

ILLINOIS STATE BOARD OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)  
) ISBE CASE NO. 2015-0316  
)  
) Michael Risen  
) Impartial Due Process  
) Hearing Officer

RECEIVED

JUL 20 2015

SPECIAL EDUCATION  
[REDACTED]

**FINAL DETERMINATION AND ORDER**

**BACKGROUND**

The hearing involved a nine year seven month old female student. The Student's most recent IEP identified the Student's disabilities as Autism. In a letter dated February 19, 2015, Mr. [REDACTED], Esq., the representative for the Parents (Parent) filed the due process complaint notice (DPCN) for the Student. The District filed the complaint with the ISBE on March 3, 2015. The ISBE appointed this impartial hearing officer (IHO) on March 4, 2015. 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 March 4, 2015, the District, represented by Mr. [REDACTED] esq., and Mr. [REDACTED] esq., (District) filed the required response to the Parent's DPCN.<sup>1</sup>

On March 10, 2015, the parties waived resolution in favor of state sponsored mediation and filed the required ISBE form with the IHO via electronic mail.

On March 24, 2015, the parties completed mediation and failed to resolve any issues.<sup>2</sup>

On March 27, 2015, the IHO and the parties completed the recorded Pre-Hearing Conference (PHC) and a summary was provided to both parties.<sup>3</sup>

<sup>1</sup> See IHO exhibit 4.

<sup>2</sup> See IHO exhibit 7.

The following witnesses testified: [REDACTED] Special Education Teacher, [REDACTED] Personal Paraprofessional, [REDACTED], Behavior Specialist, [REDACTED], Occupational Therapist, [REDACTED], Nationally Certified School Psychologist, Dr. [REDACTED], M.D. (via telephone), [REDACTED], Director of Student Services, [REDACTED], Board Certified Behavior Analyst (BCBA), [REDACTED], Assistant Superintendent, [REDACTED], Program Supervisor, The Parents, [REDACTED], Parent of student victimized by sexual abuse (via telephone), Dr. [REDACTED], Clinical Psychologist (via telephone), Dr. [REDACTED], M.D., Psychiatrist, Dr. [REDACTED], M.D., Pediatrician, [REDACTED], APN, [REDACTED] BCBA, and [REDACTED] BCBA. The IHO had a copy of the transcript when writing the decision.

The Parent submitted one bound set of documents tabbed as Exhibits 1-19 and numbered PLF 0001 thru PLF 000379. The District submitted four sets of bound documents. The first set of documents was tabbed 1-23 and numbered "D1- D363." The second set of documents was tabbed 24-29 and numbered "D364-D1076." The third set of documents was tabbed 50-62 and numbered "D1077-D1712." The fourth set of documents was tabbed 63-76 and numbered "D1713-D2757." The IHO only considered those documents either referenced or testified to by the witnesses who testified at the hearing. The IHO submitted exhibits 1-50 and numbered "RP HO 1 thru RP HO 393." Additionally, the IHO submitted the transcripts for six days of testimony and the post hearing briefs filed by each party.

### ISSUES

During the recorded PHC, the IHO and the parties discussed and clarified the following issues and proposed remedies:

- i. Did the District meet the substantive requirement of the IDEA by providing the Student with a full continuum of alternative services including a self-contained

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<sup>3</sup> See IHO exhibit 14.

elementary class for students who fall within the moderate to severe Autism Spectrum? <sup>4</sup>

- ii. Did the District meet the substantive requirement of the IDEA to provide a researched based, peer reviewed program and services in the least restrictive environment that addresses all of the Student's unique needs when the District recommended placement at the Hope Academy?
- iii. Did the District meet the substantive requirement to provide the Student with a FAPE in the least restrictive environment when the District recommended an institution that is significantly distant from the Student's home and is currently under investigation by the Illinois Department of Children and Family Services (DCFS)?
- iv. Did the District meet the procedural requirements for proper notice and for parental participation when the District made the Hope placement recommendation without disclosing to the Parent any information the District had regarding the investigations of Hope Academy by the DCFS?

### **PROPOSED REMEDIES**

- i. Conduct an IEP team meeting and include in the Student's IEP behavioral goals and services designed to address the Student's diagnosed Post Traumatic Stress Disorder (PTSD). Parent must present evidence to identify the required behavioral goals and services appropriate for the Student.
- ii. Include in the Student's IEP provisions for homebound placement with services provided by the school district and a transition plan designed from homebound placement to gradual reintroduction by the Student to the public school setting consistent with the recommendations made by Dr. Glen Aylward, Ph.D.
- iii. Provide the Student with compensatory education and related services to address the Student's deficits caused by the onset of PTSD during the 2013-2014 school year and to make up deficits caused by the denial of FAPE since August 2014. Parent will provide evidence at hearing to support specific comp ed requested.
- iv. Reimburse the Parent for documented expenses for special education and related

services that the Parent incurred since August of 2014. Parent must provide documentation for all expenses incurred.

### **FINDINGS OF FACT**

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

- 1) In December 2011, the Parent provided the Student with ABA services in the home between 2.5 and 3 hours daily during the week and four hours on Saturday and

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<sup>4</sup> Note: On July 7, 2015, the Parent sent the IHO a notice and voluntarily dismissed Issue #1 as a consideration for determination by the hearing officer as reflected in the IHO exhibits pp. 390-393.

Sunday. The services lasted until January 2014.<sup>5</sup> The Parent's insurance covered the cost of the ABA services. Within two weeks of starting ABA at home the Parent saw the Student's progress "increasing dramatically." The Student became more verbal, began asking for things, was interested in doing things and began toilet training and began reading within a few months.<sup>6</sup>

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2) On or about July 19, 2012, the Student "had the potential to move very fast through programs. She learned skills at a very rapid rate. She went from being partially verbal to highly verbal, not toilet trained to fully toilet trained. She was reading and writing and doing basic math all within a seven month period."<sup>7</sup>

3) On August 13, 2013, [REDACTED] BCBA from [REDACTED] conducted a full day training for the Student's teacher and paraprofessionals on discrete trial training.<sup>8</sup>

4) On August 26, 2013, the District's consultant BCBA [REDACTED] observed that the Student's second grade placement was of "unknown efficacy."<sup>9</sup>

5) On September 23, 2013, the District conducted a Parent meeting. Present at the meeting were the Student's Parents, the Student's special education teacher, the District's consultant BCBA, [REDACTED] the Director, and the Student's regular education teacher. The meeting established the Student's desk was separated from the rest of her non-disabled peers, faced away from her non-disabled peers, and the Student was unable to participate or observe any of the interactions with her non-disabled peers. The BCBA noted that the regular education placement in second grade was not "efficacious" for the Student.<sup>10</sup> The District staff were all in agreement that the Student could obtain better academic achievements if the Student were not

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<sup>5</sup> See T2 p. 319.

<sup>6</sup> See T2 pp. 320 – 321.

<sup>7</sup> See T1 p. 171.

<sup>8</sup> See D75 p. 2491 and T4 p. 163.

<sup>9</sup> See D 10 p. 375; T4, p. 77.

<sup>10</sup> See T5 p. 113.

placed in the regular education classroom. The District staff proposed placement in the self-contained autism classroom to the Parent, but the Parent declined. The District staff acquiesced to the Parent's position until April of 2014.<sup>11</sup>

- 6) On December 17, 2013, the [REDACTED] reported on an ongoing investigation of the [REDACTED] by the Illinois Department of Children and Family Services (DCFS). The report indicated that "New admissions to the facility are prohibited until further notice."<sup>12</sup> The Director was not aware of the ban on admissions at the [REDACTED] at any time prior to or during the IEP team meeting conducted on August 13, 2014.<sup>13</sup> Also, on or December of 2013, the Student began demonstrating self-injurious behaviors like head-butting. The school notified the Parent who expressed concern and surprise. The Parent also expressed concern that the Student's BCBA ([REDACTED]) was only coming to see the Student every couple months when the IEP called for once per month. The Parent expressed particular concern since the school indicated the Student's behaviors had escalated but the BCBA services had been reduced at the same time.<sup>14</sup> Further, the Parent expressed concern that the team recommended reducing the BCBA time from bi-monthly to monthly and then the Parent learned the service had actually been reduced to every other month.<sup>15</sup>
- 7) On March 7, 2014, parents reported to [REDACTED], school social worker, that they were "concerned with GI issues."<sup>16</sup>
- 8) On April 11, 2014, the District conducted an IEP team meeting to review the psychiatric evaluation completed by Dr. [REDACTED].<sup>17</sup> The Parent expressed

<sup>11</sup> See T5 p. 117.

<sup>12</sup> See P17 p. 346.

<sup>13</sup> See T1 p. 106.

<sup>14</sup> See T2 pp.327-328.

<sup>15</sup> See T2 pp. 328-329 and T4 pp.78-80.

<sup>16</sup> See D 19, p. 641.

concerns about the evaluation. The time spent specifically with the Student during the evaluation of the Student only lasted 30 minutes and took place in a windowless room with only one light bulb on due to the migraines suffered by Dr. [REDACTED]. The Parent expressed to Dr. [REDACTED] that the dimly lit room could become a problem for the Student.<sup>18</sup> The Student had an obsession with the light switch and repeatedly tried to turn on the lights, but Dr. [REDACTED] covered the switch with his hands. During the evaluation, Dr. [REDACTED] asked the Student a couple questions from the other side of the room while he blocked the light switch next to the door and asked the Student to draw from a choice of 5 drawings. The Parent provided the Student with the drawing materials and prompted her to draw. The Parent was upset that Dr. [REDACTED] reflected in his report that the Student drew a capital "D" instead of a house as directed. The Parent explained the Student actually drew an igloo because the Student had "igloo" as a recent vocabulary word. Further, the Parent expressed dissatisfaction with the report because the report reflected the Student had "wrestled" with Dr. [REDACTED] and that the Student had been "uncooperative," "uncompliant," (sic) and this "shocked" the Parent since the evaluation only lasted 20-30 minutes.<sup>19</sup> Dr. [REDACTED] concluded that the Student's behaviors were not a reflection of school or home but a reflection of something else such as a mood disorder and he believed the Student required a more restrictive learning environment.<sup>20</sup> Dr. [REDACTED] reported that the Student had regressed by more than six months and this was not typical of a child with autism.<sup>21</sup> If medicated, the Student required a self-contained placement. If not medicated, the Student required a more therapeutic setting. If the Student did not begin medication,

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<sup>17</sup> See District 2, pp. 49-50 and T1 p. 243.

<sup>18</sup> See T3 p. 710.

<sup>19</sup> See T2 pp. 359-360.

<sup>20</sup> Id.

<sup>21</sup> See D2 p. 49.

Dr. [REDACTED] predicted residential placement would be required for the Student. The recommendations from the psychiatric report upset the Parent a great deal.<sup>22</sup> The IEP team reviewed the fact that the Student exhibited an increase in self-injurious, non-compliant and aggressive behaviors. As a result, Dr. [REDACTED] recommended the Parent consider medication as a tool to help the Student with the behaviors. Further, the IEP team recommended adding Other Health Impairment (OHI) as a secondary eligibility. The Parent did not agree with either recommendation.<sup>23</sup> The Parent's biggest concern was the listed side effects of the medication which included "sudden death."<sup>24</sup> As a result, the IEP team decided to honor the Parent's position on the medication recommendation from Dr. [REDACTED] and the designation of OHI.<sup>25</sup> The Parent also expressed shock when the school psychologist reported the Student had exhibited 95 occurrences of self-injurious behaviors in one morning as well as, behaviors that included lifting her dress, and pushing desk and chairs.<sup>26</sup> The Parent believed the Student had made real progress during the 2013-14 school year and that she should continue in the same program. The Parent did not know who the IEP team was referencing when reviewing the completed reports as the Parent did not believe they represented the Student.<sup>27</sup> The Parent expressed this surprise because the Student had not displayed those behaviors at home and the reports of [REDACTED] and [REDACTED] did not indicate such severe behaviors.<sup>28</sup>

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<sup>22</sup> See D2 p. 50 and T3 p. 716-717.

<sup>23</sup> See T1 pp. 244-245.

<sup>24</sup> See T3 p. 705.

<sup>25</sup> Id.

<sup>26</sup> See T2 pp. 349-350.

<sup>27</sup> See T3 p. 720.

<sup>28</sup> See T2, p. 349-52.

- 9) On April 22, 2014, the Parent sent an email to [REDACTED] concerning several recent visits to doctors, including a "GI Doctor" and a urologist, and also informed her the Parent had an ultrasound and x-ray taken of Student.<sup>29</sup>
- 10) On April 24, 2014, the Director emailed the Parent indicating she had reviewed the information sent to the Parent regarding the suspended license of Dr. [REDACTED] that occurred in the late 1980s for two years. The Director also indicated that the Director had no prior knowledge of the suspension until the Parent provided the information to the Director.<sup>30</sup> The information reviewed by the Director and referenced in the email also indicated that Dr. [REDACTED]' medical license was fully reinstated on September 1, 1991.<sup>31</sup> Additionally, [REDACTED], the Student's former home therapist and BCBA, observed the Student in school.<sup>32</sup> The fidelity of the ABA discrete trial provided the Student in school failed to provide reliable data since the protocol of two data collectors collecting the same data did not occur.<sup>33</sup> Contrary to the Student's behavior plan, transport holds were utilized with the Student on three occasions for non-compliant and/or minor disruptive behavior. These behaviors were not listed in the behavior plan as authorized behavior for the utilization of transport holds.<sup>34</sup> The Student reacted to the transport holds by attempting to bite herself and the staff members. The Student continued these self-injurious behaviors for up to an hour until the Student's Parent came to school to take her home.<sup>35</sup> The Student's BCBA reported this incident to the Student's contracted BCBA, [REDACTED]. The

<sup>29</sup> See T2, p. 33S, D63 and D 75, p. 2581.

<sup>30</sup> See P18 p. 356 and T1 p. 92.

<sup>31</sup> See P18 p. 360 and T5 p. 155.

<sup>32</sup> See P6a p. 26 and T2 pp. 434-435.

<sup>33</sup> See T2 p.438.

<sup>34</sup> Id.

<sup>35</sup> See T2 p. 443.

contracted BCBA reported that she needed to observe the Student and provide more supervision but the funding contract did not allow for that.<sup>36</sup>

11) On April 30, 2014, the Parent sent an email to Special Education Teacher [REDACTED] advising that the Student's recent x-ray "showed large amount of stool. The Parent said the urologist reported it could cause why she tries to go all the time."<sup>37</sup>

12) On May 5, 2014, [REDACTED] ABA certified, observed the Student at the request of the Parent. The discrete trial therapy provided by the Student's paraprofessionals did not meet the standard for effective discrete trial therapy. The ineffective discrete trial therapy resulted from providing the Student tasks already mastered, physically prompting the Student before the Student responded independently, delayed prompting, failing to vary the motivators provided for the Student to choose from, and failure to address the Student's lack of interest in the task at hand.<sup>38</sup> Additionally, data collection completed by the Student's paraprofessionals failed to meet the standards for effective discrete trial training.<sup>39</sup> The social story utilized by the District to address the Student's hands in her underwear failed to meet the standards of an effective social story but rather, was designed in a manner that was negative, scolding and addressed the Student as if the Student was a much higher functioning neuro typical child.<sup>40</sup> Social stories are stories about something that is going to happen that can be read to the student that has pictures or words and the social story enhances a child's ability to understand. Social stories should be positive

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<sup>36</sup> See T2 p. 446.

<sup>37</sup> See P 7 c, p. 77.

<sup>38</sup> See T1 pp. 180-183.

<sup>39</sup> See T1 pp. 185-186.

<sup>40</sup> See T1 pp. 207-208.

rather than negative. The Student responded well to the social stories utilized in the completed IEE that was reviewed during the August 13, 2014 IEP team meeting.<sup>41</sup>

13) On May 13, 2014, the Parent's BCBA, [REDACTED], wrote to address several concerns with the District's consultant BCBA working with the Student. The first concern involved the use of contingent timeout utilized as a disciplinary measure when it is not called for in the Student's IEP. Further, she expressed real concerns regarding the use of CPI for removal from the classroom for the Student's tantrum whose antecedent was escape when the IEP called for the removal of the target audience. She wrote: "Why place her in the 2<sup>nd</sup> grade room if they can't follow the plan which says remove the audience and they must resort to disciplinary measures and CPI."<sup>42</sup>

14) On May 14, 2014, [REDACTED], the Districts current consulting BCBA, responded to the Parent's BCBA and expressed agreement with Ms. [REDACTED] and with the former BCBA [REDACTED] that the regular education class was not where Student belonged.<sup>43</sup> The current BCBA recommended that the Student attend Special Education Teacher [REDACTED]'s autism class.<sup>44</sup> She believed the Student did not benefit from the current regular education placement.<sup>45</sup> She also expressed this to the Student's Special Education Teacher in November of 2013 but wrote nothing more and told no one else about her opinion until she responded to an inquiry from the Parent's BCBA [REDACTED].<sup>46</sup> She observed that she did not share this with the IEP team because she was a consultant and "it wasn't [her] place to push."<sup>47</sup>

<sup>41</sup> See T3 pp. 864-865.

<sup>42</sup> See D14 p. 484.

<sup>43</sup> See D10 p. 375, T4, p. 77. (Note BCBA Brott had raised this concern back in November of 2013, See Supra Note 10).

<sup>44</sup> Id., p. 76.

<sup>45</sup> Id., p. 94.

<sup>46</sup> See T3 pp.93-94 and D14, p. 483.

<sup>47</sup> Id., pp. 94-96.

15) On May 15, 2014, the District conducted another IEP team meeting.<sup>48</sup> As a part of Student's reevaluation reviewed at the IEP meeting, the Parent reported to [REDACTED], the school social worker, that Student was waking up in the middle of the night in a panic.<sup>49</sup> There is no evidence in the record that the District did anything in response to this parental report. The Director did not remember this being discussed at an IEP meeting.<sup>50</sup> The Parent also wanted to discuss clarification regarding the Student's behavior intervention plan (BIP). During the meeting, the Parent also questioned the Student's seating arrangement in the second grade. The Student's desk was separate from her nondisabled peers and facing away from them. The Student's special education teacher explained the reasoning for that seating arrangement. The Parent's behavioral consultant, [REDACTED] also recommended the team consider adding more social skill instruction and more peer interaction and indicated the Parent was interested in a change in placement. The IEP team made no placement changes.<sup>51</sup> The District also recommended extended school year (ESY) for the Student, but the Parent declined the service because the Parent planned on continuing the Student's ABA therapy at home.<sup>52</sup>

16) On May 20, 2014, the Parent emailed the Director seeking a District medical certificate to present to the Student's doctor for completion. The Director emailed the District approved form the same day.<sup>53</sup>

17) On June 17, 2014, the Director emailed the Parent and indicated the Student's 1:1 aide would be present for the Student's scheduled IEE with Dr. [REDACTED]. The Parent responded the same day via email and indicated the Parent did not want any

<sup>48</sup> See T1 p. 243 and D3 p. 123.

<sup>49</sup> See D 21, p. 649.

<sup>50</sup> See T1, pp. 52-53.

<sup>51</sup> See D4 p. 191.

<sup>52</sup> See T1 pp. 247-250 and T3 p. 656.

<sup>53</sup> See D76 p. 2645 and T3 p. 731-732.

[REDACTED] staff present for the IEE. The Parent explained the Student had come home during the last of week of school with bruising on her arms and the Student had been "stressed out." The Student said to the Parent during the last week of school: "no [REDACTED], no [REDACTED]" The Student also began saying "no school" during this same time period.<sup>54</sup> The Parent's email concluded with the Parent's willingness to take the Student to the evaluator's location to maintain the fidelity of the IEE.<sup>55</sup>

18) On June 18, 2014, the District received a physician's certification that the Student required home and hospital instruction for at least one year. Dr. [REDACTED], the Student's pediatrician completed the form and utilized the District's board approved document.<sup>56</sup> The completed form reflected the specific diagnosis as: "pervasive developmental disorder developmental delay."<sup>57</sup> On July 1, 2014, the Director sent the Student's pediatrician a letter requesting additional information. The Director included a copy of the Illinois Compiled Statute and Illinois Administrative Code governing home hospital instruction with the letter.<sup>58</sup> The Director wrote the letter as the Director determined that home hospital instruction is supposed to be "short term. It's not a permanent placement."<sup>59</sup> The Pediatrician responded with a letter with more details on July 14, 2014. The Director also determined that the identified prognosis from the Student's pediatrician did not qualify for home hospital instruction in her experience.<sup>60</sup> During the office visit, the Student appeared fine when spoken to by the Pediatrician until the Pediatrician mentioned school. At the mention of school, the Pediatrician observed that the Student would "start shaking,"<sup>61</sup> hit herself in the

<sup>54</sup> See D76 pp. 2660-2661 and T3 p. 743-748.

<sup>55</sup> Id.

<sup>56</sup> See P1 p. 1 and T1 pp. 22-23

<sup>57</sup> Id.

<sup>58</sup> See P1 pp. 4-9 and T1 pp. 26-31.

<sup>59</sup> See T1 p. 27.

<sup>60</sup> See P Ex. 1, pp. 4-5, and T1 p. 29.

<sup>61</sup> See T1, p. 140.

head "very hard" and bite herself,<sup>62</sup> and act very frightened and nervous about school.<sup>63</sup> The Pediatrician also found the Student's social behavior different from previous office visits.<sup>64</sup> The Pediatrician concluded that something had happened to the Student as a result of the Student's fears about school and the regression in her behaviors. As a result, the Pediatrician recommended homebound instruction for the Student.<sup>65</sup>

19) On June 29, 2014, the Student's BCBA [REDACTED] completed a functional behavior assessment (FBA).<sup>66</sup> The problem behaviors identified included screaming, physical aggression, self-injurious behavior, drop to the ground and tantrum.<sup>67</sup> The Student's BCBA also created a BIP for the Student and this was incorporated into the August 13, 2014 IEP.<sup>68</sup>

20) On July 14, 2014, the Student's pediatrician responded to the District's July 1, 2014 request for more information.<sup>69</sup> The Student's pediatrician reported the Student was now completely frightened in attending school and that the Student engaged in self-injurious behaviors that would make it dangerous for the Student and others if the Student attended school.<sup>70</sup> The Director determined that the Student's pediatrician's responses were not sufficient to warrant home hospital instruction for the Student as the Director believed "there's programs available to assist those needs and we have to provide FAPE. Going to a more restrictive homebound would not provide FAPE, which is what we discussed as an IEP team."<sup>71</sup> The Director did not know the

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<sup>62</sup> Id. at 132-33.

<sup>63</sup> Id., p. 141.

<sup>64</sup> Id. at 159.

<sup>65</sup> See T1, p. 132-34; P Ex. 1, p. 1.

<sup>66</sup> See D5 pp.D323-D334.

<sup>67</sup> See T1 p. 253.

<sup>68</sup> See D5 D337 and T1 p. 254.

<sup>69</sup> See T1 p. 57.

<sup>70</sup> Id.

<sup>71</sup> See T1 p. 61.

Student's current levels of performance in July of 2014, only what was discussed during the May 2014 IEP team meeting.<sup>72</sup> After receipt of the Pediatrician's communications, the Director did not ask the Student's pediatrician or Parent to provide any additional information relative to the Student's then present levels of performance.<sup>73</sup>

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21) On July 17, 2014, Dr. [REDACTED], Nationally Certified School Psychologist,

completed an IEE of the Student at public expense.<sup>74</sup> The Student scored at a four year eight month level on the Peabody Picture Vocabulary Test (PPVT) when the Student was eight years one month old. This result placed the Student in the 1<sup>st</sup> percentile for language development. The Student failed to demonstrate executive functioning skills that could be measured by the assessment given to the Student.<sup>75</sup>

22) On August 11, 2014, the Student's Nurse Practitioner provided the District with a medical note on [REDACTED] Clinic stationary that: "I am further documenting [the Student's] behaviors and acting out secondary to psychiatric illness manifested in voiding every twenty minutes every day and the touching of her genital area when in pain. She is currently being referred to a pediatric urologist for further urologic workup to determine if this secondary to psychiatric behaviors or an urological issue. I would ask for the time being that Rebecca be homebound and receive home schooling where she would not be made to feel frightened or scared and exacerbate her pre-existing conditions and behaviors."<sup>76</sup> The Director confirmed the District received the information on the same day as the IEP team meeting and reviewed the

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<sup>72</sup> See T1 pp. 61-62.

<sup>73</sup> Id.

<sup>74</sup> See D 32 and T3 p. 813.

<sup>75</sup> See T3 p. 833.

<sup>76</sup> See P3 p. 21.

information during the IEP team meeting.<sup>77</sup> The Director also noted the IEP team believed that the Student's constipation and bathroom issues may also be related to behaviors and not medical.<sup>78</sup> The Director did not follow up with the Nurse Practitioner to request any further information or documentation related to the Student's potential urological condition.<sup>79</sup>

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23) On August 12, 2014, the Director emailed the Parent and indicated Dr. [REDACTED]'s home hospital form was insufficient and stated "the home bound request completed by Dr. Fry does not list a medical condition that would prevent [REDACTED] from attending school. For example, hospitalization, surgery, contagious disease, etc."<sup>80</sup>

24) On August 13, 2014, the District completed an IEP team meeting to discuss the Student's placement for the upcoming 2014-15 school year. The IEP team recommended placement at the [REDACTED] School in [REDACTED], IL.<sup>81</sup> The August 13, 2014 IEP did not reflect any accommodations or modifications for the Student's documented urological problems as identified by the Nurse Practitioner.<sup>82</sup> The Parents advocate, Dr. [REDACTED] attended the IEP team meeting.<sup>83</sup> The IEP team

indicated that the Parents could homeschool until they could get a psychiatric evaluation that could meet the criteria for home hospital instruction.<sup>84</sup> The Parent's advocate was surprised the medical certificates provided did not meet the criteria for home hospital instruction but summarized for the Parent what the IEP team indicated could meet the requirements.<sup>85</sup> The IEP team reviewed the medical certificates provided by the Student's pediatrician and the Nurse Practitioner and concluded the

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<sup>77</sup> See T1 p. 66.

<sup>78</sup> See T1 p. 67 - 68.

<sup>79</sup> See T1 p. 71.

<sup>80</sup> See P7t p. 142 and T1 p. 71.

<sup>81</sup> See T1 p. 74.

<sup>82</sup> See T1 p. 88.

<sup>83</sup> See T1 p. 221.

<sup>84</sup> Id.

<sup>85</sup> See T3 p. 751.

certificates did not provide a medical diagnosis and did not meet the criteria for home hospital instruction services.<sup>86</sup> The District's administrators believed home hospital instruction was only available to students for a temporary or short term medical condition from which the student would eventually be cured.<sup>87</sup> The IEP team also concluded that the Student's urological issues documented in the Nurse Practitioner's medical certificate were behavioral and did not require any further investigation by the District.<sup>88</sup> The Director's opinion regarding home hospital instruction is it should be "short term" and is intended to "assist the student with medical needs."<sup>89</sup> The Director also noted that unless the severity of the student's diagnosis of pervasive developmental disorder and intellectual disability required hospitalization, homebound placement was not required.<sup>90</sup> For a student with pervasive developmental disorder and intellectual disability, no matter how aggressive or self-injurious the student's behaviors might be, or, for a student with PTSD, regardless of the severity, the Director noted that such a student would not be eligible for homebound services unless the student was hospitalized.<sup>91</sup> The Director noted that the District "had supports in place to support her..." and had "resources to address those needs."<sup>92</sup> The IEP team also developed a Behavior Intervention Plan to address the Student's recent increase in maladaptive and self-injurious behaviors.<sup>93</sup> A representative from the [REDACTED] School attended the IEP team meeting.<sup>94</sup> The [REDACTED] day program in which the Student was to be placed in was not under investigation. The representative invited the Parent to visit [REDACTED] School and take a tour. The

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<sup>86</sup> Id., and T1 p. 65.

<sup>87</sup> See T1 p. 74.

<sup>88</sup> See T1 pp.283-291.

<sup>89</sup> See T1, p. 27.

<sup>90</sup> Id., pp. 28-29.

<sup>91</sup> Id., pp. 46-47 and 49.

<sup>92</sup> Id. at 58-59.

<sup>93</sup> See T1 p. 254.

<sup>94</sup> See T1 p. 228.

representative offered her card to the Parent. The Parent left the card on the table and did not take a tour or visit [REDACTED] School.<sup>95</sup> The Parent believed the Student's doctors recommended a different placement due to medical reasons and the Parent did not see the value in visiting [REDACTED] because the Parent would not go against the Student's Doctors' recommendations.<sup>96</sup> [REDACTED] School has an extensive two-tier screening process before any student is finally admitted. This process was never explained to

the Parents or that the Student's eventual admission to the [REDACTED] School was contingent upon the completion of the screening process.<sup>97</sup> Further, the Parents did not understand that the process could last anywhere from two weeks to two months and during the process the Student would remain at [REDACTED] elementary in the Student's current program.<sup>98</sup> Dr. [REDACTED] also provided the results of her IEE. Dr. [REDACTED] confirmed that the Student's goals and benchmarks developed by the IEP team were consistent with the results Dr. [REDACTED] reached when the Student was evaluated.<sup>99</sup> Ms. [REDACTED] did not identify any learning or behavioral deficits which would necessitate Student's placement in a private separate day program outside of a public school.<sup>100</sup>

25) On August 17, 2014, the Parent sent the Superintendent an email and notified the District of the Student's withdrawal from school for the purpose of homeschooling the Student.<sup>101</sup>

26) On September 3, 2014, Dr. [REDACTED] provided the District with a completed District form for Student home hospital instruction and indicated a diagnosis of

<sup>95</sup> See T1 pp. 236-239 and T4, p. 171.

<sup>96</sup> See T3 p. 721.

<sup>97</sup> See T4 pp. 172-178.

<sup>98</sup> See T4 p. 179.

<sup>99</sup> See D288 and T3 pp. 840-845.

<sup>100</sup> See T3, p. 861-863.

<sup>101</sup> See P7 p. 163.

"Autism PDD PTSD, Intellectually deficient/Develop Delay."<sup>102</sup> Dr. [REDACTED] continued to see the Student and had office visits on October, 15, 2014, March 11, 2015 and April 16, 2015. Dr. [REDACTED] reported the Student's behaviors had worsened over that time frame.<sup>103</sup> Dr. [REDACTED] indicated his recommendation for home hospital instruction was only based on his medical opinion that the Student required those services for her own safety and well-being and as a result of his diagnosis of PTSD

and PDD NOS.<sup>104</sup> The PTSD diagnosis resulted from the Student's experience of having three adults change her dress into jeans when she placed her hands in her pants or lifted her dress.<sup>105</sup> Dr. [REDACTED] noted that a single traumatic occurrence with a student with autism is sufficient to cause PTSD.<sup>106</sup> Dr. [REDACTED] also wrote that these conditions led to Student's difficulty sleeping at night, self-injurious behaviors, refusal to get dressed or get on the bus, increased anxiety, aggression to parents and school staff, and crying profusely. Dr. [REDACTED] noted: "this is consistent with a diagnosis of PTSD."<sup>107</sup> The Director responded to the Parent via email stating

"...you have removed her from the public school setting to conduct a homeschool program. Because she is no longer enrolled in District 117, she is not eligible for homebound instruction. If you did decide to enroll [the Student] with District 117, the services and placement determined by the IEP team in August would be put into place."<sup>108</sup>

<sup>102</sup> See P 2 p. 20 and T1 p. 72.

<sup>103</sup> See T2 p. 375.

<sup>104</sup> See T2 pp. 370-378.

<sup>105</sup> See P 7o p. 133 and T4 pp. 101-111. (The IHO notes that the record also reflects that the punishment technique of having the Student wear gloves to prevent her from sniffing her fingers was also instituted by District staff without the BCBA's permission. The BCBA testified that using a punishment technique like making the Student wear jeans or the gloves could result in more aggression or self-injurious behaviors. The BCBA Moore testified she shared these concerns with the Student's teacher regarding the use of gloves).

<sup>106</sup> See T2 pp. 388-389.

<sup>107</sup> See P Ex. 2, p. 19.

<sup>108</sup> See P 7v p. 165 and T1 pp. 73-74.

27) On September 10, 2014, the Parent sent the Superintendent an email expressing the Parent's confusion over the process. The Parent states: "I am very confused now with the response below from Mrs. [REDACTED], because the answer doesn't reflect of (sic) what we were told to do at IEP – that we can homeschool until we get psychiatrists note. We have followed all the steps that we were told – conducted psychiatrists (sic) evaluation and obtained the note from him and homeschooled up until the moment. Can you please ensure that District would review Doctor [REDACTED]'s note? I feel like we should get a meeting to discuss it or the response on (sic) can we have homebound instruction or not?"<sup>109</sup> On or about the same time frame, Nurse Practitioner [REDACTED] referred Student to pediatric urologist, Dr. [REDACTED], M.D. F.A.A.P., at [REDACTED]'s Hospital in [REDACTED], Missouri.<sup>110</sup> The Parent did not receive a report from Dr. [REDACTED] until Mar. 12, 2015.<sup>111</sup> Dr. [REDACTED]'s report corroborates the recommendations of Nurse Practitioner [REDACTED]. The report recommended increased hydration and bathroom breaks for Student whenever necessary, "even if this is every 15 minutes. She would not be able to tolerate a bus ride longer than 20 minutes in duration."<sup>112</sup> Parent confirmed that [REDACTED] and other doctors always recommended giving Student as much water as possible.<sup>113</sup> The Student's BCBA noted that this toileting recommendation is now being followed by the in-home ABA team.<sup>114</sup>

28) On September 11, 2014, the Parent received an email response from the Superintendent.<sup>115</sup> The Superintendent informed the Parent that the medical

<sup>109</sup> See P7x p. 168.

<sup>110</sup> See T2, p. 597.

<sup>111</sup> See P Ex. 5, p. 25.

<sup>112</sup> Id.

<sup>113</sup> See T2, p. 599. (The IHO notes the IEP did not have access to this report. However, the report corroborates the findings of Nurse Practitioner [REDACTED] and her report was received and considered by the IEP team at the August 13, 2014 IEP team meeting.)

<sup>114</sup> T2, p. 463-464.

<sup>115</sup> See P Ty p. 175.

certificate provided by Dr. [REDACTED] did not qualify the Student for home and hospital instruction services as the certificate did not “provide any new information.”<sup>116</sup> The Director acknowledged Dr. [REDACTED]’s letter included new information with the diagnosis of PTSD but failed to share her opinion with the Superintendent.<sup>117</sup> The District’s procedures required the IEP to reconvene to consider any submitted medical certificate for home hospital instruction.<sup>118</sup> The District did not schedule a meeting with the Parent nor reconvene an IEP team meeting to review Dr. [REDACTED]’s medical certificate.

29) On September 16, 2014, the Parent emailed the Superintendent and sought an explanation why the diagnosis of PTSD was not “new information.” The District did not respond to the email.<sup>119</sup>

30) On or about October, 2014, the Student began participation in a home ABA therapy program. The program included bathroom access for the Student whenever the Student needed access per the Student’s Doctor’s recommendation.<sup>120</sup> The Student can tell her therapists when she needs to use the bathroom and typically did so from every 15 minutes to upwards of an hour or two between requests for use of the bathroom.<sup>121</sup> The home ABA program is a comprehensive behavioral and education program based upon the VB-MAPP protocol, a tool used to develop programs for children with autism.<sup>122</sup> Included in the program were lessons based upon the Illinois State Learning Standards consistent with the Student’s functioning level and a BIP. The therapists revise the BIP every six to eight weeks depending on the Student’s

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<sup>116</sup> *Id.*

<sup>117</sup> See T1 p. 82.

<sup>118</sup> See T1 p. 214.

<sup>119</sup> See P7z p. 175 and T2 p. 594.

<sup>120</sup> See T2 p. 464.

<sup>121</sup> *Id.*

<sup>122</sup> See T2 p. 466-467 – The IHO comments that the testimony of Dana Affronti was credible and presented in a measured and informed manner that demonstrated a clear grasp of the concepts and principles required of therapists working with students on the autism spectrum.

progress.<sup>123</sup> The BIP differed from the school District's BIP in that the Student is not physically prompted or physically redirected or touched to avoid opportunities for the Student to bite. The BIP does not include any contingent changes of clothes if the Student lifts up her dress. Consistent with the District's BIP, the home ABA BIP includes visual procedures and transition techniques and breaking down skills into component parts. The Student's home academic goals included goals in spelling, typing skills, hear and write numbers, and reading comprehension.<sup>124</sup> The Student made both behavioral and academic gains during the home ABA therapy sessions.<sup>125</sup> During the ABA home therapy, the Student demonstrated a particular aversion to one specific therapist and the therapist was replaced and the Student performed better.<sup>126</sup> The Student's improved performance resulted from the ABA therapy home sessions and medication support in the form of guanfacine.<sup>127</sup>

31) On or about December 2, 2014, Dr. [REDACTED], licensed clinical psychologist, examined the Student after a referral from the Student's pediatrician. The results of the examination from the Kaufman Brief Intelligence Test-2 included a verbal score of 63, nonverbal score of 54 and composite score of 53. The test reflected an improvement in all three areas from previous testing completed by the District's school psychologist [REDACTED] that reflected a verbal score of 47, non-verbal of 40 and composite of 41.<sup>128</sup> Recommendations included home hospital instruction to allow the Student to "settle down."<sup>129</sup> Additionally, the Student should be slowly reintroduced to school with new teacher and aides or provided a completely different

<sup>123</sup> Id.

<sup>124</sup> See T2 pp. 467-469.

<sup>125</sup> See P6b and 6c and T2 pp. 470-477.

<sup>126</sup> See T2 p. 499.

<sup>127</sup> See T2 p. 546.

<sup>128</sup> See T2 pp. 406-407.

<sup>129</sup> See T2 p. 412.

school.<sup>130</sup> The minimum amount of time for the home hospital instruction should be six months.<sup>131</sup> The Student should not attend Hope School due to the lengthy round trip bus ride.<sup>132</sup>

### CONCLUSIONS OF LAW

32) 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.

33) Issue (ii.) "Did the District meet the substantive requirement of the IDEA to provide a researched based, peer reviewed program and services in the least restrictive environment that addresses all of the Student's unique needs when the District recommended placement at the Hope Academy?"

A. The statutory requirements related to this issue include the IDEA requirement that

a "free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21..."<sup>133</sup> The IDEA also requires

that "In general. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are

educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."<sup>134</sup> Further, the IDEA requires that

"Special education" means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including . . . instruction conducted in the classroom, in the home, in hospitals and institutions, and in other

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<sup>130</sup> Id.

<sup>131</sup> Id. p. 414.

<sup>132</sup> Id. p. 415.

<sup>133</sup> See 20 USCS §1412 (a)(1)(A).

<sup>134</sup> Id. (5)(A).

settings. . . ."<sup>135</sup> and "Each district must ensure that a continuum of alternative placement is available to meet the needs of children with disabilities for special education and related services. The continuum must include regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions."<sup>136</sup> Illinois regulations require: "In accordance with 34 CFR

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§300.304(c)(4), any student who is being evaluated or re-evaluated for special education services shall be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, communicative status and motor abilities. The results of the medical review shall be used by the IEP team to address any educationally relevant medical findings or other health concerns that may affect the provision of FAPE to students with disabilities."<sup>137</sup> Further Illinois regulations require: "Educationally relevant medical findings, which shall include the identification of the medical conditions and other health-related issues that are likely to adversely affect a child's educational performance. Recommendations, which shall include an analysis of the information gathered for the purpose of: ... developing a proposed plan that provides for specific accommodations, modifications or interventions to be implemented when educationally relevant medical, school health and/or school nurse findings are made, which shall include annual goals, short-term objectives and ongoing evaluation."<sup>138</sup> Also controlling is the Illinois regulations that state in part: "..., ensure that a continuum of placements is available to meet the needs of children with disabilities for special education and related services. With respect to the home instruction and instruction in hospitals and institutions ...:

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<sup>135</sup> See 20 U.S.C. § 1401(29).

<sup>136</sup> See 34 C.F.R. Part 300.115.

<sup>137</sup> See 23 IL Admin Code §226,160 (a).

<sup>138</sup> See 23 IL Admin Code §226.160(a)(4)(5)(A)(B).

a) The child receives services at home or in a hospital or other setting because he or she is unable to attend school elsewhere due to a medical condition.

b) When an eligible student has a medical condition that will cause an absence for two or more consecutive weeks of school or ongoing intermittent absences, as defined in Section 14-13.01(a) of the School Code,<sup>139</sup> the IEP Team for that child shall consider the need for home or hospital services. The provision of home or

hospital services shall be based upon a written statement from a physician licensed to practice medicine in all its branches that specifies: 1) the child's medical condition; 2) the impact on the child's ability to participate in education (the child's physical and mental level of tolerance for receiving educational services); and 3) the anticipated duration or nature of the child's absence from school. Special education and related services required by the child's IEP must be implemented as part of the child's home or hospital instruction, unless the IEP Team determines that modifications are necessary during the home or hospital instruction due to the child's condition, The amount of instructional or related service time provided through the home or hospital program shall be determined in relation to the child's educational needs and physical and mental health needs. The amount of instructional time shall not be less than five hours per week unless the physician has certified in writing that the child should not receive as many as five hours of instruction in a school week. In the event that the child's illness or a teacher's absence reduces the number of hours in a given week to which the child is entitled, the school district shall work with the IEP Team and the child's parents to provide the number of hours missed, as medically advisable for the child.

... In accordance with Section 14-13.01(a) of the School Code, services required

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<sup>139</sup>105 ILCS 5/14-13.01(a)

by the IEP shall be implemented not later than five school days after the district receives the physician's statement.”<sup>140</sup>

B. The District first became aware that the Student's placement was not appropriate in September of 2013 and later discussed the inappropriateness in November of 2013.<sup>141</sup> However, the District's administrators acquiesced to the wishes of the Parent and continued a placement that its paid consultant informed the District that the “efficacy” of the placement was not known.<sup>142</sup> In April of 2014, the District's paid consulting psychiatrist recommended a change in placement.<sup>143</sup> Additionally, the Parent's BCBA informed the District's BCBA that the District was utilizing CPI and disciplinary measures that were not called for in the Student's IEP. The District's BCBA responded that she needed to observe the Student more often but the District's funding contract did not provide for the additional observations.<sup>144</sup> The District's BCBA also agreed the Student needed a change of placement and believed the self-contained autism class was the most appropriate. She shared this with the student's teacher but did not share with the IEP team because she did not see it as her place to “push” the issue.<sup>145</sup> There was no disagreement between the parties that the Student's behaviors had become significantly worse and that a change of placement was required. The District's recommendation of the Hope Academy failed to consider the overwhelming evidence of a relationship between the year long delay in effecting a change in placement and the inappropriate use of disciplinary measures with the Student and

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<sup>140</sup> See 23 IL Admin Code §226.300(a)(b)(c)(d)(h).

<sup>141</sup> See Supra Notes 9 and 10.

<sup>142</sup> See Supra Note 11.

<sup>143</sup> See Supra Note 20.

<sup>144</sup> See Supra Notes 36.

<sup>145</sup> See Supra Notes 43-47.

the Student's escalating behaviors.<sup>146</sup> Further, the District failed to properly implement the Student's IEP when it improperly used disciplinary measures and the use of CPI, failed to effectively provide IEP required discrete trial therapy, and failed to effectively design social stories with a positive meaning.<sup>147</sup> At no time did the District consider the potential impact these failures had on the Student's escalating behaviors. Finally, the Parent provided timely, frequent and overwhelming evidence to the District of the Student's significant medical needs and the District at best chose to ignore the medical information or, at worst, dismissed the information out of hand.

C. The District concluded that the Student could travel to and from Hope Institute without accommodations because she travelled to Springfield, Peoria, and other out-of-town locations with her parents. There was no evidence anyone from the District investigated whether these out of town trips with the parents required bathroom stops or not. The District's own BCBA [REDACTED] testified that she "didn't make those connections" between Nurse Practitioner Blessman's letter, the length of the bus ride and Student's toileting needs at the August IEP meeting. Asked if Student could make the trip now, Ms. [REDACTED] testified she thought that the ride would be "very difficult" for Student at this time.<sup>148</sup>

D. The District clearly received from the Student's Pediatrician a timely and legal medical certificate and follow-up written statement authorizing homebound instruction.<sup>149</sup> The letter sent to the Pediatrician in July by the Director asking for information regarding when the condition developed or whether therapy would allow school attendance, is clearly not required by the Illinois Administrative

<sup>146</sup> See Supra Notes 9,11,13,20,26,42-53,60-65, and 70-73.

<sup>147</sup> See Supra Notes: 15, 32-36, 39-40, and 42-47.

<sup>148</sup> See T4, p. 86-87.

<sup>149</sup> See Supra Notes 56, 58 and 136.

Rules or the Illinois School Code.<sup>150</sup> The District's rationale for denial of homebound placement is unsupported by Illinois statutes, administrative rules, and caselaw, as discussed below.

- E. There are 7<sup>th</sup> Circuit Court rulings that have upheld homebound placements for students with similar medical determinations as existed for this Student that did not involve hospitalization, infectious disease, accidents, and the like as asserted as necessary by the District. For example, in Wisconsin, a district placed a 10 yr. old student with autism in a homebound program for the remainder of the school year after the student's extremely aggressive behavior resulted in his removal from both a regular school and a specialized day school program. When the parent brought suit, the 7<sup>th</sup> Circuit ruled that there was no basis for the hearing officer's order that the student could safely return to a regular school environment.<sup>151</sup> Even when it is the District recommending the home hospital instruction placement, the 7<sup>th</sup> Circuit has upheld such placement for reasons other than those suggested by the District as being required for homebound instruction.
- In an Indiana decision, the district placed a student in a homebound educational program because the student's anxiety, coupled with his recent diagnosis of autism spectrum disorder, made it impossible for him to attend school. The parents eventually filed a due process hearing request, alleging that the student's autism diagnosis was unnecessarily delayed and that his homebound placement violated the least restrictive environment requirement. The district court held that the school district's homebound placement for the student did not violate the least restrictive environment requirement. Further, the homebound placement was appropriate since the student's anxiety "was so debilitating . . . that he was unable

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<sup>150</sup> See Supra Note 137.

<sup>151</sup> See *School Dist. of Wis. Dells v. Littlegeorge*, 295 F. 3d (7<sup>th</sup> Cir. 2002)

to attend any regular classes outside his home.”<sup>152</sup> An 11<sup>th</sup> Circuit Court decision parallels the facts in this case. In the Florida case, a student with autism, and other disabilities developed violent and destructive behaviors as a result of school anxiety. The parents requested the District remove the student from seventh grade and the school district agreed to a modified schedule of a few hours of instruction in public school and a few more hours of homebound instruction. The modified program continued until high school when the district modified the IEP to provide programming at the high school. Within a few days the student began exhibiting anxiety symptoms when he had difficulty sleeping, became more obsessive compulsive, and persisted in vomiting. His behavior at home deteriorated dramatically as demonstrated by behaviors such as throwing himself on the floor, screaming, and breaking doors. As a result, his parents withdrew him from school and provided him with a 1:1 home instructional program. The school district filed for due process seeking an order that the high school placement provided a FAPE. The 11<sup>th</sup> Circuit found that the school district failed to offer the student a FAPE. The 11<sup>th</sup> Circuit held that the 1:1 instructional program provided by the parents was appropriate because it provided some educational benefits to the student. Further, the 11<sup>th</sup> Circuit concluded that parents don’t have to provide a perfect program as long as the program provided was reasonably calculated to provide at least some educational benefits to the student. The 11<sup>th</sup> Circuit also observed that the school district offered the parents only a take-it-or-leave-it position and would not consider the alternative offered by the parents. The court observed that the facts revealed that it did not seem there was anything the parents could have said, or any data which could have been produced, that

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<sup>152</sup> See *Tindell v. Evansville-Vanderburgh Sch. Corp.*, 805 F. Supp. 2d 630 (S.D. Ind.

would have changed the school district's position. As a result, the 11<sup>th</sup> Circuit ruled that this placement denied the student a free appropriate public education.<sup>153</sup> This Hobson's choice is very similar to the facts in this case. The District first concluded that the Student's current placement was not appropriate in November of 2013.<sup>154</sup> The Student's special education teacher, the Director, and the District's consulting BCBA again concluded in the spring of 2014 that the Student's behaviors necessitated a change in programming but failed to take any action.<sup>155</sup> As early as May, 2014, the District knew the Parent was considering a request for home hospital instruction.<sup>156</sup> The District received the Parent's request in a timely manner in June of 2014. The request was completed on the District's required medical certificate form fully completed by the Student's pediatrician. When asked for additional information the pediatrician responded with a more detailed letter.<sup>157</sup> A court decision in the 9<sup>th</sup> Circuit held that a school district improperly rejected a parents' homebound request when it concluded that a student with autism did not qualify since he had not suffered an illness or accident. As in this Student' case, the district did not independently assess the student's educational needs after it received a physician's letter recommending homebound services. The parents removed the student from school and filed their request for a hearing. Any reading of the The 9<sup>th</sup> Circuit decision would conclude, as in the case of the Student in this hearing, the district failed to establish any factual basis for its assertion that the student's anxiety was any different before he left school than afterwards. The court further held that the

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<sup>153</sup> See *R. L. v. Miami- Dade Cty. Sch. Bd.*, 757 F. 3d 1173 (11th Cir. 2014)

<sup>154</sup> See Supra Note 10.

<sup>155</sup> See Supra Notes 43-51.

<sup>156</sup> See Supra Notes 53-56.

<sup>157</sup> See Supra Notes 56-60.

district improperly put the burden on the parents to provide further justification for their homebound services request.

F. As noted earlier, federal and state statutes and regulations clearly support the provision of home hospital instruction for students. The law and its regulations requires parents provide districts with a written statement from a physician that describes the child's medical condition, the impact on the child's ability to participate in school, and the expected length of the child's absence from school, provided that absence is a minimum of two weeks in duration. Additionally, the IDEA clearly provides for special education instruction in the home.<sup>158</sup> The letter from the Director to the Student's pediatrician requesting information not required by Illinois statute or any submitted or discovered case law, suggests the District administrators' interpretation of the requirements for provision of homebound instruction at the August 13, 2014 IEP meeting was wrong. The testimony of both the Director and the Asst. Supt. also further supports such a conclusion. The Director was adamant in her belief that homebound services were supposed to be "short term," "temporary," intended to "assist the student with medical needs" or a "temporary medical issue."<sup>159</sup> Any clear reading of the Illinois statute and administrative rules would reveal there is no basis for concluding as the Director indicated. There is also no support in case law within the Seventh Circuit or elsewhere for the District's position. *Rodriguez* supports a conclusion that the Director's position, and therefore the District's position, was incorrect. Since the IEP team relied on the legal interpretation of the Director when considering the Student's medical certificate and follow-up letter submitted by the Student's pediatrician and the corroborating medical certificate

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<sup>158</sup> See Supra Notes 134-137.

<sup>159</sup> See Supra Notes 59-60,71,80,90-91.

submitted by Nurse Practitioner [REDACTED], the IHO concludes that the District denied the Student a FAPE in the least restrictive environment when the District administrators and the IEP team denied the recommendations of the Student's medical providers for home hospital instruction. Therefore, the IHO rules that the preponderance of the evidence supports a ruling in favor of the Parent on Issue

#2.

28) Issue (iii.) and (iv.) Issues III and IV are inextricably linked as both issues allege failure of the District to inform the Parent of a DCFS investigation of the Hope School, that if revealed, would have resulted in a different placement decision for the Student. **Issue III states:** Did the District meet the substantive requirement to provide the Student with a FAPE in the least restrictive environment when the District recommended an institution that is significantly distant from the Student's home and is currently under investigation by the Illinois Department of Children and Family Services (DCFS)? **Issue IV states:** Did the District meet the procedural requirements for proper notice and for parental participation when the District made the Hope placement recommendation without disclosing to the Parent any information the District had regarding the investigations of Hope Academy by the DCFS?

A. The guiding legal principle for both issues is what did the IEP team know on August 13, 2014 when it wrote the Student's IEP for the 2014-2015 school year. The 1st

Circuit court noted that, "For one thing, actions of school systems cannot, as appellants would have it, be judged exclusively in hindsight. An IEP is a snapshot, not a retrospective."<sup>160</sup> Whether the August 13, 2014 IEP provides a FAPE should not be judged in 20/20 hindsight. It is uncontroverted that no one who attended the August 13, 2014 IEP meeting shared any information about any DCFS investigation at Hope School. The Parent failed to provide evidence that any [REDACTED] School District employee possessed knowledge of the issues at the [REDACTED] residential school when the employees participated in the August 13, 2014 IEP team meeting. Further, the Parent failed to present any evidence that even if a District employee did have knowledge of the investigation that such knowledge would impact any IEP team

<sup>160</sup> See *Roland M. v. Concord Sch. Comm.* 910 F.2d 983, 992 (1st Cir. 1990).

decision since the investigation only impacted the residential component of the Hope School and not the therapeutic day program the IEP team recommended for the Student. It is unfair to expect disclosure of information that is not known at the time the disclosure would have been required. While it is true that [REDACTED], the Student's former consulting BCBA and now [REDACTED] School representative, made a professional judgment call when she elected not to inform the IEP Team about the DCFS investigation, even though she had knowledge of it. Regardless of whether that judgment call was correct or not, BCBA Brott is not an employee of the District. The evidence was also clear that the Hope School was admitting students to its day program on the day the District recommended the Student's placement.<sup>161</sup> [REDACTED] the Student's current consulting BCBA also attended the August 13, 2014 IEP team meeting and agreed with the recommendation of the Student's placement at [REDACTED] for the day program. The abuse claims [REDACTED] was aware of a [REDACTED] involved the residential program. BCBA [REDACTED] also made a professional judgement call to not share her knowledge about the investigation with the IEP Team. BCBA Moore is also not an employee of the District. The only case found with any parallels to the current case was submitted by the District in their closing brief. The case addresses the failure of an IEP team participant to share with the Team information that may have had an impact on the ultimate placement decision.<sup>162</sup> In that case, the District placed a student with Asberger's Syndrome in an alternative school. At the time of the placement the school district did not know there was any risk of the student being sexually assaulted while attending the alternative school. The school district's prior experience with the alternative school was positive. It had no reason to be suspicious of the placement. As a result, the school district could not be held liable for the 1983

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<sup>161</sup> See Supra Note 95.

<sup>162</sup> See *Reichert vs. Pathway School*, 935 F.Supp.2d 808 (E.D. Pa., 2013)

civil rights damages. While there is some relevance to the instant case, the relevance is certainly not on point, though the relevance that does exist favors a ruling for the District. The Parents argued that "Asst. Supt. [REDACTED] made it clear that the Student would not be placed at [REDACTED] Institute unless it was safe for her to attend. Had [REDACTED] or [REDACTED] shared information about the DCFS investigation and placement ban, the August 13, 2014 IEP placement decision would not have occurred at all. Or the IEP

Team would have at least held up its decision until it and the parents received satisfactory assurances that Student would be safe at [REDACTED] Institute."<sup>163</sup> This statement from the Parent's closing brief asserting such dramatic changes in the outcome of the IEP team meeting might have occurred if the DCFS investigation of the Hope residential program had been shared assumes more than the preponderance of the evidence would support.

B. The other component that must be considered when deciding Issue III and IV is whether the IEP team erred in making a recommendation for the Student to attend [REDACTED] School when it failed to consider the length of the Student's bus ride and any required accommodations this presented due to the Student's documented medical conditions. The Student's August IEP does not reflect any specific accommodations in connection with door-to-door bus transportation to and from Hope Institute that would address the Student's unique need to use the toilet as often as every 20 minutes. By the August 13, 2014 IEP meeting, the District had recently completed a comprehensive re-evaluation of the Student and was in possession of all medical certificates provided by the Parent regarding the Student's urological and GI issues.<sup>164</sup> Despite the preponderance of evidence indicating the Student may have significant urological issues, the District failed to follow up or investigate the degree of those

<sup>163</sup> See Parent's Closing brief p. 64.

<sup>164</sup> See Supra Notes 49, 56, 60, 69, and 76.

issues and for some unknown reason determined they were not relevant to any transportation decision for the Student to the [REDACTED] School. As a result, the August 2014 IEP is silent on transportation accommodations. *Jenna P.*<sup>165</sup> suggests that hearing officers and the courts must evaluate the Student's IEP transportation arrangements as they existed, not a hypothetical IEP that never existed. The preponderance of the evidence supports the District knew, or certainly should have known, that the Student had, or may have had, serious urological issues that required accommodations for the projected 60-120 minute round trip bus ride to the Hope School. If the Student cannot travel without multiple stops to use the bathroom, the IEP Team had an obligation to write in the IEP the accommodations for transportation designed to address those urological needs. The IHO concludes the preponderance of the evidence supports a ruling that the District committed a procedural error when the IEP team failed to include the necessary transportation accommodations designed to accommodate for the Student's urological needs. Under the IDEA, a hearing officer can only find a procedural defect denied a student a FAPE if the error: impeded the child's right to FAPE, significantly impeded the parents' opportunities to participate in the decision-making process regarding the provision of FAPE to the child, or caused a deprivation of educational benefits.<sup>166</sup> In the seminal case, *Board of Education of Hendrick Hudson School District v. Rowley*, 458 U.S. 176 (1982), the Supreme Court: (1) set the federal requirements for IEP design; and (2) divided IDEA violations into procedural and substantive violations of a disabled child's right to a free appropriate public education ("FAPE"). In *Rowley*, The Supreme Court held that a school district complies with IDEA: (1) if the proposed IEP is designed to provide the child with an educational benefit; and (2)

<sup>165</sup> See *Jenna R.P. v. City of Chicago Sch. Dist. No. 229*, 2013 IL App (Pt) 112247, P59-62 (2013)

<sup>166</sup> See 34 CFR §300.513 (2)(i-iii).

the District complies with the procedural components of IDEA. Further, Most courts (including the Seventh Circuit) treat the failure to properly design and set out one of the components of an IEP to be a procedural violation of the IDEA.<sup>167</sup> Such components include related services like transportation. Transportation includes— (i) Travel to and from school and between schools; (ii) Travel in and around school buildings; and (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.<sup>168</sup> It would seem reasonable to conclude that an “adapted” bus would be one that is adapted to accommodate the Student’s documented medical needs. The preponderance of the evidence supports a ruling that the District failed to accommodate those documented medical needs of the Student. The IHO rules the District failed to provide the Student’s required related services when it recommended a placement significantly distant from the Student’s home and failed to provide appropriate transportation accommodations in the Student’s IEP that were required by statute to accommodate for the Student’s documented medical needs.

Even though the District maintains there was no need to develop these accommodations because the District alleged the Parent refused the placement and walked out of the IEP team meeting before the IEP was finalized, such allegations, even if true, do not relieve the District of the responsibility to fully develop the IEP and include the IEP all required accommodations necessary to meet the needs of the Student. As a result, the IHO rules the preponderance of the evidence supports a ruling that the District’s failure to develop an IEP on August 13, 2014 that recommended a placement significantly distant from the Students home and the

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<sup>167</sup> See *Board of Education of Township High School District No. 211 v. Ross*, 486 F.3d 267 (7th Cir. 2007) (failure to include a transition plan a procedural violation of IDEA); *Rosinsky v. Green Bay Area School District*, 53 IDELR 193, 667 F.Supp.2d 964 (E.D. Wis. 2009) (failure to set out goals a procedural violation of IDEA); *A.I. by Iapalucci v. District of Columbia*, 402 F.Supp.2d 152, 44 IDELR 255 (D.D.C. 2005) (same).

<sup>168</sup> See 34 CFR §300.34(c)(16).

District's failure to include accommodations for transportation designed to meet the Student's documented medical needs denied the Student a FAPE and the IHO rules in favor of the Parents on Issue #3. The IHO rules the preponderance of the evidence failed to support the Parent's allegation that the District should have informed the Parent regarding the DCFS investigation of the ██████ School residential program. As a result, the IHO rules the District did not commit procedural error by not sharing the DCFS investigation information of the ██████ residential program with the Parent since it did not possess the information at the time of the August 13, 2014 IEP team meeting. Thus, the IHO rules in favor of the District on Issue #IV.

### **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 #II and III. The IHO rules the preponderance of the evidence failed to support a ruling in favor of the Parent on Issue #IV. The preponderance of the evidence submitted by the Parent failed to establish the Parent's request for compensatory education related to the Student's diagnosis of PTSD. The Parent is hereby awarded the following relief and the IHO orders the District to:

1. Reimburse Parents for the documented costs incurred by the Parents in the amount of \$10, 435.62. The District must submit a check to the Parents in the amount of \$10, 435.62 no later than September 20, 2015. 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. No later than August 20, 2015, convene an IEP team meeting and develop an IEP that includes the continuation of the Student's current home ABA therapy

program that is provided to the Student a minimum of (2) hours each day during the days of Monday thru Friday (the in home therapy is not required on any school holiday or holiday break that occurs during the six month period) and note in the IEP that the home instructional program is the Student's LRE. Include in the IEP a transition plan to reintroduce the Student to an appropriate self-contained classroom provided by the District for students with autism. Such transition plan must mirror the recommendations as provided by Dr. [REDACTED]

[REDACTED]. The Student's home ABA therapy program must continue for at least six months from the beginning of the school year, unless the Parent and the District mutually agree and stipulate same in writing that the Student is ready to transition back to the identified District autism program sooner than the required six month period. All costs associated with the six month (or less) home ABA therapy program must be paid by the school district upon receipt of an invoice from the Parent's ABA provider. Such payments must be paid to the provider consistent with the District's standard practice for payment of similar invoices. Upon completion of the IEP, a copy of the completed IEP must be submitted the same day as completed to: Mr. Andrew Eulass, Esq., Due Process Coordinator, ISBE, 100 N. First Street, Springfield, IL 62777. Similarly, each time the District pays an invoice to the Parent's home ABA provider, the District must also send a copy of the submitted invoice and District payment 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.

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**IT IS SO ORDERED:**

**Dated: July 20, 2015**

  
**Impartial Hearing Officer**

  
 phone

 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 1<sup>st</sup> class USPS, certified mail, return receipt, and directed to:

[REDACTED]  
And

[REDACTED]  
And

[REDACTED]  
And

Mr. Andrew Eulass, Esq., Due Process Coordinator  
@: [aeulass@isbe.net](mailto:aeulass@isbe.net)

On July 17, 2015

[REDACTED]  
D. MICHAEL RISEN, PH.D.  
IMPARTIAL HEARING OFFICER

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