACTED] Student was determined to have ADHD and receives services under the OHI designation, ED, and LD. Additionally, the Student has been diagnosed with mood disorder and diabetes. For [REDACTED] has been in an instructional classroom in the District.

In this matter, Parents requested a hearing on October 13, 2013, based on an objection to the District's proposed placement. The Hearing Officer was appointed October 18. Parent then retained counsel and an amended complaint was filed November 15. A resolution was held but the matter was not fully resolved. Two mediations and two IEP meetings have been held but the matter was not settled. Parent requested leave to file a second amended complaint which was denied. The pre hearing was convened on April 24 and the parties agreed on June 9, 10, and 11 for hearing dates. The pre hearing was continued to May 21 as the parties continued attempts to settle the matter.

The hearing was held June 9, 10, 11, and July 14, 2014. On July 15 the parties requested a continuance to August 8 in order to obtain transcripts and file briefs. The briefs were timely filed. Both parties did excellent work on behalf of their respective clients.

Representing parties – District: Attorney [REDACTED] Parent – Attorneys [REDACTED]
[REDACTED] and [REDACTED]

PRELIMINARY RULINGS

Parent sought to introduce a document into evidence which involved the District policies and an investigation into placement and staff, arguing that it had relevance because of the three schools involved and instructors interviewed. The District contended that the document’s focus was on monitoring and it was not specific to the Student. The Hearing Officer did not allow the document into evidence because it was not a school record regarding the Student nor a document developed with respect to the due process matter before the Hearing Officer. Additionally, the Hearing Officer noted that the Parent had another venue to pursue a different remedy with respect to any complaints outside the due process matter.

In addition to admission of stipulations and affidavits, after the testimony had been completed, Parent sought to introduce a document regarding use of physical restraint at the District’s proposed placement. The District had no objection so long as it was allowed to introduce an affidavit that reflected the proposed placement had exceptions to the use of physical restraint. The Hearing Officer allowed both documents into evidence.

ISSUES AND RELIEF REQUESTED

The issues and relief were discussed in the continued pre hearing and are as follows:

Issues

Whether the District failed to:

1. Conduct an appropriate evaluation from November 15, 2011, to December 30, 2013, including use of multiple assessment tools and assessing the Student in all areas of need. (As noted above, Parent did not object to the District’s independent evaluation which was conducted subsequent to the filing of the complaint. Parent’s attorney stated that Issue 1 regarding failure to conduct an appropriate evaluation is included as it relates to Parent’s issue No. 2, failure to provide an appropriate IEP because the evaluations were not appropriate, and in order to seek relief as contained in Remedy 1, 2, 3, 5. Parent accordingly is not seeking a new independent evaluation and thus will focus in hearing on the specific request Parent is making in this regard: that the District conduct a functional behavior assessment conducted by a Board Certified Behavioral Analyst, as contained in Issue 2).
2. Provide an appropriate IEP from November 15, 2011, to the present, with appropriate IEP team, with respect to appropriate instruction, development of goals, appropriate behavioral interventions, appropriate functional behavior analysis (FBA) and behavior

intervention plan (BIP), appropriate related services, extended school year during summer 2012 and 2013.

3. Implement the Student's IEP from November 15, 2011, to December 10, 2013, with respect to progress on IEP goals and implementing the Student's BIP.

4. Provide appropriate training for the Student's teachers, related services providers, and aides in order for them to implement behavioral interventions.

5. Provide an educational placement in the least restrictive environment from October 7, 2013 to present.

Relief

Order the District to:

1. Conduct an FBA by a BCBA.

2. Convene an IEP team with statutorily required members including the BCBA to review the IEP to include a BIP with data from the FBA.

3. Contract with a BCBA to provide training to staff regarding the BIP.

4. Retain Student in the instructional classroom at the current school.

5. Pay for compensatory education services, including transportation to and from such services, equaling a minimum of one hour per week in each deficit area including reading, writing, math and behavior.

FINDINGS OF FACT

The Hearing Officer finds that:

1. The District provided appropriate evaluations of the Student. The District psychologist, [REDACTED], did two evaluations. A behavior consultant, [REDACTED], also conducted a psychological evaluation and obtained results that were similar to what [REDACTED] obtained. Parent did not object to [REDACTED] evaluation.

2. The District provided appropriate IEPs from November 15, 2011, to the present, with appropriate IEP team, with respect to appropriate instruction, development of goals, appropriate behavioral interventions, appropriate FBA and BIP, and appropriate related services. No extended school year was required during summer 2012 and 2013. The evidence reflects that the District over a period of years worked to develop IEPs to

provide for the Student's needs, factoring in [REDACTED] complexities, and to address Parent's concerns. The Student's medical condition which precludes identifying antecedents created difficulty in developing an accurate FBA and BPI. Despite this difficulty the District developed numerous FBAs and BIPs. Teachers also maintained behavioral charts and other aids to assist in working with and modifying the Student's behavior. Additionally, the District conducted two behavioral consultations, both of which included three observations by the evaluators from the [REDACTED]. The District also did an independent evaluation by a behavior consultant, [REDACTED].

3. The District implemented the Student's IEP from November 15, 2011, to December 10, 2013, with respect to progress on IEP goals and implementing the Student's BIP, including social workers' recommendations, recommendations of behavior consultants, and interventions regarding behavior, revisions to the FBAs and BIPs, and frequent interaction with Parent on the Student's behavior, and teachers' innovative techniques. The social worker in sixth grade interacted with the Student far in excess of the Student's required hours. Other staff, including the school nurse (on a daily basis), Assistant Principal, and Principal also interacted with the Student when needed.

4. The District provided appropriate training for the Student's teachers, related services providers, and aides in order for them to implement behavioral interventions, including recommendations from the behavior consultants, social workers' advice to teachers, and providing access to the school nurse for the Student to get assistance with managing [REDACTED] diabetes in order to prevent any behavior issues that might arise from blood sugar fluctuations. The Hearing Officer finds the District staff to be credible and their testimony is supported by documents. Parent's arguments regarding evaluations, IEPs, implementation and teacher training and teachers' methods of training lack credibility in light of her argument that the Student has received educational benefit with supports and she wishes him to remain in the District instructional class, which is contradicted by her arguments that the Student has not been provided a FAPE in the LRE.

5. The District attempted over the years to address the Student's behavior issues, providing numerous supports and accommodations, prior to making the proposed placement for an instructional day school, [REDACTED]. Physical restraint is not an issue with respect to placement at [REDACTED] because [REDACTED] will not use such restraint when there is medical contraindication to its use. The Hearing Officer finds [REDACTED] the least restrictive environment for the Student. Parent's arguments regarding LRE are not credible in light of her participation in the resolution session in which she asserted she wanted [REDACTED] placed at [REDACTED] but then stated this was for "resolution purposes only." Further, her argument lacks credibility in light of her assertions that he has been denied a FAPE in the District instructional class, yet she wants [REDACTED] to remain there with more supports.

ANALYSIS

In this matter, Parent has asserted that the Student has been denied FAPE and that the District's proposed placement in an instructional day school would not be the Least Restrictive Environment for [REDACTED] as required by law. The Hearing Officer first reviews the issue of FAPE and then reviews whether the District has offered a FAPE in the LRE.

Free Appropriate Public Education

The District has the burden of presenting evidence that the special education needs for the Student have been appropriately identified and that the special education program and related services proposed to meet the needs of the Student are adequate, appropriate, and available. 105 ILCS 5/14-8.02a(g-55).

The Parents have the burden of proof regarding the request for a due process hearing involving a denial of FAPE based on the United States Supreme Court ruling in *Schaffer ex rel. Schaffer v. Weast*, 126 S.Ct. 528, 537 (2005) which was analyzed with respect to the relevant Illinois statute (the Illinois School Code) by the Northern District. *Kerry M v. Manhattan School Dist.*; and the *Illinois State Board of Education*, U.S. District Court, Northern District of Illinois, IDELR 194 106 LRP 58547 (September 2006).

In *Hendrick Hudson Dist. Bd. of Education v. Rowley*, 458 U.S. 176 (1982), the United States Supreme Court has set the standard to determine whether a child has been given a free appropriate public education (FAPE) under the IDEA. The *Rowley* standard requires that an IEP must be " 'reasonably calculated to enable the child to receive educational benefits.' 458 U.S. at 206,7." *T.H. v. Board of Education of Palatine Community Consolidated School District 15*, 55 F. Supp. 2d 830, 841 (N.D. 1999).

In *Rowley* the United States Supreme Court has articulated a two-prong test to determine whether a child has been given a free appropriate public education under the IDEA. The first prong is whether the school district complied with the procedural requirements of the IDEA. Second, the Hearing Officer must determine whether the IEP was reasonably calculated to enable a child to receive an educational benefit. That determination is based on whether the District's IEP for the Student identified his needs/eligibility and offered services to address those needs as required by statute.

(I)Procedural Requirement

With regard to the first prong, the Parent asserted procedural violations in the IEP development that precluded access to a FAPE for the Student. However, even if violations occurred, only "procedural inadequacies that result in the loss of educational opportunity

constitute a denial of FAPE.” *Evanston Community Consol. School Dist. No. 65 v. Michael M.*, 356 F. 3d 798, 804 (7th Cir. 2004); *Board of Ed. Of Township High School District No. 211 v. Michael R.*, 2005 WL 2008919 (N.D. Ill. 2005). IDEA-2004 which became effective on July 1, 2005, also requires that where a procedural violation is alleged, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies: (I) impede the child’s right to a FAPE; (II) significantly impede the parents’ opportunity to participate in the decision making process regarding the provision of a FAPE; or (III) cause a deprivation of educational benefits. 34 CFR 300.513(a)(2)(ii).

Parent alleges that there was: (1) a lack of evaluations; (2) Student’s goals were deficient; (3) progress reports were not provided; (4) a general education teacher was not in attendance at the IEP; (5) and the Student prior to the independent evaluation was not classified as LD. The Hearing Officer has found that: (1) there were appropriate evaluations. (2) the goals were sufficient; teachers consistently worked with each other from grade to grade to ensure continuity and meeting of goals, while having to contend with behavior issues; Parent participated in IEPs and did not object to IEP goals; additionally, Parent attended the February 2014 IEP with her attorney, requested revisions in the goals, and agreed to the revised goals, service minutes, and behavior plan. (3) Progress reports reflected the Student’s work on specific goals as to whether he was making progress. Teachers interacted with Parent frequently about his academics and behavior. Daily check-in check-out sheets, weekly reports and monthly IEP updates as agreed on in resolution were given to Parent beginning in December 2013. (4) The District’s Special Services Director was in attendance at the IEP meeting and could discuss general education but there was no evidence that a general education teacher would play a relevant role in the IEP. (5) The matter of whether the Student had appropriate labels during these years is not a denial of FAPE; the Student had services to address his specific needs.

Parent has shown no specific harm from any alleged procedural violation in that there was no deprivation of educational benefit. Parent herself has asserted that the Student made progress and wants him retained at the District instructional class.

(II) Substantive Component of a Legally Sufficient IEP

To determine whether the District complied with the second prong—the substantive component of a legally sufficient IEP—the Hearing Officer must find that the District’s IEP for the Student identified [redacted] needs/eligibility and offered services to address those needs as required by statute. To meet the *Rowley* standard the IEP must be developed based on an evaluation that meets statutory requirements.

The Student is eligible for services in the categories of emotional disturbance (ED), OHI-ADHD, and Learning Disability (LD). Additionally, the Student has been diagnosed with diabetes and mood disorder. There were two words most often used to describe the Student during the hearing: complex and inconsistent. Despite the complexities and inconsistencies with the Student’s behaviors, the evidence reflects that the District over a period of years has worked to develop and

implement IEPs, including BIPs, to provide for the Student's needs and address Parent's concerns.

Parent's testimony underscores the extent of [REDACTED] complexities. According to Parent, when the Student was in third grade she had concerns regarding [REDACTED] social emotional functioning. She spoke with a pediatrician, an endocrinologist, and a social worker. The Student was diagnosed as bipolar and prescribed medication. However, in fifth grade, a psychiatrist observed [REDACTED] and determined that he did not show classic symptoms of bipolar. The psychiatrist found that [REDACTED] had anxiety, impulsivity, and depression which mood disorder encompasses and the bipolar diagnosis was not appropriate. Accordingly, [REDACTED] diagnosis was changed from bipolar to mood disorder/NOS. This evidence highlights the Student's complexity with respect to psychiatric diagnosis.

Parent testified that she sought support through medication because she thought it would help. [REDACTED] medication changed between third grade and the present. It would take from three to six months to see if medication worked. From third grade to the present [REDACTED] had three periods of change. Periods of medication adjustment also coincide with behavior difficulties. Parent would inform the psychiatrist of issues at school and the Student had to be taken off medication. Parent also testified that medication stability coincides with stable behavior, i.e. by the end of sixth grade [REDACTED] was on a more stable regiment. Parent updated the District on medication changes. Parent's testimony reveals the difficulties with respect to medication management and behavior over which the District had no control. The District cannot be blamed for behavior caused by medication. Yet Parent seeks to assign responsibility to the District for not addressing the behavior through more FBAs and BIPs.

In addition to having mental health issues, [REDACTED] was diagnosed with diabetes in December 2006. Parent testified that if [REDACTED] blood sugar is too high, [REDACTED] body produces ketones, resulting in acid build up which can start to shut down [REDACTED] organs. [REDACTED] blood sugar range is 80-140, depending on the time of day, according to an endocrinologist. If his blood sugar is too high, [REDACTED] can get thirsty, hungry, irritable, tired, and produce ketone byproduct; if it is too low, [REDACTED] becomes tired, shaky, and irritable. The Student, according to Parent, cannot always recognize when [REDACTED] blood sugar is off. [REDACTED] is not independent in managing [REDACTED] diabetes. [REDACTED] needs help with counting carbs and with confirming correct blood sugar being entered into pump. If [REDACTED] blood sugar is over 250 [REDACTED] must be reminded to check for ketones. Parent informed the nurse at school, provided a meter, emergency kit, snacks, juice, and keto sticks. [REDACTED] has been hospitalized because of [REDACTED] diabetes. This testimony further confirms the complexity of the Student's issues. There is ample evidence that the District did everything possible in having a nurse and then an aide to assist the Student for [REDACTED] medical issues.

The Student, according to Parent, had private therapy through [REDACTED] in third grade, for a year, once a week, and continued into fourth grade. The Parent informed the District and gave consent for the District to talk with the therapist, which the District did. Then the therapist felt therapy was no longer needed. At the end of fourth grade in June 2013 and going into fifth grade, the Student went to a private group through Resurrection once a week. In October [REDACTED] started with [REDACTED] services. The Parent initiated this

because the Student had difficulties at the end of fifth grade (medication) which led to homebound placement. The Parent felt going into sixth grade [REDACTED] needed help for the transition. Parent testified that [REDACTED] now has an effective relationship with [REDACTED] therapist, Bethany Apa. The Student trusts her and is receptive to her ideas. [REDACTED] is learning coping skills. The Student has been able to be more open, more aware of [REDACTED] can identify emotions [REDACTED] is feeling although not always, and is better able to say what is bothering [REDACTED]. The results of the private therapy carry over at home and school. Parent plans to continue with [REDACTED] because the Student needs the additional help. Parent acknowledged that private therapy is necessary even though [REDACTED] is getting social work services at school. The Student's emotional issues, including animosity to his father, are an additional factor to be considered. Parent's testimony and documents in evidence reflect the complexity of the Student's medical, learning and emotional issues and how this complexity had to be factored into developing IEPs.

The testimony of the Director of Student Services (DSS) and documents in evidence demonstrate that the District has over a period of years attempted to address the Student's complexity and even as early as the first eligibility considered a possible need for a more restrictive environment. DSS first attended an IEP for the Student on June 6, 2011. A referral for the Student to PACE had been developed on March 30, 2011, and signed by the District and Parent. P 17. The Student's behaviors were "unsafe" according to DSS' testimony. [REDACTED] had been "kicking people" and "running after younger students." The District informed the Superintendent. The referral was filled out before the IEP but not submitted to the program before the IEP meeting. Parent signed the consent for initial evaluation on April 12, 2011. On May 2, 2011, [REDACTED], a licensed behavioral clinician at [REDACTED], wrote a letter to a District social worker stating that [REDACTED] was referred for treatment, had behavioral problems in school and at home, and recent medication services with [REDACTED] [REDACTED] diagnosed the Student with Bipolar Disorder NOS-primary and ADHD (combined)-secondary. [REDACTED] was scheduled for a psychiatric evaluation May 17 and referred for group therapy. [REDACTED] was to see the Student for family therapy. D 11. On May 26, 2011, the District nurse developed a health history from information obtained in a telephone interview with Parent. The nurse reported that [REDACTED] was taking Depakote 750 mg for bipolar affective disorder. [REDACTED] was also diagnosed with Type 1 diabetes. [REDACTED] diabetes is managed through carbohydrate counting. [REDACTED] experiences sleep difficulties. D 15.

The IEP of June 6, 2011, reflected concern that the Student's behavior was impacting [REDACTED] [REDACTED] receptive and expressive language skills were within and above normal limits. D 18. [REDACTED] was determined to be functioning at age-grade level in all academic subjects for cognitive functioning. D 18. [REDACTED] was determined eligible for OHI with an explanation that bipolar adversely affects academic performance through behaviors such as refusals and inappropriate escalation of name-calling or behaviors. D 21. A behavior intervention plan was deemed required. D 26 Goals were developed for functioning, to identify and manage emotions and behavior (D 27); academic for reading (D 28); academic for math (D 29); academic for communication/writing (D 30). [REDACTED] was given accommodations for breaks and extended time for testing. [REDACTED] was provided social worker services of 30 mpw and social work consult of 10 mpw. The recommended placement

was the instructional program. D 34. The behavior intervention plan (BIP) was in place, to be revised in the fall of the 2011-2012 school year. D 37.

██████ BIP was originally created March 17, 2011, and revised March 21, September 26, and October 17. D 40. The BIP noted that at any time, in addition to regularly scheduled checks, the Student may see the nurse to have ██████ glucose level checked. D 41. The BIP detailed the tiered de-escalation procedures, for mild, moderate, and severe escalation (D 41, 42). Severe escalation would result in staff informing the Student that the staff needs to keep ██████ safe and, depending on the circumstances, taking the Student to the nurse's office to check ██████ glucose level. D 43. The BIP included positive supports, motivators and rewards. The BIP noted that for restrictive disciplinary measures, if the Student engaged in behavior which presented immediate risk of harm to ██████ or others, the office will be contacted and the Principal will determine if physical contact is necessary. D 44.

On October 6, 2011, ██████ wrote a letter, "To Whom It May Concern" that the Student was having episodes of low blood sugars that are "causing ██████ to be combative and have a definite personality change," noting the importance of identification of low blood sugar. ██████ adjusted ██████ insulin to carbohydrate ration. D 45.

On October 12, 2011, Parent signed a consent for initial evaluation (D 48) for the following domains: academic achievement and cognitive functioning. D 50. Motor Abilities – OT only was added later when Parent voiced her concerns. D 65. ██████ was determined to be qualified for OT services. D 72. Parent also signed the ██████/Service Referral. D 57. The DSS signed the Intervention Strategies Team: Student Collaboration Request on October 18, which stated that Parent had been made aware of the IST referral. D 58. Concerns listed for the Student were aggressive behavior and non-compliance. The TIER 3 interventions of individual minutes with the social worker and a behavior plan produced a "Limited" response. D 59. The Student's teacher completed a discipline referral on October 25, 2011, citing harassment on the playground; no action was taken.

On November 3, 2011, a District social worker wrote to the Principal and DSS that she had contacted ██████ at ██████ regarding concerns with the Student's increased acting out behavior and ██████ being sent home three days in a row. ██████ informed her that the Student was not taking ██████ mood stabilizer and could be a risk to ██████ and others. The social worker then included the Principal in the conversation. Reed disclosed that she had spoken with Parent about the "dangers" of the Student not taking the mood stabilizer due to ██████ bi-polar diagnosis, which could result in a risk to ██████ and others; ██████ behavior could be erratic and outbursts could have no apparent antecedent; ██████ could show anger, physical and verbal aggression. Parent told ██████ she had seen a "large improvement at home since discontinuing Depakote", stating that she took ██████ off it with the help of his pediatrician, not one of the doctors at ██████

The social worker asked what type of calming strategies ██████ utilized so that she could replicate them. On November 21, 2011, the social worker followed up with ██████ She related to ██████ that the Student was currently taking Ritalin for ██████ ADHD and ██████ behavior improved. Reed suggested structures for unstructured activities. Noting that

the Student's outbursts often seem to have no antecedents, Reed agreed that bi-polar children will have outbursts with visible and detectable antecedents. This is an indication that the bi polar diagnosis was incorrect; it was later changed by another psychiatrist to mood disorder. The social worker informed [REDACTED] that the Student was still scheduled for the psycho neurological evaluation at University of Chicago, November 28. D 62. This evidence demonstrates the difficulty of having an accurate FBA and BPI in light of the Student's medical condition which precludes identifying antecedents.

A psycho-education assessment was initiated by the District psychologist, [REDACTED]. D 80 – 92. However, on November 22, 2011, Parent wrote that the [REDACTED] would do testing and that the school psychologist could stop [REDACTED] evaluations and may continue them at another time. D 63.

The Student's next IEP was held on December 20, 2011. The IEP reflects Parent's concerns about the Student's behavior and academics (D 97) and notes [REDACTED] behavior impedes [REDACTED] learning; positive behavioral interventions and supports will be attempted; a BIP is required. D 98. [REDACTED] goals for May 2012 were continued from the previous IEP. D 99.

An Intervention Support Team Report was made on February 10, 2012. D 119. Parent had a choice in selection of evaluator. The evaluator from [REDACTED] Behavior Specialist, did three observations: January 17, morning and afternoon, and one on January 23, 2012. He made a number of recommendations. He also noted that the Student's teacher "should be lauded for the skillful ways in which she was observed managing and monitoring (the Student's) behavior." D 123.

The next IEP was held January 9, 2012, (D 140) followed by an IEP November 30, 2012. [REDACTED] placement remained the instructional program. It noted that, "Health impairment (diabetes), and emotional disability adversely effects academic performance." D 204. The FBA was written by two social workers, noting, "It appears that (the Student) needs to have [REDACTED] needs met immediately and when this is not possible or events/incidents are not resolved to his satisfaction his behavior escalates." D 218. On April 30, 2013, Parent was notified of [REDACTED] suspension for behavior incidents, noting, "harm to self and others." D 228. The next IEP was May 13, 2013. D 242. It noted that, as did the November 30, 2012, IEP, "Health impairment (diabetes), and emotional disability adversely affects academic performance." D 244. The FBA remained the same. D 257.

The DSS testified that she attended the May 13, 2013, IEP because of the Student's behavior issues and a request for homebound services. P88. There was a program service referral form May 7, 2013, to [REDACTED] P75. The Student was to be referred to [REDACTED]

In the IEP May 13, 2013, the team discussed the Student's recommended placement of [REDACTED]. It was decided that Parent would tour [REDACTED] and the District school and the team would meet in August to determine placement for sixth grade. P 91. It was not decided that the Student would start at [REDACTED] the next school year. For this IEP the Student was

going to homebound services. [REDACTED] was to have homebound services of 60 minutes a day, five days a week, with consult social work services. D 86. The DSS agreed to homebound because the Student's doctor recommended it (for medication adjustment) and the Student was exhibiting escalating behaviors in school.

The IEP team convened on August 5, 2013, to discuss the IEP and placement. P95. The IEP document noted Parent's concern about changes in behavior after a medication change that occurred at the end of February/beginning of March. It was noted "Safety concerns in school setting are also a concern." P 96. [REDACTED] and the instructional classroom in the District school were discussed for placement. The IEP team determined that the instructional classroom would be the placement because Parent indicated there had been a leveling off when the doctor adjusted [REDACTED] medication and he was less anxious. The District decided to implement the IEP at the District school. Since the change in medication was the catalyst for homebound, it was decided there was no need for more supports.

The District decided to collect data for a new BIP, after the Student started at the District school. At the October 7, 2013, IEP, the team discussed that on September 5, 2013, staff members reported that the Student had a difficult time that day. [REDACTED] had stuck a student with a pencil in the leg and used inappropriate language. [REDACTED] was moved to the nurse's office. The Parent called and talked with the Principal. When Parent went to the nurse's office, the Student believed [REDACTED] would be suspended and punched the wall, breaking [REDACTED] wrist. At the IEP meeting Parent did not express any concerns other than not wanting the Student to go to [REDACTED]. The DSS was in agreement with the [REDACTED] placement, deeming it more supportive; there was more staff readily available to de-escalate and help the Student process emotions, as well as teach [REDACTED] and model for [REDACTED] appropriate strategies when [REDACTED] is upset and out of control.

After this meeting Parent requested due process. The parties agreed to mediation. D 447. The matter was not resolved but the District amended the IEP based on Parent concerns. Check in and check out were in place; [REDACTED] was provided a second set of books and could access water any time; [REDACTED] was to get an hour per week of social work services. D 450-465. The District agreed to postpone decisions about placement until after the Student's surgery for tonsils and adenoids. D 451.

On November 6, 2013, Parent retained counsel and filed an amended hearing request. D 489. Subsequent to mediation, the District had a resolution session on December 2, 2013. D 508. In addition to others, the District Superintendent attended. D 508. A discussion ensued on the level of support the Student was receiving—an adult was writing [REDACTED] assignments for [REDACTED] and making sure [REDACTED] had the required materials. In the December 9, 2013, resolution agreement, the District agreed to ESY for summer 2014. D 519. Although Parent requested a Board Certified Behavior Analyst (BCBA), she was willing to consider someone other than a BCBA, and the Parent and the District agreed to an independent psychological evaluation. Parent had the choice in selection of the evaluator. The District agreed to another consultation with a behaviorist from the [REDACTED]

██████████, ██████████. D 520. The second behavior consultation also included three observations: October 1 (which took place before the resolution agreement as a follow up to the previous consultation) and December 19, 2013, and January 14, 2014. D 604-611.

Although she wants him in a “typical school” Parent understands ██████ needs targeted intervention to allow transition back to a “regular” school. D 511. At the December resolution the parties discussed ██████ versus ██████. D 512. Parent stated that the Student needs to be taught about emotions but she thought the program at ██████ was the same as the District’s school and would address behavior the same way. She advocated for ██████. Parent admitted the Student needs help and a day school but wanted to choose a school despite the fact that the District cooperative has one; Parent said it was not the placement she wanted. The District did not agree to the school the Parent school wanted, which was more restrictive than the District proposed.

The District also agreed to visit ██████ which the DSS did. The District agreed to special communication with the Parent so that there would be bi-weekly reports on IEP goals. D523. Parent agreed to an evaluation. D 527, D 533. The evaluation included a speech pathologist and nurse. D 529. 533 534. By email December 6, the Student’s teacher confirmed that a second set of books was sent home.

The DSS testified that the Student’s diabetes manifested itself in the Student’s outbursts, aggression to staff members, and daily class disruptions. The District conducted an evaluation and provided a one on one aide to keep the Student and others safe. The aide also redirects the Student. The Student’s lack of progress was reported to the Parent. The District developed an FBA, including environment, blood sugar accommodations, and moment-by-moment data collection. Staff is trained on a tiered plan.

The DSS testified that the Student may look like ██████ is more focused but has a one aide and is turning in more work, with the one on one; ██████ was moved to be with students different from the students ██████ had issues with; ██████ was removed from a teacher; ██████ was allowed to participate in bowling although ██████ did not qualify. The DSS testified that the Student manipulates ██████ blood sugar and goes home to avoid being upset, misses school, and goes to private allergy and private therapy appointments during the day. When one looks at ██████ accommodations, it reflects that ██████ has not made progress. He has no friends and does not like attending junior high. In her view he needs a therapeutic day setting that can meet ██████ education needs, with positive and intensive interventions in a small student to staff ratio class.

In an effort to resolve this case, the District provided an independent evaluation in early 2014. Parent had no objection to the evaluation.

Testimony shows the number of District personnel, in addition to teachers and ██████ aide, who routinely had to be involved with the Student, due to ██████ combination of mental and physical conditions, including the Principal, Assistant Principal, social worker, and medical personnel. Evidence shows the kinds of incidents and behavior that required this attention.

fourth grade teacher used research-based materials, Focus Math and Reading Streets and Sidewalks. She worked on phonics activities for reading goals, using Haggerty Phonics and manipulative to provide multi-sensory instruction. Although made progress in writing on simple sentences, inconsistent behavior impeded progress in writing complex sentences. The fourth grade teacher expressed concern that various interventions were not successful due to behavior.

The fifth grade teacher worked on phonics, fluency, and reading comprehension and made progress in reading. SD 291. made progress in math measured by STAR math testing (SD 222) until behavior declined. fifth grade teacher also testified goals in fifth grade were implemented at a higher reading level than fourth grade goals, which were similar. also noted similarity of these goals but deemed them to be specific and measurable. The Student also made progress on math goals in sixth grade and teacher testified that if behavior and emotions were able to be controlled had the ability to be in general education math. With respect to writing, the teacher testified that things must be done the Student's way and will not write on a specific topic if chooses not to. The other sixth grade teacher, whom the Student professed to dislike, worked on goal for fluency, decoding, and comprehension.

most recent special education teacher, social worker, and one on one aide all testified needs a more intense environment. Specifically the special education teacher and social worker supported the recommendation of. The independent evaluator, testified that the Student is complex on multiple levels. The Student has a cognitive profile with LD, significant emotional and behavior problems, impulsivity, mood dysregulation. emotional and behavioral problems "equal ADHD." These issues are complicated by diabetes. According to, there were a multitude of factors involved, especially for a "complex boy" like the Student--medication, emotional status, relationship with teachers, intensity of treatment, motivation--all would have an effect on behavior and ability to access education. There was a medication change, which also could be a factor in behavior.

This evidence reflects that the Student needs a more therapeutic setting. Claims that the IEPs were inappropriate are also unavailing in light of the evidence regarding the Student's complex needs and Parent's own acknowledgements to staff, as testified to by the DSS. frequent absences and removals from school by the Parent also factor in to the difficulty of creating an IEP for the cross-categorical setting in which the Student was placed. Parent's testified that on her visit to she observed a smaller classroom, quiet, with 10-13 students in a class. She did not see anything there that could not be "recreated" at the District. She also saw the "cool down" room which contained tables, chairs, and books. She testified that could be "recreated" at the District in the instructional class. However, courts have determined that when there is an existing structure that will provide a FAPE for a child a school district is not required to "recreate" it in another setting.

Contrary to Parent's assertions of a lack of an appropriate IEP which would have solved the Student's behavior and other problems, the evidence shows that the District has worked to meet the Student's needs and help progress in education. During the day, the Student was in a

classroom with a teacher and a para professional. Student had the opportunity to visit the nurse, and rather than confine the Student the Student was allowed to step outside the classroom. [REDACTED] was given a one on one aide whose function was to prevent the Student from harming [REDACTED]. The Student also commanded attention from the Assistant Principal and Principal, and daily interaction with the social worker, far beyond the IEP requirements.

Parent asserts a denial of ESY but the District determined there were no regression issues. Nonetheless, despite no documented need for ESY, the District included ESY for summer 2014 in [REDACTED] IEP. However, Parent refused to have [REDACTED] attend because the ESY program is at [REDACTED]. Parent could have taken advantage of this opportunity offered by the District to see if it provided assistance for her [REDACTED] but she refused. The District had also provided the Student with additional tutoring in fifth grade through the Sylvan learning center, through a grant.

After the Student returned to school from being on homebound due to a recommendation from [REDACTED] psychiatrist about needing to change [REDACTED] medication, the Student's behaviors continued to be an issue. The District's PE instructor testified that [REDACTED] had the Student in the first quarter of sixth grade, from the middle of August to October 20, 2013. D Vol. IV, 992. The Student was absent for 14 days. The PE instructor had the Student's behavior plan. D 386-391. He has had training regarding behavior and his training on the Student's BIP was through conversations with the social worker. There were discussions that blood sugar can drop and the Student may need to use the bathroom. The PE teacher implemented a tiered de-escalation and was aware of [REDACTED] accommodations.

During the first day the Student was back after breaking a hand punching wall, during a group activity [REDACTED] was not staying on task and was talking to others. [REDACTED] asked to use the bathroom, repeatedly. The PE teacher directed [REDACTED] to do work, to which the Student replied, "I can do what I want." The Student started punching wall, called the teacher a name, and ran off. D 356. The Principal came to the class to provide assistance. D 943. D359. The teacher testified that typically he did allow the Student to go to bathroom and if [REDACTED] had gone back on task [REDACTED] would have let [REDACTED] go. Part of behavior control is to get the Student back on task. D 359. After this incident, the social worker spoke to the PE teacher regarding behavior intervention and ongoing behavior intervention training. The social worker told [REDACTED] not to say anything, not to engage, and to call for assistance.

At times the Student left the class and went to the social worker because [REDACTED] was upset regarding comments of other students about his diabetes. If the PE teacher asked him a question about whether [REDACTED] was having a problem with his diabetes, "the Student yelled 'no'."

The Student's sixth grade case manager/special education teacher testified that [REDACTED] the Student has ED which impacts learning capabilities. The special education teacher has specific training to work with students with ED and how to de-escalate. He reviewed the Student's IEP and attended a meeting in August regarding [REDACTED] medical needs.

He testified that it is a pleasure to have the Student in class and [REDACTED] showed improvement. PD 440, 441. [REDACTED] made progress on goals and objectives. PD 473. The trendline shows [REDACTED] is going in the right direction. In quarter 3 of the 2013-2014 school year [REDACTED] grades went up from the first

quarter: math from B- to A. PD 510. The Student improved in math word problems but struggles with multiple steps. The teacher testified that if [redacted] behavior and emotions were able to be controlled [redacted] had the ability to be in general education math. Language arts is harder for the Student. If he is given a topic [redacted] does not want to address, [redacted] will not write anything. [redacted] made progress in grammar--from a D- in quarter 1 to a B+ in quarter 3. PD 510.

During the 3rd quarter the Student had a medication change and was in a small class, with about 15 students. Classes [redacted] was in for the previous quarters had about 26-28 students. [redacted] completion of work still went down a little and went down behaviorwise at the end of 4th quarter.

On September 19, 2013, an IEP was held. D 395. Another IEP was held October 7, 2013. Behavior Specialist [redacted] discussed behavior concerns. The special education teacher agreed with [redacted] concerns. He testified that the Student has the potential to make more progress if [redacted] has no behavior issues. D 636, 655. Parent gave suggested revisions/additions for the IEP and the special education teacher revised [redacted] goals to include the revisions. D 661. The February 18, 2014, IEP goals were further revised from recommendations and Parent agreed with all of the goals. The IEP team discussed placement and recommended the [redacted] setting and the special education teacher agreed with it.

The District's social worker testified that he worked with the Student at [redacted] previous school and current school in sixth grade. [redacted] emotional disabilities make it difficult for [redacted] to manage frustration and anger. [redacted] has been aggressive to self, others, and objects. The Student's transition to the District was difficult and [redacted] had behavioral incidents after [redacted] began.

[redacted] completed the FBA and updated the BIP. [redacted] compared this FBA to the Student's previous FBA. P 109 -130. He wrote goals from third grade when he had the Student. The FBA of 2013 is not the same. P 109. For August 2013 of immediate concern was aggression. P 132 to 133. He drafted the October 2013 BIP, noting the difference between August and October BIP plans. The August plan did not have information on it. The IEP team determined it would increase social work minutes because of the Student's risk to [redacted] and others. He worked on breathing techniques, worked to help [redacted] stay on task, use self-talk, and social skills. D938. The Student had to have his tonsils and adenoids out and there were medication changes. These factors and others can affect changes in behavior.

The social worker did an observation and an FBA to include target behavior. He looked at settings, times and date of date, antecedents, P 386. Part of the plan was to have blood glucose checked, avoid power struggles, and tier de-escalation process. The Student had emotions about [redacted] father and made a statement that, "Some men are cruel like my John--I hate you." [redacted] would not discuss it further.

The social worker testified that the Student should have a person available to [redacted] when needed and he is not always available for the Student, who needs help at the moment. He is the only social worker for seventh grade and has 26 IEP students, 12 students with a behavior management plan. He agreed with the recommendation for the Student to attend [redacted] because it is best for

█ The social worker is still seeing the same issues--emotional reaction, which the Student does not talk about, and negative verbalization. The Student needs someone to help █ process.

The Student's one on one aide testified that he is a substitute teacher and does maintenance work with the District but is not a para professional. As the one on one he was to keep the Student safe, follow █ at all times, observe what is going on. He received training from the social worker. He received information on the characteristics of diabetes, i.e., when to check the Student's blood sugar. The Student is in the nurse's office frequently and talks with her. The Student was good about knowing when █ needed to be tested, and it was usually before lunch, as part of the schedule. BIP events differ from day to day. When █ got upset it was the one on one's job to escort █ out. He also reminded █ to stay on task once in a while. The Student did not want an aide and ran away from him numerous times. █ said he "hates this stupid place" and is never coming back. █ was at the observation by the Student's private therapist. █ had a good day that day. The Student approached and talked to her.

During █ years at the District, from November 15, 2011, to the present, the Student's IEPs have contained appropriate goals. █ has been given research-based, multisensory instruction. Behavioral interventions have been offered, changed, increased to meet █ needs and █ behavior intervention plan has been implemented. Additionally, the Student has been given appropriate related services and in fact given services beyond what was required in an attempt to meet █ needs, which fluctuated based on behavior and medical issues.

The Hearing Officer has found all teachers and other services providers to be competent and qualified individuals. Testimony of teachers reflects their appropriate work with the Student in ensuring progress on █ goals.

The issue of appropriate FBAs and BIPs must factor in the complexity of the Student's medical, behavior, and social emotional needs. The Hearing Officer has also found that the District provided numerous behavior analysis, two from █ behavioral consultants, █ (in the Student's fourth grade), and █ (in sixth grade), in addition to the ongoing work of social workers with regard to behavior, and then the independent evaluation by a behavioral specialist. Testimony from teachers, social workers, and the independent evaluator support a finding of the appropriateness of FBAs and BIPs. Of particular note is testimony that it is difficult to identify antecedents with respect to Student's behavior based on █ identified condition of mood disorder. █ testified as to the necessary components contained in the FBA and BIP. D 365, 368, 386-391.

The FBA and BIP conform to the requirements that the IEP of a student who requires a behavioral intervention plan shall: 1) summarize the findings of the functional behavioral assessment; 2) summarize prior interventions implemented; 3) describe any behavioral interventions to be used, including those aimed at developing or strengthening alternative or more appropriate behaviors. 23 Ill. Admin. Code 226.230(b). What is essential is that teachers have techniques to address behavioral issues. Testimony is replete with examples of such techniques, as used by teachers, social workers, and other school staff. A teacher testified that she had her own behavior chart. The social worker consistently worked on developing new techniques and another District social worker consulted with █ to determine methods to address behavior. █ previous social

worker updated [REDACTED] BIP twice. It is also noteworthy that these behavior interventions and techniques had to factor in the Student's diabetes. D 1, 4, 40, 52.

Parent asserts the Hearing Officer should order the District to contract with a BCBA to conduct an FBA and develop a BIP, citing *Doe v. Reg'l Sch. Unit No. 21*, 2012 WL 7653507 (D. Me. July 31, 2012). In *Doe* the hearing officer ordered a BCBA and the court upheld the hearing officer, although the court did not hold that a BCBA was required by law. The court noted that "FBAs are usually done in association with the removal of a student from school for behavioral reasons and the IDEA only *requires* them in connection with serious disciplinary matter. See 34 CF 300.530(f). *Doe* at 15." In that case, an FBA had not been done and the court stated it was unclear why the school did not evaluate [REDACTED] with respect to language and the "fact that [REDACTED] behaviors were a major impediment to [REDACTED] learning." *Doe* at 15. In *Doe* a "behavior plan" had been developed but not with involvement of the IEP team nor shared with the IEP team, Parent, or teachers.

Those facts distinguish that case from this case. FBAs were conducted by members of the Student's team and the BIPs were developed by members of the team and shared with the rest of the team, teachers and Parent. It is also noted in *Doe* that the parent sought an independent evaluation but the evaluator did not complete her evaluation or report in time for the hearing. *Doe* at 5. It is not clear why the parties did not continue the hearing until the completion of such a vital component of the process but in the instant case an independent evaluation which was sought by Parent was completed and considered at an IEP prior to hearing. The independent evaluator, [REDACTED], a behavior consultant, did not state that a BCBA was required. The Parent asserts that the Student needs an FBA developed by a behavior expert and that the social worker who developed the FBA is not a behavior expert. The Hearing Officer has reviewed the testimony regarding the Student's behavior, the long-time involvement of the social worker with the Student and his exhaustive efforts with regard to the Student's behavior, the history of the FBAs and BIPs, the fact that it is difficult to determine behavior antecedents due to [REDACTED] condition of mood disorder, the behavioral consultations conducted by [REDACTED] and the independent evaluation (with which Parent agreed) which, as noted above, did not indicate a BCBA was required. Parent has cited no statutory requirement for a BCBA. However, the District has a BCBA available at [REDACTED] where the District has offered a placement for the Student to address [REDACTED] behavior needs.

After behavior improvements, the IEP team in November 2012 found a BIP was no longer needed. [REDACTED] behavior would be addressed with social work services and information supports. Parent agreed. When Student's behavior deteriorated after a medication change, the District convened an IEP meeting to provide additional supports. Parent relayed that [REDACTED] behaviors were a medical issue and gave the District a doctor's letter recommending homebound services for the Student due to the behavior issues. SD 239. Instead of acknowledging that the medication change prompted deteriorating of behavior, the Parent instead argues, "In the spring, (the Student's) behavior deteriorated to the extent that [REDACTED] doctor recommended [REDACTED] receive homebound services and undergo frequent medication monitoring and adjustments." P Closing p 3. The IEP team considered the medical letter at the May 13, 2013, meeting and agreed to homebound services, with a plan to update the Student's BIP for sixth grade. SD 256. When the school year began, the BIP in place at the time of the November 20, 2012, meeting was utilized until the adoption of the new BIP on September 19, 2013.

In sixth grade, the Student's social worker provided instruction for [redacted] teachers and [redacted] one on one aide on implementation of his BIP. The Social Worker gave instruction to the health teacher on handling the Student's issues. [redacted] behaviorist, [redacted], did an analysis and made recommendations, relaying to [redacted] one on one how to identify antecedents to behavior. The aide also collected behavior data on a daily basis. [redacted] also noted the District's efforts in addressing the Student's behaviors. During sixth grade the Social Worker far exceeded the Student's IEP social work minutes in trying to help [redacted] acknowledging [redacted] was overwhelmed with this amount of work. D 692. The Social Worker has recommended that the Student needs a full time social worker.

Although the District determined that [redacted] did not need ESY previously because there was no indication of regression or recoupment issues, the District agreed to ESY, as a component of resolution, for summer 2014, which Parent rejected. The Hearing Officer makes no finding of denial of FAPE which would require compensatory education as a remedy.

Parent has done an exhaustive and detailed Closing Argument. In her Closing, Parent argues that the Student should remain at the District because [redacted] education has been satisfactory and that [redacted] made progress on [redacted] IEP goals and received passing grades while participating in a general education setting, when given "reasonable measures to assist [redacted] education." P Closing p 7. However, Parent then offers a number of arguments in her Closing regarding denial of FAPE. As noted in the Findings of Fact, the Hearing Officer has determined that the District has met its obligations with respect to the provision of FAPE and provided many measures to assist the Student.

The Hearing Officer has focused on the most relevant aspects of the Parent's argument in assessing the evidence. However, two other aspects of the Closing warrant specific attention, in addition to the matter of the FBAs, BIPs, and a BCBA, as discussed above. Parent argues that although the District provided the Student with some methodologies for reading and math there is no evidence they were "suitable" or "individualized" to the Student. P closing p 34. Teachers, however, testified to the multisensory approach utilized and attempts to ensure that to the extent possible [redacted] is exposed to the appropriate curricula and concepts. In general, teachers and other staff testified that it is [redacted] behavior that is inhibiting [redacted] learning.

Parent asserts that there is a denial of FAPE because of lack of assessments and observations for evaluations and a failure to provide specialized instruction. The Hearing Officer has made a finding that the evaluations were appropriate. The Hearing Officer has already noted that Parent had no objection to the independent evaluation the District conducted. The Hearing Officer has already determined that teachers were qualified and competent and clearly provided the Student with specialized instruction in addition to working with [redacted] complex needs. Parent also argues there are no legally adequate Present Levels of Academic Achievement and Functional Performance (PLAAFPs/PLOPs); measurable goals; and teachers implemented goals differently. Using an example of an IEP cited (P Closing p 27) by Parent, June 7, 2011, (P 22) Parent states the following:

Present Levels of Academic Achievement and Functional Performance – (The Student) is currently scoring between 55-85% on given reading tests at a second grade level. [REDACTED] has difficulty sounding out unfamiliar words and often times guesses. [REDACTED] has difficulty answering comprehension and critical thinking questions regarding short stories.

As argument that the Student's PLAAFPs are not legally sufficient because it does not contain a baseline, Parent cites, among others, two cases. In one, an Illinois Hearing Officer ruled that the PLAAFP stating that the student was "performing below his current grade level" did not contain a baseline. *City of Chicago*, 108 LRP 42829. In the other, the PLAAFP stated the student had "weak expressive language skills. *In re: Student with a Disability*, 50 IDELR 236. Those two examples are distinguished from the Student's PLAAFP as cited above, which is far more descriptive

Annual Goal – The Student will demonstrate vocabulary, reading, and comprehension skills with 80% accuracy by May 2012.

Parent argues a goal must state how a goal will be measured, even acknowledging that goals that contain criteria such as "8 out of 10 times" are one example of how a goal meets the measurability requirements, and which is similar to the 80% requirement. Further, the goal here states skills to be learned.

Instructional Objective/Benchmarks

Given an unfamiliar vocabulary word at [REDACTED] reading level, the Student will use learned phonetic skills to sound out the words by May 2010; given a story read aloud, the Student will answer various comprehension questions by May 2012; given a story read aloud, the Student will identify the title, author, setting, main idea, and plot of the story by May 2012.

Parent argues the goals and objectives must be tied to tasks. *City of Chi., Sch. Dist. #299*, 108 LRP 42829 (SEA IL 2008). However, a reading of the objectives reflects specific tasks.

The Hearing Officer makes a similar analysis of the February 28, 2014 IEP PLAAFPs/PLOPs, goals and benchmarks. P 166.

The Hearing Officer finds the District staff to be credible and their testimony is supported by documents. Parent's arguments regarding evaluations, IEPs, implementation and teacher training and teachers' methods of training lack credibility in light of her argument that the Student has received educational benefit with supports and she wishes [REDACTED] to remain in the District instructional class, which is contradicted by her arguments that the Student has not been provided a FAPE in the LRE.

The Student's IEPs from September 2011 to the current IEP met the *Rowley* standard, particularly in light of the fact that an IEP is assessed on the basis of when it was written. At all times the District had to work with a very complex Student with multiple needs.

As noted, Parent has asserted that the Student's education has been satisfactory (P Closing p 7), yet Parent has argued that [REDACTED] has not received a FAPE but should stay at the District school with supports and not be placed in an instructional day school. She also argued, in the resolution session, for a more restrictive placement that [REDACTED]

Parent has not offered a preponderance of the evidence in this case to support Parent's assertion that the District failed to conduct an appropriate evaluation with respect to an FBA and denied the Student a FAPE by failing to develop an IEP to provide [REDACTED] educational benefit. The District has met its burden of presenting evidence that the special education needs for the Student have been appropriately identified and that the special education program and related services proposed to meet the needs of the Student are adequate, appropriate, and available. 105 ILCS 5/14-8.02a(g-55).

For the first issue, Parent states that the District failed to:
Conduct an appropriate evaluation from November 15, 2011, to December 30, 2013,
including use of multiple assessment tools and assessing the Student in all areas of need. Parent did not object to the District's independent evaluation which was conducted subsequent to the filing of the complaint, in an effort to resolve this matter. However, Parent's attorney stated that Issue 1 regarding failure to conduct an appropriate evaluation is included as it relates to Parent's issue No. 2, failure to provide an appropriate IEP because the evaluations were not appropriate, and in order to seek relief as contained in Remedy 1, 2, 3, 5. Parent accordingly is not seeking a new independent evaluation and thus will focus in hearing on the specific request Parent is making in this regard: that the District conduct a functional behavior assessment conducted by a Board Certified Behavioral Analyst, as contained in Issue (2).

The Hearing Officer accordingly may determine that the evaluation was appropriate for the development of the February 2014 IEP. Additionally, the Hearing Officer has found that the previous evaluations were appropriate. The District psychologist, [REDACTED] did an evaluation in December 2011 but was unable to complete achievement testing because the Student would not complete the tests. Parent told [REDACTED] at that time the testing could be stopped because Parent was going to have testing done by University of Chicago Medical Center, which was not done. He also conducted another evaluation in September 2013 including intelligence testing, interviews, rating scales, and classroom observations. In January 2014, [REDACTED] conducted a psychological evaluation and obtained results that were similar to what [REDACTED] obtained. [REDACTED] determined the Student had a Learning Disability.

The FBA's and BIPs were conducted by the District social workers who worked directly with the Student. Additionally, the District conducted two behavioral consultations, both of which included three observations by the evaluators from the [REDACTED] Cooperative. Behavior Specialist, [REDACTED] observed on January 17, morning and afternoon, and on January 23, 2012. The second consultant, Behaviorist [REDACTED] observed on October 1 and December 19, 2013, and January 14, 2014. D 604-611. The District also did an independent evaluation by a behavior consultant, [REDACTED]

For the second issue, Parent states that the District failed to: Provide an appropriate IEP from November 15, 2011, to the present, with appropriate IEP team, with respect to appropriate instruction, development of goals, appropriate behavioral interventions, appropriate functional behavior analysis and behavior intervention plan (BIP), appropriate related services, extended school year during summer 2012 and 2013.

The Hearing Officer finds that Parent has not offered evidence to support a finding that the District did not provide an appropriate IEP from November 15, 2011, to the present.

Evidence supports findings that the District provided appropriate IEPs from November 15, 2011, to the present, with appropriate IEP team, with respect to appropriate instruction, development of goals, appropriate behavioral interventions, appropriate functional behavior analysis and behavior intervention plan (BIP), appropriate related services. Parent has offered no evidence or cited statutory requirement or case law that the District is required to provide a BCBA. The District has also offered the Student a placement where a BCBA is available—[REDACTED]. No extended school year was required during summer 2012 and 2013.

For the third issue, Parent states that the District failed to implement the Student's IEP from November 15, 2011, to December 10, 2013, with respect to progress on IEP goals and implementing the Student's BIP. The Hearing Officer has found that the District implemented the IEPs with respect to progress on IEP goals. Parent has contended the Student's education was satisfactory. A number of social workers have worked to implement the Student's BIPs over the years.

For the fourth issue, Parent asserts that the District failed to provide appropriate training for the Student's teachers, related services providers, and aides in order for them to implement behavioral interventions. The Hearing Officer has found that the District provided appropriate training for the Student's teachers, related services providers, and aides in order for them to implement behavioral interventions. Teachers and social workers are credentialed individuals who worked with each other and all staff to implement behavioral interventions, adjusting interventions and creating different techniques to address the Student's behavior issues.

The Hearing Officer has found with respect to Parent's first four issues, which are FAPE issues, that she has not met her burden in offering a preponderance of the evidence in this case to support Parent's assertion. The District has met its burden of presenting evidence that the special education needs for the Student have been appropriately identified and that the special education program and related services proposed to meet the needs of the Student are adequate, appropriate, and available. 105 ILCS 5/14-8.02a(g-55). Parent requests for relief are accordingly denied.

Although the Student has received a FAPE in the District, with a great deal of supports, the District contends and evidence shows the Student can make more progress when [REDACTED] is

able to process [REDACTED] emotions and regulate [REDACTED] behavior. Despite the fact that the District is not required to provide the best possible education (*Heather S. v. Wisconsin*, 125 F.3d 1045, 1057 (7th Cir. 1997)), the District has proposed the Student be placed at [REDACTED], an instructional day school, where [REDACTED] will have a better opportunity to achieve more academic progress but where the goal will be to transition [REDACTED] back to [REDACTED] home school.

Least Restrictive Environment (LRE)

For the fifth issue, the Parent contends that the District has failed to Provide an educational placement in the LRE from October 7, 2013 to present.

The District has proposed placement at an instructional day school, which the Hearing Officer finds, is the least restrictive environment for the Student. Physical restraint at [REDACTED] is not a concern, as contended by Parent, because [REDACTED] will not use such restraint when there is medical contraindication to its use.

To meet IDEA requirements the District must provide the Student with a FAPE in the least restrictive environment (LRE). 20 U.S.C.1412(a)(5)(A). The IDEA "requires participating States to educate handicapped children with non-handicapped children whenever possible." *Rowley*, 458 U.S. at 202. The Illinois School Code and implementing regulations also require that to the maximum extent appropriate a child with a disability must be educated in the least restrictive environment with children who are not disabled. 105 ILCS 5/10-22.41; 23 Il. Admin. Code 226.240. Removal from the regular education classroom of a child with a disability should only occur when education in the regular classroom cannot be achieved with the use of supplementary aids and services. 20 U.S.C.1412(a)(5)(A); 34 CFR 300.114.(a)(2)(ii).

In 1983, the 6th Circuit posed the issue of LRE as follows: whether the services which make the more restrictive placement superior could be provided in the regular education classroom setting. *Roncker v. Walter* 700 F.2d 1058 (6th Cir.), cert. denied, 464 U.S. 864 S.Ct. 196, 78 L.Ed.2d 171 (1983). In 1989, the 5th Circuit examined the measures which need to be taken in order to determine whether or not a child must be integrated with non-handicapped, age appropriate peers. *Daniel R.R. v. State Board of Education*, 874 F.2d 1036 (5th Cir. 1989). If it is decided that the child cannot be educated in the regular classroom, the next determination is whether the school district has mainstreamed the child to the maximum extent possible. *Daniel R.R.* at 1050.

The courts have examined the nature and scope of the services or modifications required to "include" a student in regular education and have concluded that schools are not required to provide a student with a full-time teacher to allow the child to be satisfactorily educated in a regular classroom (*Greer v. Rome City School District*, 950 F.2d 688, 697 (11th Cir.

1991)) nor are schools required to so drastically modify the curriculum, or modify the curriculum beyond recognition, that it could deprive the child of a sense of belonging important to the achievement of any non-academic benefit. *Sacramento City Unified School District v. Holland*, 786 F.Supp. 874, 880 (E.D. Cal. 1992) aff'd 14 F.3d 1398 (9th Cir.1994).

Although the IDEA expresses a statutory preference for placement at a neighborhood school, there is no basis for a mandatory right of placement there under the IDEA. *Urban v. Jefferson County School District R-1*, No. 93-S-908, U.S. District Court, Colorado, December 3, 1994. 21 IDELR 985. Additionally, IDEA expressly recognizes the placement of disabled children under appropriate circumstances in "segregated programs," indicating that mainstreaming is not appropriate for every child with disabilities. It is not evidence of discrimination to place disabled children in special programs located in public schools. With regard to the location of the child's educational services, the *Urban* Court found that school officials properly considered numerous factors: qualifications and certifications of teaching staff; ratio of students to teaching staff; accessibility or appropriateness of available physical facilities; and other considerations which the school officials properly consider in determining the appropriate placement (consistent with the State Plan as contemplated by the Administrative Law Judge) of a child such as this student. *Urban* at 991.

The law mandates placement in the LRE and mainstreaming to the maximum extent appropriate but not at the expense of FAPE. Under the IDEA, children with disabilities must be mainstreamed with non-disabled peers to the extent possible.... (mainstreaming) was not developed to promote integration with non-disabled peers at the expense of other IDEA educational requirements and is applicable only if the IEP meets IDEA minimums.... In implementing the LRE mandate, each school district must maintain a continuum of program options, which range from regular classrooms with supplementary aids to separate schools and residential facilities. See 34 C.F.R. 300.551(b)(1); 23 Ill. Admin. Code 226.300.

Thus, the regulations contemplate that mainstreaming is not required in every case. *Board of Education of Murphysboro Community Unit School District v. Illinois State Board of Education*, 41 F.3d 1162, 1168 (7th Cir. 1994). See also *Poolaw v. Bishop*, 67 F.3d 830, 836 (9th Cir. 1995) ("[t]he IDEA's preference for mainstreaming is not an absolute commandment. In some cases, such as where the child's handicap is particularly severe, it will be impossible to provide any meaningful education to the student in a mainstream environment. In these situations continued mainstreaming would be inappropriate and educators may recommend placing the child in a special education environment." *Poolaw* at 834.

During the DSS' testimony it was revealed that Parent has admitted that the Student needs to be taught about addressing his emotions. Although she wants [REDACTED] in a general education setting she is aware that he needs a more "targeted" approach. The DSS testified that there were multiple occasions where Parent acknowledged that she understood the need for a therapeutic or more supportive setting.

After Parent retained an attorney and the amended due process was submitted, a resolution session was held. Parent suggested Parkland school and during the resolution session both Parkland and the District's cooperative [REDACTED] school [REDACTED] were discussed. D 512. Parent would agree to a therapeutic program but wanted [REDACTED] only. D 515.

The DSS visited [REDACTED] and testified that from what she observed, [REDACTED] offers more services to students; [REDACTED] had K through high; both were using the same reading interventions, Lexia. However, the amount of parent "cafes" and classes was greater at [REDACTED]. Both schools had social workers and behavior specialists and access to BCBA's and a process in place for de-escalation, and both were "hands on." However the DSS testified that [REDACTED] is closer to home; it is part of the Student's home network in the cooperative.

As a component of the resolution agreement, the parties discussed Parent's proposal for [REDACTED]. D 515. On questioning by the Parent's attorney, the DSS testified that Parent was only discussing [REDACTED] for the resolution process but she always believed the District school was the LRE. Parent would agree to a therapeutic program but wanted [REDACTED] only. D 515. The DSS testified that in resolution the District Superintendent asked if this case would have ended if the District agreed to [REDACTED] and the Parent's attorney said "yes." D 515. At the hearing, however, Parent testified that she visited [REDACTED] and did not like it and found it restrictive.

This scenario with respect to the resolution raises a concern regarding an attempt to subvert the resolution process with Parent stating she wanted a particular restrictive setting, [REDACTED], but only for resolution purposes. In this resolution Parent was represented by counsel who would know that the resolution session as required by statute is meant to assist parties in resolving matters and is not a tool to be used to deny the District its right to resolve these matters.

In her initial Notice of Status, the Hearing Officer stated: The resolution process is a mandatory procedure to be completed prior to a hearing. Failure to engage in the process may result in delay of the hearing, dismissal or an order of default by the Hearing Officer. In her May 12, 2014, order in this matter, the Hearing Officer stated: The Hearing Officer also notes Congress' preference for resolving these matters rather than having to expend the time and incur the expense of having a hearing, noted particularly by the incorporation of resolution mechanisms into the IDEA in 2004. 20 USCS Sec. 1415(e) and (f); 34 CFR 300.510(a)(b). Thus, the Parent was aware that it was Congress, not the District nor Hearing Officer, which requires a resolution session, unless both parties waive it. Participating in the process requires a good faith effort to resolve a matter.

Prior to attending [REDACTED] current school the Student had been in the general education setting with accommodations and modifications. Initially when [REDACTED] began at the District elementary school, [REDACTED] was placed in a low incidence classroom because of behavior issues and has remained in this setting. It quickly became apparent that [REDACTED] was having

difficulty in this setting. The District assigned a teacher assistant to work with [REDACTED]. A District social worker also started to work with [REDACTED] after she was called in to discuss behavioral issues when the Student was having difficulty functioning. [REDACTED] behavior was also disruptive and [REDACTED] hit and kicked others in the class, making it difficult for teachers to provide instruction and for the other students to learn. The difficulties continued. The Student was found to be able to learn but not available to learn because of his ED. The District, through evaluation, determined that the Student's ED required a more therapeutic school setting. While the Student made progress both academically and in monitoring [REDACTED] behavior, [REDACTED] behavior was such that he incurred major incident reports, particularly in less restrictive settings, such as PE, reflecting that the Student had not made sufficient progress to warrant maintaining [REDACTED] in a less restrictive environment.

In this case, the Student's behavior and medical issues create a significant alteration of a regular school day because the Student must be frequently monitored for changes in blood sugar and [REDACTED] behavior, which may be triggered by such changes and requires that someone is with [REDACTED] at all times to ensure [REDACTED] safety and that of others. In this case, the District has provided a one-on-one whose sole purpose is keeping the child safe. Additionally, the Student must daily seek assistance in the nurse's station for blood sugar testing and for nutrients to adjust the blood sugar levels before [REDACTED] can return to the classroom. Teachers and other personnel have attempted to ensure non-confrontation with the Student, particularly after a message from the social worker in sixth grade, to ensure no outbursts from the Student. However, attempts to avoid any confrontation may also hamper the ability of school personnel to address his behaviors at the time of occurrence. The social worker testified that [REDACTED] sent [REDACTED] message after the PE teacher did not let the Student use the bathroom until performing PE activities. The PE teacher testified that he attempted to get the Student to do some activity but the Student kept refusing.

There has been testimony that the Student was told that the District "wanted to get rid of [REDACTED]." There is no evidentiary basis for a determination that any of the school personnel communicated such a message to [REDACTED]. All personnel who testified were concerned that the Student have the best possible school setting to enhance [REDACTED] learning. There is no evidence that any District personnel wanted to have the Student removed from the school other than to ensure [REDACTED] safety and enhanced ability to learn in the instructional day school. Current and previous teachers and social workers who testified relayed not only all the steps taken to assist the Student but their concern for [REDACTED] educational progress.

In particular, the District's social worker, who worked with [REDACTED] in sixth grade (as [REDACTED] previously had in third grade) was emotional when he testified about the Student, asserting his concern that he wanted the Student to be in the best environment. He agrees with the recommendation for the Student to attend [REDACTED]. He has looked at the data and considered what is best for the Student. The social worker saw the same issues from the beginning of the school year. He needs someone to help [REDACTED] process [REDACTED] emotions. Some times there is no one there to help [REDACTED] process, to make crisis a process for growth. Staff is there but have other responsibilities. At [REDACTED] the Student will have an adjustment room, where [REDACTED] can process emotional reactions in a safe place. The social

worker testified that it is overwhelming trying to provide reinforcement. The Student gets sated easily but [REDACTED] has numerous activities. If [REDACTED] emotional issues are addressed, [REDACTED] will do better academically.

The Student's sixth grade teacher testified similarly. The IEP team discussed placement and recommended [REDACTED]. He agreed with the recommendation because [REDACTED] has a smaller class, academic supports, interventions, more de-escalation, several social workers and social work in class, more social reinforcements, something to eat, video games, and a tier system. Even with interventions, i.e., bowling, which the Student likes, there were behavior incidents. The Student would not make progress at the current setting. [REDACTED] according to this teacher, is better for [REDACTED].

The Student's one on one aide testified that he thinks the Student needs to be in a place where [REDACTED] has someone like the social worker at [REDACTED] "beck and call" all day and a nurse to check [REDACTED]. The one on one aide testified that he thinks a different place might help.

The independent evaluator, [REDACTED] found the Student to be complex on multiple levels. [REDACTED] initially agreed with the District's proposed placement at [REDACTED]. However, he testified that when he conducted his evaluation the Student was doing work on a more consistent basis. [REDACTED] was more able to identify emotions, less acting out, more motivated in meeting goals, which is different than in September and October 2013. After learning that the Student's behavior was changed, he declined to support the recommendation for [REDACTED] and made a recommendation for services in the class.

[REDACTED] change in recommendation is problematic for a number of reasons. [REDACTED] change of opinion was based primarily on information for sixth grade relayed from the social worker and teacher. However, as noted above, they both testified in the hearing that the Student's behaviors were still a problem and they recommended transfer to [REDACTED] the instructional day school. [REDACTED] also acknowledged that when he observed the Student in class the Student knew who he was because of the evaluation sessions he conducted with the Student prior to the observation. He testified that typically he would not want a student to know him. He was originally scheduled to observe before testing but because of the weather he had to do it afterwards. He acknowledged that best practice is that the student not know the observer and the observer would not talk to a student in observation. Knowing the evaluator could change the Student's behavior.

The Hearing Officer determines that [REDACTED] changed opinion is not supported by his own testimony. He noted that a mood-disorder child's interaction with the environment is variable. Thus, behavior would be inconsistent. [REDACTED] also acknowledged that it would be important for the Student to process emotions in the moment and that [REDACTED] would need frequent meetings with social workers--access to a social worker/mental health person as needed, which would not be feasible in a less restrictive environment as testified to by the social worker. [REDACTED] did not factor in his own findings about the Student's complexities and whether the behavior change was

temporary as opposed to consistent. Therefore, the Hearing Officer does not rely on his opinion with respect to placement.

Parent's advocate who attended the February 2014 IEP is a credentialed cross-categorical teacher who has a personal relationship with Parent and provides private tutoring to the Student. She testified that in tutoring she has no problems with the Student. The Hearing Officer notes, however, that her experience with the Student is one on one and does not include working in a classroom with [REDACTED] with other students. This one on one tutoring/teaching is similar to what the Student would have in the instructional day school and accordingly her testimony supports the District's proposed placement at [REDACTED].

Parent testified that what she saw at [REDACTED] could be duplicated at the current school. However, courts have found that cost is a factor and that duplication of resources is not required. "In view of the limited resources available for the education of handicapped children, a school system is not required to duplicate a small, resource-intensive program at each neighborhood school." *Barnett by Barnett v. Fairfax County School Bd.* 927 F.2d 146, (C.A.4. (Va.) 1991) (P.8) The *Barnett* court noted that, although placement decisions should not be made on the basis of financial considerations alone, "appropriate" does not mean the best possible education that a school could provide if given access to unlimited funds. See, *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. at 99, 102 S.Ct. at 3047 ("to require ... the furnishing of every special service necessary to maximize each handicapped child's potential is ... further than Congress intended to go"); *Department of Educ. of Hawaii v. Katherine D.*, 727 F.2d at 813. (*Barnett* p. 8). The *Barnett* court also found that Congress intended the states, in making placement decisions, to balance the competing interests of economic necessity and the special needs of a handicapped child. 20 U.S.C. Sec. 1412(3); *Doe v. Anrig* 592 F.2d 800, 806 (1st Cir. 1982). (*Barnett* p.8)

Testimony of [REDACTED] most recent teachers, [REDACTED] one on one aide, and [REDACTED] social worker support a determination that the Student must have an intensity of services that will help [REDACTED] progress in order to move to a general education setting as soon as feasible. The Student does well in math and this will be an opportunity for [REDACTED] to progress into the general education population with appropriate services when feasible.

The [REDACTED] Principal testified that [REDACTED] can be considered cross categorical—an instructional therapeutic day program. Academics are aligned to common core. Interventions are computer based. All programs are research based, with use of multi sensory strategy. Modifications can be done for academics. A writing curriculum is based on a rubric. She described [REDACTED] as less restrictive than a private therapeutic day school.

Parent's arguments regarding LRE are not credible in light of her participation in the resolution session in which she asserted she wanted [REDACTED] placed at [REDACTED] but then stated this was for "resolution purposes only." Further, her argument lacks credibility in light of her assertions that he has been denied a FAPE in the District instructional class, yet she wants [REDACTED] to remain there with more supports.

As discussed above the evidence supports a determination that the Student's complex needs, combining medical, behavior and learning, make [REDACTED] not consistently available for learning in [REDACTED] current education setting. Time is a factor in education and the Student needs to spend time in an education setting which can provide sufficient supports for [REDACTED] complex needs so that [REDACTED] can learn to process [REDACTED] emotions which currently impede learning. The essential program for the Student already exists at [REDACTED]. The LRE for the Student at this time will be the instructional day school at [REDACTED]. Accordingly, Parent request for relief, retaining the Student in the instructional classroom at the current school, is denied.

CONCLUSIONS OF LAW

Based on the evidence, the Hearing Officer makes the following conclusions of law:

I. The District met the standard the United States Supreme Court articulated--a two-prong test to determine whether a child has been given a free appropriate public education under the IDEA. *Hendrick Hudson Dist. Bd. of Education v. Rowley*, 458 U.S. 176 (1982). The District must ensure a FAPE is available to each child with a disability who resides in the state and is enrolled in the District and requires special education and related services, to accord with 34 CFR 300.101 through 300.103. The District met its obligation to provide education and services according to the child's individualized education program. 34 CFR 300.39(a); 223 Ill. Admin. Code 226. 50. Accordingly, the District met its burden to demonstrate, in compliance with applicable law, it offered the Student a free, appropriate public education (FAPE). IDEA 20 U.S.C.A sec. 1400(d)(1)(A).

II. To meet IDEA requirements the District must provide the Student with a FAPE in the least restrictive environment (LRE). 20 U.S.C.1412(a)(5)(A). The IDEA "requires participating States to educate handicapped children with non-handicapped children whenever possible." *Rowley*, 458 U.S. at 202. The Illinois School Code and implementing regulations also require that to the maximum extent appropriate a child with a disability must be educated in the least restrictive environment with children who are not disabled. 105 ILCS 5/10-22.41; 23 Il. Admin. Code 226.240. Removal from the regular education classroom of a child with a disability should only occur when education in the regular classroom cannot be achieved with the use of supplementary aids and services. 20 U.S.C.1412(a)(5)(A); 34 CFR 300.114.(a)(2)(ii). In implementing the LRE mandate, each school district must maintain a continuum of program options, which range from regular classrooms with supplementary aids to separate schools and residential facilities. *See* 34 C.F.R. 300.551(b)(1); 23 Il. Admin. Code 226.300. The District met its burden that the FAPE has been provided in the LRE and its proposed placement meets the IDEA requirements for LRE.

ORDER:

The District has met its burden in providing FAPE; the proposed placement meets the IDEA requirements for LRE and the District need take no further action.

RIGHT TO REQUEST CLARIFICATION: Either Party may request clarification of this decision by submitting a written request for such clarification to the Hearing Officer within five (5) days of receipt of this decision. 105 ILCS 5/14-8.02a(h). 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 the other parties and to the Illinois State Board of Education. The right to request such a clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

FINALITY OF DECISION: This decision shall be binding upon the parties unless a civil action is commenced.


RIGHT TO FILE CIVIL ACTION: Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 ILCS 5/14-8.02a(i) that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision was mailed to the party.

This Decision and Order entered August 18, 2014.



Ann Breen-Greco, Impartial Hearing Officer

**ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING**


Student
vs.


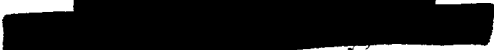




Case No. 2014-0189


Local School District


ANN BREEN-GRECO, Hearing Officer

CERTIFICATE AND AFFIDAVIT OF DELIVERY BY MAIL

The undersigned hereby certifies that this Decision has been sent certified mail to the District, Parent, and the Due Process Coordinator for ISBE on August 18, 2014:





Attorney
Attorney
Attorney



Due Process Coordinator
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