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

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Student,	)	
	)	
	)	Case No. 2015-0332
	)	
v.	)	Sabrina Wilkins-Brown
	)	Impartial Hearing Officer
	)	
	)	
School District.	)	
	)	

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**FINAL DETERMINATION AND ORDER**

**JURISDICTION**

The undersigned Hearing Officer was appointed to hear this matter on March 12, 2015 and has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq. and the Illinois School Code, 105 ILCS 5/14-8.02a et seq.

**Procedural Background**

On March 6, 2015, the Parents (Pro Se) filed a Request for an Impartial Due Process Hearing Officer.

On March 9, 2015, the District received the Parents' due process request.

On March 10, 2015, the District forwarded the request to the Illinois State Board of Education ("ISBE") for assignment of an Impartial Due Process Hearing Officer.

On March 11, 2015, the District filed a Notice of Insufficiency and a general response to the Parents' due process request. The Notice was filed with the ISBE as this Hearing Officer had not yet been appointed.

On March 12, 2015, this Hearing Officer was appointed to conduct the due process hearing.

On March 16, 2015, this Hearing Officer sent the Parties hearing documents explaining the process which included, an initials status letter with Rights of Parties scheduling a date for the initial status conference, Due Process Guidelines, Preliminary Order and Standing Order. An initial telephone status call was scheduled for March 24, 2015.

On March 17, 2015, the District via an e-mail correspondence sent this Hearing Officer a copy of the Notice of Insufficiency previously filed on March 11, 2015 with the ISBE.

On March 20, 2015, this Hearing Officer issued a Notice of Insufficiency granting the Parents leave to file an amended complaint within three (3) business days on or before 5:00 p.m. on March 25, 2015.

On March 24, 2015, the Parents filed an amended complaint with notice to the District and this Hearing Officer.

On March 26, 2015, this Hearing Officer entered the amended complaint into the ISBE Special Education Data System (SEDS) database. The amended due process complaint raised new issues not previously raised in the Parents' original complaint which reset the timelines under IDEA.

On April 3, 2015, this Hearing Officer sent the Parties a new status letter on the amended complaint, setting a new date and time for the initial status telephone conference to April 8, 2015. A scheduling order was also entered allowing the District time to file a written response to

the amended due process complaint and Notice of Insufficiency, if any, from the date the amended complaint was input on SEDS.

On April 8, 2015, this Hearing Officer held an initial telephone status call with the parties to determine the status of the resolution meeting and/or mediation and to set a mutually convenient date for the prehearing conference. During the telephone conference, the Parents stated they wanted their medical professional, Dr. Lewis Jackson, to observe the Student in the "proposed setting." The District objected.

On April 15, 2015, this Hearing Officer issued an Interim Order which required the Parents to specify in writing the purpose of their medical professional's classroom observation and required the District to provide a written response, after which a determination of the reasonableness of the request would be made. **(See April 15, 2015 Order)**

On April 16, 2015, a notice of prehearing conference call was sent to the Parties advising the parties of the subjects matter to be addressed during the prehearing conference.

On April 22, 2015, a prehearing conference was held over the telephone with the parties. During the prehearing conference, the parties identified the issues for hearing, discussed proposed witness and documents for the hearing and set the hearing dates.

On April 30, 2015, this Hearing Officer issued a Prehearing Report and Order setting the Hearing Dates to May 15, May 18, June 4, June 5 and June 9, 2015. **(See April 30, 2015 Prehearing Report and Order)**

On May 4, 2015, the Parents requested clarification of the wording for one of the issues and a telephone conference call was scheduled to address it. The District objected to the re-wording of the issue.

On May 5 2015, the parties participated in a telephone conference call to address the wording for one of the issues as well as an ancillary matter of the Parents right to the Student's school records prior to the due process hearing. As a result, the due process hearing dates were continued at the Parents' request until after the deadline date to receive the Student School Records. The Parents requested the District expeditiously produce the remaining student records. The District response was that the records would be produced in accordance with the timeline set in the statute. The Parents verbally requested the hearing be postponed until after they received the student records. The District objected. **(See May 5, 2015 Order – Classroom Observation)**

On May 8, 2015 this Hearing Officer issued an Amended Prehearing Report and Order revising the wording of one of the issues, postponing the start date of the multiple day hearing to June 4, 5 and 9, 2015, and . **(See May 8, 2015 Amended Report and Order)**

On May 28, 2015, the District expressed concern via an e-mail communication that three days for the due process hearing would not be sufficient.

On June 1, 2015, a telephone conference call was held with the parties to discuss and identify additional hearing dates. The parties agreed that a seven (7) day hearing would be required based on the number of witnesses and documents. The Parties confirmed the additional hearing dates of July 13, 14, 15 and 16, 2015. **(See June 10, 2015 Interim Order – Additional Hearing Dates)**

#### **Hearing Summary**

The due process hearing was scheduled to be held over seven (7) days (June 4, 5, 9, 2015 and July 13, 14, 15, and 16, 2015). The Parents were pro se and the District was represented by counsel from the law firm of Engler, Baasten & Sraga.

The hearing commenced on June 4, 2015. The last day of the hearing was July 16, 2015.

The Parties made oral closing arguments and were instructed to submit any source documentation or case law relied upon in support of their respective positions. The Parents advised this Hearing Officer they had no additional documentation and the District submitted fourteen cases for consideration. The Parties agreed that the following list of exhibits were offered and admitted into evidence in the due process hearing:

- School District Exhibits (SDE): SDE 8-pgs 77-78; SDE 20-pgs 109-110; SDE 21-pg 111; SDE 27-pgs. 137-176; SDE 31-pgs. 177-207; SDE 34-pgs.212-283; SDE 43-pgs.308-310; SDE 44-pgs.311-541; SDE 47-pgs. 548-549; SDE 48-pg. 550; SDE 49-pgs. 551-552; SDE 50-pgs. 553-554; SDE 52-pgs. 556-558; SDE 53-pgs.559-565; SDE 54-pgs. 566-567; SDE 55-pgs. 568-570; SDE 58-pg. 573; SDE 59-pgs. 574-577; SDE 62-pgs.584-585; SDE 63-pgs.586-587; SDE 65-pg. 590; SDE 66-pgs. 591-701; SDE 73-pgs. 726-730; SDE 76-pgs. 744-750; SDE 79-pgs.755-788; SDE 80-pgs. 789-1035; SDE 92-pgs. 1084-1121; SDE 93-pgs. 1122-1387; SDE 94-pgs. 1388-1530; SDE 95-pgs. 1531-1533; SDE 97-pgs. 1536-1542; SDE 98-pgs.1543-1553; SDE 99-pgs. 1554-1555; SDE 100- pg. 1556; SDE 101-pgs. 1557-1578; SDE 102-pg. 1579.
- Parents Exhibits (PE): PE 5, PE 6-pg. 226; PE 15-pgs. 267, 270. 283; PE 17-pgs. 318, 322, 335, 336; PE 18-pg. 346; PE 24-pg. 405; PE 28-pgs. 470 also marked as 469, 479-484, 487-489, 495-496, 525,527; PE 29-pg.529; PE 30-pg. 581.

Only the foregoing will comprise the record and be relied upon in rendering this decision.

***The following persons testified on behalf of the Parents:***

- ██████████, Special Education Teacher, ██████████ High School (██████████)
- ██████████ Teaching Assistant (██████████)
- Dr. ██████████ (Expert Witness)-Professor of Special Education-International Fulbright Scholar, Northern Colorado University (Private Consultant)
- ██████████ -Personal Service Worker
- ██████████ - Personal Service Worker
- ██████████ -Private Auditory Therapist
- ██████████ Private Board Certified Behavior Analyst (BCBA)
- ██████████, Mother
- \* ██████████ Father

***The following persons testified on behalf of the School District:***

- ██████████ Speech Language Pathologist

[REDACTED], Biology Teacher, NVHS  
 [REDACTED], Hearing Itinerant  
 [REDACTED], School Social Worker  
 [REDACTED], Assistant Principal for Student Services, NVHS  
 [REDACTED], Math Teacher, NVHS  
 [REDACTED], Special Education Teacher, NVHS  
 [REDACTED], Special Education Teacher, NVHS  
 [REDACTED], Department Liasion, Support Services, NVHS  
 [REDACTED], Assistant Director for Student Services  
 [REDACTED], School Psychologist  
 [REDACTED], Math Teacher, NVHS  
 [REDACTED], Physical Therapist  
 [REDACTED], Occupational Therapist  
 [REDACTED], Special Education Teacher, Crone Middle School  
 [REDACTED], Student Services Coordinator, Crone Middle School  
 [REDACTED], School Social Worker  
 [REDACTED], Department Chair, Support Services, NVHS  
 [REDACTED], Assistant Superintendent of Student Services  
 Dr. [REDACTED] (Expert Witness), Clinical Psychologist  
 Dr. [REDACTED] (Expert Witness), Speech Language Pathologist/Assistive Technology Specialist

Note: Licensed District witnesses were qualified as experts in their respective fields of practice specialty. The Parents did not object.

\*Weighted testimony -outside the two year statute of limitations

\*\*Mutual witness

At the conclusion of the hearing, the parties were advised that a written decision would be rendered within 10 days. The tenth day being a Sunday, pursuant to Illinois Statute on Statutes, 5 ILCS 70/1.11, the decision is due the following business day. Since no written transcript of the hearing was produced, references in this decision to witness' hearing testimony is based on the undersigned's tape recording (tr) and date of the testimony, and written notes. In rendering this decision, unless otherwise noted, this Hearing Officer has considered all testimony of the parties' witnesses and opening and closing arguments. This decision is issued as required by Illinois law pursuant to 105 ILCS 5/14-8.02a (g-55)(5).

## ISSUES

Following are the issues and remedies agreed to by the Parties during the prehearing conference and clarified during the hearing:

- A. Whether the District's February 24, 2015 Individual Educational Plan (IEP) appropriate for the Student? Specifically
  - 1) whether the Student's February 24, 2015 IEP goals and objectives were aligned with an appropriate ninth grade general education curriculum which promotes access and progress in the general education setting;
  - 2) whether the Student's February 24, 2015 IEP provided the necessary access to teachers and classes for instruction in the general education setting;
  - 3) Whether the IEP contained adequate supportive services to meet the Student's identified academic needs;
  - 4) Whether the District provided reasonable measures to allow the Student to participate or access the 2014-2015 general education academic setting;
  
- B. Whether the parents were denied meaningful participation in the development of the February 24, 2015 IEP? Specifically:
  - 1) Whether the IEP was collaboratively developed with the parents and considered the parents' preferences including their recommendation for goals and objectives, appropriate accommodations, adaptive measures and supportive services;
  - 2) Whether the parents' educational consultant, Dr. Lewis Jackson was excluded from participation in the February 24, 2015 IEP meeting;
  - 3) Whether the District adequately considered the parents' expert's recommendations;
  - 4) Whether the District's IEP was predetermined prior to the February 24, 2015 meeting
  
- C. Whether the February 24, 2015 IEP proposed 2014-2015 academic placement of the Student was in the least restrictive academic setting?
  
- D. Whether the District throughout the 2014-2015 academic school year provided reasonable measures to allow the Student to participate or access the general education academic setting?

The parents identified requested relief is as follows:

- E. An order requiring the District to convene an IEP meeting in order to develop an appropriate IEP containing specific parental input, as well as input from the parents' educational expert, including consideration of their recommended goals and objectives, supports, related services and adaptations.

- F. An order requiring the District to work with the parents and their consultants in developing appropriate supports, adaptations and services to enable the Student to access and progress in a general education curriculum setting,
- G. An order requiring the District to permit the parents' educational consultant to conduct ongoing half and full day observations of the Student in his educational setting.

The District seeks an order denying all requested parental relief and seeks an order finding the District provided the Student with a Free and Appropriate Public Education (FAPE) during the 2014-2015 school year.

### **BURDEN OF PROOF**

The U.S. Supreme Court established in *Schaffer v. Weast*, 44 IDELR 150 (2005), that the burden of persuasion in proving the effectiveness of a student's IEP is allocated to the party challenging it. The Supreme Court's ruling requires that, in an administrative hearing challenging the effectiveness of a student's IEP, the party challenging the IEP must provide sufficient information to show it does not address the student's individual needs adequately. *See also West Platte R-II Sch. Dist. v. Wilson*, 45 IDELR 88 (8th Cir. 2006). Here, the Parents are challenging the February 24, 2015 IEP and have the burden of proof [i.e. by a preponderance of evidence].

In Illinois, pursuant to 105 ILCS Sec. 14-8.02a (g), the District must provide evidence that it has properly identified and evaluated the nature and severity of the student's suspected or identified disability and that, if the student has been or should have been determined eligible for special education and related services, that it is providing or has offered a free appropriate public education to the student in the least restrictive environment. *Id.*

## FINDINGS OF FACT

After considering all the documentary evidence admitted into the record and the testimony of the witnesses, as well as the arguments of the parties, this Hearing Officer's Findings of Fact are as follows:

### Background

At the time the Parents' filed their due process complaint, the Student was a 15 year old ninth grader attending [REDACTED] (NVHS) in the District. The Student was born with a rare genetic disorder that results in the following deficits: cognitive impairment, moderate to severe hearing impairment, growth hormone deficiency, fine and gross motor delays, reduced proprioceptive awareness, sensory integration processing and language impairment (receptive, expressive and pragmatic). The Student is eligible for special education and related services under the multiple disabilities category and has been receiving special education services since he was first assessed in preschool. The Parents are extremely knowledgeable about their son's condition and his associated learning needs through years of self-education and research. No one understands the Student's capabilities, strengths and weaknesses better than the Parents. The Parents acknowledge the Student exhibits some behaviors that require correction (removal of hearing aids, tantrums, toileting and public self-stimulation (tr. 6/9) The Parents also acknowledge the Student' deficits and have worked and continue to work with the District to find solutions to resolving not only the behaviors but to assist with the learning deficits.

The Parents have retained a number and variety of professionals (i.e. Inclusion Specialist and Board Certified Behavioral Analyst "BCBA") over the years at great personal expense to work with the District staff in developing appropriate solutions to address behaviors and employ strategies to address learning deficits. The Student is engaged in a number of extra-curricular

activities outside of the academic setting which suggest a level of functioning not demonstrated at school. For example, (with the assistance of a personal service worker), the student is able to play golf, swim (learning scuba diving), and take piano lessons. The Student also jogs and has previously participated in the Special Olympics. (PE-17, pg. 318, 322, 335, 336).

The Parents are adamant that their son should be educated in a full inclusion setting (aka general education classroom), with the appropriate special education supports. The Parents have retained, at their own personal expense, an expert on the subject, Dr. [REDACTED], to assist the District in developing strategies for their son's educational programming. The Parents have been avid participants in the Student's evaluations, though often refusing to give their consent to certain District recommendations they felt were not needed or could be used to limit their son's potential, i.e. social work, I.Q. testing (tr. 7/13/15) For many years, the Parents enjoyed a cooperative and collaborative relationship with the District until recently when discussions began about the Student's transition to high school. (Amended DPC)

There is no question the Student has significant deficits. The Student is non-verbal and requires the use of an Augmentative Alternative Communication (AAC) device. The IEP dated May 22, 2013, which was the Student's seventh grade year going into the eighth grade, is the last agreed upon IEP and which the District is purportedly implementing. (SDE 1-10, pgs. 4-82) The May 22, 2013 IEP provided the Student would participate in general education math, PE, elective classes with special education support, including a 1-1 aide; co-taught English and Language Arts, Science, and History classes. The Student has always been in the general education academic setting, receiving special education support services. In the Spring 2013, the District assessed the Student using the Illinois Alternate Assessment (IAA). The Student was assessed as having a Foundational performance level in Reading and Math, and a Satisfactory

performance level in Science. (SDE 1-10 pgs. 1-3) However, with substantial input from the Parents, the District's academic recommendation for the Student's eighth grade placement was in the General Education Classroom with significant special education supports. (SDE 1-10, pg. 29)

### **Academic achievement/Functional Performance**

#### **Eight Grade**

On or about February 26, 2014, during the Student's eighth grade year, the District proposed to conduct its triennial evaluation of the Student. However, the Parents refused to give consent for a triennial evaluation.

On or about April 21, 2014 and May 12, 2014, respectively, the District did conduct IEP conference meetings to review the Student's eligibility and for his annual review. The IEP meetings were held without any additional testing or assessment due to the Parents refusal to give consent. The Parents did fully participate in those IEP meeting together with their advocate, Dr. [REDACTED] who participated by phone on [REDACTED]. The Parents submitted a written Input Statement for the District's consideration.

The reports from District staff at that time were based on teacher observation (via extensive documented data collection sheets) and curriculum based performance, which indicated the Student was not progressing in his academic achievement and functional performance. (SDE 27, pgs. 134-136). It was noted that the Student needed continued support in the areas of toileting, basic hygiene, money, transportation, scheduling, and community safety, problem solving and time management. (SDE 27, pg. 224)

Curriculum based measures indicated the Student correctly identified words from a second grade word list. The difficulty of the material appeared to be the antecedent for some behaviors such as getting out of seat and asking to go to the bathroom on second grade word list but struggled with words on the

third to six grade lists. The Student was administered the San Diego Quick Assessment of Reading Ability Curriculum based measure. The Student was presented with 3 words in a Smart Notebook file. The teacher read a word and asked the Student to drag and drop the correct word in a box. The Student dragged all the correct words in the box from the primer through second grade lists but struggled with the third through sixth grade lists. The Student answered 5/20 correct on a first grade reading passage, 7/18 correct on a second grade reading passage and 6/17 correct on a third grade reading passage.

The Student was assessed in math and was given addition problems using numbers 0-12 on a Smart Notebook file. The Student was asked to type the answers in the box. The Student answered 1/16 correctly without a calculator and 9/16 correctly with the use of a calculator. In subtraction, the Student answered 3/12 correctly without a calculator and 6/12 correctly with the use of a calculator. The Student's cognitive functioning could not be assessed for this IEP meeting because of the Parents refusal to give consent. School records indicated a 2005 School Functional Assessment (SFA) was last given by the District and indicated Cognitive/Behavioral tasks fell within the "Most Difficult Range".

The Student was able to access the 8<sup>th</sup> grade curriculum on his personal computer. The Student used a Smart Notebook file, sentence starters and a talker to complete modified tasks with a teacher's aide, but required adult prompting to stay focused and seated. (SDE 34-pgs, 212-283) The IEP team, with significant Parental input developed goals in the areas of math, listening comprehension, writing, handwriting, typing, toileting, functional tasks, i.e. washing hands, blowing nose, speech/language, and social skills, i.e recognizing personal boundaries. The Parents suggested a vocabulary goal for the Student's vocabulary development, but the IEP team

considered it and decided his vocabulary goal should be addressed through accommodations and is comprehending less content provided by staff rather than a goal

The Student's progress on achieving his IEP goals varied. It was noted by staff that the Student was struggling in the general education setting even with his special education supports. The Staff attributed this variation to an increased need to remove the Student from the classroom, as well as a recognition that the general education curriculum content was getting increasingly more difficult.

### **Behaviors**

The difficulty of the material appeared to be the antecedent for at least some behaviors such as removing hearing aids, getting out of seat and asking to go to the bathroom. It was determined that the Student missed 34.5% of instructional minutes because of toileting, snacks, and other breaks, reading social stories to redirect behavior such as self-stimulation, and traveling time between classes. The Parents' private BCBA, Mr. Wind, recommended to the Staff that snack breaks should be eliminated and the District accepted the recommendation. The observed and documented exhibited behaviors included but was not limited to: head banging, throwing items, pushing fist to head, self-stimulation (described by the District as pressing or touching of genitals).

### **Ninth grade**

Pursuant to a mediation agreement entered into on or about June 30, 2014, the District and Parents agreed for the Student to be placed in all general education classes, except for a special education block and study skills, conduct an independent evaluation, including a Functional Behavioral Assessment (FBA) at District expense and in cooperation with Parent's private consultant, Dr. Lewis Jackson. The Parties agreed to re-convene at a later date after

completion of the evaluations to discuss the results and the Student's instructional needs and placement.(Dist resp to amended DPC).

A domain meeting was held on or about September 5, 2014. Mutually agreed upon private evaluators (Parents did their own independent research) assessed the Student in the following areas: academic achievement, functional skills, processing abilities, language- (receptive, expressive and pragmatic), school functional assessment/motor performance, and social, behavioral and adaptive skills. The Parents refused to allow I.Q. testing of the Student but did agree to a standardized cognitive assessment without an I.Q. component score. The Parents did not provide their written consent to any of the tests until on or about November 10, 2014. Id. At the Parents' request, Dr. [REDACTED] and Mr. [REDACTED] conducted school observations of the Student on or about December 4, 2014 and February 20, 2015, respectively.

Dr. [REDACTED] provided advice and recommendations and constructive criticism and gave his insight as to how the Student's needs would best be served in the general education classroom. Essentially, Dr. [REDACTED]'s recommendations at that time, seemed to be premised on the Student's progress and middle school experience. Dr. [REDACTED] suggested that, "patterns of learning demonstrated in middle school can be continued in high school using the same supports and adaptations provided in middle school". (PE-5) Specific recommendations of the Parent's inclusion expert were: 1) reformulate the IEP so that it addresses the Student's learning needs; 2) Place in classes that assure educational equity and parity with non- disabled peers; 3) develop a peer support program, use a modified grading process, 4) implement effective and evidence based approaches to resolve learning difficulties. Id.

The IEP meeting convened to review the evaluation and assessment results which took place on or about February 23, 2015 and February 24, 2015, respectively. The Parents were

present and fully participated on both days. The IEP team reviewed the results of the re-evaluation, including the speech-language evaluation completed by Dr. [REDACTED] and a psychological evaluation completed by Dr. [REDACTED].

### **Speech/Language evaluation**

Dr. [REDACTED]'s report indicated the Student achieved age equivalent of 3 years, 11 months. The Student followed a variety of directions and comprehension simple conversations during the evaluation. The evaluation confirmed the Student is capable of using a speech generating device to communicate effectively, based on his assessed visual, hearing, physical, cognitive and linguistic abilities.

### **Psychological Evaluation**

The Student's attention and engagement was variable. The Student sat and was engaged 5-10 minutes when given preferred activities like manipulatives. The Doctor noted because of the difficulty in engagement, the scores should be interpreted with caution and is not necessarily indicative of potential.

The Student's reading abilities on the WIATT-III was an age equivalent of 8.0. Oral language, reading comprehension and mathematics were assessed to be below 4.0. The Student's school readiness composite score was at an age equivalent of 3.8.

The Student's adaptive functioning was assessed in the moderately delayed range across all domains (Communication, Daily Living, and Socialization) and was assessed higher than his cognitive abilities. To increase Adaptive functioning and independence the recommendation was to increase time for routines, reward any effort made and make sure Student follows through on expectations and demands, and teach new skills in small steps.

Recommended educational supports included providing a positive, structured and secure environment, use of visual cues for behavior and the use of schedules and sequence strips.

A recommendation for implementation of an FBA and Behavior Intervention Plan (BIP) was made. Educational supports recommended a continued collaboration between Parents and School to exchange of information and suggested strategies. The District proposed a hybrid placement at the February 24, 2015 IEP meeting, proposing a 50-50 mix of self-contained and general education curriculum classes. The Parents disagreed with the Placement.

### **District's Reasons for Recommendation**

The District acknowledged that the Student has always been educated in the general education academic setting and has throughout the years tried to accommodate the Parents' wishes that the Student continue in such a setting. Specific examples of accommodations made in geography for student were: pulled out pictures and power points related to a concept being taught. Similarly math was modified or accommodations made for the Student's academic level of functioning. (tr 6/5 EW) Also in Literature/Reading, the Student uses a modified version, where he gets a sentence starter to drag and drop. The Student also uses a co-writer to type a word which anticipates the word and types it in. The Student is able to complete a sentence but not an entire paragraph. The Student's overall performance depends on how an answer is provided, therefore it is hard to tell if the Student is guessing or really comprehending. For example, Student's device uses a Drag and Drop function. The text box on a document will give 2 answer options and the Student is asked to choose the correct answer. The Student always chooses the answer closest to the text box. Academic Lit is reading and English unit. Student does a modified version gets a sentence starter to drag and drop. Uses co-writer to type whatever is written when he starts to type a word it anticipates the word and types the word. Student does

one sentence not full paragraph.(SDE pg. 1388) Another modification for the Student was to give him less options for greater success.

The recommended PACE class is a two tier program/instructional and academically based and self -contained special education class with a focus on functional adaptive skills. (SDE 27-p. 137-172) Prior to the February 24, 2015 IEP meeting resulting in the recommendation, the District comprised a significant amount of data collection on various activities including academic progress reporting and adaptive functioning and behaviors.

A fundamental problem was the Student's consistent behavior of removing his hearing aids. The District presented evidence of data collected to try and determine triggers or antecedent events and suggested ways to handle the behavior. In collaboration with the Parents and the Parents' private consultants, Dr. [REDACTED] and BCBA, Mr. [REDACTED], strategies including picture cues, verbal prompts and social stories were utilized without success. Based on staff observations and interactions with the Student and the professional opinion of the experts, it was determined that the Student's removal of the hearing aids was an avoidance mechanism or means to escape undesired activity. The Student's behavior of removing the hearing aids became worse as school year progressed as did the Student's frustration levels demonstrated by tantrums, throwing items, shutting down computer, etc. District Staff met with parents to discuss hearing aids use at home. The Parents indicated they ignored him until the Student complied. Parents indicated they would look at the student and point to ears. Strategies for Hearing aids - Reinforcement charts, social stories, picture cues, checking for irritation in ears, collaboration as team with parents, middle school, consultants. (SDE pgs. 1124 ) A reward chart was used to encourage use of wearing hearing aids, Parents determined the reward. Effective for first time of use and thereafter became non-effective. Spoke with middle school staff about experience in

getting student to wear hearing aids and were told ([REDACTED]), none of the strategies were successful long term. (SDE pgs. 1253-1293.)

The District cooperated with the Parents' expert, Dr. [REDACTED] and accepted his input in developing a Behavior Support Plan as part of February 24, 2015 IEP. (SDE 66-pg. 699) The District's recommendation for PACE was to change 3 of the Students' classes for the 2014-2015 academic school year to PACE or instructional math. Reasoning that the Student would be exposed to the same material as in the general education curriculum but the difference in that setting is that it would focus on the Student's specific individual needs and more importantly allow sufficient time for the Student to learn the concepts.(tr 6/4-JW)

The District maintained the Student was not progressing and was not getting any educational benefit from being in the general education classroom setting and felt the Student would benefit most from self-contained special education classroom. The recommendation was to switch 3 classes, 2 would be PACE and 1 instructional. There were no classes chosen for the 2015-2016 academic year, although the Parents did indicate a preference and the District indicated a suggested curriculum. The February 24, 2015 IEP recommended placement only and not classes for 2015-2016 academic year.

However, in considering the Parents' wishes and in an attempt to compromise while balancing the requirement to meet the Student's needs, the District made the recommendation of a hybrid placement for the remaining 2014-2015 academic year, part general education and part special education as reflected in the February 24, 2015 IEP.

### **Parents' Position**

The Parents staunchly believe that their son can receive FAPE in the general education setting with the appropriate supports. The appropriate supports as identified by Dr. [REDACTED], the

Parents inclusion expert, were based on his own general opinions, expertise and experience and several observations of the Student; as well as Parents and Staff anecdotal information. Dr.

██████████ recommended that practice (re-teaching) and homework were essential elements for the Student's development. It was Dr. ██████████'s opinion that the Student should be receiving the same material as his general education peers, although modified to his academic level. Yet, Dr. ██████████ did not provide any concrete suggestion of how to logically accomplish such a modification when the Student's cognitive level is well below the associated grade level.

The Parents maintain the District staff did not reinforce parallel curriculum with parents. For example there was never or rarely any geography, biology or Language Arts/Reading homework sent home for the Student. The math special education teacher did provide homework on a regular basis. The District did not discuss academics too much with parents only behaviors exhibited in classroom. There was no digital format used and no color matching in geography as recommended or suggested. However, the Student's IEP did not require homework or for parents to receive the class criteria.

### **CONCLUSIONS OF LAW**

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

The IDEA ensures that children with disabilities are provide with a free appropriate public education and related services that meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. Sec. 1400(d)(1)(A).

**Whether the District's February 24, 2015 IEP, was appropriate [met the unique needs] for the Student? Specifically**

1. whether the Student's February 24, 2015 IEP goals and objectives were aligned with an appropriate ninth grade general education curriculum which promotes access and progress in the general education setting;
2. whether the Student's February 24, 2015 IEP provided the necessary access to teachers and classes for instruction in the general education setting;
3. Whether the February 24, 2015 IEP contained adequate supportive services to meet the Student's identified academic needs;
4. Whether the District provided reasonable measures to allow the Student to participate or access the 2014-2015 general education academic setting;

Whether the District throughout the 2014-2015 academic school year provided reasonable measures to allow the Student to participate or access the general education academic setting?

The Student's educational needs were identified as needing a modified curriculum highlighting fundamental concepts in each unit , adaptive skills instruction for independent functioning, one-on-one supervision, speech pathologist support for assistive communication devices, physical and occupational therapy for successful access to the educational environment, routines and predictive environment, opportunities for repetition and practice, breaks, hearing assistance and visual aids support. The February 24, 2015 IEP (SDE 66-pgs. 591-701) contained grade appropriate content in all subject areas. The modification of the grade level curriculum was a parallel curriculum aligned to the DLM Standards for the current grade level to meet the Student's needs, which was below grade level due to the Student's assessed cognitive functioning at the first or second grade level. (tr 6/5/15).

The record is replete with the goals, supports and measures used by the District for the Student to access the general education curriculum with supports. (SDE p.591, 729; SDE 62-pgs.584-585; SDE 63-pgs.586-587; SDE 65-pg. 590; SDE 66-pgs. 591-701; SDE 73-pgs. 726-730; SDE 76-pgs. 744-750; SDE 79-pgs.755-788; SDE 80-pgs. 789-1035; SDE 92-pgs. 1084-1121; SDE 93-pgs. 1122-1387; SDE 94-pgs. 1388-1530; SDE 95-pgs. 1531-1533; SDE 97-pgs. 1536-1542)

The IDEA creates a "strong presumption that children with disabilities be educated in regular classes with appropriate aids and services. However, the IDEA does not mandate full inclusion in regular classes. 71 Fed. Reg. 46,585 (2006). See *St. Louis Dev. Disabilities Treatment Ctr. Parents' Ass'n v. Mallory*, 556 IDELR 117 (W.D. Mo. 1984), *aff'd*, 557 IDELR 104 (8th Cir. 1985); and *Lachman v. Illinois State Bd. of Educ.*, 441 IDELR 156 (7th Cir. 1988), *cert. denied*, 488 U.S. 925, 111 LRP 7412 (1988). The term "inclusion" is commonly understood to mean that a student with disabilities receives at least portions of his education in the regular education classroom. *Board of Educ. of the City Sch. Dist. of the City of Rochester*, 26 IDELR 823 (SEA NY 1997); and *Quitman Sch. Dist.*, 58 IDELR 236 (SEA MS 2012). "Full inclusion" is the placement of the student in the mainstream for the entire school day with all activities delivered in the mainstream. *New Haven Bd. of Educ.*, 110 LRP 4313 (SEA CT 10/30/09).

The IDEA only requires that a district mainstream a student to the maximum extent appropriate. *Richard Paul E. v. Plainfield Cmty. Consol. Sch. Dist. 202*, 52 IDELR 130 (N.D. Ill. 2009, *unpublished*). Although the IDEA expresses a strong preference for mainstreaming, districts cannot lose sight of their obligation to provide FAPE. See *P. v. Newington Bd. of Educ.*, 51 IDELR 2 (2d Cir. 2008) (holding that while including students in the regular classroom as much as is practicable is undoubtedly a central goal of the IDEA, schools must attempt to achieve that goal in light of the equally important objective of providing an education appropriately tailored to each student's particular needs); *Modesto City Schs.*, 6 ECLPR 40 (SEA CA 2008) (criticizing a district's refusal to provide individualized ABA services based on its duty to provide FAPE in the LRE); and *Charleston County Sch. Dist.*, 50 IDELR 86 (SEA SC 2007) (holding that a child's need for special education services justified a district's decision to place him in a preschool intervention class rather than a general education preschool program).

Not every student with a disability will benefit from a placement in the regular education setting. FAPE overrides LRE where the two principles conflict. *Hartmann v. Loudoun County Bd. of Educ.*, 26 IDELR 167 (4th Cir. 1997), *cert. denied*, 522 U.S. 1046, 111 LRP 18076 (1998). *See also In re: Student with a Disability*, 60 IDELR 264 (SEA MT 2013) (noting that because an 18-year-old with a history of behavioral issues and eloping behaviors would receive minimal benefit in a general education setting, his proposed placement in an alternative high school was appropriate). IDEA, consistent with its FAPE obligation, requires that all education placement decisions be considered on an individual basis considering each child's unique needs. Each placement decision should be uniquely tailored to reasonably promote the child's educational success. 64 Fed. Reg. 12,471 (1999).

Clearly, the District and experts felt the Student would benefit from some inclusion in the general education classroom. However, the educational benefit must be shown and that is where the Parents' case primarily fails. The Parents did not present objective evidence to show that the Student was progressing. The evaluations that were done were intentionally limited by the Parents and simply did not substantiate the Parents contention that the Student was adequately making educational progress. On the other hand, the District had objective data collections from a variety of sources showing the lack of progress or educational achievement being made by the Student.

**Whether the February 24, 2015 IEP proposed 2014-2015 academic placement of the Student was in the least restrictive academic setting?**

The IDEA's Least Restrictive Environment mandate demands that students be educated in regular classroom settings to the maximum extent appropriate. 34 CFR 300.114 (a)(2). *See, e.g.*,

*Burbank Unified Sch. Dist.*, 64 IDELR 320 (SEA CA 2014); and *In re: Student with a Disability*, 114 LRP 36114 (SEA KS 08/01/14). A district may consider the availability of special education services when making a placement determination; however, it cannot allow those factors to dictate the child's placement on the Least Restrictive Environment continuum. *Letter to Trigg*, 50 IDELR 48 (OSEP 2007). See, e.g., *Natick Pub. Schs.* 63 IDELR 236 (SEA MA 2014); and *Washoe County Sch. Dist.* 115 LRP 3790 (SEA NV 01/05/15).

Parent preference is an appropriate consideration and the IDEA encourages parent participation in placement determinations. However, parental preference cannot be the sole or predominant factor in a placement decision. *Letter to Burton*, 17 IDELR 1182 (OSERS 1991). See, e.g., *Vista Unified Sch. Dist.*, 114 LRP 53560 (SEA CA 11/25/14); and *Chicopee Pub. Schs.*, 60 IDELR 207 (SEA MA 2013). The placement team makes the placement determination for a child with a disability. Illinois State law specifies the members of a child's placement team and what the team is called. 23 Illinois Administrative Code 226.210.

In making a placement determination, priority must be given to placement in the regular classroom with any necessary supplemental aids and services to make that placement successful. Only after that placement is considered should districts move to more restrictive placement options. However, a child with a disability need not fail in the regular education environment before a local educational agency can consider or implement a placement in a more restrictive setting. *Letter to Cohen*, 25 IDELR 516 (OSEP 1996); and *OSEP Memorandum 95-9*, 21 IDELR 1152 (OSEP 1994).

However, if a child's placement does not confer a "meaningful benefit" to the student and a more restrictive program is likely to provide such benefit, the child is entitled to be placed in that more restrictive program. *P. v. Newington Bd. of Educ.*, 51 IDELR 2 (2d Cir. 2008);

*Hartmann v. Loudoun County Bd. of Educ.*, 26 IDELR 167 (4th Cir. 1997), *cert. denied*, 522 U.S. 1046, 111 LRP 18076 (1998); and *D.W. v. Milwaukee Pub. Schs.*, 61 IDELR 32 (7th Cir. 2013, *unpublished*). If the student with a disability will not receive educational benefit from the particular placement, a more restrictive placement should be considered. *Pachl v. Seagren*, 46 IDELR 1 (8th Cir. 2006); *Greenwood v. Wissahickon Sch. Dist.*, 50 IDELR 280 (E.D. Pa. 2008), *aff'd*, 54 IDELR 113 (3d Cir. 2010, *unpublished*). *Board of Educ. of Twp. High Sch. Dist. No. 211 v. Ross*, 47 IDELR 241 (7th Cir. 2007) "This court has declined to adopt any sort of multi-factor test for assessing whether a child may remain in a regular school. We did hold, however, that it is not enough to show that a student is obtaining some benefit, no matter how minimal, at the mainstream school in order to prove that the district's removal of the student violated the LRE requirement," the 7th Circuit commented. In this case, the 7th Circuit opted ask whether a student's education in a conventional school was satisfactory and, if not, whether reasonable measures would have made it so. If the mainstream environment was satisfactory, the school district violated the statute by removing the student. If it was not and could not reasonably be made so, the district satisfied the IDEA if its recommended placement kept the student with her nondisabled peers to the maximum appropriate extent.

Here, the District's recommendation of a hybrid placement which only changed 3 classes was reasonably calculated to provide the placement with non-disabled peers while provided needed special education supports in critical academic areas and functional skills.

## **ORDER**

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

The District provided the Student with a Free and Appropriate Public Education (FAPE) during the 2014-2015 school year. The District's recommended placement of the Student for the 2014-2015 school year was appropriate. The Parents' issues and request for relief are relative only to the 2014-2015 academic school year which is now moot.

### **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.

Dated: July 27, 2015

/s/ Sabrina Wilkins-Brown  
Impartial Hearing Officer

[REDACTED]

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of this Final Decision and Order was sent before 6:00 p.m. on July 27, 2015 by certified mail with return receipt to the following persons:

Bob and Juliana Hepburn, Parents

[REDACTED]

Cynthia Baasten, District's Attorney

[REDACTED]

Mr. Andrew Eulass  
Due Process Coordinator  
Illinois State Board of Education  
100 North First Street  
Springfield, Illinois 62777-001

[REDACTED]

/s/ Sabrina Wilkins-Brown  
Impartial Due Process Hearing Officer

[REDACTED]