

Case Number: 2014-0396

Hearing Officer: Michael Risen

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

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Impartial Due Process Hearing Decision Cover Page

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

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

Date and Timelines

Date of Written Request: 04/04/14
Date of Pre-hearing Conf: 7/28/14

Date of Hearing: 11/12, 11/13, 11/14/14 and 11/19/2014
Date of Decision: 12/18/14

Summary of Decision

Parent filed a DPCN on April 4, 2014 alleging the District denied the Student a FAPE by denying the Student the right to have a service dog thereby failing to accommodate the Student's needs; failing to conduct a reevaluation for assistive technology; failing to provide the student with a personal aide during bus transportation and transition periods since the outset of the Student's service dog; and creating a hostile environment for the student such that the district can no longer provide the student with an appropriate placement within the district. The preponderance of the evidence supported the Parent's allegations for issue 1 and 4 and the IHO ruled for the Parent. The Parent failed to meet their burden on issues 2 and 3 and the IHO ruled in favor of the district. The IHO awarded the Parent tuition reimbursement for the remainder of 2013-14 school year and all of 2014-15 school year. The IHO awarded the Parent reimbursement for travel costs between home and the unilateral placement for the same time periods. The IHO also ordered the district to convene an IEP team meeting no later than May 15, 2015 to develop an IEP to meet the student's other health impairment needs and ordered the IEP team to decide how to include the student's service dog in the IEP. The team must consider whether to include the service dog as either an appropriate accommodation or a related service or such other appropriate inclusion into the IEP, provided the IEP team can provide both an educational and legal rationale for the IEP team's decision.

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)
) **ISBE CASE NO. 2014-0396**
)
) **Michael Risen**
) Impartial Due Process
) Hearing Officer

FINAL DETERMINATION AND ORDER

BACKGROUND

The hearing involved a nine year one month old female student. The Student's most recent IEP identified the Student's disabilities as: Other Health Impairment (OHI). In a letter dated April 4, 2014, the representatives for the Parents (Parent) filed the due process complaint notice (DPCN) for the Student. The ISBE appointed this impartial hearing officer (IHO) on April 21, 2014. The appointed IHO has jurisdiction to hear and decide this matter under 105 ILCS 5/14-8.02a et seq., 23 Illinois Administrative Code §226,600 et seq., and the Individuals with Disabilities Education Act 20 USC 1400 (IDEA), and 34 CFR §300.507 et seq.

On May 23, 2014, the District filed the required response to the Parent's DPCN.¹

On June 25, 2014, the Parent filed an amended complaint² more specifically detailing the Parent's allegations and proposed remedies.

On July 25, 2014, the parties completed mediation and failed to resolve any issues.³

On July 28, 2014, the IHO and the parties completed the recorded Pre-Hearing Conference (PHC) and a summary was provided to both parties.⁴

¹ See IHO exhibit 14.

² See IHO exhibit 26.

³ See IHO exhibit 33.

⁴ See IHO exhibit 34.

The IHO conducted the hearing on November 12, 13, 14, and 19, 2014. The Parent requested a closed hearing. [REDACTED], represented the District (District) and [REDACTED] represented the Parents (Parent).

The following witnesses testified: [REDACTED] Pediatric Nurse Practitioner (PNP)⁵, [REDACTED] Service Dog Facilitator (SDF), the [REDACTED] the Student's Mother, [REDACTED] District 2nd grade special educator (Sped 2), [REDACTED] District regular education 3rd grade teacher (D3), [REDACTED] District regular education 2nd grade teacher (D2), [REDACTED], Mother's Best Friend (BF), [REDACTED], Cooperative and District School Psychologist (Psych), [REDACTED], substitute janitor (Janitor), [REDACTED] School and Student's regular education 2nd grade teacher (JC2), [REDACTED], [REDACTED] School and Student's current regular education 3rd grade teacher (JC3), [REDACTED] District paraprofessional during Student's 2nd grade year (Para 2), [REDACTED] District's Special Education Coordinator, (Coordinator), [REDACTED] District substitute paraprofessional (Sub Para), [REDACTED] former District elementary music (FEM), [REDACTED] Principal (Principal), [REDACTED] District regular education 4th grade teacher (D4-1), [REDACTED] District regular education 4th grade teacher (D4-2), [REDACTED], 4th grade student at Student's school and safety patrol student (SPT), [REDACTED] Superintendent (Supt), [REDACTED] Cooperative and District School Psychologist (Psych 2), [REDACTED] District's Union President (Pres), and [REDACTED] District music teacher (HP), The IHO had a copy of the transcript when writing the decision.

⁵ Witness [REDACTED] testified remotely by telephone. The Parent's attorney and the IHO provided the witness with instructions and directed the witness to affirm under oath the documents the witness had available during the testimony and to affirm the witness was alone during the testimony. (See transcript T1 pp. 37-42).

The Parent submitted one bound set of documents tabbed as Exhibits 1-26. The District submitted two sets of bound documents. The first set of documents was tabbed 1-142 and numbered "SD0001- SD000475." The second set of documents was a copy of the Student's medical records numbered "SD 000476-SD000781." The IHO only considered those documents either referenced or testified to by the witnesses who testified at the hearing. No witness testified regarding any of the District's submitted medical records of the Student. Thus, the IHO did not review any of those documents. The IHO submitted exhibits 1-110 and numbered "KM HO 1 thru KM HO 661."

ISSUES

During the recorded PHC, the IHO and the parties discussed and clarified the following issues and proposed remedies: Did the District deny the Student a free appropriate public education (FAPE) by:

1. Denying the Student the right to have a service dog thereby failing to accommodate the Student's needs;
2. Failing to conduct a reevaluation for assistive technology;
3. Failing to provide the Student with a personal aide during bus transportation and transition periods since the outset of the Student's service dog; and
4. Creating a hostile environment for the Student such that the District can no longer provide the Student with an appropriate placement within the District.

PROPOSED REMEDIES

1. Reimburse the Parents for all costs associated with the unilateral enrollment of the Student at ██████████ School during the remainder of the 2013-14 school year, including tuition, fees, mileage, uniform costs and book fees.
2. Order the District's IEP team to identify the Student's least restrictive environment as ██████████ School for the 2014-15 school year and to pay the costs associated including tuition, fees, mileage, uniform costs and book fees.
3. Order the District to provide the Student with counseling to specifically address any anxiety created by the District's denial of a FAPE.

FINDINGS OF FACT

After considering the presented testimony and reviewed documents presented as the evidence at hearing, as well as the arguments of both parties, the IHO made these Findings of Fact:

- 1) On December 13, 2007, the Parent documented the Student's seizure activity with the Student's physician's assistant (PA).⁶ Subsequent testimony regarding the seizure activity documentation with the Student's PA included December 11, 2008 and March 1, 2011.⁷
- 2) On March 13, 2013, the District developed the initial IEP for the Student when the Student was in first grade. The District identified the Student's eligibility as Other Health Impaired (OHI) due to seizure activity.⁸ The Student's first grade teacher made the referral as a result of the teacher's concern about the amount of reteaching the Student needed on a daily basis. The IEP team's concerns related to the Student's epilepsy and whether the condition had an impact on the Student's working memory.⁹ Special education services included 30 minutes daily of pull out instruction and language arts and 15 minutes per day of pull out instruction in mathematics.¹⁰
- 3) On March 31, 2013, the Disability Assistance Dogs (DAD) secured the Student's service dog named [REDACTED] ([REDACTED]) for initial training.¹¹ Service dog training as an industry does not have any nationally sanctioned standards or protocols for trainers to follow or meet.¹² The dog passed the temperament test for service dogs while at the shelter.¹³ The DAD used a reward system to train [REDACTED].¹⁴ Further, the DAD

⁶ See P26 p. 48 and T1 p. 89.

⁷ See P26 p. 42 and T1 p.88 and P2 p. 30 and T1 p87 respectively.

⁸ P 1 and T2 p. 341.

⁹ See T3 p. 828.

¹⁰ See D2 p.12.

¹¹ See P 9 all pages for a detailed description of the training of [REDACTED] by the witness.

¹² See T1 pp. 118-119.

¹³ See T1 p. 135 and P9-1.

provided [REDACTED] with over 450 hours of training over a 10 month period of time beginning on this date.¹⁵

- 4) On November 15, 2013, as a result of a referral from the Student's pediatrician, the Student was again seen by the PNP.¹⁶ The visit documented that a hospitalization of the Student at the age of 20 months resulted in a diagnosis of "status epilepticus in the context of a febrile illness."¹⁷ Thus, the Student experienced seizure activity as an infant that was not readily stopped when the Student also experienced a fever.¹⁸ The diagnosis resulted in identification of the Student as a child with epilepsy.¹⁹ The Student's treatment plan at this time resulted from a stable condition with regards to her epilepsy and the PNP recommended that the current treatment plan continue.²⁰
- 5) In December, 2013, the District learned the Student had a service dog in training and the Student would have the service dog at school in the near future.²¹
- 6) On January 13, 2014, [REDACTED] passed a required public access test and DAD certified [REDACTED] as a Seizure Response Dog.²² On or about the same day, the Parent's uncontroverted testimony indicated the Parent requested an IEP team meeting to revise the Student's IEP to reflect the Student's service dog in the IEP. The Parent's uncontroverted testimony established that the District indicated the request was unnecessary as the Student's IEP re-evaluation was due in March of 2013.²³ Also on this day, a representative from DAD presented an all school assembly to all students and staff about [REDACTED] coming to school and how to interact with [REDACTED] when he was

¹⁴ See T1 p. 143.

¹⁵ See T1 p. 145.

¹⁶ See T1 p. 53 and P26-16.

¹⁷ See T1 p. 54.

¹⁸ *Id.*

¹⁹ See T1 p. 56.

²⁰ See T1 p. 60-61.

²¹ See T3 p. 1000.

²² See P 3-1

²³ See T1 p. 227.

working with the Student.²⁴ The Mother and other staff members observed HP texting during the assembly.²⁵ The Principal testified that HP informed the Principal that HP called the Department of Justice to inform them of the violations that HP believed occurred with [REDACTED] during the assembly.²⁶

- 7) On January 14, 2014, the Mother accompanied the Student and [REDACTED] to all of the Student's classes for one-half of the school day. The Mother sat in the back of the Student's classrooms. No incidents occurred with the Student and [REDACTED] while [REDACTED] attended the first day.²⁷
- 8) On January 15, 2014, the Mother accompanied the Student and Jasper to the other half of the Student's classes, including art taught by HP. No incidents with the Student and [REDACTED] were observed.²⁸ The Parent had also requested that the District provide an aide on the bus for the Student to assist with Jasper and escort the Student and [REDACTED] into school. The Parent's uncontroverted testimony established the Principal denied the request but indicated the Principal would meet the Student and [REDACTED] each morning and escort the Student and [REDACTED] into school.²⁹
- 9) On January 22, 2014, the Student and [REDACTED] along with the Student's Mother rode the bus to school and were met by the Principal and there were no incidents on the bus with the Student and [REDACTED]. The Student and [REDACTED] then attended a full day of school without the Mother present.³⁰ During the final period of the day the Student and [REDACTED] went to art class. The art teacher, HP, opened the door to the art classroom suddenly and the door hit the wall loudly and [REDACTED] barked causing HP's service dog

²⁴ See D p.000361 and T1 p. 211.

²⁵ Among others testimony, see T1 p. 212, T3 pp.759-760 and T4 p. 1474.

²⁶ See T3 p. 1077.

²⁷ See T1 pp. 213 - 214.

²⁸ *Id.*

²⁹ See T1 pp. 225-226.

³⁰ See T1 p. 215-216.

in the art class room to bark.³¹ The Student successfully redirected [REDACTED] and he sat as directed while the service dog in the room continued to bark. As a result of the continued barking from HP's service dog, Para 2 escorted the Student and [REDACTED] back to the 2nd grade classroom.³² HP commented within earshot of the Student, "That's no way a service dog is supposed to act."³³ When the Principal contacted the Parent, the Parent indicated surprise that HP had a service dog in the room. The Parent's uncontroverted testimony reflected the Principal had assured the Parent that the Principal would instruct HP not to have the service dog present during the Student and [REDACTED]'s first days at school.³⁴ The Parent's uncontroverted testimony reflected that the Student was upset that HP did not want her and her service dog in art class as a result of the incident.³⁵ Later this same day, [REDACTED] alerted the Parents while at home that the Student was experiencing a seizure in her bedroom. The Parent's uncontroverted testimony established the Parent believed the stress of the day at school caused the Student to experience the seizure. As a result, and to eliminate the stress for the Student, the Parent made the decision to inform the Principal that the Student should no longer attend art class once each week with HP.³⁶

10) On January 23, 2014, the Principal received an email from the Parent detailing the Parent's decision to withhold the Student and Jasper from HP's art class.³⁷ The Principal testified the Parent informed the Principal of the Parent's belief that HP was trying to "ruin" [REDACTED] because she disliked DAD and believed that DAD performed poorly when providing trained service dogs. The Principal confirmed that HP had

³¹ See T2 p. 497 and T3 768 and P20.

³² See T1 pp.218-220 and T3 p. 770 and D 123.

³³ See T3 p. 770.

³⁴ See T1 pp. 220-221.

³⁵ See T1 p. 222.

³⁶ See T1 pp.224-225.

³⁷ See T1 p. 225 and D 123.

expressed her dislike of DAD and that HP believed that HP's service dog organization did a much better job of training service dogs than DAD.³⁸

11) On January 24, 2014, HP sent an email to the Principal informing the Principal of the laws that HP believed the Student and [REDACTED] violated.³⁹

12) On January 30, 2014, the Principal received an email from the Parent that indicated the Parent's discomfort with meeting with HP.⁴⁰

13) On January 31, 2014, the Principal received an email from the Parent reflecting that [REDACTED] alerted the Parents the night before of seizure activity with the Student.⁴¹

14) The week of February 3 through February 7, 2014, the Principal received information from the bus driver that the Student and [REDACTED] performed very well on the bus.⁴²

15) On February 10, 2014, the Student arrived at school and the District failed to have anyone meet her and [REDACTED] when she arrived at school on the bus.⁴³ When the Student and [REDACTED] entered the school they encountered HP in the hallway. [REDACTED] barked and lunged at HP's wheelchair pulling the Student on [REDACTED]'s harness. The Student successfully corrected [REDACTED] and took him into the office and sought assistance from the Principal. The Principal then escorted the Student and [REDACTED] to class and again encountered HP in the hall. The dog barked or growled at HP and the Principal took [REDACTED] and the Student into the computer lab and waited for HP to pass.⁴⁴ After the incident, HP informed the Principal that the dog's behavior was threatening and she was fearful of her safety. HP also informed the Principal that the District violated Illinois laws and the Americans with Disabilities Act by allowing an

³⁸ See D 123.

³⁹ See D 000396 and T3 pp.1009-1010.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ See T1 p 228 and D 109 p. 362.

⁴⁴ See *Supra* Note 41.

“aggressive service dog” in the school. HP requested a meeting with the Parent to discuss the situation.⁴⁵ As a result, the Principal contacted the Student’s second grade teacher and told her of the incident and informed the teacher her decision to ban [REDACTED] from school.⁴⁶ The Parent’s corroborated⁴⁷ testimony revealed the second grade teacher called her and informed her of the decision and that later the same day the Principal called the Parent and confirmed the information.⁴⁸ The Parent’s uncontroverted testimony also established that the Principal admitted the Principal was busy that morning and failed to meet the Student at the bus.⁴⁹ That evening, the Principal contacted the Parent and requested the Parent set up a meeting the next day with the interim superintendent. The Parent complied. The Parent’s corroborated testimony reflected that the Student and [REDACTED] were required to attend the meeting before the Student could attend school with [REDACTED].⁵⁰ The Student expressed to the Parent that she could not understand why the school did not like her dog.⁵¹

16) On February 11, 2013, the Parent, Student and [REDACTED] met with the interim superintendent and the Principal. HP did not attend the meeting. The interim superintendent walked [REDACTED] around the office and introduced [REDACTED] to the other employees. When he returned he commented he did not see anything wrong with [REDACTED] and that [REDACTED] and the Student could return to school. In response to the interim superintendent’s request as to what the District could do to make the situation work, the Parent again requested that a full-time aide be assigned to the Student and [REDACTED] during transition times and that HP be told to stay away from the Student and

⁴⁵ See D 109.

⁴⁶ See T2 p.527.

⁴⁷ See T2 pp. 569-570.

⁴⁸ See T1 p229.

⁴⁹ *Id.*

⁵⁰ See T1 p. 230 and T3 p. 1041 and D 123.

⁵¹ See T1 p. 231.

██████ to avoid any more confrontations.⁵² The Parent again asked that the IEP be revised to address the addition of the service dog with the Student. The Parent's uncontroverted testimony reflected the interim superintendent agreed to the Parent's request and authorized a full-time aide for the Student and that he directed the Principal to inform HP of the District's plans going forward.⁵³ Later that day, the Principal called the Parent and informed the Parent of the Principal's decision to bar the Student and ██████ from attending school the next day. The Principal explained that HP indicated she would call the police if the Student and ██████ attended school again and the Principal wanted to avoid that confrontation. Additionally, the Principal indicated to the Student's 2nd grade teacher that the Principal's reason for banning ██████ was "I cannot have an employee of mine feeling unsafe."⁵⁴

17) On February 12, 2014, the Parent sent the Student and ██████ to school despite the Principal's instructions. The Principal and Para 2 met the Student at the bus and took the Student and ██████ to a far end entrance of the school to avoid any confrontations with HP. Upon entering, the Principal saw HP at the far end of the building near the front entrance. As a result, the Principal concluded that HP intended to cause a confrontation between ██████ and HP and the Principal intended to avoid any confrontations.⁵⁵ The Principal and HP made eye contact and HP proceeded "quickly"⁵⁶ down the hallway towards the Principal, Para 2, the Student and ██████. The principal believed that HP intended to cause a confrontation and thus the Principal took ██████'s harness and escorted ██████ and the Student into the computer lab until HP passed by the room. The Principal then escorted the Student and ██████ to the Student's second grade classroom and HP followed them to the room and

⁵² See T1 p. 232-234.

⁵³ See T1 pp. 233-234 and T3 p. 1021 and D 123.

⁵⁴ See T1 p. 234-235 and T3 p. 1103.

⁵⁵ See T3 p. 1109-1111 and T2 p. 527.

⁵⁶ See D 123 and T3 p. 1109.

attempted to cause a confrontation with the Principal by stating that HP would report the incident to the interim superintendent because the Principal was “running away from me” (HP)⁵⁷ The Principal concluded that HP had made up HP’s mind from the day of the first all school assembly with DAD personnel that [REDACTED] (having been trained by DAD) failed to meet service dog standards.⁵⁸ The Principal did not discipline HP at any time during the course of the incidents between HP, the Student, [REDACTED], the interim superintendent and the Principal.⁵⁹ HP and the President also met with the interim superintendent on this day. At the meeting, HP provided a written statement of events that HP drafted. HP also expressed to the interim superintendent HP’s concern with the interim superintendent’s decision to assign an aide to the Student that had not been trained to handle a service dog.⁶⁰ Finally, on this same day, the Principal had discussions with the Coordinator about developing an IEP for the Student in light of the Student’s service dog. Testimony also reflected that the Principal did not have the knowledge to know how to set up the IEP or how the IEP should address the presence of the service dog for the Student. The Principal also acknowledged that the Coordinator expressed a lack of certainty on how to proceed and that the Coordinator either sought or intended to seek guidance from the special education cooperative known as [REDACTED] ([REDACTED]).⁶¹

18) On February 13, 2014, the Principal secured from the interim superintendent a written statement of events⁶² prepared by HP and the [REDACTED] CUSD union President. The

⁵⁷ *Id.*, and T3 pp. 1112-1114.

⁵⁸ See T3 p. 1116-1118.

⁵⁹ See T3 pp. 1114-1115.

⁶⁰ See T4 p. 1501-1503.

⁶¹ See T3 pp. 1036-1038, 881-882 and T2 pp. 368-369.

⁶² See D60, pp. 000243-000245. (The IHO notes he found the testimony of HP less than credible. The prepared statement of events found at D60 states clearly that HP requested that [REDACTED] be removed from school when she wrote: “I requested that she make the decision to remove the dog based on the Il and National laws.” Yet, when under oath, HP responded three separate times to questions

interim superintendent directed the Principal to visit with the teacher witnesses identified in HP's prepared statement which the Principal completed that day.⁶³ The Principal accepted statements prepared by witnesses and returned the HP statement and those of the witnesses completed in her presence to the interim superintendent. The Principal did not keep copies and did not see the documents again.⁶⁴ Further, the Principal informed the Parent during Parent/Teacher conferences and in the presence of others that the Student and ██████ could not return to school until the Parents attended a second meeting at the unit office with the interim superintendent.⁶⁵ The Principal informed the Parent of this information in the presence of the Student and ██████. The Principal testified that the Parent and the Principal cried in the presence of the Student and the Principal acknowledged the situation upset the Student.⁶⁶ The Parent's uncontroverted testimony indicated that the Principal also suggested the Parent could consider homeschooling the Student.⁶⁷ The Principal acknowledged that the Parents had already met with the interim superintendent and understood the interim superintendent had approved ██████'s attendance with the Student along with the provision of a full time teacher aide for the Student and that the interim superintendent directed the Principal to meet with HP and direct her to avoid any more interactions with the Student and ██████. The Principal acknowledged that the

that probed if she ever asked to have the dog removed and she responded "No" to each question (T4 p. 1505-1506). Further, the record of HP's actions recorded both in the referenced prepared statement of events (D60), numerous emails, and testimony regarding HP's actions during the course of the problems experienced by the Student and ██████ all support that HP believed that ██████ failed to be properly trained. As a result, HP's behaviors were more consistent with a persistent effort to prove her belief of ██████'s perceived lack of training by sending emails and documents to her superiors that demonstrated what HP believed to be the law governing service animals (See D60, D64, D65). Additionally, HP identified in her document at D60 that several teachers witnessed her allegations. When the interim superintendent directed the Principal to confirm what those identified teachers witnessed, the Principal testified that several teachers put in writing to the interim superintendent they did not witness anything (e.g., See T3 1142-1144 and T4 p 1217). Finally, HP claimed she was afraid of ██████ even though she prided herself as a dog trainer, including training German Shepherds in Schutzhund, the German guard dog training (See T3 p. 927). These inconsistencies with HP's documented behaviors and documented statements pose serious questions as to the reliability of any of HP's testimony. As a result, when HP testified that HP only wanted to meet with the Parents and work to resolve the issues, or testified that HP was willing to use her own training and knowledge of service dogs to help ██████ the IHO found this testimony not credible).

⁶³ See T3 p. 1122.

⁶⁴ See T3 p. 1128.

⁶⁵ See T3 p. 1128 and T1 p.241-243.

⁶⁶ See T3 p. 1135-1136.

⁶⁷ See T1 p. 243.

Principal had failed to implement any plan to enable the Student to have Jasper present at the school to assist with the Student's seizure needs.⁶⁸ The Principal also testified she conferred with the interim superintendent on a daily basis and hoped the interim superintendent would provide her with guidance on how the District wanted the Principal to handle the issue.⁶⁹ The Coordinator notified Sped2 and other District administrators that the District did not need to incorporate [REDACTED] into the Student's IEP until the Student's annual review IEP due in March of 2014.⁷⁰ The Parent's uncontroverted testimony indicated the Student suffered three seizures during this week of turmoil at school.⁷¹ As a result, the Parents became concerned about the Student's health and safety at school and made the determination to withdraw the Student and enroll the Student at [REDACTED] School.⁷²

19) On February 14, 2014, the Principal resigned her position as Principal of [REDACTED] [REDACTED] School because the Principal believed she had failed the Student. The Principal stated: "It's my job as the Principal to make things work, solve problems, keep my children safe. I felt very badly that obviously we hadn't made it work. I hadn't made it work"⁷³ Further, the Principal testified that the environment at the Student's school had become toxic with two camps at the school, one supporting HP

⁶⁸ See T3 p. 1129. (The IHO also notes that the IHO found the Principal's testimony to be credible but resistant. On several occasions the Principal's response to Parent questioning was unresponsive when the Parent's attorney asked the Principal to respond with professional based opinions regarding the personnel she supervised and/or two of the issues under examination at the hearing. As a result of the unresponsive testimony, the IHO deemed it necessary to probe the Principal further and require the Principal to respond to reasoned questions that generally required professionally reasoned opinions based upon the Principal's training and experiences. The District objected to the IHO's questioning of the witness on the basis that the form of the question represented bias against the District and in favor of the Parent. The IHO informed the District that the statutes are clear that IHOs have the authority to question witnesses. Secondly, the IHO informed the parties on the record that the Principal's responses had been unresponsive and the questions that were unresponsive related directly to two of the issues that the IHO had to decide. Further, the questioning by the IHO was only intended to elicit responsive answers from the witness regarding the two identified issues.)

⁶⁹ See T3 p. 1148.

⁷⁰ See D 62 and T3 pp. 858-860.

⁷¹ See T1 p. 259.

⁷² See T1 p. 259. (The IHO notes that the testimony of the Parent on T252 through T259 and referenced documents in that testimony established that the Student experienced success at [REDACTED] for the remainder of the year and during the beginning of this current school year, the Student's third grade year. Further, testimony from JC2 and JC3 confirmed the same. The IHO found the testimony of JC2 and JC3 credible and believable.)

⁷³ See T3 p. 1044-1045.

and one supporting the Student and [REDACTED].⁷⁴ Additionally, the interim superintendent received an email from the Parent indicating the Parents believed the District had denied the Student a FAPE and the Parents had decided to withdraw the Student and enroll the Student at [REDACTED].⁷⁵

20) On April 7, 2014, the District hired a new permanent superintendent (Supt). The Supt testified that the District did not have any policies regarding service dogs when the Supt began the new position at [REDACTED]. Further, the Supt acknowledged the District had not, up to the day of testimony, considered or adopted a board policy on service dogs.⁷⁶ Further, the Supt did not see any need to either add a policy or modify any policy relative to service dogs.⁷⁷

21) On May 22, 2014, the PNP again saw the Student for a follow-up examination.⁷⁸ The PNP's exam of the Student concluded the Student continued to remain stable since her last medical visit in May of 2013.⁷⁹

22) On or about May 31, 2014, HP conducted a staff meeting to share her version and feelings regarding the incidents with the Student and [REDACTED]. HP also informed the staff that she had resigned her position as a teacher in the [REDACTED] District effective the end of the year.⁸⁰

⁷⁴ See T3 p. 1099, for corroboration, see T2 p. 359, 464, T3 p. 1100 and T2 p. 516.

⁷⁵ *Id.* and See D 67. The IHO also finds that the Parents uncontroverted testimony and the corroboration of the Principal that the Parent sent an email notifying the District of the Parent's intent to place the Student unilaterally per D67 and T3 p. 1044. The District did not respond to the Parent's email. The IHO also finds that the uncontroverted testimony of the Student's 2nd grade teacher at [REDACTED] on T2 pp. 677-692 established that the Student not only progressed while at [REDACTED] in all areas and [REDACTED] had zero issues in any of the Student's classes including art and music. Further, the IHO finds that the uncontroverted testimony of the Student's 3rd grade teacher found on T2 pp. 722-734 demonstrates the Student continues to thrive at [REDACTED].

⁷⁶ See T4 p. 1332.

⁷⁷ See T4 p. 1343.

⁷⁸ See T1 p.70 and P26-10.

⁷⁹ See P26-10&11 and T1 p.62.

⁸⁰ See T2 pp. 513-516.

CONCLUSIONS OF LAW

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

24) Issue (i.) "Did the District deny the Student a free appropriate public education (FAPE) by: Denying the Student the right to have a service dog thereby failing to accommodate the Student's needs?"

A. The Parent alleges that the District, on more than one occasion, told the Student that she could not attend school with [REDACTED] without any factual basis under permissible statutes to make such a determination. By doing so, the Parent alleges the District "repeatedly put [the Student], an eight year old child with health impairments, in a position to have to defend her service animal."⁸¹ The Parent alleges the District took these actions due to the complaints of "one disgruntled staff member, who, for some reason, chose to focus on this child and her service animal."⁸² The Parent also alleges the District violated the Illinois School Code, the Illinois Criminal Code and the Code of Federal Regulations. As a result, the Parent alleges that the "District prevented [the Student] from exercising the rights afforded to her by State and federal law and denied her a FAPE."⁸³

B. The District argues, in a lengthy brief, that "At all times, [REDACTED] abided by the procedural and substantive requirements of the IDEA without limitation..."⁸⁴ The District also argues that at no time did anyone from the District tell the Parents

⁸¹ See Parent's closing brief p. 6.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ See District closing brief p. 35.

that ██████ would not be allowed at ██████. The District alleges the Parent “refused meetings with ██████ that could have led to resolution.”⁸⁵ The District also argues that the Parent “acted unreasonably.”⁸⁶ Conversely, the District argues: “Instead, ██████ was at all times attempting to accommodate the Student’s needs with respect ██████ (sic) to ensure the Student and ██████ could attend ██████ and be successful.”

C. The legal questions the IHO must address in this first issue include:

- a. whether the District failed to abide by the procedures of the IDEA to accommodate the Student’s needs by failing to convene an IEP team meeting as required and thereby failed to provide appropriate modifications, accommodations, or related services for the Student by failing to include in the IEP the Student’s right to have her service dog present at school,
- b. and failed to abide by the Code of Federal Regulations and Illinois Statutes pertaining to policies regarding service animals.

D. The Parent presented uncontroverted evidence that the Student has a seizure disability.⁸⁷ The parties agreed that the District identified the Student as a student with a disability under the IDEA [other health impairment] and developed an IEP for the Student prior to the arrival of ██████⁸⁸ Thus, there is no argument as to the Student’s eligibility under the IDEA. The purpose of the IDEA is to provide a “cooperative process” between parents and schools, and a central component of this collaboration is the IEP process. A student’s IEP constitutes the written document memorializing the collaborative effort between parents and district

⁸⁵ *Id.*

⁸⁶ See District closing brief p. 36.

⁸⁷ See *Supra* Note 6.

⁸⁸ See *Supra* Note 8.

personnel to develop an educational plan for a student with a disability. The IEP describes the child's individual needs and proscribes the proper placement and services designed to meet those unique needs.⁸⁹ The IEP is the cornerstone of the IDEA that sets forth the FAPE that is offered to a child with a disability eligible to receive special education and related services under the IDEA.⁹⁰ The failure of an IEP to address a child's educational needs will likely result in a denial of FAPE.⁹¹ As described by the U.S. Supreme Court, the IEP is a comprehensive statement of the educational needs of a child with a disability and the specially designed instruction and related services a district will employ to meet those needs.⁹² As part of providing a student with a FAPE, the IDEA defines when a school must provide a student with appropriate accommodations and modifications in the IEP; Illinois statutes define a student's eligibility to have a service dog; and the Illinois Criminal Code defines what qualifies as a service animal:

- a. "Review and revision of IEPs —(1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team— (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and (ii) Revises the IEP, as appropriate, to address... (C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2); (D) The child's anticipated needs; or (E) Other matters."⁹³
- b. With regards to providing appropriate accommodations and modifications,

⁸⁹ See *Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005).

⁹⁰ See 34 CFR 300.17.

⁹¹ See *Forest Grove Sch. Dist. v. T. A.*, 52 IDELR 151 (U.S. 2009).

⁹² See *Burlington Sch. Comm. v. Massachusetts Dept. of Educ.*, 556 IDELR 389 (U.S. 1985).

⁹³ See 34 CFR §300.324 (b).

the IDEA requires: “(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child— (i) To advance appropriately toward attaining the annual goals; (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section.”⁹⁴

- c. Finally, the IDEA provides that districts provide students with "related services" which means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education.⁹⁵ The IDEA also defines each of the listed related services and describes what those services include. The list of related services spelled out in 34 CFR §300.34 is illustrative and is not exhaustive. Related services may include other developmental, corrective, or supportive services if they are required to assist a child with a disability to benefit from special education.⁹⁶
- d. Illinois statutes require that: “Service animals such as guide dogs, signal dogs or any other animal individually trained to perform tasks for the benefit of a student with a disability shall be permitted to accompany that

⁹⁴ See 34 CFR §300.320.

⁹⁵ See 34 CFR §300.34.

⁹⁶ See 34 CFR §300.305 (a)(i-iii).

student at all school functions, whether in or outside the classroom. For the purposes of this Section, "service animal" has the same meaning as in Section 48-8 of the Criminal Code of 2012."⁹⁷ The Illinois Criminal Code defines service animal as: "a dog or miniature horse trained or being trained as a hearing animal, a guide animal, assistance animal, a seizure alert animal..."⁹⁸ Additionally, the Code of Federal Regulations requires that: "a public entity shall modify its policies, practices, or procedures to permit the uses of a service animal by an individual with a disability."⁹⁹

E) The Court in *Rowley*,¹⁰⁰ established a two prong test for the provision of a FAPE for a student. The first prong stipulates that schools and districts must first follow the rules of the IDEA. If the finding includes such a determination, then the school or district must provide a program and specialized services that is reasonably calculated to enable the student to receive educational benefit. Further, the 7th Circuit has ruled that any finding of procedural error can only constitute a denial of FAPE if the error(s): 1) impeded the child's right to a FAPE; 2) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of FAPE to the parents' child, or 3) caused a deprivation of educational benefits."¹⁰¹ Finally, the 7th Circuit decided a similar case and ruled: "A single provision in the Illinois School Code undermined a district's efforts to keep a 6-year-old boy with autism from bringing his dog to school.

Determining that the dog qualified as a 'service animal' despite its alleged failure to respond to commands or provide the child with necessary assistance, the Illinois Appellate Court held that the child could bring the dog to all school functions. The court

⁹⁷ ILCS 105/14-6.02.

⁹⁸ See ILCS 720 5/48-8.

⁹⁹ See 28 CFR §35.136.

¹⁰⁰ See *Board of Educ. Of the Hendrick Hudson Cent. Sch. Dist. V. Rowley*, 553 IDELR (U.S. 1982).

¹⁰¹ See *Board of Educ. Of Township High School District No. 211 v. Ross*, 486 F. 3d 267, 276 (7th Cir. 2007).

indicated that the decision turned on the plain language of Section 14-6.02 of the school code. That provision states that a district must permit service animals such as guide dogs, signal dogs, or any other animal trained to perform tasks for the benefit of a student with a disability to accompany the student at all school functions, whether inside or outside of the classroom. “Despite the inevitable impact a service animal's presence at school will have on a student's individualized education plan, the School Code requires school districts to admit the service animal with the student so long as the animal meets the definition set forth in Section 14-6.02,” Justice James A. Knecht wrote as follows in the decision: “The court observed that the dog performed specific tasks to benefit the child. In addition to applying deep pressure to calm the child, the dog prevented the child from eloping when the two were tethered. The court rejected the district's argument that the dog's failure to obey all commands raised questions about its status as a service animal. Section 14-6.02 does not specify service animals must behave perfectly at all times.” Nor did the dog lose its status as a service animal because it was commanded by a one-to-one aide rather than the child. Because the dog met the definition of a service animal under state law, the court held that the district could not exclude the dog from the child's classroom. The court affirmed a decision reported at 53 IDELR 300 that allowed the child to bring the dog to school.¹⁰² The 7th Circuit also ruled that determining whether decisions made by administrators who review placement and service decisions are in compliance with statutory and case law requirements, the IHO must consider “whether the school administrators were unreasonable.”¹⁰³

F) The District acknowledged that the Parent informed the District in December 2013 that [REDACTED] would be coming to school sometime during the beginning of the second

¹⁰² See *K.D., by and through his Parents v. Villa Grove CUSD #30*, 403 Ill. App. 3d 1062 936 N.E.2d 690 (7th Cir. 2010).

¹⁰³ See *School Dist. Of Wisconsin Dells v. Z.S. ex. rel. Littegeorge*, 295 F.3d 671,676 (7th Cir. 2002).

semester in 2014.¹⁰⁴ Then, the Parent specifically requested that the District convene an IEP team meeting to revise the Student's IEP to reflect the Student's service dog in the IEP and the District responded that it was not necessary since the Student's reevaluation IEP would be due in March of 2014, almost two months away.¹⁰⁵ The IDEA requires that Districts convene an IEP meeting when requested by parents and/or when a parent provides new information. The Parent did both, provided new information in December 2013 and requested an IEP in January of 2014. Had the District met this obligation when the District was first informed of [REDACTED]'s pending arrival, much, if not all of the conflict that developed in January and February may have been avoided. While it is not possible to definitively conclude such, it is possible to conclude that the District's argument that it was appropriate to wait until the March 2014 reevaluation IEP meeting before addressing the Student's service dog failed to meet the requirements of the IDEA for IEP revision, allowing the parent meaningful input, and providing the student with appropriate accommodations and including appropriate related services. The law requires the District to convene the IEP prior to the arrival of Jasper and determine what, if any accommodations the IEP should include to successfully integrate [REDACTED] into the IEP and the Student's program. The District failed to meet this obligation and the District failed to determine whether [REDACTED] constituted an appropriate modification, accommodation, or related service for the Student. Whatever the IEP team determined, the IDEA requires that the District document same in the Student's IEP prior to [REDACTED]'s involvement with the Student at school. If the District had followed the IDEA's required procedures, one has to at least consider whether all of the conflicts that developed during January and February of 2014 could have been avoided. In fact, the District's administrators in charge of special education services for the Student (Principal and Coordinator)

¹⁰⁴ See *Supra* Note 21.

¹⁰⁵ See *Supra* Note 23.

acknowledged they did not know what was required when a student brings a service dog to school. Certainly conducting an IEP team meeting prior to [REDACTED]'s arrival would have caused the district's administrators to conduct the research necessary to be prepared to effectively implement statutory and case law requirements. The IHO concludes the District failed to meet the IEP revision requirements, accommodations and related services requirements of the IDEA. When considering the requirements of the Illinois Service Animals Act described earlier, the preponderance of the evidence supports that the District lacked knowledge of this law and this lack of knowledge resulted in the District's failure to comply with its requirements. The Supt acknowledged that the District never had a policy as required by ILCS 105/14-6.02 and ILCS 720 5/48-8 regarding both having a policy on service dogs, as well as, revising such policies when appropriate. Further, the Supt stated that the Supt saw no reason to develop and adopt a policy in compliance with the aforementioned statutes going forward despite all of the controversy the District experienced.¹⁰⁶ The IHO concludes this attitude demonstrates a continuation of unreasonableness and the indifference previously demonstrated by the administrators of the District. Therefore, continuing to deny the need to have policies either revised or created to comply as required under the statutes, denying the Parent's request to conduct an IEP team meeting, knowing that the district administrators were uninformed as to the legal requirements surrounding the Student's use of a service dog and failing to take any reasonable action to become appropriately informed, results in the IHO concluding the administration of [REDACTED] behaved indifferently, unreasonably, and failed to take actions consistent with the requirements of Illinois Statutes and the courts.¹⁰⁷ As noted earlier, the IEP process is the cornerstone of the IDEA designed to facilitate meaningful communication and cooperation between districts and parents. In doing so, school

¹⁰⁶ See *Supra* Notes 76 and 77.

¹⁰⁷ See *Supra* Notes 96, 97 and 102.

personnel through the IEP team can work with the parent to develop appropriate services, accommodations, or related services as required for the child based upon past or current information. The IHO concludes that the preponderance of the evidence supports that the District failed to use the new information of the impending arrival of the service dog to conduct a revision IEP team meeting and consider either if or how the service dog should be included in the Student's IEP. The IHO concludes that the preponderance of the evidence supports a decision that the District failed to comply with Illinois Statutes and case law when the administrators of the district demonstrated unreasonableness and an almost complete indifference when the administrators failed to follow any reasonable course of action on behalf of the Student or to secure legal information that could guide the District in the decision-making needed to effectively integrate [REDACTED] and the Student into the school setting. As a result, the IHO rules that the preponderance of the evidence supports a finding for the Parent and thus ruled for the Parent on Issue #1.

25) Issue (ii.). Failing to conduct a reevaluation for assistive technology.

A. The Parent alleged that the District failed to conduct an evaluation for assistive technology that would result in [REDACTED] being identified as the Student's assistive technology.¹⁰⁸ The Parent also alleges similar arguments related to the District's failure to conduct an IEP team meeting, failure to respond to the Parent's request for an IEP team meeting, and the District's refusal to conduct an IEP team meeting prior to the Student's required re-evaluation IEP team meeting.¹⁰⁹

B. The District argues that the Parent never specifically requested an assistive technology evaluation, and further, the need for an assistive technology evaluation never manifested itself as warranted.¹¹⁰

¹⁰⁸ See Parent's closing brief p. 13.

¹⁰⁹ *Id.*

¹¹⁰ See District's closing brief p. 44.

C. The IDEA defines "assistive technology device" as any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability." The term does not include a medical device that is surgically implanted or the replacement of such a device.¹¹¹ "Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device."¹¹² The IDEA requires each public agency to ensure that assistive technology devices and services are made available to each child with a disability if required as part of the child's special education, related services, or supplementary aids and services.¹¹³ As part of the program development process, the IEP team must "consider whether the child needs assistive technology devices and services."¹¹⁴ Districts are required to provide assistive technology devices or services to a student with a disability if the participants on the student's IEP team determine that the student needs such a device or service in order to receive FAPE.¹¹⁵ A device qualifies as AT only if it is necessary for the child to receive an educational benefit.¹¹⁶ The IDEA allows 60 days to complete an assessment unless the state has a different timeline, in which case the state rule controls.¹¹⁷

D. The preponderance of the evidence failed to demonstrate that the Parent requested an assistive technology evaluation, whether [REDACTED] as a service dog would meet

¹¹¹ See 34 CFR §300.5.

¹¹² See 34 CFR §300.6.

¹¹³ See 34 CFR §300.105(a).

¹¹⁴ See 34 CFR §300.324 (a)(2)(v).

¹¹⁵ See *Letter to Anonymous*, 24 IDELR 854 (OSEP 1996); *Letter to Fisher*, 23 IDELR 565 (OSEP 1995); *Letter to Naon*, 22 IDELR 888 (OSEP 1995); *Letter to Seiler*, 20 IDELR 1216 (OSEP 1993); *Letter to Anonymous*, 18 IDELR 627 (OSEP 1991).

¹¹⁶ *J.C. v. New Fairfield Bd. of Educ.*, 56 IDELR 207 (D. Conn. 2011).

¹¹⁷ See 34 CFR 300.301 (c)(1). See also *Providence (RI) Pub. Sch. Dist.*, 108 LRP 53219 (OCR 2008).

the definition of “technology device” or “technology service.”¹¹⁸ Further, the preponderance of the evidence failed to establish that assistive technology was required as part of the child's special education, related services, or supplementary aids and services. As the District correctly argued in the District's closing brief, even if the District had an obligation to complete an assistive technology evaluation, Illinois statutes provide districts 60 school days to complete such an evaluation.¹¹⁹ The Parent withdrew the Student prior to any expiration of the 60 school day requirement. For all these reasons, the IHO concludes that the preponderance of the evidence failed to support for a ruling in favor of the Parent and the IHO thus finds in favor of the District on Issue #2.

27) Issue (iii.) Failing to provide the Student with a personal aide during bus transportation and transition periods since the outset of the Student's service dog;

- A. The Parent acknowledges that the District provided the Student with a personal aide during transition periods, albeit some days after the Parent's initial request.¹²⁰ Further, the Parent alleged that the District did not include the Student's personal aide in the Student's IEP.¹²¹ For these reasons, the Parent alleges the District failed to follow the procedures as required under the IDEA.
- B. The District argues that the District never refused to provide a personal aide, but that the Principal simply stated that the Principal did not have the authority to make that decision.¹²² The District also argues that the Parent did not dispute that the District did eventually provide the Student with a personal aide during all transition periods. The District also argues that even if the Student required a personal aide on the bus, any failure to provide such does not constitute a denial

¹¹⁸ See *Supra* Notes 110 and 111.

¹¹⁹ See Ill. Admin. Code §226.110(d).

¹²⁰ See Parent's post hearing brief p. 14.

¹²¹ *Id.*

¹²² See District closing brief p. 47.

of FAPE.¹²³

C. The IDEA does not specifically define a personal assistant. IEP Teams are to develop IEPs for students that include “supplementary aids and services.” Supplementary aids and services are defined as “aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate...”¹²⁴ Thus the idea of “supplementary aids and services” is to enable the student to be successful in a less restrictive setting. Notice that the regulation refers to “aids” rather than “aides.” However, an “aide” can be an “aid.” Schools assign dedicated aides to support the education of students in numerous situations. As noted above, supplementary aids and services are required, “to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate...” Case law is perhaps the biggest factor in determining how, when, and where personal assistants function. The terms “aides,” “assistants,” and “monitors” are used interchangeably by the courts to refer to one-to-one personnel who assist students with disabilities in the context of transportation or the classroom. One state agency determined that if personalized services are warranted in the classroom, there is a compelling argument that they will also be needed on the school bus. The provision of an aide on the school bus may be necessary to enable the student to ride with nondisabled peers and thereby satisfy LRE. Aides have also been necessary for students who ride alone in the vehicle to and from school.¹²⁵

¹²³ *Id.*, p. 48.

¹²⁴ See 34 CFR §300.42.

¹²⁵ See *Dallas Independent School District 26 IDELR 34*, (SEA TX 1997).

D) As noted earlier, the District provided the Student with a personal aide after the Parent requested one 10 days after [REDACTED] began working as a service dog at the school.¹²⁶ Since the District failed to ever conduct an IEP meeting to consider the addition of [REDACTED] in the school setting, the District failed to include the personal assistant in the Student's IEP. While this may constitute a procedural error by the District, the IHO concludes that the District's failure to write the personal assistant into the Student's IEP did not violate the Student's right to a FAPE since the Student still benefitted from the services provided by the personal assistant. The preponderance of the evidence failed to support the Parent's allegation that the District was required to provide an aide for the Student on the bus, or that the 10 day delay in providing the personal assistant or failing to include said assistant in the Student's IEP constituted any denial of FAPE. As a result, the IHO rules in favor of the District on Issue #3.

27) Issue (iv.) - Creating a hostile environment for the Student such that the District can no longer provide the Student with an appropriate placement within the District.

A. The Parent alleges that HP, the Student's art teacher, bullied the Student when HP took issue with the Student's service dog [REDACTED]. The Parent argues that to understand the allegation of bullying, the IHO needs to view the actions of HP through the eyes of a seven year old girl. The Parent argues that the Student's seizure disability has caused a life time of anxiety for the Student since on at least one occasion, a seizure experienced by the Student was life threatening when the seizure caused the Student to stop breathing. The Parent argues this anxiety caused the Student to "live in fear of something she cannot control ending her life."¹²⁷ Thus, the Parent argues, that HP, the art teacher that the

¹²⁶ See *Supra* Notes 52 and 53.

¹²⁷ See Parent closing brief p. 8.

Student believed would understand the Student best, a teacher also knowledgeable about service dogs, takes issue with [REDACTED]. The Parent argues that the experiences of the Student were directly caused by HP's taking issue with [REDACTED]. The Parent argues these experiences included: knowledge that HP did not like [REDACTED] the Mother of the Student taking the Student to meetings with the Principal, the interim superintendent, and having the Principal isolate the Student and [REDACTED] to avoid confrontations with HP. The Parent further argues that these experiences caused the Student to know there was a problem, but the Student had no way of correcting the problem.¹²⁸ The Parent then argues that school personnel were deliberately indifferent to the harassment by HP by not confronting HP about the harassment. The Parent also argues that certain teachers/paraprofessionals in the building were concerned about HP's behavior and voiced these concerns to the school's administration. The Parent also notes that the school personnel failed to take reasonable steps to prevent the bullying. The Parent references the transcript and HP's documented events that serve as a record to support the allegation that nothing was done by the school to address HP's harassment of the Student. Instead, the Parent argues, the school allowed the Parent to remove the Student from art class, forced the Student and [REDACTED] to miss school to attend a meeting with the interim superintendent but the administration does not meet with HP. The Parent argues the District chose to meet with the Student and [REDACTED] in an effort to "force" the Student to prove she needs [REDACTED] to protect her life should the decision be to allow Jasper to continue to attend school with the Student.¹²⁹ The Parent then notes that even though the interim superintendent approved [REDACTED]'s continued attendance at school and

¹²⁸ *Id.*

¹²⁹ *Id.*, p. 9.

when HP is informed by the administration, HP threatens to call the police on the Student and her service dog. The Parent then notes that the Student needed a personal aide to protect the Student from further interactions with HP. The result, HP seeks another confrontation with the Student in the hallway with [REDACTED] and the Principal and newly assigned teacher's aide need to enter an empty classroom and wait for HP to leave the area. The Parent further notes this incident is the second time the Student and [REDACTED] had to hide in an empty classroom to avoid any confrontation with HP. The Parent alleges that the District chose to isolate the Student instead of confronting the issue with the Student's art teacher, HP. Finally, the Parent alleges that the result of these interactions and alleged failures by the District:

“[the Student's] opportunity for an appropriate education was compromised. [The Student] was isolated from other students and her friends when she was forced to go through alternate doors and hide out in class rooms in order to avoid her bully. [The Student] also missed school to attend a meeting with the Superintendent. There was also testimony that, despite feeling more confident and independent with the arrival of [REDACTED], [the Student] began feeling fearful and dependent upon her aide. [The Student] knew HP did not like her service dog and that caused her to feel as though HP was 'coming at her.’¹³⁰

Finally, the Parent alleges that the evidence supports that the school had a generalized feeling of polarization between 2 factions, those that believed [REDACTED] should be removed, and those that believed [REDACTED] should be allowed to stay. The Parent argues this polarization among faculty had to impact the education that the Student received while at the school.¹³¹

B. The District argued that there were only two isolated incidents of any confrontation between the Student and HP and that the evidence did not support the Student was even aware of the second confrontation. The District also

¹³⁰*id.*, p. 11.

¹³¹ *id.*

argued that the school's teachers testified they had never seen the Student bullied and that the Student was well liked.¹³² The District also argued that any polarized environment that might exist failed to negatively impact the Student.¹³³ The District further argued that the Student's absence from school to meet with the interim superintendent was not even a necessary absence and there was a lack of evidence demonstrating any impact on the Student.¹³⁴ In fact, the District argues, the "Student was making progress throughout her time at [REDACTED]."¹³⁵ The District also argued that any impact on the Student may have been from the Student adjusting to the responsibility and/or excitement of having [REDACTED].¹³⁶ The District also asserted that the District did not respond in a manner that was deliberately indifferent. Rather, the District alleges the Parent failed to provide the District with an opportunity to respond. The District asserts the Parent did not provide the District with a reasonable opportunity to investigate and remedy the situation prior to the Parent's unilateral withdrawal of the Student.¹³⁷ The District alleges that the Parent was informed when the first incident occurred and that another incident did not occur until 19 days later when the District met with the mother, the Student and [REDACTED] and talked to HP. Within another two days, the District spoke with all teachers involved and planned another meeting for the next school day with the parents and HP, but the Parent refused to meet and withdrew the Student from school prior to the scheduled meeting. The District also argued that HP repeatedly sought meetings with the parents to try and resolve the issues and that the District was "active in trying to remedy concerns

¹³² See District's closing brief p. 53.

¹³³ *Id.*, p. 55.

¹³⁴ *Id.*, p. 57.

¹³⁵ *Id.*

¹³⁶ *Id.* p. 58.

¹³⁷ *Id.*, p. 62.

with respect to the environment at Sherrard and was not given the opportunity to take further steps as necessary.”¹³⁸ The District quoted the IHO in a previous ruling noting that the mere existence of a hostile environment does not constitute a denial of FAPE unless the hostile environment prevented the student from receiving educational benefit as designed and developed in the child’s IEP.¹³⁹ In summary, the District argued that “the Parent failed to prove that conduct was so severe or pervasive to create a hostile environment, that the environment caused a loss in educational benefit as set forth in the IEP, and that Sherrard was deliberately indifferent to the environment.”¹⁴⁰

C. The district court in New York defined “disability harassment” as “intimidation or abusive behavior based on disability that creates a hostile environment.”¹⁴¹

Further, *TK* commented that “students with disabilities are less popular, have fewer friends, and struggle more with loneliness and peer rejection, increasing the likelihood they will become the victim of bullying.”¹⁴² *TK* also held that students have a right to be secure in school and schools have a duty to prevent students from harassment under IDEA...¹⁴³ The district court also noted that “to be denied educational benefit, a student need not regress, but need only have her educational benefit adversely affected. Finally, *TK* noted [and both parties agreed] that the analysis of whether the alleged bullying or hostile environment denied the Student a FAPE must include a determination as to whether the Parent established that the harassment occurred as a result of the Student’s disability, the harassment was sufficiently severe or pervasive that it altered the

¹³⁸ *Id.*, p. 62-63.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ See *T.K. v. New York City Dept. of Educ.*, 779 F. Supp. (E.D. NY 2011).

¹⁴² *Id.*

¹⁴³ *Id.*

condition of [the Student's] education, the District knew of the harassment, and the District was deliberately indifferent to the harassment. The evidence is clear that the conflict or harassment between HP and the Student was due to the Student's disability. If not for the Student's seizure disability, [REDACTED] would not have been necessary and never present at school. HP would not have had an issue with [REDACTED] or alleged that [REDACTED] was not properly trained or a danger to HP and the Student. This was evident from the first day when Jasper was introduced to the school during the all school assembly.¹⁴⁴ The IHO rejects the District's argument that there were only two incidents with HP and that the evidence failed to support the Student knew of the second incident. The IHO concludes the evidence supports the Parent's argument that the harassment resulted in such severe or pervasive environment that it altered the condition of the Student's education.¹⁴⁵ The preponderance of the evidence supports the Parent's argument that:

“[the Student's] opportunity for an appropriate education was compromised. [The Student] was isolated from other students and her friends when she was forced to go through alternate doors and hide out in class rooms in order to avoid her bully. [The Student] also missed school to attend a meeting with the Superintendent. There was also testimony that, despite feeling more confident and independent with the arrival of [REDACTED], [the Student] began feeling fearful and dependent upon her aide. [The Student] knew HP did not like her service dog and that caused her to feel as though HP was 'coming at her.'¹⁴⁶ Ultimately, the Parent feared for the daughter's safety and withdrew the Student from school.

The IHO also concludes that the evidence supports that the District's administrators, charged with protecting the Student and implementing the procedures of the IDEA and Illinois statutes, did not possess the requisite knowledge to carry out these responsibilities. Further, the IHO concludes that

¹⁴⁴ See *Supra* Notes 25 and 26.

¹⁴⁵ See *Supra* Notes 31, 32, 33, 34, 35, 36, 38, 39, 40, 44, 45, 46, 47, 48, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 62, 65, 66, 67, 68, 71, and 72.

¹⁴⁶ *Id.*

the evidence proves the District failed to conduct any formal legal research or consult with legal counsel regarding what their responsibilities were and what actions the administrators should take to meet those responsibilities. The IHO rules the District's administrators relied on the information the harasser [HP] provided them and the information she did provide was not the actual governing laws. As a result, the IHO rules that the preponderance of evidence supports that the District administrators' actions were unreasonable and constituted a deliberate indifference to the hostile environment that HP created when HP made the unilateral decision to take on the Student's service dog as not properly trained and sought to have the dog removed from the school. Additionally, the IHO rules the District administrators prevented the Student's service dog from attending school, informed the Parent the dog would not be allowed, became emotional with the Parent in the presence of the Student. Further, the Principal acknowledged her own failures and resigned her position shortly after the Parent withdrew the Student because the Principal so regretted her own failure to implement any plan to enable the Student to have ██████ present at school. The IHO concludes that the interim superintendent and Coordinator failed to provide any guidance or plan to effectively address the hostile environment created by HP.¹⁴⁷ The result of the District's administrators failure to respond with anything but indifference caused the Parent to believe the environment threatened the Student's health and safety and the Student needed to be removed. The removal caused by the District resulted in the Student's IEP no longer available to the Student, thereby denying the Student the opportunities afforded the Student in the Student's IEP.

Therefore, the IHO rules that the preponderance of the evidence supports the

¹⁴⁷ See *Supra* Notes 65, 66, 67, 68, 69, 70,71, and 72.

Parent's allegation in Issue #4 and rules for the Parent.

D. In light of the IHO's ruling in favor of the Parent on Issues I and IV, the Parent seeks remedies that include: Reimburse the Parents for all costs associated with the unilateral enrollment of the Student at [REDACTED] School during the remainder of the 2013-14 school year, including tuition, fees, mileage, uniform costs and book fees. Order the District's IEP team to identify the Student's least restrictive environment as [REDACTED] School for the 2014-15 school year and to pay the costs associated including tuition, fees, mileage, uniform costs and book fees. When the parents of a student with a disability are dissatisfied with the public school program, they have the option of placing their child in a private school program and then seeking tuition reimbursement from the school district.¹⁴⁸ Courts and hearing officers will order tuition reimbursement as a remedy when a district has failed to make FAPE available to the student and the private placement is appropriate.¹⁴⁹ The IDEA provides that "If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to

¹⁴⁸ See 34 CFR §300.148(c).

¹⁴⁹ See *Florence Cty. Sch. Dist. 4 vs. Carter*, 20 IDELR 532 (U.S. 1993).

education provided by the SEA and LEAs."¹⁵⁰ A student's placement is appropriate when the student is making reasonable and educationally adequate gains.¹⁵¹ The IHO concludes that the uncontroverted evidence submitted by the Parent relative to the Student's almost immediate success at [REDACTED] that has continued up to the date of the hearing establishes that the program and services provided by [REDACTED] for the Student is appropriate.¹⁵² Courts may consider equitable factors in considering a tuition reimbursement award.¹⁵³ The IDEA permits a court to limit or deny reimbursement if the parents fail to provide timely notice of the student's private school enrollment. One exception to this requirement is if the parent did not receive the notice of this procedural safeguard.¹⁵⁴ The Parent argued that the Parent filed the requisite notice but the District failed to respond in any way and thus failed to provide the Parent with the required procedural safeguards as required. The Parent's argument is substantiated by the evidence.¹⁵⁵ Therefore, having found the Parent provided timely notice and the District failed to provide the Parent with the required procedural safeguards notice, that the placement at [REDACTED] is appropriate and the Student is both making gains and even thriving, and that the District denied the Student a FAPE by the District's failure to remedy a hostile environment that caused the Parent to fear for the Student's health and safety, the IHO rules the Parent is entitled to full tuition reimbursement for the remainder of the 2013-14 school year and all of the 2014-15 school year and all

¹⁵⁰ See *Supra* Note 147.

¹⁵¹ See *L.G. and K.G. v. School Bd. of Palm Beach County*, 48 IDELR 271 (11th Cir. 2007, unpublished); *Coleman v. Pottstown Sch. Dist.*, 64 IDELR 33 (3d Cir. 2014, unpublished); and *A.S. v. New York City Dep't of Educ.*, 63 IDELR 246 (2d Cir. 2014, unpublished).

¹⁵² See *Supra* Note 75.

¹⁵³ See *Alamo Heights Indep. Sch. Dist. v. State Bd. of Educ.*, 557 IDELR 315 (5th Cir. 1986).

¹⁵⁴ See 20 U.S.C. § 1412(a)(10)(C)(iv).

¹⁵⁵ See *Supra* Note 75.

related documented costs.¹⁵⁶ In the Parent's closing brief, the Parent also sought compensation for tuition at [REDACTED] during the 2015-16, 2016-17, 2017-18, and 2018-19 school years. These years were not part of the requested relief when the issues and proposed relief were finalized during the July 28, 2014 Pre-Hearing conference and thus, the IHO denies the portion of the Parent's request specifically identified for years 2015-2019 as submitted in the Parent's post hearing brief.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered: The IHO rules that the preponderance of the evidence support a ruling in favor of the Parent in Issue #1 and 4. The IHO rules the preponderance of the evidence failed to support a ruling in favor of the Parent on Issues 2 and 3 and therefore denies the Parent's request for relief associated with Issues 2 & 3. The Parent's request for the following relief is hereby ordered:

1. Reimburse Parents for the tuition costs incurred by the Parents for the remainder of the 2013-14 school year in the amount of \$1,177.16. The District must submit a check to the Parents in the amount of \$1,177.16 no later than 60 days after the date of this decision. Upon payment, the District shall simultaneously send a copy of the check and the correspondence to deliver the check to: Mr. Andrew Eulass, Esq., Due Process Coordinator, ISBE, 100 N. First Street, Springfield, IL 62777.
2. Reimburse Parents for the tuition costs incurred by the Parents for the remainder of the 2014-15 school year in the amount of \$1,050.00. The District must submit a check to the Parents in the amount of \$1,050.00 no

¹⁵⁶The Parent requested reimbursement for books and uniforms. While the Parent would have experienced costs for books in either school setting, the Parent failed to comply with the IHO's directive to provide receipts for books and uniforms. Thus, the IHO denies the Parent's request for reimbursement for these items.

later than 60 days after the date of this decision. Upon payment, the District shall simultaneously send a copy of the check and the correspondence to deliver the check to: Mr. Andrew Eulass, Esq., Due Process Coordinator, ISBE, 100 N. First Street, Springfield, IL 62777.

3. Pay directly to [REDACTED] School the remaining balance of the Student's tuition for the 2014-15 school year in the amount of \$2,450 to be paid in monthly installments at the end of each month the Student attends [REDACTED] School for the remainder of the 2014-15 school year. The District must begin payments to [REDACTED] School no later than 60 days after the date of this decision in the monthly amount of \$612.50 payable on March 1, 2015, April 1, 2015, May 1, 2015 and June 1, 2015. Upon payment, the District shall simultaneously send a copy of each check submitted to [REDACTED] School and the correspondence to deliver the check to: Mr. Andrew Eulass, Esq., Due Process Coordinator, ISBE, 100 N. First Street, Springfield, IL 62777.
4. For the remainder of the 2013-14 school year, the District shall remit to the Parents within 60 days of the date of this decision \$481.38 to cover the Parent's costs of transportation for the Student for the remaining 60 school days the Parent transported the Student to [REDACTED] School. The amount owed is calculated by 60 school days times 14.2 miles times the IRS reimbursement rate of .565 cents mile. Upon payment, the District shall simultaneously send a copy of each check submitted to [REDACTED] School and the correspondence to deliver the check to: Mr. Andrew Eulass, Esq., Due Process Coordinator, ISBE, 100 N. First Street, Springfield, IL 62777.
5. For the 2014-15 school year, the District shall reimburse remit to the Parent within 60 days of the date of this decision the amount of \$722.07 to cover the costs of transportation for the Student for the first 90 days of school. The formula for reimbursement is the same as noted in paragraph 4 above. Upon payment, the District shall simultaneously send a copy of the check submitted to the Parent and the correspondence to deliver the check to: Mr. Andrew Eulass, Esq., Due Process Coordinator, ISBE, 100 N. First Street, Springfield, IL 62777.

6. Beginning March 1, 2015, the District shall reimburse the Parent the amount equal to the number of days the Student attends during January, 2015 and the first half of February, 2015 multiplied times 14.2 times .565 cents per mile, and continue such payments payable on each April 1, May 1, June 1, 2015, and July 1, 2015 [payment on July 1, 2015 for the last half of school attendance in May of 2015 plus any days of regular school attendance dates after June 1, 2015]. The Parent must submit to the District a copy of the Student's attendance record at [REDACTED] School for each month of attendance from January 1, 2015 through the end of the school year. The Parent must provide the District with the attendance records at least 14 days prior to the date the District must submit reimbursement [e.g., reimbursement payment due on March 1, 2015, attendance records for January 1 – February 13, 2015 must be delivered to the District by the close of business on February 14, 2015]. Whenever the District provides the required reimbursement to the Parent, upon payment, the District shall simultaneously send a copy of the check submitted to the Parent and the correspondence to deliver the check to: Mr. Andrew Eulass, Esq., Due Process Coordinator, ISBE, 100 N. First Street, Springfield, IL 62777.
7. Finally, no later than May 15, 2015, the District must convene an IEP team meeting to include current representatives of [REDACTED] School [the District must pay to [REDACTED] School the cost of any substitute teacher(s) or other professional(s) if [REDACTED] submits a bill for same to enable the necessary personnel to participate in the IEP team meeting]. During the IEP team meeting, the District must be prepared to develop an IEP for the Student that provides the Student with the appropriate specialized services to address the Student's other health impairment and to include the Student's service dog in the IEP as either an appropriate accommodation or related service as determined by the IEP team members. No later than May 16, 2015, the District must send a completed copy of the IEP to: Mr. Andrew Eulass, Esq., Due Process Coordinator, ISBE, 100 N. First Street, Springfield, IL 62777.

NOTICE OF RIGHT TO REQUEST CLARIFICATION

Pursuant to 105 ILSC 5/14-8.02a(h) either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification shall specify the portions of the decision for which clarification is sought. A copy of the request shall be mailed to all other parties and the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777. The right to request clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

NOTICE OF RIGHT TO APPEAL

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

IT IS SO ORDERED:

Dated: December 18, 2014

/s/ D. Michael Risen

Impartial Hearing Officer
222 E Surrey Lane, East Peoria, IL 61611
mikerisen@msn.com
309-694-4864 phone
309-694-2295 fax

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Final Determination and Order was sent via electronic mail as an attached PDF file, and 1st class USPS, certified mail, return receipt, and directed to:

[REDACTED]

And

[REDACTED]

And

Mr. Andrew Eulass, Esq., Due Process Coordinator
@: aeulass@isbe.net

On December 18, 2014

/s/ D. Michael Risen
D. MICHAEL RISEN, PH.D.
IMPARTIAL HEARING OFFICER

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (phone)
[REDACTED] (fax)
[REDACTED] (cell)