

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

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In the Matter of:

██████████, by his parent/guardian, ██████████

&

██
Local School District.

OCT 31 2014

SPECIAL EDUCATION
SERVICES

ISBE Case Number: 2014 - 0511

W. David Utley
Impartial Hearing Officer

FINAL DECISION and ORDER

The Hearing in the above captioned matter took place on June 26, 2014 at the ██████████ ██████████, IL and on October 15 and 16, 2014 at the ██████████ ██████████ Administrative Offices, ██████████ IL. The parties were advised of their rights under Section 14.08.02 (a) of the School Code, 34 C.F.R. 300.512 and 23 Illinois Administrative Code 226.625. The undersigned Hearing Officer has jurisdiction to hear and decide this case under 105 ILCS 5/14-8.02 (a) of Illinois School Code, 23 Illinois Administrative Code 226.600 et seq., and the Individuals with Disabilities Education Act 20 USC 1415. The Student was represented by ██████████ Esq. of ██████████, Ltd and the School District was represented by ██████████, Esq. and ██████████ Esq. of the ██████████ (hereinafter "██████████").

A. Procedural Background

The Parent's Request for an Impartial Due Process Hearing was dated June 26, 2014. The Hearing Officer received his appointment in this matter on July 2, 2014. The School District, by its Attorneys, responded to the Parent's Due Process Request on July 15, 2014. An initial Status Conference was scheduled for July 28, 2014 but by joint request, the Pre-Hearing Conference was continued to September 9, 2014 to allow for the completion of a parent evaluation of the Student. As the evaluation was not completed by the date set for the Pre-Hearing Conference, the parties jointly requested a continuance to September 29, 2014. At the Pre-Hearing Conference on September 29, 2014, the parties agreed to set this matter for Hearing on October 14, 15 and 16, 2014. The parent requested that the hearing be closed. Closing arguments were made at the conclusion of the testimony.

At the Hearing, procedurally, the parties agreed and stipulated to admission of the parent document book [PD Exhibit Tabs 1 - 34] and the school district document book [SD 1 - 103] and for admission of all the documents contained therein. Both document books were admitted into evidence at the conclusion of the testimony.

The parents called the following witnesses: the Student's father; Parent's Private Evaluator, [REDACTED], [REDACTED] School District [REDACTED] Special Education Teacher, [REDACTED] and [REDACTED] School District [REDACTED] Special Education Teacher, [REDACTED]

The School District called the following witnesses: [REDACTED] Principal, [REDACTED]; [REDACTED] District Representative, [REDACTED]; [REDACTED] School Psychologist, [REDACTED]; and [REDACTED] School Psychologist, [REDACTED]

B. Issues

The issues raised by the Parent and the response of the District present the following issue for determination by the Hearing Officer:

1. Whether the School District's proposed placement provided the Student a Free Appropriate Public Education (FAPE) in the Least Restrictive Environment for purposes of the Parent's Tuition Reimbursement Claim for the Unilateral Placement of the Student at the [REDACTED] School.

C. Relief

The relief requested by the Parent present the following for determination by the Hearing Officer:

1. Placement of the Student at the [REDACTED] School in [REDACTED] for the 2014 - 2015 school year as well as extended school year.
2. Tuition Reimbursement for the Student's current placement at the [REDACTED] School.

The attorneys for the parties agreed to the issues of relief at the Pre-Hearing Conference.

D. Findings of Fact

Disclaimer: The Hearing Officer was not provided the transcript in this case and had no access to it as it has not yet been transcribed. The recitations of the facts of this case were gleaned from a review of the documents and the Hearing Officer's notes as to the facts elicited or facts that could have been inferred from the testimony of the witnesses herein.

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

1. The Student has Pallister-Killian Syndrome, a genetic disorder. He functions in the severe range of intellectual disability. His level of functioning is consistent with an individual 1 year 9 months. [Hearing Testimony - Student's Father; Hearing Testimony - [REDACTED] Dr. [REDACTED] report, Parent's Document Book, Exhibit 30 and Hearing Testimony - Dr. [REDACTED]] The Student is non-verbal and expresses his needs with difficulty (gestures). He is not toilet trained. He is

extremely sensitive to noises. He has hearing issues. He has a hearing aid but will pull it off without the presence of a dedicated paraprofessional/aide. He has difficulty with transitions and gets frustrated with sensory overload, i.e., noise. Calming influences are familiarity with the people with whom he is dealing. Elopement is a concern as he has done this already. [Hearing Testimony - Student's Father]

2. The Student attended the following public schools: [REDACTED] and [REDACTED] Schools ([REDACTED] SD # [REDACTED]); and [REDACTED] and [REDACTED] Schools ([REDACTED] School District # [REDACTED]). [Testimony - Student's Father]

3. The [REDACTED] School District # [REDACTED] placed the Student at the [REDACTED] School in the [REDACTED] School District # [REDACTED] in 2008 as it had no in district placement suitable for the Student. [Testimony - Student's Father]

4. The [REDACTED] School is a public therapeutic day school for children with severe disabilities [Dr. [REDACTED] report; Parent's Document Book, Exhibit 30, p. 1; May 13, 2014 IEP, [REDACTED] School, Parent Exhibit 28, page 26; Testimony - Student's Father]

5. The Student currently resides at the [REDACTED] facility in the [REDACTED]. [Parent's Hearing Book, Exhibit 29, p. 20; Testimony - Student's Father]

6. [REDACTED] School convened an IEP meeting for the Student on May 13, 2014. Facts gleaned from that IEP include the following:

The Student really benefits from the sensory room where he actively picks out activities that he wants to do on his own such as swing, trampoline, music share and the cognitive wood box. [Parent Exhibit 28, page 6]

As to educational environment, the Student is in a full-time therapeutic day school for 1385 minutes per week plus 200 minutes per week of adaptive physical education; 60 minutes per week of language services; 200 minutes per week of other related services and 30 minutes per week of occupational therapy. In addition, he was provided an individual student aide for his entire school week of 1875 minutes. [Parent Exhibit 28, page 21]

The Student has significant sensory needs. He is essentially nonverbal. He has hearing loss and his ability to communicate is severely limited. He is considered a flight risk and wears a wrist monitor which prevents him from leaving the premises. He requires a high degree of physical and verbal re-direction for safety purposes. [Parent Exhibit 28, page 26]

7. The Student's father moved to [REDACTED] in 2014 and advised the [REDACTED] (hereinafter "[REDACTED]") regarding his son and the then current placement. The Student transferred into [REDACTED]. [Parent Hearing Book, Exhibit 24; Father's Testimony]

8. █████ sent a Conference Notification for the Student on June 6, 2014 setting an IEP meeting for June 17, 2014. [Parent's Document Book, Exhibit 23, p. 1]

9. █████ held an IEP meeting for the Student on June 17, 2014. Facts gleaned from that IEP include the following:

Both parents were in attendance. [Parent's Document Book, Exhibit 23, p. 1] There was no disagreement with the out-of-district IEP so the █████ IEP team accepted the services (with a modification for minutes) and the request for a dedicated paraprofessional. [Parent's Document Book, Exhibit 23, p. 5 - 8]

The Student requires full support to transition into and out of the school building, throughout the school and in between activities. He can be a flight risk and needs to be carefully monitored for safety transitioning in and out of spaces. Currently, he uses a wrist monitor that detects his proximity to doors, locking the doors to ensure safety as he comes within close proximity to the exit. [Parents exhibit 23, page 3]

Technology devices are recommended but none were listed. [Parent Exhibit 23, page 5]

The Student needs a 1 to 1 aide to safely transition into and out of the school building, throughout the school building and within the classroom. He additionally needs support to engage in activities. The IEP provides for a dedicated aide. Rationale for the dedicated aide is that student is currently a flight risk and can leave without notice. He shows inconsistent behaviors such as dropping on the floor and not moving. He also eats non-edible objects that can be a choking hazard. [Parent Exhibit 23, page 5 - 7]

The Student's father told the IEP team that he wanted his son to continue his placement at █████ School in █████. The parents were concerned about the transition to a new school after 6 years as well as his self-care ability as he enters into adulthood. The parents requested a full-day ESY program. [Parent Exhibit 23, page 3]

Placement was determined to be general education with special education supports over 60% of the day outside of the general education setting. This was determined appropriate to meet the Student's needs. The Student would be removed from the general education classroom for special education or related services 78 % of the time. [Parent Exhibit 23, page 20]

10. █████ sent the June 17, 2014 IEP paperwork and recommendations to the parent on July 7, 2014. [School District Document Book, p. 3]

11. On July 7, 2014, █████ notified the parent of the Student's placement at █████ (hereafter "█████"). [Parent Document Book Exhibit 22; School District Document Book, p. 1]

12. ██████ educates students with moderate cognitive disabilities, ages 14 to 22. There are 289 students enrolled. [Parent Hearing book, Exhibit 26] ██████ serves a population generally of moderate cognitively impaired individuals, Other Health Impairment (OHI) and other multiple disabilities. Class size is typically somewhere between 9 and 13 to 1 (students to teachers) [Hearing Testimony - Duane Pitts]

13. The IEP developed by the ██████ on June 17, 2014 is similar or the same as the one developed by the ██████ School on May 13, 2014. [Hearing Testimony - ██████; Hearing Testimony - ██████, Hearing Testimony - Dr. ██████]

14. The population of ██████ does not support a student with severe to profound intellectual disability. The level of the Student's intellectual disability is in the severe range. He has severe sensory deficit issues. A student to teacher ratio of 4 to 1 or less would appropriate. The noise level of ██████ varies dependent upon what is going on in class and building, i.e. passing period, lunch period, etc.¹ He does not model or imitate non-disabled peers. The Student's sensory needs are being met at ██████ School through use of the sensory room which he uses every day. [Hearing Testimony - Dr. ██████; Hearing Testimony - Student's father; Hearing Testimony - ██████; Parent Hearing book, Exhibit 26]

15. Ms. ██████ disagrees with Dr. ██████ as to the severity of his conditions. She would have accessed the Student in the moderate range of intellectual disability. The psychological evaluation from ██████ suggested that he did not need a significant amount of sensory support. The Student would not be the lowest functioning individual at ██████ but he would be in the bottom 1/4. [Hearing Testimony - ██████] Although ██████ has a typical student to teacher ratio between 9 and 13 to 1 [Hearing Testimony - ██████], there is no reason that the student couldn't receive services in a class of 13 to 1 student/teacher ratio. There is no sensory room at ██████ but ██████ could establish sensory modifications to address the Student's needs. [Hearing Testimony - ██████] (Ms. ██████ has not evaluated the Student so her opinions are based upon her 30 minute observation of the Student, her review of the ██████ psychological evaluation and the ██████ School May 13, 2014 IEP.)

16. ██████ School. The Student needs a one-to-one aide/paraprofessional to assist with safety as he puts many objects in his mouth. He needs assistance with many of the Activities of Daily Living (ADL) including toileting. Transitions are hard on the Student. He has no verbal language - only sounds. He continually needs 1 to 1 assistance to complete a job as he needs prompting, re-direction and reminders as to how to follow routine. His behavior was not significant enough though to warrant a Behavioral Intervention Plan (BIP). He does have a visual schedule. He uses the sensory room every day. He started in the morning but the staff

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Hearing took place at ██████ for the first day of hearing. Hearing Officer was able to observe passing periods, lunch and briefly, the gym. The noise level was average to slightly above average during passing periods and lunch. Only one hallway monitor was observed although numerous staff were present with the students during this time.

found that it was better for him if he switched to the afternoon. He uses it for relaxation and gross motor skills. [Hearing Testimony - ██████████]

17. ██████████ can implement the June 17, 2014 IEP. Specifically, his behavioral issues and sensory needs are not terribly severe. ██████████ does have 1 to 1 aide(s) and supports. Aides are instructed to "aid and fade" as opposed to providing hand over hand assistance. [Hearing Testimony - ██████████, Hearing Testimony - ██████████, Hearing Testimony - Dr. ██████████] The doors at ██████████ are not locked. Monitors staff the hallways only during passing periods but do not have walkie-talkies for instantaneous communication. There were also doors to the outside including the door to the module where the Student would attend. [Hearing Testimony - Dr. ██████████]

18. I accord greater weight to the testimony of Dr. ██████████ as to issues dealing with the evaluation of the student and his developmental and intellectual needs as she has worked with him over a period of 9 years, evaluated him three (3) separate times and observed him in the Park School program and observed the ██████████ program. As to the services and facilities offered by ██████████ I accord slightly greater weight to the testimony of ██████████, ██████████, ██████████ and ██████████ as they have more detailed and in depth knowledge of the programs and services at ██████████. As to the Student's functioning and needs in the school environment, I accord greater weight to the testimony of ██████████ as she actually worked with the student during the school year.

E. Burden of Proof

The Supreme Court in *Schaffer v Weast*, 546 U.S.49 (2005) has held that the party filing the request for due process bears the burden of persuasion. "The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief" *Id.* at 537. The parent's burden is to present sufficient evidence to support their allegations that the school district failed in its obligation to provide the student with a free appropriate public education (FAPE) and such other relief as they are seeking.

However, per *Schaffer*, the state may, if it wishes, put the burden on the school district. In Illinois, "the IDEA framework ... provides that 'the school district shall present evidence that the special education needs of the child have been appropriately identified and that the special education program and related services proposed to meet the needs of the child are adequate, appropriate and available'. 105 ILCS 5/14 - 8.02 (h) states only that a district's obligation is to present evidence, it does not place a burden of proof on the district. See *Schaffer*, *Id.* at 533-534 (distinguishing burden of production from burden of persuasion). As such, section 8.02(h) does not contain the explicit burden of proof language necessary to override the default rule the plaintiff, as a party challenging the IEP, bore the burden of proof." *Kerry M & Kristine M v Manhattan Sch. Dist. # 114*, 106 LRP 58547, 46 IDELR 194 (7th Circuit, No. Dist. IL, 2006).

F. Conclusions of Law

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

1. Whether the School District's Proposed Placement Provided the Student a Free Appropriate Public Education in the Least Restrictive Environment for Purposes of the Parent's Tuition Reimbursement Claim for the Unilateral Placement of the Student at the [REDACTED] School.

The Student's parent seeks tuition reimbursement for the unilateral placement of the student at the [REDACTED] School as of the Extended School Year (hereinafter "ESY") 2014. In order to prevail on a tuition reimbursement claim, a parent must show both (A) that the public agency failed to provide the student with a Free and Appropriate Public Education (FAPE) and (B) that the parent's placement is appropriate. See *School Committee of Town of Burlington, Massachusetts v. Department Of Education of Massachusetts*, 471 U.S.359 (1985). In addition, under 20 USCS 1412 (a) (10)(C)(iii) (I) (aa), as a matter of equity, the cost of reimbursement may be reduced or denied.

Congress provided for payment for education of children enrolled in private schools without the consent of or referral via public agency at 20 USC 1412 (a) (10) (C) (ii) which states:

The parents of a child with a disability, who previously received special education and related services under the authority of a public agency, and enroll the child in a private 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 a free appropriate public education available to the child in a timely manner prior to that enrollment.

- A. Whether the School District's proposed placement at [REDACTED] provided the student a FAPE.

The Student suffers from Pallister - Killian Syndrome, a genetic disorder characterized by weak muscle tone and severe to profound intellectual disabilities among other characteristics. [Findings of Fact # 1] Due to the nature and severity of his disability, the Student was placed at the [REDACTED] School, a public therapeutic day school in the [REDACTED] School District # [REDACTED] by the parent's then home school district - [REDACTED] School District # [REDACTED] [Findings of Fact # 3,4] He has been a student there since 2008. [Findings of Fact # 3] He resides at Misericordia in the Rosemary home.[Findings of Fact # 5] In 2014, the Student's father moved from [REDACTED] to [REDACTED] and advised the [REDACTED], regarding the student. [Findings of Fact # 7] [REDACTED] sent a "conference notification" on June 6, 2014 during the current 2013-2014 school year for a IEP meeting dated June 17, 2014. [Findings of Fact #8] The district's proposed placement at the [REDACTED] forms the basis of this dispute.

1) Adoption of Out-of-District IEP

When a student transfers intrastate, under 34 C.F.R. 300.323 (e),

The new public agency (consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP previous public agency), until the new public agency, either –

- (1) adopts the child IEP previous public agency; or
- (2) develops, adopts and implements a new IEP

In this matter, the testimony is preponderant that the IEP developed by the [REDACTED] is similar if not identical to the IEP developed at the [REDACTED] School. [Findings of Fact # 13] The parent informed the school district regarding enrollment of the Student in the Spring of 2014 [Findings of Fact # 7] . The school district sent out a “conference notification” on June 6, 2014 [Findings of Fact # 8] and held the IEP on June 17, 2014. [Findings of Fact # 9] Although the IEP was generally completed at the IEP meeting, a copy was not provided to the parent until July 7, 2014. [Findings of Fact # 10] No placement was made at the IEP meeting but was determined by [REDACTED] after the IEP meeting. [Findings of Fact # 11]

Significantly, the parties do not dispute the development of the June, 2014 IEP goals and benchmarks. There is no dispute as to the general considerations in the development of the IEP. There is no dispute as to the present level of performance. During the hearing, the parties generally agreed that the IEP developed at the June 17, 2014 meeting was similar or identical to the IEP developed in May, 2014 by the [REDACTED] School IEP team. [Findings of Fact # 13]

2) Implementation of Adopted IEP

The key dispute among the parties is the implementation of IEP. Once the June 2014 IEP was developed, this was forwarded to the [REDACTED] central office for assignment of a location of services. This location was the [REDACTED]. [Findings of Fact #11] Testimony from the [REDACTED] witnesses indicated that [REDACTED] can implement the IEP developed on June 17, 2014 at [REDACTED] [Findings of Fact # 15, 17] The Parent disputes this placement and filed the instant Due Process Hearing Request. The parent's witnesses opined that due to various concerns including security/safety, lack of a sensory room, staffing and environmental issues that [REDACTED] is unable to implement the IEP. [Findings of Fact # 14, 16]

Case law is clear that only actual inability to implement the IEP can be considered. Speculation as to what a school district might or might not do to properly implement the IEP cannot serve as the basis for a unilateral placement. *F. L. v. New York City Dep't of Educ.*, 535 F. APP'x 2 (2nd Cir. 2014, unpublished), 62 IDELR 191; *B.K. and Y.K. ex rel. G.K. v. New York City Dep't of Educ.*, 63 IDELR 68

Without ever seeing the Student, [REDACTED], in essence, adopted the general considerations for the development of an IEP, the present levels of performance and the goals and benchmarks

including ESY services. [Findings of Fact # 9, 13] Even though similar, there are several significant actual differences in the delivery of services and the facilities environment. No request for additional evaluations was made. Although the IEPs are essentially similar, the following factors relative to the placement decision affect the ability of the [REDACTED] to deliver those services and program.

Sensory Issue: [REDACTED] does not have a sensory room whereas [REDACTED] School does have a sensory room in which the Student participates on a daily basis. Additionally, [REDACTED] serves a significantly larger student population than [REDACTED] School. [Findings of Fact #12] This causes issues with transition, movement and noise during passing periods, among other times, which adversely affect the Student. [Findings of Fact # 14, 15]

Security: The security for elopement is significantly different. [REDACTED] School has a wrist monitor and lockable doors whereas [REDACTED] has multiple points of entry/exit without locks and only monitors them during passing periods. [Findings of Fact # 9]

Developmental and Intellectual Disability: The focus of the schools as to the population of disabilities and the severity of disabilities served varies - [REDACTED] School focuses on the severe to profoundly disabled whereas [REDACTED] serves a population of students with moderate cognitive disabilities [Findings of Fact # 12] The staffing ratio of students to teacher(s)/staff is significantly different - being between 9 and 13 to 1 at [REDACTED] whereas it is 4 to 1 at the [REDACTED] School. [Findings of Fact # 14, 16, 17] Although the [REDACTED] IEP calls for a 1 to 1 aide for the majority of the day, the testimony elicited does not provide such certainty as to the delivery of this service. Given this Student's needs, the method of delivery of the paraprofessional at [REDACTED] (aid and fade) does not provide the necessary support for a student who needs constant redirection and hand-on-hand assistance. [Findings of Fact # 16, 17]

Although the school district personnel testified that the June 17, 2014 IEP could be implemented at [REDACTED], these concerns about safety, security, sensory needs, meeting the Student's intellectual and developmental needs, the provision of a dedicated paraprofessional coupled with the fact that the population served at [REDACTED] is that of the moderately cognitive impairment weigh heavily against the ability of [REDACTED] to provide a FAPE for this Student.

Based upon the testimony and evidence presented during the hearing as to the Student's severe to profound disabilities and the factors above, this hearing officer concludes that the [REDACTED] does not have the actual ability to implement the June 17, 2014 IEP at [REDACTED] so as to provide FAPE to the Student.

B. Whether the Parent Provided Timely Notice to the District of the Rejection of the Proposed Public Placement.

Although Congress provided for tuition reimbursement for private school placement at 20 USC 1412 (a) (10) (C) (ii), it also established a potential limitation on reimbursement. These limitations include (1) the parents failure to advise the IEP team at the most recent IEP meeting

that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child including stating their concerns and their intent to enroll their child in a private school at public expense; or (2) 10 business days prior to the removal of the child, the parents did not give written notice to the public agency of the information described in item (aa). 20 USC 1412 (a) (10) (C) (iii) (I) (aa) and (bb).

Although slightly different from the typical unilateral placement as the Student here was already placed at the [REDACTED] School by the prior Local Educational Agency, the parent was very clear at the June 2014 IEP meeting that he wanted the Student to continue his placement at [REDACTED] School. He expressed his concerns about the ability of [REDACTED] to provide a FAPE for the Student. [Findings of Fact # 9] The parent was not provided the written IEP at the June 17, 2014 IEP. [Findings of Fact # 10] Regardless, within 10 days of this IEP meeting, on June 26, 2014, the parent filed the instant Due Process Complaint. In that Due Process Complaint, he advised the school district of his concerns regarding the ability of the [REDACTED] to provide a [REDACTED] for the Student and his continued request to place the Student at the [REDACTED] School. [Parent Hearing Book, Exhibit 1, p. 2] [Findings of Fact # 9] It was not until July 7, 2014 that the school district sent the requisite IEP paperwork and forms. Even then, the placement decision for [REDACTED] was not sent until July 7, 2014. [Findings of Fact # 10]

The parent expressed his concerns about the ability of [REDACTED] to provide the Student a FAPE. He informed [REDACTED] of the Student's current placement at [REDACTED] School and requested that he remain there. Even after the parent filed the Due Process Complaint, [REDACTED] did not request further evaluations within 10 days of that request.

Based upon the testimony and evidence presented during the hearing, this hearing officer concludes that the parent met the provisions of 20 USC 1412 (a) (10) (C) (ii) and (iii) (I) (aa) and (bb).

C. Whether the Parent's Proposed Unilateral Placement is Appropriate.

It is imperative that the parent's proposed placement, or in this case actual placement, is appropriate to meet the unique needs of the student. As the Court in *Bd. of Ed. v. Risen*, 61 IDELR 1340 (N. D. Ill, 2013), noted:

"Parents are required to establish not only that the District failed to provide FAPE, but also that the private placement they selected was appropriate. *Forest Grove*, 557 U.S. at 232; *Carter*, 50 U.S. at 15. A private placement is generally appropriate if it is reasonably calculated to enable the child to receive educational benefits and "provides educational instruction specially designed to meet the unique needs of the handicapped child" *Frank G. v. Bd. of Educ. Of Hyde Park*, 459 F. 3d 356 (2nd Cir 2006)".

In the instant case, the prior placement of the Student at the [REDACTED] School by the [REDACTED] School District # [REDACTED] provides substantive evidence that the placement is appropriate. [Findings of Fact # 3, 4] As the [REDACTED] School District was unable to provide a placement for the Student, it

placed the Student at [REDACTED] School in the [REDACTED] School District # [REDACTED] which met the needs of the Student and was appropriate to provide him with a FAPE. [Findings of Fact # 3,4] Even if this is insufficient (which it is not), the testimony of Dr. [REDACTED] establishes that it is. Although deference should be given to the professional educators (versus outside experts) *School District of Wisconsin v. Littlegeorge*, 295 F. 3d 671 (7th Cir. 2002); *Marshall Joint School Dist. No. 2 v. C. D.* 616 F. 3d 632, 640 - 641 (7th Cir. 2010), Dr. [REDACTED] is well-qualified and credentialed in the area of children and learning. [Parent's Document Book, Exhibit 31] She is an ISBE - approved independent educational evaluator for state of Illinois. She has evaluated over 600 children. She has presented at various professional associations on the topics of children and learning [Parent's Hearing Book, Exhibit 31]

Per Dr. [REDACTED], it is important to understand the severity of the Student's severe/profound disability. The program at the [REDACTED] School provides services for students in the severe range of functioning and meets this Student's needs. He needs constant 1 to 1 supervision, both for safety as well as to keep him engaged and interacting with his environment. His program at [REDACTED] School provides the support necessary for him to function safely and to be engaged and interact with his environment. The program at [REDACTED] would not. [Findings of Fact # 14, 15]

Although the IDEA has expressed a preference for educating children in the least restrictive environment (LRE), under the holdings of *Bd. of Educ. Of City of Chicago v. Illinois State Bd. of Educ.*, 46 IDELR 219 (N. D. Ill. 2006) and *Jenna R. P. v. City of Chicago Sch. Dist., No. 299*, 3 N.E. 3d 927 (Ill. Ct. App. 2013), LRE is, at most, a pertinent but not primary consideration in a tuition reimbursement case. Given the Student's severe to profound disability, he is not able to model other non-disabled peers. [Findings of Fact # 14] As such, educating the Student with non-disabled peers will not provide him with educational benefit.

Based upon the testimony and evidence presented during the hearing, this hearing officer concludes that the [REDACTED] School is an appropriate placement for the Student.

G. Relief Requested

Under 20 USC 1412 (a) (10) (C) (iii) (I) (aa) and (bb), the Parent is entitled to reimbursement for the Student's attendance at [REDACTED] School for the school year 2014 - 2015 including ESY summer 2015. Reimbursement for this will be the actual amount that the parent paid for the Student's attendance at the [REDACTED] School. Upon receipt of documents verifying the actual amount paid, the School District is to reimburse the parent within thirty (30) days. If the Illinois Purchased Care Review Board approves [REDACTED] School, payment and/or reimbursement shall be limited to the amount actually paid by the Illinois Purchased Care Review Board commencing as of the date that the first payment is made by said Board. Until such time as payment is actually made by the Illinois Purchased Care Review Board, [REDACTED] is obligated to reimburse the parent as stated above.

Although both IEPs require ESY for the Student, the School District did not make provision for ESY services for the Student for the summer, 2014. Accordingly, the [REDACTED] is obligated to fund the Student's attendance for ESY services for the summer 2014.

Reimbursement for this will be the actual amount that was paid for his attendance at the [REDACTED] School. Upon receipt of documents verifying the actual amount paid, the School District is to reimburse the parent within thirty (30) days.

H. ORDER

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

1. This matter is found in favor of the Parent. The Student is to continue his placement at the [REDACTED] School for the 2014 - 2015 school year including ESY 2015.
2. Reimbursement for ESY 2014 will be the actual amount that was paid for the Student's attendance at the [REDACTED] School. Upon receipt of documents verifying the actual amount paid, the School District is to reimburse the parent within thirty (30) days.
3. The School District is to reimburse the Parent for the costs actually incurred for the school year 2014 - 2015 and ESY - Summer 2015.
 - A. Upon receipt of documents verifying the actual amount paid, the School District is to reimburse the parent within thirty (30) days.
 - B. If the Illinois Purchased Care Review Board approves [REDACTED] School, payment and/or reimbursement shall be limited to the amount actually paid by the Illinois Purchased Care Review Board commencing as of the date that the first payment is made by said Board.
 - C. Until such time as payment is actually made by the Illinois Purchased Care Review Board, [REDACTED] is obligated to reimburse the parent as stated above.
4. In accordance with 105 ILCS 5/14-8.02a (h), the School District shall provide proof of compliance with this Order to the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777-0001 no later than January 31, 2015.

It is so ORDERED.

[REDACTED]
W. DAVID UTLEY
Impartial Hearing Officer
Dated this 27th day of October, 2014

FINALITY OF DECISION

This Decision and Order shall be binding upon all parties.

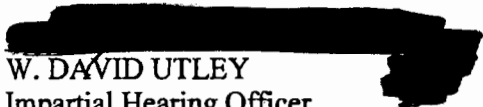
RIGHT TO REQUEST CLARIFICATION

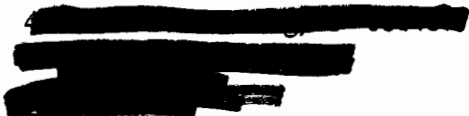
Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned Hearing Officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought and a copy of the request shall be mailed to the party and to the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, Illinois 62777. **The right to request such a clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.**

RIGHT TO FILE A CIVIL ACTION

This decision shall be binding upon the parties unless a civil action is commenced. Any party to this hearing aggrieved by this decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14.8.01 (I), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision was mailed to a party.

THE EFFECTIVE DATE OF THIS DECISION IS THE DATE OF RECEIPT OF ANY CLARIFICATION OF THIS DECISION. THE REQUEST SHALL OPERATE TO STAY IMPLEMENTATION OF THOSE PORTIONS OF THE DECISION FOR WHICH CLARIFICATION IS SOUGHT, PENDING ACTION ON THE REQUEST BY THE HEARING OFFICER, UNLESS THE PARTIES OTHERWISE AGREE. (105 ILCS 5/14-8.02)


W. DAVID UTLEY
Impartial Hearing Officer
Dated this 27th day of October, 2014



CERTIFICATE AND AFFIDAVIT OF DELIVERY BY MAIL

Under penalties as provided by law, pursuant to 735 ILCS 5/1-109, the undersigned certifies that he/she served the foregoing document by mailing a copy certified mail to the below named parties/attorney(s) at the address(es) indicated above and to the Illinois State Board of Education, by depositing the same in the U.S. Mail at the United States Postal facility at Schaumburg, IL on this 27th day of October, 2014

[REDACTED]

Illinois State Board of Education
Attn: Andrew Eulass, Esq.
Office of the Due Process Coordinator
100 N. First Street
Springfield, IL 62777-0001

[REDACTED]
W. DAVID UTLEY
Impartial Hearing Officer

[REDACTED]

APPENDIX A

[REDACTED] by his parent/guardian, [REDACTED] v. [REDACTED]
ISBE Case Number: 2014 - 0511

Child	[REDACTED]
Attending School	[REDACTED] School, [REDACTED] School District #[REDACTED]
Child's Parent/Petitioner	[REDACTED]