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SPECIAL EDUCATION SERVICES

Case Number: 2014-0250

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

Impartial Due Process Hearing Decision
Cover Page

District Name:
Superintendent:
Address:
Phone:
Represented by:

Parent Name:
Address:
Phone:
Represented by:

Date and Timelines:

Date of Written Request:
December 6, 2013 - School District's Due Process Complaint (withdrawn March 7, 2014)
January 20, 2014 – Parents' Due Process Complaint
June 13, 2014 – Parents' Additional Due Process Complaint
July 7, 2014 - Order of Consolidation regarding both of Parents' Due Process Complaints

Date of Pre-Hearing Conference: July 23, 2014

Date of Hearing: August 25, 26, 27, 29 and September 3 and 8, 2014; and the parties were given leave file written closing briefs through September 11, 2014

Date of Decision: September 22, 2014 (as September 21, 2014 was a Sunday).

Summary of Decision:

Whether the School District failed to adequately assess all of the areas of J.O.'s suspected disability; Whether the School District failed to reimburse Parents for the evaluations it obtained (Dr. Dr. and the Occupational Therapy bill by ; That after making an IEP and placement, whether the School District failed to reimburse for the transportation costs to and from speech/language services, to and from Kid Country (daycare), and for placement at Kid Country – found in favor of the School District;
Whether the School District failed to explain to Parents that the Early Childhood Program was available at no cost; Whether stay put was violated by reducing or taking away 's lunch, recess, Olympic Day activities, and/or speech and language services; Whether the School District predetermined placement; and
Whether the June 5, 2014 IEP is not the least restrictive environment in which all of J.O.'s goals can be met or alternatively phrased, whether the June 5, 2014 IEP provides a free appropriate public education within the least restrictive environment upon which 's goals can be met.

Hearing Officer found in favor for the School District on all issues, with exception of payment of out of pocket costs for evaluations of Dr. and Dr.

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION IMPARTIAL DUE PROCESS HEARING

IN THE MATTER OF:

Student

v.

School District

ISBE CASE NO: 2014-0250

Josette Allen
Impartial Due Process
Hearing Officer

FINAL DECISION AND ORDER

I. INTRODUCTION AND PROCEDURAL HISTORY

a. Identification of Parties and their Representatives:

Student: (hereinafter "" or "Student") by and through his Parents and are represented by Attorney of with the assistance of an advocate,

School District: is represented by Attorneys of Ms., the School District's Director of Special Education appeared as the School District's representative at the Due Process Hearing.

b. Background:

is a seven (7) year old boy who is currently in the first (1st) grade at Elementary School ("WCES"). Although he is eligible for second (2nd) grade due to his age, his Parents opted for an additional year of early childhood services during the 2013-2014 school year.

is eligible to receive special education and related services as a student with an emotional disability and an other Health Impairment. is diagnosed with Disruptive Mood Dysregulation Disorder and Attention Deficit Hyperactivity Disorder, combined type.

On December 6, 2013, the School District filed a request for Due Process which was thereafter withdrawn in March 2014; That on January 23, 2014, Parents filed for due process and on June 13, 2014 Parents filed an additional complaint for due process; both of which were the subject of the hearing.

Hearing Officer Patricia Marino initially was assigned and upon her retirement, this matter was assigned to the undersigned Hearing Officer. Both matters have been consolidated and are before the undersigned Hearing Officer for ruling.

c. Jurisdiction: The undersigned has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 *et seq.* and the Illinois School Code, 105 ILCS 5/14-8.02(a) *et seq.*

d. Summary of Pre-Hearing Conference

On July 23, 2014, this matter proceeded to a Pre-Hearing Conference. Both parties provided preliminary witness and document lists, which were reviewed extensively during the Pre-Hearing telephone conference. During the PreHearing, the following was addressed:

- Each parties' claims and requested relief wherein Parent withdrew multiple counts and narrowed the issues;
- The Five Day Disclosure date was set for August 15, 2014 at 5:00 p.m.;
- A briefing schedule was set for August 20, 2014 if either party had written objections to either party's witnesses or documents;
- The due process hearing was scheduled for three days to be held on August 25, 26 and 29, 2014 at [redacted] Elementary School ([redacted]); and
- Preliminaries were discussed regarding that the matter would be a closed hearing; each party was going to be able to present a short oral closing and be given leave to file a written closing.

A follow-up status call was set for August 22, 2014 wherein the parties addressed the disclosure of exhibits and witness lists; Parent had not forwarded a witness list and the School District agreed that Parent could call witnesses pursuant to their Pre-Hearing Disclosure; a substantial amount of time was used for purposes of coordinating the scheduling of the witnesses and regarding the status of each parties' disclosure of documents.

During the Hearing the parties needed additional time and the parties agreed to add three additional days and agreed to an extension of the 45-day timeline up to and including September 22, 2014.

On September 10, 2014, this matter proceeded to another status call to address last minute matters.

e. Dates of Due Process Hearing:

This matter proceeded to a Due Process Hearing on August 25, 26, 27, 29 and September 3 and 8, 2014; and the parties were given leave file written closing briefs through September 11, 2014. During the course of the hearing, the parties needed additional time to complete the testimony. The School District submitted a written motion reflecting the parties' joint request for a continuance of the 45 Day Timeline which is hereby granted. The due date for the decision is September 22, 2014.

f. Witnesses Called at the Due Process Hearing:

- Day One - August 25, 2014 – [redacted] (Father of Student); [redacted] (speech and language pathologist); [redacted] (Mother of Student);
- Day Two - August 26, 2014 – Dr. [redacted] (LIST type of dr); [redacted] (Retired Principal)
- Day Three - August 27, 2014 – [redacted] (Early Childhood and Kindergarten teacher);
- Day Four – August 29, 2014 - [redacted] (Educational support for [redacted]); [redacted] (School Psychologist); [redacted] (Occupational Therapist); [redacted] (Speech Pathologist); [redacted] (Social Worker)
- Day Five – September 3, 2014 - [redacted] (Father of Student, for purposes of Parents' Motion to Reconsider regarding School District's Motion to Bar); [redacted] (employee of [redacted] Cooperative); [redacted] (Supervisor of [redacted] program)
- Day Six – September 8, 2014 - [redacted] (Director of Special Education for School District); [redacted] (Mother of Student, for purposes of Parents' Motion to Reconsider regarding School District's Motion to Bar).
- A court reporter service was provided for the hearing, namely various court reporters through McCorkle Litigation Services. No transcript other than for the [redacted] was issues prior to the date of the decision; therefore, the testimony referenced below is based upon the undersigned's memory and hearing notes.
- In rendering this Decision, the undersigned has considered all of the pleadings, the documents entered during the Hearing, the testimony by the parties' witnesses, the parties' oral opening and written closing briefs; and independent research. This Decision is issued within ten days after the Hearing's conclusion, as required by Illinois law. 105 ILCS 5/14-8.02a(g55)(5).

g. Exhibits Introduced During the Hearing:

- Parents' Exhibits: The Parents set of exhibits are included in one binder and are marked P-1 through P-203. All of P-1 through P-203 were admitted by agreement of School District. Regarding P-204 through P-247, the School District objected that those documents were not tendered in compliance with the Five Day Rule; and accordingly P-204 through P-247 were excluded and removed from the Parents' binder.
- School District's Exhibits: The School District's set of exhibits are included in four binders and are marked SD-1 through SD-1534, which also includes subsets of a, b, c. All of SD-1 through SD-1534 were admitted by agreement of the Parents.
- Hearing Officer's Exhibits: IHO Group-1 and IHO Group-2 were admitted by agreement of the parties. IHO Group-1 relates to emails sent by Parents' Advocate [redacted] pertaining to disclosure of documents which were ultimately excluded as untimely.

h. Stipulations:

- On September 8, 2014, the parties entered into a stipulation that J.O. was on vacation for the first part of Extended School (during the summer of 2014); that J.O. attended the ESY program for three (3) days; and that J.O. then participated in a partial hospitalization program.

II. ISSUES TO BE DECIDED AND RELIEF SOUGHT

This matter proceeded to a status call on September 10, 2014. A subsequent email from the undersigned (dated September 11, 2014) to the parties memorialized the parties' agreement that the issues before the Hearing Officer and the relief being sought are as follows:

a.) Whether the School District failed to adequately assess all of the areas of J.O.'s suspected disability;

b.) Whether the School District failed to reimburse Parents for the evaluations it obtained (Dr. [redacted], Dr. [redacted], and the Occupational Therapy bill by [redacted]);

c.) That after making an IEP and placement, whether the School District failed to reimburse for the transportation costs to and from speech/language services, to and from [redacted] (daycare), and for placement at [redacted];

d.) Whether the School District failed to explain to Parents that the Early Childhood Program was available at no cost;

e.) Whether stay put was violated by reducing or taking away [redacted]'s lunch, recess, Olympic Day activities, and/or speech and language services;

f.) Whether the School District predetermined placement; and

g.) Whether the June 5, 2014 IEP is not the least restrictive environment in which all of [redacted]'s goals can be met or alternatively phrased, whether the June 5, 2014 IEP provides [redacted] a free appropriate public education within the least restrictive environment upon which [redacted]'s goals can be met.

Parents seek the following relief: Reimbursements as set forth in their Due Process Complaints ([redacted]; $364.76 for transportation; $4,132.00 for the evaluation costs of Dr. [redacted], Dr. [redacted] and Dr. [redacted], combined cost). Parents are no longer seeking reimbursement for the evaluation cost by Dr. [redacted] which was paid by the School District. Parents are further requesting that the Hearing Officer order a new IEP or alternative placement in a least restrictive environment. In Parents' closing brief, Parents requested that the Hearing Officer enter an order finding that the School District failed to afford [redacted] with a free appropriate public education, failed to abide by IDEA and Child Find, order the reimbursements requested, and order the [redacted] be allowed to continue in the April 18, 2013 placement for the upcoming school year.

School District is asking that the Hearing Officer enter an Order finding that the School District appropriately identified [redacted]'s educational needs, provided [redacted] with a free appropriate public education in the least restrictive environment from January 20, 2012 through the end of the 2012/2013 school year and affirm that the placement and program offered to [redacted] in the June 5, 2014 IEP provides [redacted] with a free appropriate public education in the least restrictive environment. School District requests a finding that it did not commit the above referenced violations sought by Parents (a) through (g); that it not be ordered to pay for the reimbursement for the evaluations, transportation costs, [redacted] tuition; and that it did not violate stay put regarding speech/language services, recess, lunch and Olympic Day.

III. FINDINGS OF FACT

a. ***Student's History and Aspect of Student's Disability regarding 2011/2012 School Year:***

1. In October 2011, [redacted] was determined to be eligible for speech and language services to address delays in the area of articulation. *H.O. Group-2.* At the time of [redacted]'s initial eligibility, he was attending a private, parentally placed preschool/daycare at [redacted] The School District's speech and language pathologist for [redacted] was [redacted] Ms. [redacted] did not observe any significant behaviors during her work with [redacted] which occurred weekly. *T. [redacted]; SD-34.*
2. Parents made a written request that [redacted] be evaluated for additional disabilities due to their concerns regard to [redacted]'s emotional functioning and interractions with peers. The date that the written request was sent to the School District is in dispute.
3. The former principal for the school is [redacted] who reported that Ms. [redacted] faxed her a written statement from [redacted] noting her and the

staffs' observations and recommendations. *T.* *SD 1017.* The date of the statement is December 26, 2011. Ms. reported that the fax was sent April 26, 2012. An issue of fact exists whether the statement was provided to the School District prior to April 2012. Mother maintained that she provided it to the School District prior to faxing the document and that the faxed version was sent as a reminder. *T.*

4. On April 27, 2012, there was a meeting pertaining to , wherein the School District reviewed the information from , information from the Parents, 's behavioral, cognitive and Kindergarten screening, and 's behavioral functioning during his speech and language services. It was determined by the School District that a re-evaluation of 's needs was not necessary in April 2012. *T.* *SD 32-37.* The School District offered supports to . which included a Behavioral Intervention Plan, Social Work Services and Occupational services. *SD 34.* . would have been age appropriate to attend Kindergarten the following school year which would have been 2012/2013. Parents remained concerned. Parents' concern was addressed by the School District by permitting to attend the Early Childhood Program for the remainder of the 2011/2012 school year as a trial period. *T.* , *SD 32-37.* Thereafter, attended starting May 3, 2012 through end of May 2012 at Elementary School (WCES). 's teacher in the Early Childhood setting was Ms. *T.* *T.* *T.* *T. et al.*

5. Ms. currently teaches Kindergarten at however at the time attended she was his teacher. Ms. 's history includes obtaining her Bachelor's in Science from Purdue; has worked as an inclusionary paraprofessional in a special education Kindergarten; received her Master's Degree in Early Childhood education with special education certifications; has taught in a special education classroom; and is certified with the Illinois State Board of Education. *T.* , *8/27/2014.*

6. At this time, during 's attendance in E.C., he was in a small classroom setting of ten students taught by Ms. which was supported by a special education teacher, a classroom aide, a social worker, an occupational therapist, a speech pathologist and a school psychologist. *T.* *SD 38-49.*

7. At or around the end of the trial setting, the IEP team met to review 's progress in the setting. 's teacher provided reports of his overall functioning. *T.* *SD 54-60.* In the trial setting, appeared to be doing well. He was performing at or above expected levels and was involved in only a mild behavioral incident. *T.* *SD 56-58.* 's cognitive and academic readiness to participate in Kindergarten at the start of the next school year were considered. Parents

requested that [redacted] be placed in the [redacted] setting for the 2012/2013 school year. Supports to be included were speech and language, occupational therapy, and social work. In part this request was also due to [redacted]'s age, who had a birthday which would have made him one of the younger students in Kindergarten. *T.* [redacted] Further, Parents indicated that they were pursuing private evaluations which they intended to present to the School District. The IEP team agreed to hold a meeting before the 2012/2013 school year to review any additional reports or information that Parents presented and to determine [redacted]'s program and services for the following year. *T.* [redacted], *T.* [redacted], *T* [redacted] *SD 56.*

b. ***<u>Student's History and Aspect of Student's Disability regarding 2012/2013 School Year:</u>***

1. <u>Parents' obtaining private evaluations for consideration by the School District.</u>
   a. Prior to the start of the 2012/2013 school year, Parents obtained a private auditory processing evaluation by Audiologist, [redacted], Ph.D.; and whose evaluation concluded that [redacted] was functioning within expected ranges and no disability was evident. *SD3-69.*
   b. Parents obtained a private neurodevelopment report from Dr. [redacted] and whose evaluation diagnosed [redacted] with Attention Deficit Hyperactivity Disorder, Combined Type (ADHD) and Disruptive Behavior Disorder, Not Otherwise Specified. Dr. [redacted] was not called to testify by either party in this proceeding; however her recommendation was that [redacted] be placed in a special education classroom with related services to meet his emotional and behavioral needs. *SD 70-77.*

2. <u>School District's Consideration of Evaluations provided by Parents for the upcoming 2012/2013 school year:</u> Parents provided these reports to the School District for its review. *T.* [redacted]; *SD 63-78.* The IEP team considered the private evaluations as well as information pertaining the initial speech and language evaluation; progress therein; time spent in the E.C. classroom on the trial basis. The IEP team found [redacted] eligible to receive services as a student with a developmental delay in the areas of social-emotional, communication, and adaptive development; and also as an Other Health Impairment due to ADHD. *T.* [redacted]; *T* [redacted] *SD 88-89, SD85-92.*

3. Placement for the 2012/2013 School Year: The IEP team considered a range of placements which included whether [redacted] should attend [redacted] ([redacted]) or continued placement in [redacted] At the time [redacted] would have attended [redacted] would have been a part time program (meeting either in the morning or the afternoon.). Parents requested that [redacted] be placed in [redacted] special education classroom five days a week with support. Parents through their advocate requested reimbursement for [redacted] The School District denied this request. The School District noted that opportunities for interaction with non-disabled peers was offered through the [redacted] program which Parents rejected. *T[redacted]; T[redacted]; T[redacted] T[redacted] SD 102, 105, 93-107.*

4. [redacted]'s experience in [redacted] during the 2012/2013 school year: Ms. [redacted] reported regarding [redacted]'s behavior and progress during the 2012/2013 school year. Although [redacted] had some behavior issues in the beginning, by the end he was doing well. [redacted] demonstrated positive behaviors including accepting redirection, transitioning, responding to staff. [redacted]'s acts of aggression related to unstructured activities, circle time, transitioning to non-preferred activities. *T[redacted]; SD 136.* During [redacted]'s time in the [redacted] classroom during 2012/2013, it was still a setting with a small amount of students and was supported daily by a special education teacher with an assistant; with the additional resources provided to students such as social work and occupational therapy.

c. ***Student's History and Aspect of Student's Disability regarding 2013/2014 School Year:***

1. Placement between regular education Kindergarten and Developmental Kindergarten:
   a. On April 18, 2013, the IEP team met regarding [redacted] for the upcoming 2013/2014 school year for purposes of programming and placement. [redacted]'s progress on goals was discussed. Placement options reviewed included multiple options and the focus was between whether [redacted] should attend a regular education Kindergarten with support and services or the [redacted] with supports and services and mainstreaming opportunities.
   b. [redacted]'s private psychologist, Christensen, and [redacted]'s father had serious reservations regarding [redacted]'s ability to be successful in the regular education Kindergarten, even with supports.
   c. [redacted] was placed in regular education Kindergarten with social work services, speech and language services, occupational therapy services, and a classroom aide.
   d. [redacted]'s need for behavioral supports were addressed and Ms. [redacted], who was going to be [redacted]'s Kindergarten teacher in

the regular education setting due to a change in employment, noted what she had implemented in [redacted] and she recommended that they be continued.

e. The IEP team agreed to closely monitory [redacted]'s transition to general education Kindergarten and agreed to hold an IEP meeting during the first quarter of school to assess [redacted]'s progress.

2. [redacted]'s experience in regular education Kindergarten at the start of the school year:

a. The transition to Kindergarten was a difficult experience for [redacted] who demonstrated problematic behaviors early on. The class size was substantially larger (23 students).

b. Some of the behaviors [redacted] displayed included verbal and physical aggression towards other students and adults, non-compliance, refusal to do work. T. [redacted] T. [redacted] SD 165, SD704-707.

c. [redacted] had adapted a schoolwide behavioral reinforcement system known as the "Rainbow Chart;" wherein a student's color would change based upon their behavior for the day. Initially, [redacted] was subject to the same Rainbow Chart system, but within weeks of school starting, Ms. Wingfield modified [redacted]'s chart into "halves." Her purpose was so that [redacted] would receive more positive reinforcement and for purposes of tracking [redacted]'s negative behaviors and what they may relate to. Despite the modification, [redacted] was not successful under the modified Rainbow plan so it was further modified as early as October 2013 into larger increments of time, and up to 30 minutes per increment. *T. [redacted] T. [redacted] T. [redacted] SD 165, 589a-b; 696-698, 704-707.*

d. Additionally, [redacted] was provided opportunities for regularly scheduled sensory breaks; which were available during his day and before school, and as needed, as positive rewards to [redacted] or even at [redacted]s election if he felt he needed the break. These sensory breaks were provided in different locations, such as the [redacted] room, the gym or in the classroom. *T. [redacted] T. [redacted]*

e. Other variations were made for the benefit of [redacted]. to provide him the opportunity to regulate his behavior, such as allowing him to enter class prior to the other students, not having to wait in crowded hallways or for the busline. *T. [redacted], T. [redacted]; SD 179-187.*

f. Ms. [redacted] proactively worked with staff, including J.O.'s aide, about changes to the Rainbow color plan, as well as possible strategies to benefit [redacted]

g. 's progress and behaviors were continually being addressed by the school staff for purposes of evaluating interventions and addressing his needs. *T. T. T.*

h. During the due process proceeding, Parents expressed disagreement with having to have lunch in the conference room and/or not being able to engage in recess. *T.*

i.

3. The October 1, 2013 IEP meeting: *(T T. T.; SD 162-171)*

a. On October 1, 2013, an IEP meeting was held to discuss 's progress; to obtain consent to conduct a formal functional behavioral analysis; and to obtain Parental consent for a reevaluation of speech/language needs.

b. Ms. reported to the IEP team. was on track academically but his behavior interfered with his educational functioning. struggled in the general education Kindergarten regarding self-control, noncompliance, not following directions, physical aggression, resisting circle time.

c. may have been affected by multiple factors such as the larger class size, noiser environment.

d. During her testimony, 's mom expressed concerns whether Ms. was unable to manage the classroom size. 's mom is a long-term Kindergarten teacher with years of experience and who has served on IEP teams in her professional setting.

e. The IEP team determined that it would collect data for a functional behavioral analysis to determine, what if any, triggers precipitated 's negative behaviors.

f. Placement was addressed during the October 2013 IEP meeting and the team discussed placing in Developmental Kindergarten, which was rejected by Parents. According to school staff, 's private psychologist (Dr. - who did not testify at the Due Process Hearing) noted that the smaller classroom might be beneficial to .

g. No change in placement occurred; . remained in regular education Kindergarten. Support was changed to include 60 minutes per week of social work and a 1:1 aide to support J.O.

4. J.O.'s behavior in October, 2013 and suspension:

a. On October 21, 2013 engaged in behaviors that resulted in an out of school suspension; he was lining up with the Kindergartners to go to recess and putting his fingers in other children's faces; he was redirected; he grabbed another students; he punched; was restrained; that after he went to the office,

he would not communicate with Principal [redacted].

b. On October 29, 2013, [redacted]. engaged in an incident in the lunchroom; was hitting children with his clothing; was told not to do that; he punched an aide in the stomach; attempted to hit the aide again; was kicking; had difficulty calming down; a cpi hold was performed on [redacted]., he tried kicking; he ran away and was found in a different hallway under a table.

c. That [redacted]. was suspended from school; at which time Principal [redacted] retained a certified teacher (T.Bergman) who later became [redacted].'s aide; that the purpose was to try and put positive supports into place for [redacted].; that the aide was to closely monitor [redacted]. academically and behaviorally; be proactive regarding [redacted]' interaction with other students; that the aide did not work out well. [redacted]

5. The November 8, 2013 IEP Meeting:

a. Another IEP meeting was to occur on November 8, 2013. Its purpose was to address multiple matters including, review of the speech and language reevaluation; the Functional Behavioral Analysis, review and revise the IEP and development of Behavioral Intervention Plan for [redacted]

b. Multiple school district personnel testified that the Parents' advocate, [redacted]., "ended" the meeting prior to having the opportunity to discuss the matters; that the advocate wanted the district to provide a Final FBA and BIP; that the District indicated that it could not provide a final version until it had the opportunity to share data and analysis, obtain parental feedback and discuss as a team. Attempts were made to discuss concerns but no substantive progress was made; and Parents' advocate informed the School District that it would be requesting an Independent Educational Evaluation. *T[redacted], T[redacted], T[redacted] T[redacted]*

6. The January 9, 2014 IEP Meeting:

a. The IEP team met in January 9, 2014 regarding [redacted]

b. One of the purposes of meeting was to review the speech and language services reevaluation; wherein it was determined that based upon the results, [redacted] would not be eligible for speech and language. The School District attempted to share the results of the FBA and proposed BIP, but Parents were not in agreement and indicated they were seeking a private evaluation from Dr. [redacted]

c. Upon Parents' request, the IEP team agreed to consider the

private evaluation before any changes were made to [redacted]'s IEP, including services, program, placement and behavior plan. *SD 215-236, 815.*

d. Parents filed for Due Process after this meeting, thereby triggering stayput.

7. Evaluation obtained by the Parents from Dr. [redacted]

a. Parents obtained a private evaluation by Dr. [redacted]. The School District cooperated with Dr. [redacted] in multiple ways, including coordinating evaluation activities, completing behavior rating scales, arranging for a classroom evaluation, responding to his emails, and by considering his opinions and recommendations.

b. Dr. [redacted] provided two written reports, *(P, 36-43; SD 244-259)* namely the

   i. January 16, 2014 Neuropyschological Evaluation; and

   ii. January 28, 2014 Functional Behavioral Analysis.

c. Dr. [redacted] diagnosed [redacted] with ADHD and Disruptive Mood Deregulation Disorder. *SD 249*

d. Dr. [redacted] evaluated [redacted] at his classroom for slightly over an hour as part of the Functional Behavioral Analysis. His report included his observations, some target behaviors, replacement behaviors, and support strategies. *SD 252-259.*

8. Additional subsequent behavioral incidents:

   a. During an assembly, [redacted] attempted to run; was upset and on the floor. *SD436-438.*

   b. On February 21, 2014, [redacted] refused to do his work and ripped a paper; he punched the teacher and Ms. [redacted] was called to the classroom; [redacted] was restrained and multiple staff assisted; *T[redacted]; SD428*

   c. On February 26, 2014, similar incident and [redacted] was running around the room and attempting to leave the room; *T[redacted]; SD 428*

   d. On March 10, 2014, [redacted] was on the playground and playing soccer; his ball was taken; [redacted] attempted to punch the other student but the student ducked but his face was grazed and red; [redacted] took off running past the playground; the cpi team was called; [redacted] was not restrained; *T[redacted]; SD 428*

   e. On May 2, 2014, [redacted] took another student by the arms and shook him; [redacted] ran after the other student; Ms. [redacted] intervened and [redacted] hit her; [redacted] was restrained; [redacted] ran around the gym where another class

needed to be removed; was crying; he sat under a table for an hour after the incident. *T SD 428*

9. Behavioral Specialist retained by the School District:

a. The School District obtained a behavioral specialist named ; who is a member of the *T.* *T.* Ms. observed for multiple days at school to gather information relating to his functioning and behavior.

10. Classroom Aides: had three classroom aides during his Kindergarten school year, namely: and

a. Neither party called any of these aides to testify.

b. There is a difference in opinion between the Parents and multiple witnesses regarding the effectiveness of as 's aide. Parents' believed functioned well under Mr. and that a male influence was beneficial to ; multiple District personnel and Dr. felt that that aide was not adequately intervening and redirecting negative behaviors or do meaningful interventions. *T.* *T.* *T.* *T.* *SD 252.*

c. The School District, primarily Ms. , took multiple steps to train (and update) each of the aides regarding 's needs and the requirements of the IEP. *T.* *T.*

d. had familiarity with in and during his Kindergarten year.

11. The March 26, 2014 IEP Meeting:

a. The IEP team met on March 26, 2014. *SD* .

b. Consideration was given to the speech and language reevaluation and Dr. 's reports; and for purposes of reviewing and revising 's IEP, including the Behavioral Intervention Plan. *SD272-319.*

c. It was determined that was no longer eligible for speech and language services; which was in agreement with Dr. . No disagreement was expressed by Parents. *T.* , *T.*

d. was eligible to receive services as a student with an Emotional Disability and Other Health Impairment.

e. The final Behavioral Intervention Plan for was developed, which included input from Dr. and . *T.* *T.* *SD 912a-b.*

f. Placement options were discussed which included continued

participation in the general education Kindergarten with resource support, social work support, sensory support and the BIP; placement in the [redacted] ([redacted]) with supports; or the [redacted] classroom. *SD 308-309, 311-314.*

g. The IEP team agreed to see whether the revised BIP impacted [redacted]'s behaviors before a change in placement; and to reconvene in May 2014 to review [redacted]'s progress. *T.*[redacted].

h. Subsequent to the this IEP meeting, [redacted] provided support to [redacted] on an almost daily basis for purposes of observing [redacted]; assisting the teacher and 1:1 aide; collecting data; and regularly communicating with Dr. [redacted]. *T.* [redacted]; *T.* [redacted]

12. Behavioral Incidents:

a. That [redacted] engaged in multiple instances wherein he was physically restrained by staff; and that multiple staff were necessary to keep [redacted] from harming himself or others. *T.*[redacted]

b. That on April 4, 2014, there was an incident wherein [redacted] was involved and was poking another child; would not follow redirection; ridiculed the staff; punched the aide; ran down the hallway; was restrained; spit at a teacher. *T.*[redacted], *T.* [redacted]

13. Parent's Overall Reporting of J.O.:

a. [redacted]s father. testified that [redacted] was going better following rules; transitioning; getting along with his father; seemed more happy; was less difficult; and had better behavior. That [redacted] is a very bright child who loves sports and multiple activities; that [redacted] participates in hockey; that [redacted]. plays with neighborhood children; that [redacted]'s behavior at [redacted] was worse than at school. *T.*[redacted].

b. [redacted]s Mother reported regarding her qualifications as a licensed Kindergarten teacher with over twenty years experience; [redacted] attending [redacted] for childcare; that [redacted] had attended a different childcare prior to that; that she did not attend the October 27, 2011 appointment with the speech pathologist but did give consent to the evaluation; that she intended on holding [redacted] back due to his age and maturity; that she felt Principal Hogan wanted [redacted] in developmental Kindergarten which she was not in favor for because it generally involved children with LD and that her belief is that [redacted] wanted [redacted] out of this building; that she received reports regarding [redacted]'s behavior early on in the year after he started Kindergarten; that she has

attempted to positively affect ███'s behavior by seeing Dr. ███ and through diet; that ███ has been suspended multiple times; that he was not able to participate in Olympic Day; that his lunch and recess have been changed without her approval; that she inspected the ███ program and does not believe it to be appropriate for ███; that it is not connected to a general education school and the rooms seem small and without appropriate light; that they are attempting to utilize medication to monitor ███'s behavior; that ███'s behavior has improved; that she works with ███ on reading at home; that he has performed at 93-94% in math; that he does not need specialized remedial education. *T.███ P66-105* (IEP's in Parent's Binder)

14. <u>███, Director of Special Education:</u>

a.) That she is the Director of Special Education and oversees the program; she described her role and responsibilities in her position; her credentials and her familiarity with ███;

b.) That she has participated in multiple IEP's on behalf of ███; that during the November 8, 2013 IEP, which went on for almost two hours, there seemed to be no progress due to the Parent's advocate, ███ being unwilling to discuss the FBA and BIP; that during the March 26, 2014 IEP meeting, placement options including current placement, ███ and ███ were discussed; that Dr. ███ did not want to change much so no placement change was made; that the School District attempted to do the best they could under the circumstances; that during the June 5, 2014 IEP meeting, a review of the IEP, progress and goals were discussed; that four options regarding placement were presented; that each team member spoke regarding each one and why he/she felt it was most appropriate; that Dr. ███ said the best approach would be to see if medication affected ███'s behavior and then to make the placement decision; that teachers have a love of kids and want them to learn; that the district attempted to do what it could for ███ and to make it better for him but felt that everything had been exhausted; that her opinion is that the SI environment would not provide ███ with the social emotional support he needs compared to the ███ program.

15. The June 5, 2014 IEP Meeting:

a. That Parents cancelled the May 2014 IEP meeting.

b. That the IEP meeting was then rescheduled to June 5, 2014.

c. That a purpose of the IEP meeting was to review ██'s progress under the revised BIP; and to determine his program, services and placement for 2014/2015.

d. That at the June 5, 2014 meeting, members of the IEP team presented progress reports regarding ██ relating to performance and his goals and objectives. *SD 331-386*

e. That placement options for 2014/2015 were discussed which included analyzing the positives and negatives of four options for ██:

1. Placement in General Education with support;

2. Placement in the Specialized Instruction classroom with access to general education; with classroom aide support, social work services and occupational therapy support;

3. Placement in the ██ program with access to general education setting, with classroom aide support, social work services and occupational therapy support; or

4. Placement in a therapeutic day school.

f. Members of the IEP team from the School District determined that the ██ program was appropriate to meet ██'s needs. Parents were not in agreement with the recommendation for ██, and thereafter filed their additional complaint for Due Process.

IV. CONCLUSIONS OF LAW AND APPLICATION OF LAW TO THE FACTS IN THIS MATTER PERTAINING TO EACH ISSUE (including Credibility Findings, Analysis, and Weight of Testimony)

Introductory Statutory and Case Law Authority:

- The Federal and State Special Education Laws are set out in the Individual with Disabilities Education Act, 20 U.S.C.A. 1400 et seq. ("IDEA") and Article 14 of the Illinois School Code, 105 ILCS 5/14-8.02(a). IDEA does not impose a nationally uniform approach to the education of children with a given disability. *Id.* Further, IDEA does not preempt state law if the state standards are more stringent than the federal minimums set by IDEA.
- The United States Supreme Court has defined a Free Appropriate Public Education (FAPE) as one which guarantees a reasonable probability of educational benefits with sufficient supportive services. *Bd. Of Education Hendrick Hudson School District v. Rowley*, 458 U.S. 176 (1982).
- In *Rowley*, the Supreme Court established the following two part inquiry to determine whether a District has provided a FAPE to a Student in accordance with the requirements of the IDEA: (1) Has the District complied with the Procedures in the Act and (2) Is the Individualized Education Program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits.

Review by the Hearing Officer

- The IDEA sets forth the standard Hearing Officers and courts must use in ruling on disputes concerning the provision of special education and related services to students with disabilities. Generally, the decision rendered is to be made on substantive grounds based upon the determination of whether the Student received a free appropriate public education. 20 U.S.C. Section 1415(f)(3)(E)(i).
- In determining whether IEP designs are reasonable, a Hearing Officer need not accept school district claims as true regarding the reasonableness of IEP design, but neither should the Hearing Officer substitute his/her judgment for that of the school officials who have designed the IEP as the hearing officer determines whether the District provided an IEP reasonably calculated to provide an educational benefit. *School District of the Wisconsin Dells v. Z.S.*, 295 F.3d 671, 37 IDELR 34 (7th Cir. 2002).
- In determining whether an IEP design is reasonable, a Student's progress under the proposed IEP is evidence that the Hearing Officer must consider. A lack of academic or behavioral progress is not dispositive of whether the IEP has been reasonably designed to provide a Student with FAPE. *Shroll v Bd of Ed of Champaign Community Unit School District No. 4*, 48 IDELR 155 (C.D. Ill. 2007).
- Moreover, when a hearing officer determines whether an IEP is reasonably designed to provide a FAPE, the Hearing Officer must judge the district based upon what the district

knew or reasonably could have known at the time the IEP was drafted--not solely on whether academic progress occurred. *MB. v. Hamilton Southeastern Schools*, 668 F .3d 851 (7th Cir. 2011). This is called the "Snapshot Rule."

- In determining whether an IEP is reasonably calculated to provide FAPE, the Hearing Officer must defer to the School District as to disputes among appropriate methodologies to educate the student. *Lachman v ISBE*, 852 F.2d 290 (7th Circ. 1988). The Parent does not have the right to veto the District's reasonable methodological choices; which even does not need to be the best choice.
- The trier-of-fact in administrative adjudications generally should accept un-contradicted factual testimony as true. For the Hearing Officer to disregard factual testimony, it should be contradicted by positive testimony or circumstances, the witness providing the testimony must be impeached, or the testimony must be inherently improbable. Inferences are conclusions of fact derived from the evidentiary facts introduced at hearing. Hearing officers can make reasonable inferences from the evidence adduced at trial. However, like in all administrative adjudications, the inferences must be supported by facts proved or admitted. *National Labor Relations Board v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 814-815 (1990). The inferences must be drawn from facts through a process of logical reasoning. The Hearing Officer must draw an accurate and logical bridge between the evidence and result. *Frobes v. Barnhart*, 467 F.Supp.2d 808, 817 (N.D. Ill. 2006). Moreover, any inference a hearing officer makes must be supported by substantial evidence. Substantial evidence means relevant evidence that a reasonable mind might accept as adequate to support his/her conclusions. *Frobes*
- Hearing officers are entitled to and often need to make credibility findings. However, in such cases, hearing officers should provide reasons for why they found testimony credible or not credible. *Marshall Joint School District No. 2. v. C.D. ex rei Brian D.*, 616 F.3d 632, 638 (7th Cir. 2010).

Burden of Proof by the Parties

- In regard to the burden of proof in a special education proceeding, the Supreme Court has held that the ultimate burden of persuasion lies with the party filing the due process complaint. *Schaffer v. Weast* 546 U.S. 49 (2005). However, the Illinois School Code has placed a heightened burden on school districts. 105 ILCS 5114-8.02a (g-55). In a due process proceeding, the school district has the initial burden of production to show that the special education needs of the student are identified and that the special education program and related services proposed are adequate, appropriate and available. After the District meets its initial burden of production, the ultimate burden of persuasion then shifts to the filing party to prove its case. The parties must prove their cases by a preponderance of the evidence.

ANALYSIS AND FINDING REGARDING THE ISSUE WHETHER THE SCHOOL DISTRICT FAILED TO ADEQUATELY ASSESS ALL OF THE AREAS OF J.O.'S SUSPECTED DISABILITY;

1. Parents allege that the School District failed to conduct an appropriate evaluation of during the 2011/2012 school year; and are seeking reimbursement for the private evaluations that they obtained. Pursuant to *20 U.S.C. Section 1412(a)(3)*, schools are required to locate, identify and evaluate all children with disabilities from birth through age 21, including children who attend private schools. Testing is not required in every conceivable area of disability, but rather assessments are only required in all areas of *suspected* disability. *Jaccardi J. v Bd Ed of City of Chicago*, 690 F.Supp.2d 687 (2010)(emphasis added). When an assessment is made in the context of a reevaluation, then it shall not take place more frequently than once a year unless the Parent and the LEA agree otherwise. *20 U.S.C. Section 1414(a)(2)(B).*

2. The undersigned Hearing Officer finds that the School District appropriately evaluated in all areas of suspected disability during the 2011/2012 school year for one or more of the following reasons:

   a.) When was identified through the PreSchool Screening process, he presented with concerns only regarding his speech and language and no behavioral concerns were noted; that immediately after the screening in the Fall of 2011, the School District appropriately and promptly evaluated regarding his speech and language impairment and provided . with services; that the School District did not have any available data at that time to warrant any other type of evaluation; that attended speech services with on a weekly basis and never presented as having needed any further evaluation in any other area of a suspected disability;

   b.) That the School District did not have information available to them during the 2011/2012 school year which have put them on notice to suspect that presented with any disabilities beyond a speech and language impairment. That merely because may have noticed aggressive behaviors by in the childcare setting, there was no other reason to have evaluated at that time.

   b.) That there exists a question of fact as to when the School District became aware of 's concerns by the Parents; that Parents provided no testimony from anyone from Kid Country during this hearing and were not able to credibly substantiate that they provided the School District with these concerns until possibly the Spring of 2012;

   c.) That Parents allege that the School District failed to explain that the program was available to Parents at no cost; that

there was no testimony or evidence at the hearing which would allow the undersigned Hearing Officer to conclude that that would have (or should have) been eligible for participation in the program prior to when the parties agreed he should attend in May 2012.

d.) That for purposes of the reevaluation, the School District alleges that since it had no reason to suspect that presented with disabilities beyond speech and language, then there would have been no basis for them to have agreed to a reevaluation. However, the observations that the School District had regarding 's behavior and the concerns of the Parents regarding at are distinctly different; that the amount of time that spent in each environment was a factor that the School District should have considered and there was not credible information before the Hearing Officer what, if any, consideration the School District gave to the amount of time in each environment and the similar/different nature of each environment; that there is weak evidence before this Hearing Officer regarding the actual time spent at but it is reasonable to infer that that was at for a much longer period of time than his weekly speech at ;

d.) That despite the differences in 's behavior in the school setting and the childcare setting; the School District demonstrated good faith by collaborating with Parents by making available to on a trial basis in the Spring of 2012 for purposes of collecting data and on a diagnostic basis; that according to the School District the data they collected was limited and that the time period spent in the trial period may have been like a "honeymoon" period.

e.) That despite the limited data available to the School District, it was sufficiently aware by the end of the 2011/2012 school year that the Parents were seeking an evaluation; that neither party filed for Due Process at that time; that the School District wants to characterize it as a "reevaluation" and claim that it was not obligated to provide an evaluation or to agree to one; that under these circumstances with this Student, if the School District felt that it had limited information and that further observation was necessary, then it could have at a minimum contacted directly to obtain further information before withholding consent to reevaluate; *P32-34.*

f.) That the Parents obtained two (2) private evaluations during the summer of 2012 which were to be submitted to the School District for their consideration for the upcoming 2012/2013 school year; that when the IEP team met on August 2, 2012 for 's domain, eligibility and IEP meeting, the School District considered and relied upon the evaluations of Dr. and Dr. regarding the eligibility of and the development of the IEP for the 2012/2013 school year. *P.34, P44-50; P51-53;P55-63.*

g.) That under the circumstances as set forth in this Order, the undersigned finds that the School District should reimburse the Parents for the cost of the evaluations by Dr. [redacted] and Dr. [redacted], in the amount of the out of pocket cost which is $600.00 and $173.90, respectively. That Parents have not established that the collateral source rule applies in the context of special education reimbursement claims. *P.35, 54.*

ANALYSIS AND FINDING REGARDING THE ISSUE WHETHER THE SCHOOL DISTRICT FAILED TO REIMBURSE PARENTS FOR THE EVALUATIONS IT OBTAINED (DR. [redacted], DR. [redacted] AND THE OCCUPATIONAL THERAPY BILL BY [redacted]);

Please see paragraph (a) above for ruling pertaining to Dr. [redacted] and Dr. [redacted] That the undersigned finds that the Parents have not met their burden in establishing that the School District failed to pay for the evaluation of the Occupational Therapy bill by [redacted] or what if any amount is due or paid by Parents.

ANALYSIS AND FINDING REGARDING THE ISSUE THAT AFTER MAKING AN IEP AND PLACEMENT, WHETHER THE SCHOOL DISTRICT FAILED TO REIMBURSE PARENTS FOR THE TRANSPORTATION COSTS TO AND FROM SPEECH/LANGUAGE SERVICES, TO AND FROM [redacted], AND FOR PLACEMENT AT [redacted]:

Regarding Parents' claim that the School District should have paid for [redacted] during the 2011/2012 school year:

[redacted] attendance and minutes are listed on [redacted]'s IEP from October 2011 through May 2012. The undersigned finds that at the time of [redacted]'s eligibility for speech and language services, the [redacted] was not making a determination for programming or placement at [redacted]

There was an exhaustive explanation provided by Ms. [redacted] that the purpose of obtaining information in order to be consistent with ISBE which requires school districts to consider and document a student's participation in "regular early childhood programs when determining the correct Early Education (EE) Code to be included on the IEP. *T.* [redacted] *See ISBE Guidance, New EE Codes for Early Childhood Special Education, dated July 15, 2010 and Related Documents, December 2010.* School District personnel credibly testified that documenting [redacted]'s participation in childcare was for data collection; and not for placement purposes. *T.* [redacted] *T.* [redacted] Further, Parents presented no credible testimony or evidence that they were under any reasonable belief that the School

District was placing [redacted] at [redacted]; and his attendance their may have even predated October 2011. *T.* [redacted]

The undersigned further infers that the Parents choice to place [redacted] at [redacted] was their independent. No evidence was presented that there was any substantive discussion, collaboration, or analysis by either Parent with any member of the IEP team regarding the program, placement, services or supports regarding [redacted]'s attendance and participation at [redacted]. The undersigned further infers that [redacted] was merely the Parents' choice of childcare.

The undersigned further finds that the Parents are further not entitled to reimbursement for [redacted] tuition or transportation services as Parents have not met their burden in establishing that [redacted] was denied a FAPE during the 2011/2012 school year.

Regarding Parents' claim that the School District should have paid for [redacted] during the 2012/2013 school year:

[redacted] attended the Early Childhood program, in lieu of Developmental Kindergarten, during the 2012/2013 school year. That during the August 2, 2012 IEP meeting in preparation for that school year, the team discussed the pros and cons of which placement for [redacted] between EC and DK with mainstreaming into the general education Kindergarten. The Team had concerns regarding whether mainstreaming [redacted] into general education Kindergarten would be too challenging. Parents had additional concerns regarding [redacted]'s late birthday. The Team determined that having [redacted] participate in an additional year of preschool through the E.C. program with supports and services that would best meet his needs. Parents' advocate requested payment for [redacted] so as to provide [redacted] access to general education. The School District refused as it had offered [redacted] the opportunity for D.K, which Parents refused. In lieu that the School District offered [redacted] a lesser restrictive and appropriate option, which would have provided [redacted] with access to his general education peers, which was rejected by Parents. *T.* [redacted] *T.* [redacted] *T.* [redacted] *SD 93-107.*

The undersigned has inferred from the testimony and evidence that the team did not find that D.K. would be "wanting;" rather it just wasn't the best option for [redacted] D.K. was considered an appropriate option but was not the "preferred" choice of the team. Further, the School District was not making the choice to place [redacted] at [redacted] and if it had been doing so, then the School District must pay those costs. In this matter, the School District was making FAPE available to [redacted] in DK and did not consent to [redacted], however the Parents elected to utilize [redacted] in addition to [redacted]'s public school education as their childcare. Most importantly, in this instance, there was no disagreement between Parents and the School District; and they specifically agreed that [redacted]

should attend the E.C. program for 2012/2013 school year. Based upon these circumstances, the undersigned Hearing Officer finds that [redacted] was not denied FAPE in a LRE, that D.K. would have been an appropriate option but was not the preferred option, that the Parents were using [redacted] for purposes (childcare) other than merely education, that the School District was not placing [redacted] at [redacted] and did not consent to his programming there; and thus Parents are not entitled to reimbursement for [redacted] during the 2012/2013 school year.

Regarding Parents' claim that the School District should have paid for Transportation to [redacted]'s walk in speech services or to [redacted]:

The undersigned hearing officer finds that under the circumstances of this case, the Parents are not entitled to reimbursement for transportation costs prior to May 2012 for the following reasons:

a.) Any expenses incurred prior to January 20, 2012 are beyond the statute of limitations; *P11-18.*

b.) That [redacted] was never a placement option for [redacted], rather it was his childcare;

c.) That parents have not presented any credible evidence or testimony of the need for reimbursement or that they made the School District aware of the alleged need prior to May 2012;

d.) That there is no existing authority to require School Districts to provide pre-school students with transportation or to reimbursement for the cost of independently paid for transportation to walk-in speech and language services.

ANALYSIS AND FINDING REGARDING THE ISSUE WHETHER THE SCHOOL DISTRICT FAILED TO EXPLAIN TO PARENTS THAT THE EARLY CHILDHOOD PROGRAM WAS AVAILABLE AT NO COST;

Regarding the issue pertaining to the tendering of the Notice of Procedural Rights at the time [redacted] was initially evaluated for speech and language services (October 2011):

Preliminarily What are Procedural Safeguards?

- That a procedural flaw does not automatically result in a denial of FAPE; significant procedural violations may rise to a denial of FAPE but the procedural flaws do not make the IEP legally defective; and the Parent must demonstrate that the violation resulted in the loss of educational opportunity. *Heather S v Wisc.*, 125 F.3d 1045 (7th Circ. 1997); *Roland M. v. Concord*, 910 F2d.983 (1st Circ. 1990), *cert denied.*
- Pursuant to 20 U.S.C. Section 1415(f)(3)(E)(ii), in matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies:

1. Impeded the child's right to a free appropriate public education;
2. Significantly impeded the Parent' opportunity to participate in the decision making process regarding the provision of a free appropriate public education; or
3. Caused a deprivation of educational benefits.

The undersigned finds that the School District produced weak but somewhat credible testimony from [redacted] to substantiate whether it provided the Notice of Procedural Rights at the time that [redacted] was initially evaluated for speech and language services. The Speech and Language pathologist, [redacted], was unable to recall which date she provided the Notice to Parents but credibly testified regarding what her practice and procedures would have been at that time pertaining to tendering a Notice; and her recollection was that she likely would have provided it to one of the Parents either on or around October 21, 2011 or October 27, 2011. Even if find that Parents were not provided the Notice of Procedural Rights in October 2011, Parents have provided no credible evidence or testimony to meet the burden that [redacted] suffered a loss of an educational opportunity pursuant to 20 U.S.C. Section 14(f)(3)(E)(ii).

Parents first raised the claim that the October 27, 2011 sign in sheet was a fraud/fraudulent document tendered by the School District, thereby implying that the School District acted in bad faith. It appears that neither parties' counsel inspected the original documents until encouraged to do so by the undersigned hearing officer at the time of the hearing. Further there was a plethora of testimony provided by Ms. [redacted] which explained the [redacted] process and inadvertent mis-calendaring of the date; how the School District was one of the first regarding implementing the [redacted] system for the State; how information gets carried over from one screen to the next for some things and not others; changes in the system.

ANALYSIS AND FINDING REGARDING THE ISSUE WHETHER STAY PUT WAS VIOLATED BY REDUCING OR TAKING AWAY [redacted]'S LUNCH, RECESS, OLYMPIC DAY ACTIVITIES, AND/OR SPEECH AND LANGUAGE SERVICES;

Law Related to Stay Put

- Federal special education law requires that a student remain in the same placement during the pendency of a due process hearing request. 20 U.S.C.A. 1415(1).
- The stayput placement is determined by the language of the IEP-not the location of services which a district is providing at the exact moment the due process request is filed. *John M v. Board of Education of Evanston Township High School District 202*, 502 F .3d 708 (7th Cir. 2007). Placement and physical location of services are not synonomous. While the physical location of services can be a component of placement, the educational

program is a fundamental component of placement. To the extent the educational program requires or contemplates a change of location of services, the undersigned holds that placement can encompass two physical locations of services.

- Further, there is an exception to stay put when there is substantially likely to result in injury to the child or to others. See, *Honig v Doe*, which draws analogy to 34 CFR 300.532.

Regarding speech and language services:

1. For the time period after March 26, 2014, the undersigned finds that there was no violation of stay put as the speech and language services were discontinued by agreement and no longer necessary. *T.[redacted] T.[redacted] SD272-295 and 311-314.*

2. For the time period after January 20, 2014 through March 25, 2014, the undersigned finds that [redacted] continued to remain eligible for speech during that time and accordingly if he was not receiving his speech and language services at the direction or failure of the School District then it would have been a violation of stay put. However the evidence presented at hearing was scanty at best on this issue regarding what dates and times [redacted] was not provided services and whether it was as a result of the School District failing to make the services available or for other reasons. It appears as if [redacted] may not have been receiving some of his speech and language minutes for an unknown amount during this time period; therefore, based upon the information before this Hearing Officer and the Parents' counsel failure to provide specific requested relief on this issue; there is no way to establish what extent make up services should be provided. Additionally, it appears as if this issue may have been waived by Parents based upon their agreement at Resolution; however it was vaguely raised in Parents' closing brief. *SD 387-390.*

Regarding lunch:

The Parents allege that the School District violated stay put by modifying [redacted]'s lunch setting wherein around November 2013, [redacted] ate lunch in the school conference room with his 1:1 aide and had the opportunity to select a general education peer of his choice to eat with them. The undersigned finds that the change in the lunch setting was not a violation for stay put for one or more of the following reasons:

a.) That while on the surface it may not have seemed ideal that J.O. was being removed from the larger group setting of the lunchroom; the School District has the right to make minor variations as they deem fit for purposes of preparing a student for the best chance at learning and the variation in the lunch setting was to be temporary; that to rule otherwise allows Parents to micromanage the daily management of the school setting;

b.) That there is credible evidence that the large and unstructured atmosphere of the lunchroom setting did not serve [redacted]'s interests and the undersigned has inferred that the School District was attempting to provide [redacted] with the best possible chance in preparing him for learning for the remainder of

his day;

c.) That there was credible evidence presented that [redacted] did not emotionally and behaviorally function well in large and unstructured settings and there was two significant behavioral incidents which occurred in that setting;

d.) That even if the change in the lunch setting was contrary to [redacted]'s "placement," the School District and Parents discussed the change in the setting at the November 8, 2013 IEP meeting and the Parents did not object; and the change in lunch predated the filing of the Parents Due Process Complaint in January 2014;

e.) That [redacted] had the opportunity to continue to be with his 1:1 aide and also to interract with a general education peer during his lunch so services were continuing to be provided despite the change in the physical room in which they were provided.

T.[redacted] T.[redacted] SD 425-428.

Regarding recess:

The Parents allege that the School District violated stay put by modifying [redacted]'s lunch setting wherein around May 2014, [redacted] was restricted from having recess on the playground. The undersigned finds that the change in recess was not a violation for stay put for one or more of the following reasons:

a.) After the Parents' Due Process Complaint was filed, the School District made changes to [redacted]'s recess whereby he was not permitted to have recess with the bulk of his general education peers on the playground. Instead, [redacted] would have recess in the gym or O.T. Room and had the opportunity to select a peer of his choice. The undersigned finds that [redacted] was not being prohibited from unstructured play but was being directed to have that play in a smaller and more controlled setting while still having the benefit of interaction with a general education student. While it may not have seemed like as much fun, the School District's concerns for the safety of [redacted] and others overrides this change in the setting and was further in accordance with [redacted]'s Behavioral Intervention Plan.

b.) Regardless, the safety of [redacted] and other students is of paramount importance and it is a responsibility of the School District to maintain a safe and orderly environment for this student, all students and the staff. The School District's variation in the setting for recess was not made arbitrarily or without careful thought and consideration to [redacted] who had demonstrated numerous incidents of aggression towards staff and other students, many of which required significant staff involvement in the form of restrictive intervention and [redacted]'s suspension. Some of these incidents occurred during recess and there was credible testimony that [redacted] did not follow redirection and that his emotions and behavior escalated to the point that another student's safety may have been in

jeopardy but for staff's immediate response as well as [redacted] fleeing from the playground.

T. [redacted] T. [redacted] SD 318, 428, 446-450, 821-824, 923-924, 959, 984-985; P.23.

Regarding Olympic Day activities:

The Parents allege that the School District violated stay put by refusing to allow [redacted] to participate in the group Olympic Day activities. The undersigned finds that this issue is moot because Parents elected not to send [redacted] to school on the day of the Olympic Day activities so no actual violation of stay put occurred, assuming it amounts to a violation of stay put. Regardless if this matter is reviewed, the undersigned Hearing Officer finds that the School District's *decision itself* not to allow [redacted] to participate in the group Olympic Day activities, regardless of [redacted]'s absence that day was not a violation for stay put for one or more of the following reasons:

a.) That Principal Hogan had serious concerns regarding the emotional and behavioral affect that Olympic Day would have on [redacted]; that she discussed her concerns with the Special Education director [redacted] and the Superintendant; that [redacted] has expressed to Ms. Hogan that he does not like loud places; that had [redacted] attended school that day [redacted] would not have been prohibited from unstructured play but that Ms. Hogan testified that she was going to coordinate a special Olympic Day activity for [redacted] in a smaller and more controlled setting while still having the benefit of interaction with general education peer(s); that the School District's concerns regarding the safety of [redacted] and others in the Olympic Day setting were sufficiently reasonable to make a variation to the location of his educational programming which would not have been inconsistent with [redacted]'s IEP or BIP.

T. [redacted], P.29, SD 318, 428, 446-450, P.25.

ANALYSIS AND FINDING REGARDING THE ISSUE WHETHER THE SCHOOL DISTRICT PREDETERMINED PLACEMENT;

1. Parents allege that the School District predetermined [redacted]'s placement prior to the June 5, 2014 IEP meeting; which is reviewed as an alleged procedural violation of the IDEA.

2. A predetermination of placement could result in a violation of FAPE if the Parents were unable to participate in the crafting of their child's IEP.

3. In this matter, either one or both Parents participated and provided meaningful input at multiple IEP meetings leading up to and including the June 5, 2014 IEP meeting. At the June 5, 2014 IEP meeting, Parents also had the benefit of [redacted]'s private psychologist, Parents' legal counsel and Parents' advocate to

assist them at that meeting. *SD 352-356.* Parents did not call the private psychologist or advocate to substantiate their claim of predetermination. In addition, Parents did not provide any credible testimony that they were not able to meaningful participate in the IEP meetings.

4. Leading up to the June 5, 2014 IEP meeting, the School District routinely shared its concerns with Parent(s); agreed to hold off on discussing placement until the completion of the evaluations provided by Parents; included input from the evaluators in the IEP's; held off on changing placement in October 1, 2013, January 9, 2014 and March 26, 2014.

5. In addition to not changing placement on the three prior occasions, the School District presented the full continuum of programs and fully described its concerns regarding ■'s functioning in the general education setting. *SD 162-169, 215-236, 289-319, 348-352.*

6. Further, the undersigned has some concerns regarding Parents' choices leading up to the June 5, 2014 IEP meeting, including refusal to discuss the data of the behavioral analysis unless a final BIP was provided in March 2014; canceling the May 2013 IEP meeting and rescheduling it after school ended; and the decision to remove ■ from school at the end of the school year for purposes of a vacation when ■ would have had the additional assistance of ■ under the revised BIP.

7. The School District produced multiple witnesses from the School District whom credibly testified pertaining their involvement with ■ over an extended period of time which included analyzing ■'s needs and providing support and services to him. Each of the witnesses on behalf of the District appeared to have an open mind. Several options were considered and the positive and negatives were explained regarding the various options. Further, during the course of testimony at the hearing, multiple witnesses from the District appeared visibly concerned regarding the wellbeing of ■ and distraught that they felt nothing more could be done on his behalf in an effort to maintain his current placement.

8. Parents provided no credible testimony to rebut or establish that any of the School District's witnesses weren't acting in good faith or with an open mind in analyzing the various placement options available for ■ at the time of the June 5, 2014 IEP meeting. Parents provided no credible contradictory testimony that members of the IEP team from the School District weren't willing to listen to the Parents' suggestions or make adjustments based upon the Parents' suggestions.

9. Accordingly, Parents provided no credible support whatsoever to meet their burden of establishing any type of a procedural defect based upon predetermination. The undersigned finds that the School District did not

predetermine[redacted]'s placement prior to the June 5, 2014 IEP meeting.

ANALYSIS AND FINDING REGARDING THE ISSUE WHETHER THE JUNE 5, 2014 IEP IS NOT THE LEAST RESTRICTIVE ENVIRONMENT IN WHICH ALL OF[redacted]'S GOALS CAN BE MET OR ALTERNATIVELY PHRASED, WHETHER THE JUNE 5, 2014 IEP PROVIDES[redacted] A FREE APPROPRIATE PUBLIC EDUCATION WITHIN THE LEAST RESTRICTIVE ENVIRONMENT UPON WHICH[redacted]'S GOALS CAN BE MET.

The Foundation of an IEP

- A District must develop an IEP which is reasonably calculated to provide the student with an educational benefit. *Alex R. v. Forrestville Community Unit School District No. 221*, 375 F.3d 603 (Cir. 2004). The Supreme Court has held that the basic floor of opportunity of the IDEA consists of specialized instruction and related services which are individually designed to provide an educational benefit to the child. *Rowley*, 458 U.S at 206-207. An IEP must be reasonably calculated to produce progress, not regression or trivial academic advancement. *MB. v. Hamilton Southeastern Schools*, 112 LRP 6281 (7th Cir. 2011).
- When determining whether a student has benefited from an educational program, the courts look in part to whether the student is making progress toward the goals included in the IEP.
- Factors to consider when determining whether an IEP is reasonably calculated to provide educational benefits include: the child's potential; whether the IEP was reasonably tailored to his/her unique needs; whether the IEP provides access to specialized services; whether it addresses disability-related acts; and whether the child achieved progress during the relevant time period. *Jaccari J v. Board of Education, Chicago Public School District No.299*, 690 F.Supp.2d 687, 702 (N.D.Ill. 2010).
- An IEP is a continuing program and must be revised as appropriate as the IEP team learns more about the Student in order to provide a free appropriate public education (FAPE). *Kevin T. v Elmhurst Comm SD 2015*, (ND IL 2002).
- States and school districts are not required to maximize each child's potential. *Rowley*. In determining whether an IEP provides FAPE, the District must develop an IEP reasonably calculated to provide an educational benefit as defined by the standards of the state educational agency. 20 U.S.C.A. 1401. Further, FAPE must be viewed through the standards of the State and when state educational benefits exceed the minimums required by federal law, the state standards are enforceable through IDEA.
- The IEP must comply with the requirements set forth in 20 U.S.C.A. 1414(d) in order to provide FAPE. 20 U.S.C.A. 1401(9). Section 1414(d) requires measurable goals designed to meet the child's educational needs that result from the student's disability. *Sarah D. v. Board of Education of Aptakisic-Tripp Community Consolidated School District No. 102*, 642 F .Supp.2d 804, 52 IDELR 281 (N.D. Ill. 2009).

- A school district must engage in a collaborative process to develop a Student's IEP and the selection of placement. Failure to collaborate is a violation of IDEA. *Board of Education of Township High School District No. 211 v. Ross*, 486 F.3d 267 (7th Cir. 2007).

Inclusion of Social Emotional Standards

- The concept of FAPE is not limited to whether a student is succeeding academically. *Mary P. v. Illinois State Board of Education*, 919 F.Supp. 1173 (N.D. Ill. 1996). In order to provide a student FAPE, a school has to meet SEA educational standards. 20 U.S.C.A. 1401(9); *Winkelman v. Parma City School District*, 550 U.S. 516 (2007); *Rowley v. Board of Education of Hendrick Hudson Central School District, Westchester County*, 458 U.S. 176 (1982) (in order to provide FAPE, the local district must comply with the definitional requirements of FAPE).
- Illinois law requires all school districts to teach students to manage emotions and behavior for both academic and life success. 405 ILCS 49/5,15. Students must be taught: social and interaction skills; how to manage emotions and behavior; how to develop self-awareness and self-management skills; how to use social awareness and interpersonal skills to establish and maintain positive relationships; to develop skills to prevent, manage, and resolve conflicts in constructive ways; to consider ethical, safety, and societal factors in making decisions; establishing positive peer, family and work relationships; and an understanding why unprovoked acts that hurt others are wrong. *See Social Emotional Standards on the Illinois State Board of Education website.*
- School Districts in Illinois must address all of a student's unique social-emotional needs like anxiety, aggression, inability to socially interact with peers and family with specific goals and short-term objectives/benchmarks. Sarah D., 642 F.Supp.2d 804 (N.D.Ill. 2009). A District must have goals which directly address a child's unique needs and behaviors. Part of the IEP team's responsibilities include that it must determine the safety and health needs of a child in order to provide accommodations designed to protect the child in his/her educational environment, and design an IEP which protects the safety needs of a child. To fail to protect a disabled child's physical and psychological safety when designing an IEP constitutes a denial of FAPE. As mandated by regulation, the physical and psychological safety of the child is also an important factor to be considered in determining the LRE of the disabled child. 34 CFR 200.116(d).
- In order to provide substantive FAPE, an IEP must establish goals which respond to all significant facets of a student's disability, both academic and behavioral. A District must address all of a student's unique social-emotional needs like low self-esteem, anxiety, lack of trust, and depression with specific goals and short term objectives/benchmarks. *Sarah D.*

Behavioral Intervention Plans

- A behavioral intervention plan contains accommodations and/or related services which are part of the student's IEP. 34 CFR 300.324(a)(2). Failure to design an IEP with an appropriate BIP can be a denial of FAPE like any other design failure in an IEP. Neosho R-V School District v. Clark, 38 IDELR 61, 315 F .3d 1022 (8th Cir. 2003); R.K. by R.K. and S.L. v. New York City Department of Education, 56 IDELR 168 (E.D.N.Y. 2011)(magistrate judge report adopted at 56 IDELR 212); judgment aff'd 694 F.3d 167 (2nd Cir. 2012).
- When behavior problems interfere to an extent that a child loses academic benefits due to behavior problems, a district may need to provide a cohesive plan to address the child's behavior problems. To fail to formulate a BIP in such a circumstance is unreasonable, and thus results in a denial of FAPE.
- Although there are no substantive federal requirements for a BIP, Illinois has state standards which govern the content of a BIP. 23 Ill.Admin.Code 226.320(b) (2007). Illinois' state standards are enforceable through IDEA. *CJN v. Minneapolis Public Schools, Special School District No. 1,* 323 F.3d 630 (8th Cir. 2003). Illinois requires the district summarize the findings of the FBA; summarize prior implemented interventions; describe behavioral interventions to be used; including those aimed at developing alternative or more appropriate behaviors; identify the measurable behavioral changes expected and methods of evaluation; identify a schedule of review of the interventions' effectiveness; and identify provisions for communicating with the parents about the child's behavior and coordinating school-based and home-based interventions. 23 Ill.Admin.Code 226.320(b)(2007).

Law Related to Placement, Least Restrictive Environment and Physical Locations of Services

- IDEA requires an appropriate placement; and it does not require the best placement possible nor does it require the placement preferred by the child's parents. *Heather S. v Niles Twshp HSD 219, Murphysboro.*
- IDEA requires that the student's education must take place in the Least Restrictive Environment (LRE) in which the student may derive an educational benefit and it is not necessarily the placement which maximizes the student's educational opportunities.
- Pursuant to 20 U.S.C. Section 1412(a)(5)(B); 34 C.F.R Section 300.114(a)(2); and 105 ILCS 5/14-8.02(a), State and Local districts must establish procedures that

  > To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular environment occurs only if the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- To implement LRE, each State is required to have procedures which ensure that a

continuum of alternative placements is available to meet the needs of the children with disabilities for special education and related services; which must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 C.F.R. Section 300.115; 23 Ill. Admininstative Code 226.300.

- In determining whether placement is proper under IDEA and the School Code, the Hearing Officer does not need to defer to the school district witnesses. Illinois Impartial Due Process Hearing Officers are presumed to be experts on special education and special education law, see 105 ILCS 5/14-8.02c); *Board of Education of Murphysboro Community Unit School District No. 186 v. Illinois State Board of Education*, 41 F.3d 1162, 1167 (7th Cir. 1994)(hearing officer characterized as expert witness in determining whether placement is proper).
- A hearing officer can override a school district's proposed placement after hearing pertinent medical testimony, even though a medical expert witness cannot prescribe educational placements. Specifically, a hearing officer can use his/her special expertise regarding special education and special education law to draw inferences as to the appropriate placement under the law-after taking into account the physical and psychological manifestations and symptoms of any given disability as testified to by a medical expert. *Murphysboro.* See also *Marshall Joint School District No. 2. v. CD. ex rei Brian D.*, 616 F.3d 632, 640 (7th Cir. 2010) (a medical expert's diagnosis is important evidence and should be considered by the IEP Team and, by extension, hearing officers, in determining a student's special education placement).
- The Supreme Court has not construed the standard for the least restrictive environment requirement. The Seventh Circuit has not adopted a specific test for weighing educational benefit against the nonacademic benefits of a LRE. However, the Seventh Circuit has provided some insight by defining LRE as "If the student's education at the regular school was satisfactory, the school district would be in violation of the Act by removing the student. If not, if its recommended placement will mainstream the student to the maximum appropriate extent, no violation occurs." *Beth M.*
- The School District has cited the following case in support of its position that the June 5, 2014 IEP provides [redacted] with a FAPE in the LRE. The Northern District of Illinois subsequently applied the *Beth M.* test in *Board of Educ. Of Tp. High School Dist. No. 211 v. Michael R.*, 2005 WL 2008919 to conclude that it was appropriate for a school district to place a child in a sophisticated behavioral high school with reverse mainstreaming opportunities that allows for integration in to the regular education environment instead of the parent's requested general education classroom with supports and services. The Court agreed with the hearing officer's finding that it was the student's "behavior, not her cognitive or motor abilities that required a change in her placement." Moreover, the court noted that the student gained minimal benefit from her placement in a regular education setting because of the amount of time she spent receiving supports and services to address her significant behaviors. The court concluded that, in light of the fact that her behaviors prevented her from gaining meaningful educational benefit from the regular education classroom and that even with significant supports, regular education for the student was "unsatisfactory" under the *Beth M.* standard.

- Parents presented concerns regarding the physical location of the STEP program and the (in)accessability to a general education setting. In general, a school district has administrative discretion as to the location where children with disabilities will attend school. The physical location of services of special education is usually a matter of administrative discretion within the purview of the school district administration.
- IDEA does not define the term placement. Board of Education of *Community High School District No. 218, Cook County v. Illinois State Board of Education*, 103 F.3d 545, 548-549 (7th Cir. 1996). Different courts and OSEP have adopted different meanings for the term over time and in different contexts.
- OSEP has provided insight into whether placement contains within its definition the physical school in which the disabled student is educated. In 1990 and 1994, OSEP stated that placement had three components: (1) the education program in the student's IEP; (2) the option on the continuum of placements in which the student's IEP can be implemented; and (3) the physical school or facility selected to implement the student's IEP. *Letter to Fisher*, 21 IDELR 992. *Letter to Wessels*, 16 IDELR 735. Subsequently, OSEP suggested that placement in most circumstances refers only to the educational program which a disabled student receives. *71 Federal Register 46588, 46687* (8/14/2006).
- As a general rule, most courts have held that major changes in the educational program of a disabled student constitute changes of placement. Variations in the educational program students are offered do not generally constitute changes in placement. However, some courts have held that when aspects of the physical location interact detrimentally with a student's disability, physical location must be considered part of the placement.
- The Seventh Circuit has indicated that placement should generally be the educational program unless there is a concern in regard to either: (1) discipline or suspensions are involved; or (2) if the child is placed in an inappropriate school. *Board of Education of Community High School District No. 218, Cook County v. Illinois State Board of Education*, 103 F.3d 545 (7th Cir. 1996). OSEP has interpreted the location of services not to mean the physical location of services, but rather a more general statement of where a student will be placed (i.e. a resource room, a self-contained classroom). *Brad K.*
- Multiple courts have addressed whether there is a denial of FAPE when a physical location of services interacted with a student's disability in a way which causes the educational benefit of the IEP to be diminished or harm to the student. A student's disabilities may cause him/her to have difficulty with a physical environment and/or with transitioning with one physical environment to another. In such circumstances, then the educational program must contain accommodations and services to allow the child to receive FAPE to be reasonably designed to provide an educational benefit.

1. Preliminarily, the undersigned finds that the January 9, 2014 IEP provided [redacted]. with a FAPE in his LRE. Specifically, it is abundantly clear that the IEP team made every decision at the January 9, 2014 IEP meeting after collaborative consideration of the available information pertaining to [redacted] Based upon his evaluation, he was no longer was eligible for speech and

language services but he continued to remain eligible for special education and services as a student with a developmental disability and OHI. Data was reviewed pertaining to the FBA; the BIP was presented; placement was not decided; and ultimately goals were not addressed per the request of the Parents.

2. For purposes of this decision, the most important aspect of placement is whether the program as identified by the June 4, 2014 IEP provided with a free appropriate public education in the least restrictive environment. The undersigned hearing officer finds that the June 4, 2014 IEP which provided for the placement provides. with a free appropriate public education in the least restrictive environment; and the finding is based upon the following:

a.) Parents claim that 's placement in program for 2014/2014 would deny him a placement in the least restrictive environment where his goals can be met. That Parents claim that the appropriate placement fo is in the general education setting with supports; However, substantial testimony was presented by the School District regarding as it pertained to his educational and his social emotional needs, wellbeing and behavior.

b.) That 's learning has been impacted due to his social emotional needs, despite being placed in a regular education setting with supports; that the IEP team has attempted many changes in an effort to meet 's needs throughout his E.C. and Kindergarten years in an effort to provide him with learning success; however has not made the academic progress anticipated, particularly in Kindergarten. Specifically, has not gained the reading skills as anticipated according to his Kindergarten teacher wherein although s rote skills as measured by the AIMSweb were above average, 's comprehension as measured by DRA and Rigby showed he did not gain the comprehension expected. T In addition, 's behavior throughout the year, which included poor emotional regulation and coping skills, non-compliance, defiance and aggressive behaviors in the general education classroom and setting impacted his ability and time for learning. That the undersigned finds that Ms. Wingfield was an strong witness who provided a lot of substantive information pertaining to ; her involvement with him and what his day looked like in the general education setting with supports.

c.) Futher, , a professional who has extensive experience with special education, provided critical information pertaining to due to her extensive involvement regarding and her analysis of his behavior and needs; communications with Dr. participation in IEP meetings; behavioral altercations between . and her. A.Teichmiller also provided relevant testimony that had the most difficulty during the academic block of the "Daily 5."

d.) That was not meeting his behavioral and social emotional goals and objectives in his IEP and did not meet his goals relating to emotional, coping or social skills. T SD 380-386.

e.) That based upon the testimony of the members of the IEP team from the School District, it was obvious that each individual's recommendation for to be placed in the SELF program was throroughly considered and well thought, by highly qualified professionals who demonstrated that they actually cared about what was appropriate and best for That has had substantial support leading up to the recommendation for placement at which included the maximum amount of social work each week; 1:1 aide; training for 1:1 aide and other staff regarding 's behavioral interventions; positive reinforcement; changes to the Rainbow

behavioral system; opportunities to earn rewards; regularly scheduled and optional sensory breaks; alternative activities; "check-in" opportunities; alternative seating; support from a highly qualified and trained behavioral specialist for a substantial period of time; the same teacher for EC and Kindergarten. *T. , T. T. T. SD 333-386.*

f.) That Dr. testified on behalf of the Parents; that his testimony addressed the issue of .'s participation in a general education curriculum; that Dr. did not offer his opinion at the hearing regarding whether should or should not be placed within the SELF program. That Dr. , who appears to be highly qualified and knowledgable, seemed to have provided substantial support to the Parents and the School District on an ongoing basis; that Dr. testified regarding his diagnosis of and the medications that he was currently taking; titrating the medications; Dr. provided insight into his evaluation reports as well as the drafting and implementation of the Functional Behavioral Analysis, the Behavioral Intervention Plan and the methods upon which to analyze data; he addressed 's involvement. Dr. did not provide an opinion regarding whether J.O. should or should not be placed at and based upon the totality of the testimony; the undersigned cannot infer that Dr. would or would not be in support of in the setting. *T. P 1-10; P36, SD244, 247, 254, 256, 912a, 296, 300, 302, 272, 279, 331, 376-377, 989a and b.*

g.) The evidence presented before this hearing officer clearly demonstrated that the program is a highly structured and specialized program that has social emotional supports built into its structure; that the class size is small; that there are multiple supports within the classroom (which include a special education teacher, an assistant, a social worker and a psychologist); that the staff collaborate to address a student's behavioral and social emotional needs; that Board Certified Behavioral Analyst designed the program and was available to the program; that the teacher in J.O.'s classroom is studying to become a BCBA;

h.) That the focus of the program is to support students with social emotional learning challenges; that here was credible testimony from the supervisor of that the program would appropriately meet 's needs which was supported by the additional testimony of the School District staff who made up 's IEP team and who had familiarity with

i.) That testified regarding her role as the supervisor of the program and her qualifications, credentials, and experience. She described how the program has classrooms with two grade levels; a small amount of students; access to support from a psychologist, speech/language; occupational therapist; paraprofessionals; how the program is run; what a day looks like; what the physical building looks like and how students are transported to the general education building; the educational curriculum; general education opportunities. *T.*

j.) described the program as an appropriate program in the least restrictive environment in that it will meet 's needs by providing him with the structure and support and direct instruction he needs in order to address behavioral regulation, emotional and social skills deficits; That 's attendance in the program still provides him with access to the general education curriculum but he will also benefit by receipt of a specialized social emotional curriculum; That will have access to general education peers through multiple areas such as lunch, recess, art, music, gym, library, computers; That the program will be structured to provide him with additional participation to general education and general education peers as he is ready. *T.*

3. Another component is whether placement contains an element related to the physical location of services. The undersigned has considered Parents claim that due to distance of the physical structure of the [redacted] program in relation to the general education setting; that it is not an appropriate placement for [redacted] The undersigned finds that while it is not ideal for the building not to be attached; that that distance alone does not make the placement inappropriate for [redacted] Further, if that were true, then the program would not be an appropriate placement for any child much less [redacted]; further, there is no information pertaining to the physical structure other than the distance between the [redacted] program and the general education building that would otherwise allow this Hearing Officer to make a reasonable inference to that effect.

V. ORDER

a. Within 30 days, the School District shall pay the Parents for the out of pocket costs of the evaluations by Dr. [redacted] and Dr. [redacted], in the amount of pocket $600.00 and $173.90.

b. Within 15 days, the School District shall convene an IEP meeting for purposes of developing a transition plan regarding [redacted]'s attendance in the [redacted] program; as well as consideration by the parties regarding all other matters currently pertaining to [redacted]

VI. RIGHT TO REQUEST CLARIFICATION

Section 14-8.02a(h) of the School Code, allows the hearing officer to retain jurisdiction after the issuance of the decision for the sole purpose of considering a request for clarification. Either party may request clarification from the undersigned Hearing Officer within five (5) days of receipt of this decision. A request for clarification shall specify the portions of the decision for which clarification is sought and a copy of the request shall be mailed to the other parties and to the Illinois State Board of Education. After a decision is issued, the Hearing Officer may not make substantive changes to the decision. The right to request such 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. The request shall operate to stay the implementation of those portions of the decision for which clarification is sought. I shall issue a clarification of the specific portion of the decision or issue a partial or full denial of the request in writing within ten (10) days of receipt of the request and mail copies to all parties to whom the decision was mailed.

VII. FINALITY OF DECISION

This decision shall be binding upon all parties.

VIII. RIGHT TO FILE CIVIL ACTION

Any party to this hearing aggrieved by the 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 this decision is mailed to the parties.

Date: September 22, 2014

Josette Allen

Impartial Hearing Officer
535 S. Washington, Suite 28
Naperville, IL 60540
Phone: (630)369-2524
Fax: (630) 689-5876
Email: josettelaw@att.net

CERTIFICATE OF SERVICE

Attorney for Parent

Attorney for School District

I, the undersigned Impartial Hearing Officer, certify under penalties of perjury as provided by law, that on the 22nd *day of September, 2014*, the following were served upon the above named parties:

- *Decision and Order of the Due Process Hearing*

_X_ by depositing the same in the United States Mail, properly addressed and mailed via certified and regular mail, with first class postage prepaid at the addresses set forth above;
___ via facsimile at the facsimile addresses set forth above;
___ via email at the email addresses set forth above.

Josette Allen
Impartial Hearing Officer