RECEIVED
JAN 19 2016
SPECIAL EDUCATION

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

Student,

v.

School District.

Case No: 2016-0176

Kenneth J. Ashman
Due Process Hearing Officer

FINAL DECISION AND ORDER

I.
INTRODUCTION[2]

The grandparents of D.M. (the "Student"), who also serve as D.M.'s legal guardians (the "Guardians"), brought this due process action to appeal the determination by the (the "District") that the Student's possession on school property of prescription medication that did not belong to him did not manifest from his disability, and challenge the appropriateness of the Student's placement during a period of disciplinary action instituted by the District. This Hearing Officer held an expedited evidentiary hearing on December 17 and 18, 2015, pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1415(k)(3) & (4); the Illinois School Code, 105 ILCS 5/14-8.02b(c)(i); the federal regulations implementing IDEA at 34 C.F.R. § 300.532(a), (c); and the Illinois State regulations at 23 Ill. Admin. Code 226 Subpart G. For the reasons set forth below, this Hearing Officer holds as follows:

1. The District had knowledge of the Student's disability prior to March 3, 2015.

2. The removal of the Student from the general education setting to an interim alternative education setting was inappropriate.

3. The Student's misconduct was a direct result of the District's failure to implement an IEP for the Student.

---

[1] Personal identification information is provided in Attachment A.

[2] The factual statements made in this Introduction come from the stipulations of the parties and certain of the Findings of Fact, identified in Section III below.

4. The removal of the Student from the general education setting was a violation of 34 C.F.R. § 300.530.

A. Pre-Filing Events

This case comes before this Hearing Officer in a rather unusual procedural context. At the time the Student was found in possession of the prescription medication, March 3, 2015, he had not yet been found eligible to receive special education services; that is, he was a general education student in the eighth grade at the time of the misconduct. On March 5, 2015, the District notified the Guardians that the Student would be suspended for 10 school days, leaving him eligible to return to school on March 18, 2015. The day following receipt of the notification, however, the Guardians received a second notification, this time informing them that the Student faced expulsion, with an expulsion hearing to occur four days later, on March 10, 2015.

At the expulsion hearing, the Guardians and the District reached a compromise, which the school board approved on March 16, 2015. The District would hold the expulsion in abeyance, and the Student would be placed in the Regional Safe School for the remainder of the 2014-2015 school year and the entire 2015-2016 school year. In the meantime, the District agreed to perform an initial case study evaluation, pursuant to IDEA, to determine whether the Student was eligible for special education services. A domain meeting was held on April 27, 2015 to determine the areas of evaluation, and the Guardians retained their own psychologist to test in certain other areas. On May 26 and June 1, 2015, the District hosted Individualized Education Program ("IEP") meetings for the Student, pursuant to IDEA, where he was found eligible for special education services under the disability category of "Emotional Disability."

Due to his new-found eligibility for special education services, the District held, at the Guardians' request, a Manifestation Determination Review ("MDR"), pursuant to IDEA, on the second day of the IEP meeting (June 1, 2015), to determine whether the Student's wrongful possession of the prescription medicine manifested from his Emotional Disability. The District concluded that the conduct in question did not manifest from his disability. The Guardians complain that the District violated a number of their procedural rights in conducting this MDR, and that as a matter of substance the District's determination that the conduct did not manifest from the Student's disability was wrong. They also complain that the District ignored specific information that should have alerted it that the Student was eligible for special education services prior to the incident in question; that is, the Guardians complain that the District ignored its "child find" obligation.

The Student's placement at the Regional Safe School did not prove successful. He received demerits that resulted in his expulsion from that school, and the parties held resulting IEP meetings on September 29, October 9, and November 5, 2015 to address the placement issue. At the October 9 meeting, the parties agreed that the Student would participate in the Ombudsman program, a computer-based, self-paced program, as an alternative to the District-recommended placement in a therapeutic day school. The Guardians served the complaint filed in this matter at the November 5 IEP meeting, commencing this due process proceeding. This Hearing Officer was appointed to the case on November 12, 2015.

B. Jurisdiction

This proceeding was invoked in accordance with the IDEA, as amended in 2004, codified at 20 U.S.C. §§ 1400, *et seq.*, and in particular at 20 U.S.C. § 1415(k)(3) & (4); the Illinois School Code, 105 ILCS §§ 5/14-1, *et seq.*, and in particular at 105 ILCS 5/14-8.02b(c)(i); the federal regulations implementing IDEA, 34 C.F.R. §§ 300.1, *et. seq.*, and in particular at 34 C.F.R. § 300.532(a), (c); and the Illinois State regulations at 23 Ill. Admin. Code 226 Subpart G.

C. Representation

The Guardians are represented by [redacted] and [redacted] of [redacted] The District is represented by [redacted] of [redacted]

D. Prehearing Rulings[3]

1. *Expedited Hearing*

The Guardians' type-written complaint included a hand-written notation requesting that the matter proceed on an expedited basis. On November 10, 2015, along with delivery of the complaint to the Illinois State Board of Education, the District included a four-page, single-spaced letter objecting to treatment of this matter as an expedited case. On November 11, 2015, the Guardians responded with their own six-page, single-spaced letter to refute the District's position. These missives were included in the materials this Hearing Officer received when he was assigned the case.

On November 19, 2015, this Hearing Officer held a status conference with counsel for the parties. Later that day this Hearing Officer issued a *Notice and Order of Prehearing Conference and Hearing* that included adjudication of the issue of whether the case should proceed on an expedited basis, explaining as follows:

> The Guardians have requested an expedited hearing, complaining that the MDR performed by the District concerning the Student's conduct (unlawful possession of prescription drugs) was incorrect. The District contends that the Guardians waived the right to an expedited hearing because they agreed to have the Student transferred to a "Regional Safe School" in exchange for the District holding in abeyance the Student's expulsion hearing, a school subsequently approved by the IEP team as the Student's appropriate placement, stating that the Guardians "gave up any right to contest that issue then." The Guardians, by contrast, contend that both the purported "agreement" and the IEP team placement were flawed and coerced.

---

[3] The bases for this Hearing Officer's prehearing rulings are often quoted at length below, since understanding these bases provides legal and factual context for the decision that follows.

> "The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection [concerning violations of a code of student conduct] . . . may request a hearing" on an expedited basis. 20 U.S.C. § 1415(k)(3)(A), (4)(B); *accord* 34 C.F.R. § 300.532(a), (c); 105 ILCS 5/14-8.02b(c)(i). These statutes and regulations contain no provision for waiver of the right to an expedited hearing in the event that the parent/guardian challenges the MDR. Moreover, "[a] waiver is the intentional relinquishment of a known right. There must be both knowledge of the existence of the right and an intention to relinquish it." *Pantle v. Industrial Comm'n,* 61 Ill. 2d 365, 372, 335 N.E.2d 491, 496 (Ill. 1975).
>
> Here, it is less than certain that the waiver suggested by the District falls within the parameters of such an intentional relinquishment of a known right, even if one could read a waiver into the federal and state statutes. Moreover, sound policy and practicality cautions against denying an expedited hearing here, for the consequences of denying an expedited hearing where the Guardians are entitled to one are more severe than the consequences of granting an expedited hearing where they are not. For these reasons, the District's request to have this hearing proceed on a non-expedited basis is denied, and, conversely, the Guardians' request that it proceed on an expedited basis is granted, and the hearing shall proceed as such.

2. *Schedule*

The *Notice and Order of Prehearing Conference and Hearing*, issued on November 19, 2015, scheduled the prehearing conference in this matter for November 24, 2015, and the hearing for November 30, 2015, with December 1, 2015 on reserve for a potential second day. On November 22, 2015, the District's counsel reported that he had suffered a serious medical emergency, and by agreement reached between the parties on November 23, 2015, the schedule was revised. This Hearing Officer issued an *Amended Notice and Order of Prehearing Conference and Hearing* on November 29, 2015 that set the prehearing conference for December 3, 2015, and the hearing for December 17, 2015, with December 18, 2015 on reserve for a potential second day. During the prehearing conference, it became clear that a second day would be needed, so the hearing proceeded on December 17 and 18, 2015.

3. *Mootness*

The prehearing conference took place as scheduled on December 3, 2015. There, the District argued that one of the two possible bases entitling the Guardians to an expedited hearing had been mooted, leaving only one ground available to them to challenge the District's actions, and requesting that this Hearing Officer not receive evidence as to the second ground. In his *Prehearing Report & Order*, issued on December 7, 2015, this Hearing Officer denied the District's request, explaining as follows:

Pursuant to Illinois law, there are only two grounds afforded parents/guardians that entitle them to an expedited hearing:

(1) "if there is a disagreement with regard to a determination that the student's behavior was not a manifestation of the student's disability," or

(2) "if there is a disagreement regarding the district's decision to move the student to an interim alternative educational setting for behavior at school, on school premises, or at a school function involving a weapon or drug . . . ."

105 ILCS 5/14-8.02b(c)(i). Here, the Guardians claim that both grounds are at issue.

At the Prehearing Conference, there was considerable discussion as to whether the second ground identified above is a live controversy or whether it has been mooted. The salient facts (for purposes of deciding the issues to be adjudicated at this hearing) are that the Student was not identified as being disabled under IDEA at the time of the drug-related incident at issue (March 3, 2015), and, therefore, the placement of the Student at an alternative setting was not an "interim alternative educational setting" under IDEA because it was not made by an IEP team. Instead, the placement decision was agreed to by the Guardians. The District thus argues that the second ground is not at play because of these facts, and because the Student's current placement – still not in the general education environment from which he came at the time of the incident – was made pursuant to an IEP team decision unrelated to discipline, after he was subsequently deemed eligible for special education services and, instead, constitutes the least restrictive environment to meet the Student's needs.

The Guardians, of course, take issue with these conclusions, and, instead, argue that their consent to the initial placement at or about the time of the incident in question was made due to a lack of informed choice and under threat of the Student's expulsion if not agreed-to. The Guardians further argue that the Student should have been afforded the protections of IDEA even though he had not been identified as a student with a disability because the District had knowledge that the Student was disabled at the time of the incident, under 34 C.F.R. § 300.534(b)(1) and (3). The District contests this conclusion and argues further that, even if it did possess this knowledge, the District had no obligation to provide IDEA-protections to the Student because the Guardians would not consent to having the Student evaluated to determine eligibility for special education services, under 35 C.F.R. § 300.534(c)(1)(i).

> There are obviously a multitude of disputed factual issues here that require an evidentiary hearing. As such, it is not possible to conclude at this time that the second ground identified above, concerning the propriety of an "interim alternative education setting," is not a live controversy or is otherwise rendered moot by subsequent events.

4. *Procedural Violation*

Also discussed during the Prehearing Conference was whether a procedural violation of 34 C.F.R. § 300.530 constitutes sufficient grounds to overturn a determination that a student's conduct did not manifest from his disability. If not, there would be no need to take evidence at the hearing of procedural violations and, instead, the hearing could concentrate on the substantive question of whether the Student's conduct manifested from his disability. In his *Prehearing Report & Order*, this Hearing Officer held that he would receive evidence at the hearing of procedural violations of Section 300.530, explaining as follows:

> In support of the Guardians' contention that procedural violations are sufficient to overturn a manifestation determination decision, they cite to 34 C.F.R. § 300.532(b)(2)(i). This provision grants authority for a Hearing Officer to "[r]eturn the child with a disability to the placement from which the child was removed if the hearing officer determines *that the removal was a violation of § 300.530* or that the child's behavior was a manifestation of the child's disability." (Emphasis added.) Since this regulation authorizes a Hearing Officer to return the child to the pre-removal placement under two different circumstances – one where the Hearing Officer determines that the child's behavior manifested from his disability, and the other where the Hearing Officer determines that removal was a violation of 34 C.F.R. § 300.530 – the Guardians argue that the former examines whether the manifest determination was substantively correct while the latter examines whether proper procedures were followed. Under either circumstance, the Guardians argue, this Hearing Officer has authority to return the Student to his pre-removal placement.[4]
>
> The District counters that the reference in Section 300.532(b)(2)(i) to a determination that the "removal was a violation of § 300.530" concerns "removals" only under that section and not all procedural violations under Section 300.530. In other words, the District argues that the Guardians read this provision too broadly, encompassing all

---

[4] This Hearing Officer recognizes that discussion of this issue also raises thorny questions of whether the Student was ever "placed" within the meaning of IDEA at the time of the incident in question, since he was not identified as a child with a disability at that time. The discussion herein does not address or resolve this issue, which turns on resolution of whether the District had knowledge of the Student's disability under 34 C.F.R. § 300.534(b)(1) and (3). Instead, the discussion herein simply focuses on what issues will be decided at the hearing of this matter.

procedural protections of Section 300.530 under its purview. Instead, the District argues, the provision properly constructed should apply only to the "removal" aspect of Section 300.530. The Guardians point out that, generally speaking, where the regulations limit provisions to a particular sub- or sub-sub-section of a provision, it will do so with precision and, therefore, the reference to Section 300.530 without further specification means that the intent is to encompass all of Section 300.530 within its ambit, *i.e.*, all of its procedural protections, and not just those aspects of Section 300.530 pertaining to "removal."

The District has not supplied any case law supporting its interpretation, and this Hearing Officer's own rather extensive research did not uncover any on-point decisions on the question. The Guardians, on the other hand, while not providing any decision expressly discussing the issue, have nonetheless supplied case law where pure procedural violations are sufficient to conclude that the manifestation determination was erroneous. *See, e.g., In re: Student with a Disability Illinois State Ed. Agency*, Case No. 2015-0263, 111 LRP 24735 (May 15, 2015); *Marengo Comm. High School Dist. 154*, Illinois State Ed. Agency, Case No. 2013-0468, 113 LRP 43754 (Sept. 30, 2013); *District of Columbia Public Schools*, District of Columbia State Ed. Agency, 111 LRP 23794 (Jan. 19, 2011); *Community Consolidated Sch. Dist. 93 v. John F.*, 33 LRP 9955 (N.D. Ill. Oct. 19, 2000). On this basis, this Hearing Officer will receive evidence of procedural violations of Section 300.530 as part of the hearing.

5. *Burdens of Persuasion and Production*

During the prehearing conference, the parties agreed that the burden of persuasion is allocated to the Guardians as the party appealing an MDR decision. This Hearing Officer disagreed, however, and held that the burden of persuasion under Illinois law fell on the District in this case, with the burden of production falling on the Guardians. In his *Prehearing Report and Order*, this Hearing Officer explained as follows:

> According to the Office of Special Education Programs of the United States Department of Education, the burden of persuasion is allocated to the parent that appeals a manifestation determination. In its comments to the 2006 revisions to Code of Federal Regulations concerning this issue, OSEP explained as follows in pertinent part:
>
> > Although the Act [IDEA] does not address allocation of the burden of proof in due process hearings brought under the Act, the U.S. Supreme Court recently addressed the issue. In *Schaffer [v. Weast*, 546 U.S.

> 49 (2005)], the Court first noted that the term "burden of proof" is commonly held to encompass both the burden of persuasion (*i.e.*, which party loses if the evidence is closely balanced) and the burden of production (*i.e.*, the party responsible for going forward at different points in the proceeding). In *Schaffer*, only the burden of persuasion was at issue. The court held that the burden of persuasion in a hearing challenging the validity of an IEP is placed on the party on which this burden usually falls – on the party seeking relief – whether that is the party of the child with a disability or the LEA.
>
> * * *
>
> If the parent disagrees with the manifestation determination, they have the right to appeal that decision by requesting a due process hearing under § 300.532. At the point a due process hearing is requested, the concept of burden of proof would be applicable. As stated above, the Supreme Court determined in *Schaffer* that the burden of proof ultimately is allocated to the moving party.

34 C.F.R. § 300.532, Comments (2006) at 46723-46724.

During the Prehearing Conference, counsel for both the Guardians and the District agreed with this above analysis, even mentioning *Schaffer* by name, stating without objection that the burden of persuasion rested with the Guardians in this case as the movants. This Hearing Officer, however, directed the parties' attention to 23 Ill. Admin. Code 226.655 a), which provides in pertinent part as follows:

a) The hearing officer shall determine:

1) whether the child shall be placed in the proposed alternative educational setting; or

2) whether *the local school district has demonstrated* that the child's behavior was not a manifestation of the child's disability.

(Emphasis added). Under the italicized language of this provision, it would appear as if the District has the burden of persuasion that the Student's behavior was not a manifestation of the Student's disability. Absent authority holding otherwise, this Hearing Officer so holds for

purposes of this expedited hearing.[5] That said, the Guardians shall have the initial burden of production, *i.e.*, will go forward first as the party challenging the manifestation determination.

E. The Hearing

The hearing was held on December 17 and 18, 2015. It was closed to the public, and witnesses were sequestered to prevent one witness's testimony affecting another's.

The parties collectively called 11 witnesses to give in-person testimony, all of whom were technically called as the Guardians' witnesses, but the District had opportunity on cross-examination to explore areas and provide information it wanted to elicit. In order of presentation, these witness are as follows:

- Dr. [redacted], licensed clinical psychologist who performed an evaluation of the Student;
- [redacted], niece of the Guardians and a certified special education teacher;
- [redacted], the Student's eighth grade science teacher and District employee;
- [redacted], social worker employed by the District;
- [redacted], the Student's eighth grade history teacher and District employee;
- [redacted] social worker employed by [redacted] Special Education Cooperative;
- Dr. [redacted], Area Assistant Superintendent for the District;

---

[5] The *Schaffer* Court acknowledged but did not address the interplay between its holding and States that determine to allocate the burden of persuasion otherwise, stating:

> Finally, [the district defendants] and several States urge us to decide that States may, if they wish, override the default rule and put the burden always on the school district. Several States have laws or regulations purporting to do so, at least under some circumstances. . . . Because no such law or regulation exists in Maryland, we need not decide this issue today. Justice Breyer contends that the allocation of the burden ought to be left entirely up to the States. But neither party made this argument before this Court or the courts below. We therefore decline to address it.

546 U.S. at 61. Since it is an open question as to whether States may allocate the burden of persuasion other than as falling on the party seeking relief, this Hearing Officer, rather than hold that an Illinois statute is preempted by federal law, has determined to follow the statute and leave it to the judiciary to adjudicate this issue of first impression.

- [redacted], special education teacher employed by the District;
- [redacted], school psychologist employed by the District;
- [redacted], Director of Instructional Intervention for the District; and
- M.B., the Student's grandmother and Guardian.

In addition to these witnesses, the parties stipulated to the admission of certain affidavits or expected testimony of certain other witnesses, identified as follows:

- Dr. [redacted], licensed clinical psychologist who serves as the treating psychologist for the Student;
- [redacted], an attorney who served as the hearing officer at the expulsion hearing; and
- Dr. [redacted], Superintendent for the District.

Insofar as documentary evidence is concerned, the parties submitted a *Joint Expedited Due Process Hearing Exhibit* book, which contains 48 exhibits. For convenience purposes, the parties numbered each page of the exhibit book sequentially from page 1 through page 441, a form of Bates numbering, regardless of the page numbering within each individual exhibit. This Hearing Officer has adopted the parties' method of identification of pages, and, therefore, citations to exhibits herein will include the exhibit number, with the page number reflecting the Bates number.

At the close of the hearing, the parties' respective counsel offered oral argument. Although neither counsel submitted post-hearing briefing, each submitted certain case law in support of their positions.[6]

II.
ISSUES

The issues to be determined at the hearing fall into four categories, with the resolution of some issues affecting one or more of the others. In order to appreciate the interrelationship among the issues, a brief discussion of the governing law is in order, some of which was touched upon earlier.

As noted above, under Illinois law, there are only two grounds afforded parents/guardians that entitle them to an expedited hearing:

---

[6] As noted, the last day of the hearing was December 18, 2015. Given the District's school calendar, this Hearing Officer must issue this Final Decision and Order on or before January 19, 2016, the tenth school day after the hearing. *See* 105 ILCS 14-80.02b(h).

(1) "if there is a disagreement with regard to a determination that the student's behavior was not a manifestation of the student's disability," or

(2) "if there is a disagreement regarding the district's decision to move the student to an interim alternative educational setting for behavior at school, on school premises, or at a school function involving a weapon or drug . . . ."

105 ILCS 5/14-8.02b(c)(i). The second of these concern the movement of the Student to an "interim alternative education setting" – an "IAES" – during a period of discipline for school code of conduct violations, which would apply to a student who engaged in misconduct who was eligible for special education services, *i.e.*, a student that already had an IEP in place. As noted above, the Student here was not found eligible for special education services at the time of the misconduct in question, so the second provision arguably would not apply in this case.

The federal regulations address the situation where discipline is to be meted out to a student who had not yet been found eligible for special education services, but should have been. Under 34 C.F.R. § 300.534(a), the regulations provide that such students are afforded all of the protections given to eligible students despite that they had not yet been found eligible, if the school district "had knowledge . . . that the child was a child with a disability" before the misconduct occurred. Thus, the Student here might be able to invoke the second provision identified above, concerning the appropriateness of an IAES, if the District knew that he was disabled prior to the misconduct occurring. Subsection (b) of the same regulation provides three specific instances where school districts are deemed to have such knowledge. *See* 34 C.F.R. § 300.

In order for this Hearing Officer to determine whether the IAES provision applies, a determination must first be made as to whether the District had knowledge of the Student's disability prior to the misconduct in question. Thus, the first issue below addresses this question. Interestingly, the analysis is not as simple as to whether any of the three specific instances found in subsection (b) of 34 C.F.R. § 300.534 have been established because the next subsection, subsection (c), provides an exception, stating that even if a district otherwise had knowledge of the student's disability before the misconduct occurred, such knowledge will not be imputed to the district if the parent refused to permit an evaluation of the student or otherwise refused special education services. This too is part of the analysis.

The "knowledge" issue applies not only to the question of the applicability of the IAES issue; rather, it also applies to two other issues. Again, if the District had knowledge of the Student's disability prior to the misconduct occurring (with no exception applying), the Student will be afforded all of the protections of a student eligible for special education services. Thus, the question as to whether the Student's misconduct was a result of the District's failure to implement an IEP for the Student also turns in part on whether the Student was entitled to receive an IEP at the time of the misconduct in question, which in turn depends on whether the District had knowledge of the Student's disability prior to the misconduct in question. Likewise, whether the District improperly "removed" the Student from the general education setting in violation of 34 C.F.R. § 300.530 is also

partially dependent on whether the District had knowledge of the Student's disability prior to the misconduct occurring.

Against this statutory and regulatory background, the following issues were identified prior to the hearing, and will be adjudicated herein:

1. **Issue One**

Basis of Knowledge (34 C.F.R. § 300.534(b)(1) & (2), and §300.534(c))

a. Whether the Guardian expressed concern in writing to (i) supervisory or administrative personnel of the District, or (ii) a teacher of the Student, that the Student is in need of special education and related services.

b. Whether a teacher of the Student or other personnel of the District expressed specific concerns about a pattern of behavior demonstrated by the Student directly to the director of special education or other supervisory personnel of the District.

c. If the answer to either 1.a. or 1.b. above is in the affirmative, *i.e.*, "yes," whether the Guardians did not allow an evaluation of the Student to determine if the Student qualified as a child with a disability under IDEA.

2. **Issue Two**

Interim Alternative Placement Setting (34 C.F.R. § 300.532(a), and 23 Ill. Admin. Code 226.655 b))

If the answer to either 1.a. or 1.b. above is in the affirmative, and the answer to 1.c. above is in the negative, *i.e.*, "no," whether the removal of the Student from the general education setting to an interim alternative education setting was appropriate for the Student.

3. **Issue Three**

Manifestation Determination (34 C.F.R. § 300.530(e)(1)(i) and (ii))

a. Whether the Student's conduct in question was caused by, or had a direct and substantial relationship to, the Student's disability.

b. If the answer to either 1.a. or 1.b. above is in the affirmative, and the answer to 1.c. above is in the negative, whether the Student's conduct in question was the direct result of the District's failure to implement an IEP for the Student.

4. **Issue Four**

Removal (34 C.F.R. § 300.531(b)(2)(i))

Whether the removal of the Student from the general education setting was a violation of 34 C.F.R. § 300.530.

III.
FINDINGS OF FACT

A. Pre-March 3, 2015 Events

1. The Student is a 14 year old male, in his freshman year of high school. Stipulation No. 7.

2. The Student has had a difficult and troubling childhood. Tr. at 54 (Testimony). His mother has been in and out of his life, and is a substance abuser. *Id.* Her current whereabouts are unknown. His father has been in and out of prison, and is currently incarcerated. *Id. See also* Tr. at 173-74 (Testimony); Exhibit 17 at 187.

3. The Guardians, the Student's parental grandparents, have had custody of the Student and his two siblings since 2002, when the Student was about a year and one-half old. Tr. at 842 (M.B. Testimony); Exhibit 1 at 17.

4. The Student sees a therapist weekly, Dr. , since approximately December 2014, and off-and-on before that. Tr. at 845-46 (M.B. Testimony).

5. Towards the end of the Student's fifth grade year, he started showing signs of difficulty with unstructured time. Tr. at 846 (M.B. Testimony). At the start of the sixth grade year, the Guardian (grandmother) requested and had a meeting with the Student's teachers. *Id.* Beginning in that year, the Student started seeing , a Student Assistant Counselor at Middle School, a District school that the Student attended.. Tr. at 851; *see also* Tr. at 204-05 (Testimony). A Student Assistant Counselor helps students who are at risk or who need some counseling or someone to talk to, unlike the school Social Worker, who works with students already eligible for special education services. Tr. at 205 (Testimony); Tr. at 256 (Testimony). The Student's sessions with Mr. continued sporadically throughout middle school, into eighth grade. Tr. at 851.

6. Towards the end of the seventh grade, the Student was engaging in improper behavior. *Id.* The Guardian (grandmother) requested and had a meeting with r, the Assistant Principal of Middle School. *Id.* at 847; *see also* Tr. at 278 (Testimony). Mr. and the Guardian agreed that she would attend a "team meeting" at the beginning of his eighth grade year. Tr. at 847 (M.D. Testimony).

7. The "team meeting" occurred at the beginning of the Student's eighth grade year (the 2014-2015 school year). Tr. at 847. Both the Guardian (grandmother) and Mr. [redacted] were in attendance, along with the Student's eighth grade teachers. *Id.* at 847. The Guardian asked for certain accommodations for the Student, such as permitting the Student to take a photograph on his cell phone of his assignments, so that the Guardian could monitor the assignments, since not all teachers used the "[redacted]" system of posting assignments online. *Id.* at 848. She also requested modified reading assignments, focusing more on "research" type readings rather than novels, since he was not receptive to novel-reading. *Id.* at 849. She further requested more challenging math assignments, since he found the assignments too easy, which she attributed to his failure to complete the assignments. *Id.* As to all of these requests, the teachers and administrator (Mr. [redacted]) declined to make the accommodation. *Id.* Insofar as behaviors were concerned, the Guardian and the eighth grade team discussed the fact that "downtime" was "dangerous" for the Student. *Id.* at 849-50.

8. This was not the only meeting among the eighth grade teachers concerning the Student, as there were multiple such meetings, although the precise number is uncertain. Tr. at 209 ([redacted] Testimony). The Guardian (grandmother), Mr. [redacted], and Mr. [redacted] attended at least one of these meetings, and perhaps more. Tr. at 211. At these meetings, the Guardian raised concerns about the Student's behaviors. *Id.*

9. On September 25, 2014, the Student's eighth grade science teacher, [redacted], who has been teaching middle school for 15 years, sent an email to the Guardian (grandmother), stating in pertinent part as follows:

> I just want to touch base with you in regards to [the Student's] progress and behavior in science class. [The Student] is not putting forth effort on his classwork. He had an opportunity to make up an assignment that he earned 4 out of 13 and chose not to do the redo. Currently he has an F.
>
> Also, yesterday I was out in meetings . . . and [the Student's] name was left by the sub in regards to him being disrespectful to her. [The Student] is often trying to distract others and try to find ways to avoid doing the class work. At times he has had a difficult time controlling himself around a few of his peers in this class. [T]he entire time he thought it was funny and tried to make the entire thing a joke. On top of his disruptions in class, he ended up with homework which he did not complete for today.

Exhibit 20 at 255; *see also* Tr. at 235.

10. The next day, September 26, 2014, the Guardian (grandmother) responded, as follows:

> I am so sorry, [the Student] is acting out probably because his brother was admitted to an adolescent unit on Saturday due to text messages to a friend on several days threatening suicide. Unfortunately, that has pulled me away from much attention or time with [the Student]. He also had a really bad, bad, bad visit with his brother Wednesday night. Not a good excuse, but it has been pretty disruptive around here.

Exhibit 20 at 254.

11. On February 20, 2015, Ms. [redacted] sent another email to the Guardian (grandmother), stating as follows in pertinent part:

> [The Student] seems to be struggling with work completion and I have given him extended time and continually try to guide him in the correct direction. He currently is earning an F. I had a conversation with him yesterday on how this is really unacceptable for someone with his ability. He has also not been able to start labs with the other students because he is refusing to write in his interactive notebook. I told him that you are not just in lab to play, I need you to document your thinking so I can understand were [sic] you are on the learning targets.

Exhibit 23 at 260.

12. The next school day, February 23, 2015, the Guardian (grandmother) responded, as follows in pertinent part:

> [The Student] continues to be going through some heavy emotional stuff although he says it is not effecting [sic] him it obviously is. He is currently in counseling but I have learned that things get worse before they get better.

Exhibit 23 at 260.

13. Ms. [redacted] described the Student's work and behavior in her eighth grade science class as follows in pertinent part:

> Daily, [the Student] comes to class unprepared and without all his materials. He tries to leave the room whenever possible to get things. When he is denied he becomes argumentative and asks why he can't go and will stated [sic] you let so and so go the other day. I usually end it by saying no and that everyone is different.
>
> During every lab, I had to monitor [the Student] personally due to the fact that he likes to make his own experiment. He constantly asks things about what would happen if I did this in lab . . . . "Light

someone on fire with the Bunsen burner?" "Drank this or ate this chemical?" The comments were always dealing with hurting someone or making something blow. . . .

> [The Student] one time in class that I caught hit another student with a ruler and left a mark. Every time I changed the seating arrangement, students near him immediately saw me after class asking for a change in their seat because they cannot sit next to [the Student] because he distracts them by saying inappropriate things etc. Since middle of January, he sits at a table by himself in my room. He now tries to distract the students in front of him by kicking their chairs or whispering things to them.

Exhibit 17 at 205-06. Ms. [redacted] also reported that interventions have not been entirely successful. *Id.* at 206.

14. Ms. [redacted] also gave the following report regarding the Student while he was in her class:

> [The Student] does what [the Student] wants to do at any given time. . . . On a regular basis he would use profanity (usually under his breath) towards teachers and peers. Students did not want to work with him because during group work his goal was to distract everyone and not get anything done. Most students would ask to not sit by him or have their seat changed the minute a new seating chart was given. [The Student] was then placed at his own table in the back of the room. If [the Student] did not get his way he would try to bully me into whatever he wanted. I offered numerous times to help him but he would accept the offer and never show up and follow through.

Exhibit 1 at 20-21.

15. Ms. [redacted] told Mr. [redacted], the school's Assistant Principal, about her observations and concerns regarding the Student, and they had a conversation about them. Tr. at 223. She did not, however, speak to any special education teacher about her concerns or the information provided in the Guardian's emails, and she did not refer the Student for a case study to determine his eligibility for special education services. Tr. at 217.

16. The Student's other eighth grade teachers – [redacted], Language Arts; Ms. [redacted], Business; [redacted], Spanish; [redacted] U.S. History; and [redacted], Math – all gave reports as to the Student's work and behavior in their classes similar to and consistent with the report given by Ms. [redacted] *See* Exhibit 17 at 207-212; Exhibit 1 at 20-21.

17. Mr. [redacted] the school's Student Assistant Counsel, who had been seeing the Student since his sixth grade year, reported the following with respect to the Student's eighth grade year:

> This school year, [the Student] appeared to begin with a more positive and appreciative outlook on school and the adults around him in the school environment. As the year progressed, this quickly deteriorated. The counseling process became stagnant with [the Student] selectively refusing to discuss topics related to school behavior, the impact of personal choices, academic performance and motivation, family relationships, friendships and other relationships with peers. He appeared to become suspicious of my intentions.
>
> Many of our interactions resulted in his accusations of adults for his mistreatment, a demonstrated inability to accept responsibility for personal choices, and challenging the rules and expectations put forth by the adults and the school environment in general.
>
> We also attempted to discuss his seeming contempt for adults attempting to build healthy relationships or provide guidance and assistance with him while at school. He demonstrated difficulty believing that adults had a genuine interest in helping him.

Exhibit 17 at 204.

18. In addition to the eighth grade team meetings concerning the Student, the middle school also held more formal Problem Solving Team ("PST") meetings, on one or two occasions, concerning the Student. Tr. at 352 (Goettel Testimony). The PST meetings are designed to solve problems concerning students. *Id.* at 342. At the meetings, the team was brainstorming ways to help the Student. Tr. at 403.

19. Prior to the drug possession incident, the Student had seven other disciplinary referrals during his eighth grade year, resulting in five out-of-school suspensions. Exhibit 12 at 170. Of these, three were for "insubordination," two were for profanity/vulgarity, and one each for "lunch violation" and improper use of an "electronic device." *Id.* In his seventh grade year, the Student had 10 disciplinary referrals, with two out-of-school suspensions and one in-school suspension. *Id.* Of these, four were for "insubordination," and the remaining six were for "bus misconduct." *Id.* In his sixth grade year, the Student had 12 disciplinary referrals, with one out-of-school suspension and one in-school suspension. *Id.* Of these, three were for "bus misconduct," two were for "lunch violations," three were for "profanity/vulgarity," two for "harassment," and one each for "gang/gang activity," and bullying. *Id.*

B. The March 3, 2015 Incident and Related Events

1. On March 3, 2015, [redacted], the Assistant Principal at [redacted] Middle School, received a report from two staffers that the Student was moving around the school, back and forth to his locker, pressed closely against other students and his locker. Exhibit 17 at 201. Mr. [redacted], along with Principal [redacted], searched the locker and backpack therein, finding a ziplock bag containing three different kinds of pills, eight total, later discovered to be Adderall (two pills), Ibuprofen (four pills), and non-prescription acetaminophen (two pills). *Id.* at 187, 201.

2. The Student gave a verbal and written statement admitting the pills were his, stating that they were Ibuprofen for his headaches, and describing the pills in such a way that matched the pills in the ziplock bag. Exhibit 17 at 186, 202, 223. The Student requested to make a second written statement, this time stating that another student shoved a bag of the pills into his backpack. *Id.* at 187, 224. At the expulsion hearing, the Student testified that Mr. [redacted] had told him that, when he asked to make a second statement, the first would be thrown out. *Id.* at 188.

3. On March 5, 2015, Mr. [redacted] wrote a letter to the Guardian (grandmother) notifying her that the Student had been suspended from school because of this incident for 10 days, effective March 4, 2015, permitting his return on March 18, 2015. Exhibit 17 at 195.

4. On the same day, March 5, 2015, the District's Superintendent, Dr. [redacted], wrote to the Guardian (grandmother) notifying her that the Student faced expulsion for the remainder of the 2014-2015 school year and the first semester of the 2015-2016 school year, with an expulsion hearing to take place on March 10, 2015. Exhibit 17 at 190.

5. At the expulsion hearing, the Guardians requested that the School Board consider an alternative placement or "safe school" program for the Student so he can receive support, noting that he has led a difficult life, with expulsion likely to be detrimental to him. Exhibit 17 at 188-89.

6. By letter dated March 17, 2015, Dr. [redacted], Area Assistant Superintendent 6-12 Education, notified the Guardians that the Student will be "permitted to attend the Safe Schools Program and/or another program selected by the District in lieu of expulsion for the remainder of the 2014-15 school year through the entire 2015-16 school year. Exhibit 18 at 247. The Safe School program is in the Mades-Johnstone Center, a part of the Mid-Valley Special Education Cooperative. *See* Exhibit 19 at 248; Exhibit 2 at 66.

7. The Safe School is not a special education school. Tr. at 421 ([redacted] Testimony).

C. The Independent Educational Evaluation

1. On May 1, 2015 and May 13, 2015, Dr. Michael D. Gara, licensed clinical psychologist, and an expert in child and adolescent psychology, evaluated the Student. Tr. at 40, 51 (Gara Testimony); Exhibit 5 (Psychological Evaluation); *see also Curriculum Vitae* of M. [redacted] (offered without objection at the hearing).

2. Dr. [redacted] made no formal diagnosis of the Student. Tr. at 76 ([redacted] Testimony). The Student does not have a learning disability. *Id.* at 124 [redacted] Testimony).

3. The Wechsler Intelligence Scale for Children, Fourth Edition ("WISC-IV") is the most recent and widely used test of child intellectual functioning. Exhibit 5 at 143.

4. The WISC-IV measures four indices that together comprise the full scale intelligence quotient (FSIQ) score. The FSIQ is a measure of general cognitive functioning. The Student's FSIQ falls in the 82nd percentile rank, with a composite score of 114, representing the "high average" qualitative description. Exhibit 5 at 144.

5. The four indices in the WISC-IV are as follows:

   a. Verbal Comprehension Index (VCI), which measures verbal reasoning and conceptualization, tapping word knowledge and reasoning, verbal expressive abilities, verbal abstract reasoning and concept formation. Exhibit 5 at 144.

   b. Perceptual Reasoning Index (PRI), which measures perceptual and fluid reasoning, spatial processing, and visual-motor integration. *Id.*

   c. Working Memory Index (WMI), which measures attention and concentration, looking at the construct of working memory, or the ability to mentally hold and manipulate information in one's head. It may be lowered by attention deficits, anxiety, or mood disturbance, low effort, or carelessness, fatigue, or other factors affecting concentration. *Id.*

   d. Processing Speed Index (PSI), which measures the ability to quickly and correctly scan, sequence or discriminate simple visual information. It also measures short-term visual memory, attention, and visual-motor coordination. *Id.*

6. The Student's score in the VCI is extraordinarily high, ranking in the 97th percentile, with a composite score of 128, representing a "superior" qualitative description. *Id.* The Student's high VCI score indicates that he demonstrated above average language development, word knowledge, and well-developed skills on a task of abstract categorical reasoning. Furthermore, the Student's understanding of social norms and conventions, common sense reasoning, and everyday problem-solving ability are well above average when compared to his same age peers. *Id.* at 145.

7. His scores in the remaining three indices are all in the "average" qualitative description. His score in PRI is in the 70th percentile, with a composite score of 108. His score in WMI is in the 61st percentile, with a composite score of 104. And, his score in the PSI is in the 42nd percentile, with a composite score of 97. *Id.* at 144.

8. Given these scores, the Student has much stronger verbal skills than non-verbals skills, suggesting that his use of words to solve problems and meet expectations is a significant strength, while his use of nonverbal skills is much less developed. Moreover, there is a relative weakness in processing speed, suggesting that the Student is able to process verbal information accurately, but often struggles due to comparatively slow processing speed, leading to frustration. This results in significant difficulty producing written work or work that requires organizational skills. Secondary effects of such frustration and lack of academic success can include school problems, such as poor work completion, problems with authority figures/teachers, and school avoidant behaviors. Exhibit 5 at 153.

9. The Student is able to come up with age-appropriate and "good" responses when he is given the opportunity to think about what he is doing, but when he is in situations that add stress or where he is asked to think quickly and efficiently, he struggles. Tr. at 80 ([redacted] Testimony). When the Student is in situations that require him to think rapidly or tolerate frustration, manage his behavior, or know what is working and what is not working, his ability to use the information that he has and knows may be impeded. Tr. at 154 ([redacted] Testimony).

10. The Cognitive Assessment System ("CAS") is a standardized and norm referenced measure of cognitive processing skills, used to evaluate Planning, Attention, Simultaneous, and Successive cognitive processes. Exhibit 5 at 146. The Student scored in the average range for Planning, Attention, and Successive Processing, and in the high average range in Simultaneous processing. *Id.* at 147.

11. The Student's performance on the Planning subtest of CAS suggests that he has average ability to engage in activities that demand development and/or use of strategies to solve problems, make decisions about how to do things, control behavior, self-monitor, and self-correct. Id. at 147-48.

12. The Student's performance on the Successive processing subtest of CAS suggests that he has average ability to remember things in order, work with information that is linearly organized, and follow instructions that are presented in sequence. *Id.* at 148.

13. The Basic Achievement Skills Inventory ("BASI") measures current levels of academic functioning. Exhibit 5 at 149. The Student scored in the average range for Reading, average range for Written Language, and above average range in Math. *Id.* at 150.

14. The Student's performance on the Simultaneous processing subtest of CAS suggests that he had high average ability to solve problems that demand complex integration of information. *Id.* at 148.

15. The Student's performance on the Attention processing subtest of CAS suggests that he has average ability to focus selectively on things heard or seen and resist being distracted by less relevant sights and sounds. *Id.* at 148-49.

16. The Test of Problem Solving – 2nd Edition ("TOPS-2") is a diagnostic test of problem solving and critical thinking. The Student scored in the average range for each of the five areas measured, demonstrating that he had average critical thinking skills. Exhibit 5 at 149. He is likely to experience little difficulty in sequencing activities, comprehending and predicting outcomes and making decisions based in logical cognitive processes. *Id.* He is also capable of having academic success, especially with reading comprehension and math processes. *Id.* With solidly developed problem-solving skills, the Student should have little, if any, difficulty planning for the future, selecting appropriate friends and role models, and is capable of showing maturity in his behavior. *Id.*

17. Insofar as an analysis of the Student's emotional/behavioral functioning is concerned, the Student's symptomatic distress levels are very low, indicating either a true absence of psychological distress or a highly defensive response posture. Exhibit 5 at 151. The Student reported few, if any, symptoms classically associated with depression, anxiety, PTSD or disordered thinking. *Id.*

18. There are times when the Student seems to be at risk for being flooded by negative emotion and becoming overwhelmed by more emotion than he can tolerate. Exhibit 5 at 152. This emotional overload likely interferes with his ability to think clearly, making it difficult to maintain attention and concentration, which then compromises the adequacy of his decision-making. *Id.* Consequently, the Student is susceptible to using ill-advised strategies (*i.e.*, withdrawal, avoidance, substance abuse) to rid himself of or otherwise manage these negative emotional states. *Id.* The Student may also be at risk for being socially as well as emotionally withdrawn or unavailable. *Id.* The Student gives evidence of marked oppositional tendencies that are likely to be associated with underlying feelings of anger and resentment toward people or the world in general. *Id.*

19. To Dr. [redacted] the Student reported having numerous difficulties in school. Exhibit 5 at 152. He was able to discuss having poor academic performance and how he no longer participates in school activities, noting that, other than being with his friends, he has very negative attitudes about school. *Id.* He has very limited interest in school or investment in success, and he does not expect to succeed. *Id.* He dislikes reading and studying, and he feels that others tend to see him as lazy. *Id.*

D. The May 26, 2015 IEP Meeting

1. The Parent/Guardian Notification of Conference (the "First Notice") for the May 26, 2015 IEP conference was sent on April 30, 2015. *See* Exhibit 1 at 65. The Notice identified two purposes for the meeting: (1) to "review your child's recent evaluation to determine . . . your child's eligibility for special education and related services; and (2) to "develop your child's Individualized Education Program (IEP) and determine the child's educational placement." *Id.* These were checked as boxes on the form. *Id.*

2. The First Notice did not indicate the May 26, 2015 meeting was for any of the following purposes: (1) "consider relatedness of disability to disciplinary code violation"; (2) "consider the need for a functional behavioral assessment for your child"; (3) "review a need to create or revise a behavior intervention plan for your child"; (4) "review your child's recent change of placement due to suspension"; or (5) "determine the location of the interim alternative educational setting." Exhibit 1 at 65; Tr. at 282-83 ([redacted] Testimony).

3. Attending the May 26, 2015 IEP meeting were the following:

   M.B., the Guardian (grandmother);
   D.B., the Guardian (grandfather);
   The Student;
   [redacted], Assistant Director of Instructional Intervention;
   [redacted], School Psychologist;
   [redacted] 8-1 Team Leader (and U.S. History teacher);
   [redacted], Assistant Principal (Haines Middle School);
   [redacted], School Nurse;
   [redacted], Special Education Teacher;
   [redacted] Social Worker, Mid-Valley SEC;
   Dr. [redacted], licensed clinical psychologist; and
   [redacted] Special Education Teacher, [redacted] School District (and the Student's cousin)

4. [redacted], the Guardians' niece and cousin to the Student, attended the May 26, 2015 IEP meeting, as the Guardians' advocate, as she is a special education teacher with the [redacted] School District. Tr. at 170, 173-75 (Kaufman Testimony).

5. Dr. [redacted] was also present at the May 26, 2015 IEP meeting. Tr. at 88 (Gara Testimony). He had emailed a copy of his written report shortly before the meeting, and verbally provided a summary of his findings, conclusions, and recommendations. Tr. at 88-93.

6. the school psychologist, was also present at the May 26, 2015 IEP meeting. Tr. at 94 (Testimony). Dr. presented his report to the IEP team. *Id.*

7. The Student was found eligible for special education services under the disability category of Emotional Disability. Stipulation at 8; Exhibit 1 at 24-27; Tr. at 97 (Testimony); Tr. at 177 (Testimony).

8. The IEP team discussed the Student's placement, including potential placement at a private therapeutic day school, which Ms. , the Assistant Director of Instructional Intervention, recommended, but with which Ms. did not agree. Tr. at 177-78, 192; *see also* Exhibit 1 at 7. It was suggested that the Guardian visit such school. *Id.* The IEP team did not discuss the Student's placement at High School, the Student's home high school within the District, other than the Student saying that he wanted to attend there. Tr. at 195-96.

9. Given the eligibility determination, Ms. raised the issue of holding a MDR to address the relationship, if any, between the misconduct and the Student's emotional disability, as Ms. believed that the Student's emotional disability pre-existed the misconduct in question. Tr. at 179. The MDR meeting was postponed until a later date. *Id.* at 179,

10. The IEP team did not discuss the Student's goals, accommodations, or supports at the May 26, 2015 IEP meeting. Tr. at 187. The IEP team also did not discuss the Student's functional behavior assessment or a behavioral intervention plan at that meeting. *Id.* at 190. The IEP report nonetheless lists the date of May 26, 2015 on the top of each page, including pages regarding these items. *See* Exhibit 1 at 29-44; Tr. at 186-90.

11. The IEP team had to adjourn before conclusion of the meeting because at least one participant had to attend another meeting. Tr. at 178. It was agreed that the IEP team would reconvene the following week to complete the IEP, review goals, supports, accommodations, service minutes and a transition plan. Exhibit 1 at 7; Tr. at 192.

E. <u>The June 1, 2015 IEP Meeting</u>

1. The Parent/Guardian Notification of Conference (the "Second Notice") for the June 1, 2015 IEP conference was sent on May 28, 2015. *See* Exhibit 1 at 53. The Notice identified two purposes for the meeting: (1) to "develop your child's Individualized Education Program (IEP) and determine the child's educational placement"; and (2) to "continu[e the] IEP meeting dated 05/26/15." *Id.*

2. The Second Notice did not indicate the June 1, 2015 meeting was for any of the following purposes: (1) "consider relatedness of disability to disciplinary code violation"; (2) "consider the need for a functional behavioral assessment for your

child"; (3) "review a need to create or revise a behavior intervention plan for your child"; (4) "review your child's recent change of placement due to suspension"; or (5) "determine the location of the interim alternative educational setting." Exhibit 1 at 53; Tr. at 288 ([redacted] Testimony).

3. Attending the June 1, 2015 IEP meeting were the following:

   M.B., the Guardian (grandmother);
   D.B., the Guardian (grandfather);
   [redacted], Assistant Director of Instructional Intervention;
   [redacted], Special Education Teacher;
   [redacted], Assistant Principal ([redacted] Middle School)
   [redacted], Social Worker;
   [redacted], School Psychologist;
   [redacted], Assistant Principal ([redacted] Middle School); and
   [redacted], 8-1 Team Leader (and U.S. History teacher).

4. At the June 1, 2015 meeting, the IEP team addressed the Student's then-present level of performance and approved the proposed goals. Exhibit 1 at 29-38; Tr. at 297-304 ([redacted] Testimony). Four out of the five goals written involve social worker implementation. Tr. at 304. The IEP team provided that the Student should receive 30 minutes per week of direct social work services. Exhibit 1 at 46; Tr. at 307. This Hearing Officer finds that "direct" social work services means individual, one-on-one social work services. The IEP team also stated the following with respect to such social work services:

   > If [the Student] attends a private therapeutic day school, he will have direct individual social work time and group social work. If [the Student] continues to attend Safe Schools, he will receive group social work.

   Exhibit 1 at 8. In other words, at a Safe School, the Student would not receive individual therapy. Tr. at 305. The Student's related services – social work services – were being proposed based on the location of the Student's placement. Tr. at 306.

5. The IEP team also conducted an MDR at the June 1, 2015 meeting, as Ms. Jones asked the Guardians if they would agree to have it occur at that meeting. Exhibit 1 at 8. The IEP team determined that the Student's behavior was not a manifestation of his disability, responding "no" to the following two statements: (1) The conduct was caused by or had a direct and substantial relationship to the student's disability; and (2) the conduct was the direct result of the school district's failure to implement the IEP. Exhibit 1 at 48.

F. **Post-June 1, 20115 Events**

1. On September 23, 2015, the Student was excluded from the Safe Schools program for receiving multiple behavior infractions for use of profanity, non-compliance with teacher requests, and demonstrating argumentative behaviors towards teachers. Exhibit 19 at 248.

2. On October 9, 2015, the IEP team met and agreed that the Student would be placed in the [redacted] program in lieu of expulsion. Exhibit 3 at 75. The IEP team stated:

> While this interim placement is not a special education placement, the District is willing to explore whether there is a seat open at a local [redacted]. The District is also willing to supplement this placement option by providing social work services while [the Student] attends school in [redacted].

Exhibit 3 at 75; *see also* Tr. at 844 (M.B. Testimony).

IV. DISCUSSION AND CONCLUSIONS OF LAW

A. ISSUE ONE: THE DISTRICT HAD KNOWLEDGE OF THE STUDENT'S DISABILITY PRIOR TO MARCH 3, 2015

As noted above, under 34 C.F.R. § 300.534(a), students facing discipline for violating school codes of conduct who have not yet been found eligible for special education services under IDEA are nonetheless afforded all of the protections of IDEA if the school district in question – defined in the regulations as a "public agency" – "had knowledge . . . that the child was a child with a disability" before the misconduct occurred. To make this determination, subsection (b) of the same regulation outlines three instances where a school district will be deemed to have such knowledge:

> **(b) Basis of Knowledge.** A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred —
>
> > (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
> >
> > (2) The parent of the child requested an evaluation of the child pursuant to§§ 300.300 through 300.311; or

> (3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

34 C.F.R. § 300.534(b).

Here, the parties agree that the Guardians never requested an evaluation of the Student pursuant to 34 C.F.R. §§ 300.300-300.311, so subsection (2) above is not applicable. Thus, this Hearing Officer's analysis will be directed towards subsections (1) and (3).

1. *Subsection (1)*

At the outset, it is important to consider what type of language is necessary in any writing to satisfy subsection (1), *i.e.*, what language the Guardian would have had to use to express concern in writing to the Student's teacher that the Student "is in need of special education and related services." To suggest that the Guardian, or any other parent, for that matter, must use the specific "magic words" of "is in need of special education and related services" is to elevate form over substance, and to impose a burden on parents that most practicing attorneys could not meet. The goal, it seems to this Hearing Officer, is to convey enough information in writing from the parent to the teacher (or other supervisory/administrative personnel) to convey that the student is in need of special education services.

Here, it is indisputable that on September 26, 2014 and February 23, 2015 the Guardian (grandmother) communicated in writing to Ms. [redacted] the Student's then-science teacher. The communications concerned both the academic and behavioral aspects of the Student, and were a give-and-take between the teacher and Guardian.

In the first exchange, the teacher expressed concerns that the Student "is not putting forth effort on his classwork," refused an opportunity to make up an assignment, was disrespectful to a substitute teacher, often tries to distract others, avoids doing work, has difficulty controlling himself, is disruptive in class, and currently had an "F" in class. *See* Finding of Fact ("Fact") A.9. In response, the Guardian did not dispute these representations; instead, she acknowledged them, and explained that the Student was probably acting out because his brother was hospitalized due to threatened suicide – an obvious area of emotional trauma for the Student – and that he had a "really bad, bad, bad visit with his brother" the other evening, noting further that it had been "disruptive" at the Student's home. Fact A.10.

In the second exchange a number of months later, but still before the misconduct in question, the teacher stated that the Student was "struggling with work completion," refuses to write in his interactive notebook for labs, preventing him from participating in labs, and is earning an "F." Fact A.11. Once again, in response, the Guardian did not dispute these representations; instead, she gave an explanation for them, stating that the Student "continues to be going through some heavy emotional stuff" and is currently in counseling, expressing a view that things may get "worse before they get better." Fact A.12.

Moreover, these missives should not be viewed in isolation, but rather in the broader context of what the District knew about the Student at the time the communications occurred. Otherwise, a school district could claim lack of knowledge of a student's disability because a parent sent a cursory communication with the understanding that the district already knew the student, making it unnecessary or redundant to provide detail or specificity. Here, for example, the Guardian knew that the District was aware that the Student had been receiving counseling services from Mr. [redacted], the Student Assistant Counselor, for a number of years, with deteriorating results; that she had requested and attended meetings with the Student's eighth grade team concerning the Student's behaviors; and that the Student had numerous disciplinary referrals demonstrating emotional disregularity. So when the Guardian communicated to Ms. [redacted] that the Student was suffering from "heavy emotional stuff," among other things, she was doing so in the broader context of her and the District's understanding of the Student's existing pattern of behavior.

Although not necessarily an easy call, this Hearing Officer holds that, on the whole, and in consideration that the Guardian need not use only the precise words of the regulation, and in further consideration of the broader context in which the messages were sent, the email communications from the Guardian to Ms. [redacted] in September 2014 and February 2015 sufficiently conveyed that the Student was in need of special education and related services – something found to be true only months later. As such, this Hearing Officer holds that 34 C.F.R. § 300.534(b)(1) is satisfied, providing a basis of knowledge by the District that the Student had a disability prior to March 3, 2015.

2. ***Subsection (3)***

Even if subsection (1) had not been satisfied, this Hearing Officer would still conclude that the District had knowledge of the Student's disability prior to March 3, 2015, under subsection (3). Subsection (3) provides in pertinent part that a district will be deemed to have knowledge of a student's disability if any of the student's teachers expresses specific concerns about a pattern of behavior demonstrated by the student directly to a supervisor. Here, the evidence is sufficient to conclude that this occurred.

Before this Hearing Officer turns to this discussion, however, it is interesting and rather odd to note that the regulation is silent about a situation where supervisory personnel or the director of special education already know about a pattern of behavior demonstrated by the child that causes concern. For example, here, Mr. [redacted], the Assistant Principal and an administrator within the District, may very well have had first-hand knowledge about the Student's concerning pattern of behavior, from discussions with the Guardian, attendance at team meetings and/or PST meetings, and perhaps from observing the Student directly. Under a narrow reading of the regulation, this would not constitute knowledge on the part of the District unless a teacher also conveyed specific concerns about the Student's pattern of behavior to him or another administrator. In any event, this Hearing Officer holds that this occurred, so the point is merely academic.

All of the Student's teachers had similar concerns about the Student. Fact A.13, 14, 15. Each expressed concern that the Student was unprepared, argumentative, and disruptive; that he used profanity and bothered other students; and that he made threats or statements reflecting self-harm or

harming others. *Id.* This is a pattern of behavior seen not only over the course of time, throughout the eighth grade year and earlier, but across each subject matter and teacher.

In her testimony at hearing, Ms. [redacted] said that she told Mr. [redacted] about the fact that the Student comes to class unprepared, leaves the room whenever possible, becomes argumentative, asks questions like what would happen if he lit someone on fire with the Bunsen burner or drank certain chemicals, distracts other students, kicks other students' chairs, whispers to other students during lessons, and says inappropriate things. Fact A.15; Tr. at 223. Again, when coupled with the other information possessed by Mr. [redacted] concerning the Student, *i.e.*, the context in which he received the information from Ms. [redacted] including the team meetings and PST meetings he attended with respect to the Student, at which the Student's teachers reported about and discussed the Student, the Student's long disciplinary history and poor academic performance, and the fact that he knew the Student was "at risk" as the reason for counseling with Mr. [redacted], this Hearing Officer holds that Ms. [redacted] expressed specific concerns about a pattern of behavior demonstrated by the Student to Mr. Fraser, a supervisor within the District. As such, this Hearing Officer holds that 34 C.F.R. § 300.534(b)(3) is satisfied, providing a basis of knowledge by the District that the Student had a disability prior to March 3, 2015.

3. *Douglas County School District Re 1, Colorado State Educational Agency*

The District has supplied only one case or other authority in support of its position, *Douglas County School District Re 1, Colorado State Educational Agency*, 35 IDELR 108, 101 LRP 366 (Aug. 9, 2001). The case is interesting, well-written and well-analyzed, and contains surprisingly similar facts to those presented here.

In *Douglas County*, a student not yet found eligible for special education services tricked another student on the last day of school into taking LSD by pretending it was breath freshener and placing drops on the student's tongue. The student hallucinated and had to be hospitalized, where LSD was found in his system. The parent of the student that caused the problem had requested an evaluation of the student under IDEA about a month prior to the incident in question, but the case study had to be postponed to the following fall due to scheduling concerns. Once the study occurred, the student was found eligible for special education services under a "Significant Identifiable Emotional Disability."

The student was subsequently afforded an MDR, as he was facing expulsion for the incident, and the IEP team found that his conduct did not manifest from his disability. This finding was reversed by a Impartial Due Process Hearing Officer. The Hearing Officer held that, although the student's disability did not impair his ability to control or understand the impact and consequences of his misbehavior, the district should have identified the student's disability prior to the incident in question, and the failure to do so and implement an IEP and behavior intervention strategies violated its statutory obligations under IDEA. On appeal to the state review officer (Colorado has a two-tier appeal process), the administrative law judge reversed the holding of the Hearing Officer, ruling, among other things, that the district should not be charged with a failure to have identified the student's disability prior to the incident in question, and, therefore, reinstating the IEP team's determination that the student's conduct did not manifest from his disability.

As noted, although the *Douglas County* case is well-reasoned, there exists a critical difference between the facts of that case and the one at bar. In *Douglas County*, the student at issue was new to the school, starting only in January 1999 with the event occurring in May 1999, but even during this time period, the student was absent for extended periods of time, including one month straight for disciplinary reasons related to events at another school, and a hospitalization. Thus, the period of time for the district to observe the student was brief, which was the basis of the administrative law judge's reversal of the Hearing Officer:

> Since the student was new to the school, and given the nature of his misconduct in early spring, and the fact that the school had so little time to assess whether the student's problems were merely disciplinary or disability-related, the administrative law judge concludes that the school did not violate its child find obligations.

In our case, the District has had the Student under its care for the entirety of his educational career, including all of his middle school years. Although the *Douglas County* case may prove instructive in other aspects of this Final Decision and Order, it is at best inapposite to the question of "child find" and perhaps even supportive of the notion that here the District had knowledge of the Student's disability prior to the misconduct in question.[7]

4. *Exception*

The conclusion that the District had knowledge of the Student's disability prior to March 5, 2015 can survive, however, only if the exception to a finding of imputed knowledge to the District under 34 C.F.R. § 300.534(b) does not apply. Subsection (c) of this regulation provides as follows:

> (c) Exception. A public agency would not be deemed to have knowledge under paragraph (b) of this section if—
>
> (1) The parent of the child —
>
> (i) Has not allowed an evaluation of the child pursuant to §§ 300.300 through 300.311; or

---

[7] The District has objected to having "child find" as an issue in this expedited hearing, arguing that the jurisdiction of this Hearing Officer is limited, with "child find" issues outside the scope of such jurisdiction. Notably, however, this Hearing Officer has not undertaken a traditional "child find" analysis under 20 U.S.C. § 1412(a)(3)(A), requiring districts to identify, locate, and evaluate children with disabilities in need of special education and related services. Instead, this Hearing Officer has limited his "child find" analysis – if one could call it such – to a determination of whether the District had knowledge of the Student's disability prior to the misconduct in question, under 34 C.F.R. § 300.534, which clearly has applicability here and for which the parties were on notice from the issues the emanated from the prehearing conference. It is interesting to note, however, that the *Douglas County* case faced the same objection, with the administrative law judge rejecting the argument, stating that it was foreseeable that "child find" would prove relevant in that case, since the parent – like the Guardian here – had taken the position that the district should have evaluated the student earlier and, had an IEP been in place, the misconduct might never had occurred.

(ii) Has refused services under this part; or

> (2) The child has been evaluated in accordance with§§ 300.300 through 300.311 and determined to not be a child with a disability under this part.

34 C.F.R. § 300.534(c).

Here, the District contends only that subsection (c)(1)(i) is applicable; that is, that the Guardians did not allow an evaluation of the Student pursuant to 34 C.F.R. §§ 300.300-300.311. The evidence as to this question is sparse.

During the cross-examination of Ms. [redacted] (the science teacher), the District's counsel engaged in the following colloquy:

> Q [by [redacted], District counsel]: Do you know whether or not [the Student's] guardian had been offered a case study evaluation?
>
> A [by [redacted]]: I was under the impression that she had.
>
> Q: By who?
>
> A: By the school counselor, [redacted], and Mr. [redacted].
>
> Q: And what gave you that impression that they had?
>
> A: Just through discussions it was like offered and then declined.
>
> Q: By whom?
>
> MS. [redacted] [Guardian's counsel]: Objection, please. Hearsay.
>
> HEARING OFFICER [redacted]: That's sustained.
>
> MR. [redacted]: Really? I mean . . . .

Tr. at 235-36.

This Hearing Officer is fully aware that neither the Federal Rules of Evidence nor the Illinois Rules of Evidence strictly govern this case; however, this Hearing Officer is guided by the principle common in administrative proceedings that evidence is admissible if it is of the "type commonly relied upon by reasonably prudent persons in the conduct of their affairs." Hearsay has a component of unreliability to it by its nature, which is why it is barred in courts, so determining when, in a due process case, it should be admitted takes some judgment.

Here, the evidence sought to be elicited was that the Guardian declined an offer of case study evaluation of the Student, but this was being offered through a teacher who was not a party to the conversation and only had an "impression" that the conversation even occurred. Given the very important nature of this testimony – an important fact to be established – something more would need to have been offered. Although Mr. [redacted] had passed away some time before the hearing, the District still could have called Ms. [redacted], the school counselor, who according to Ms. [redacted], communicated to Ms. [redacted] about it, or examined the Guardian, who was listed as a testifying witness.

Later, when [redacted] (the U.S. History teacher) testified, she appeared more certain with respect to similar testimony, and this Hearing Officer overruled a similar objection:

> Q [by Ms. [redacted]]: Did you ever refer [the Student] for a special education evaluation?
>
> A [by Ms. [redacted]]: We had spoke [sic] about it at one PST meeting.
>
> Q: We meaning who?
>
> A: The PST team.
>
> Q: Okay. And what was decided?
>
> A: [redacted] was going to call grandma. He offered those services to grandma and he told us grandma –
>
> Q: Okay.
>
> A: – declined.
>
> MS. [redacted]: I'm going to object to that being included as hearsay.
>
> MR. [redacted]: It's responsive to her question.
>
> MS. [redacted]: I asked her to stop.
>
> HEARING OFFICER ASHMAN: Well, hold on. . . . It's a tough call. I'm going to . . . permit the testimony. Let it stand. There was a question and she responded.

Tr. at 357-58.

Although this Hearing Officer admitted the testimony into evidence, this Hearing Officer accords it little weight. The next few questions from the Guardian's counsel of Ms. [redacted] established that she was not a party to the purported conversation with Mr. [redacted] and the Guardian, and that she was not even aware of whether or not he actually called her. Tr. at 358. And, she did

not remember when this conversation purportedly occurred. Tr. at 359. As such, it is inherently unreliable.

When coupled with the fact that the District has offered no documentary evidence whatsoever with respect to the issue – no notes, letters, forms, or other logs of any kind establishing that a case study was offered to the Guardian about the Student – and the fact that the District declined to ask the Guardian any questions whatsoever during her testimony, the hearsay testimony offered is simply too thin a reed on which to rest the weighty issue of whether the Guardian declined to accept a case study invitation. For these reasons, the Hearing Officer holds that there is insufficient evidence to conclude that the Guardian did not allow an evaluation of the Student pursuant to §§ 300.300 through 300.311, and, therefore, the exception listed in 34 C.F.R. § 300.534(c) does not apply. As such, the District is deemed to have knowledge of the Student's disability prior to the misconduct in question, on March 3, 2015.

B. ISSUE TWO: THE REMOVAL OF THE STUDENT FROM THE GENERAL EDUCATION SETTING TO AN INTERIM ALTERNATIVE EDUCATION SETTING WAS INAPPROPRIATE

As noted in Section II, the second issue is only applicable if this Hearing Officer determined that the District had knowledge of the Student's disability before the misconduct in question occurred, with no exception applying, which this Hearing Officer did so determine. As such, all of the protections afforded students deemed eligible for special education services are applicable to the Student here.

In this vein, the District's position that the removal of the Student from the general education environment did not constitute an "interim alternative education setting" – an IAES – since it was achieved by consent rather than through an IEP process must be rejected. Students eligible for special education and related services are afforded certain protections concerning IAES. *See* 34 C.F.R. § 300.530. Among these protections are that the Student shall continue to receive educational services, including services identified in the Student's IEP, and that such IAES shall last for no more than 45 school days when the school code violation involves drugs. 34 C.F.R. § 300.530(d)(1) and (g)(2). The placement must also be "appropriate." 23 Ill. Admin. Code 226.655 b). In determining "appropriateness," the Illinois Administrative Code provides as follows:

> The hearing officer shall consider the following factors in determining whether an interim alternative placement is appropriate:
>
> 1) Whether the local school district has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;
>
> 2) Whether the child's current placement is appropriate;

3) Whether the district has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

4) Whether the interim alternative educational setting will permit full implementation of the student's IEP and includes services and modifications designed to prevent the undesired behavior from recurring.

23 Ill. Admin. Code 226.655 b).

The analysis here is a bit tricky, for the facts presented in this case do not fall squarely into the regulatory framework. For example, under the Illinois Administrative Code, the viewpoint is prospective. It assumes that an IAES has not yet occurred, and is looking to whether the proposed IAES is appropriate. Here, not only is that not the case, but the removal of the Student to the Safe School far exceeded 45 days – well beyond the permissible timetable – a clear violation of 34 C.F.R. § 300.530(g).

Moreover, this Hearing Officer has serious concerns as to whether the Student received appropriate services at the Safe School. The testimony and documentary evidence established that the Student's IEP provided for 30 minutes of individual (*i.e.*, "direct") social work services, but at the Safe School he received only group services. One witness – [redacted], the school social worker – even admitted that social work services were being driven by the location of the Student's placement (rather than his needs). Tr. at 306. Furthermore, although the IEP team agreed on the current [redacted] program for the Student, this was predicated on the fact that placement of the student in the general education environment – at [redacted] High School – was not available, due to the School Board's decision to accept an alternative placement in lieu of expulsion.

For all of these reasons, this Hearing Officer finds that the IAES for the Student, both at the Safe School and now at [redacted], is inappropriate, as it does not afford the Student the services he needs under his IEP, and it has lasted well beyond the statutory limitation.

C. ISSUE THREE: THE STUDENT'S MISCONDUCT WAS A DIRECT RESULT OF THE DISTRICT'S FAILURE TO IMPLEMENT AN IEP FOR THE STUDENT

The third issue concerns the manifestation determination itself. *See* 34 C.F.R. § 300.530(e)(1)(i) and (ii). It is broken down into two parts, the second of which was dependent on a finding that the District had knowledge of the Student's disability prior to the misconduct at issue occurring, which, as the reader knows, this Hearing Officer so found above. Thus, the two issues are:

- Whether the Student's conduct in question was caused by, or had a direct and substantial relationship to, the Student's disability; and

- Whether the Student's conduct in question was the direct result of the District's failure to implement an IEP for the Student.

For the reasons that follow, this Hearing Officer finds for the District as to the first issue, and for the Guardians as to the second.

As to the first issue, except for procedural violations, such as the failure to provide adequate notice of the MDR, the Guardians rely almost exclusively on the testimony and report of Dr. [redacted], their expert and the private clinical psychologist that evaluated the Student. The Guardians argue that the Student's relatively poor executive functioning skills, stemming from his discrepant "superior" verbal comprehension abilities over his "average" processing speed, among other things, leads to a whole host of difficulties for the Student, including considerable frustration.

The problem with the Guardians argument is twofold. First, while Dr. [redacted]'s analysis provides an interesting explanation for why the Student may have decided to bring the drugs to school, for there is a likely psychological explanations for the behavior, it does not convince this Hearing Officer that the Student's disability caused him to do so.

Second, most of Dr. [redacted]s analysis turned on whether the Student was under stress or asked to think quickly and efficiently. For example, Dr. [redacted] testified that when the Student is given the opportunity to think about what he is doing, he makes age-appropriate and "good" responses; however, he struggles when in situations where there is stress or is asked to think quickly and efficiently. Tr. at 80. He further stated that when the Student is in situations that require rapid thinking or him to tolerate frustration, manage his behavior, or know what is working and what is not working, his ability to use the information that he has and knows may be impeded. Tr. at 154. The problem is that no party offered any testimony as to the conditions under which the Student decided to bring the drugs to school – there is no evidence in the record whatsoever that it was done under stress, quickly, or rapidly. In fact, the act took some degree of planning, obtaining the pills, putting them in a ziplock bag, bringing to school, etc., which would seem to run counter to quick, rapid decision-making.

The MDR report indicates that the IEP team considered the relevant factors that went into the decision-making process, and this Hearing Officer is convinced that the nature of the offense – drug possession – is of a different ilk and nature than the Student's numerous other infractions, all of which might be considered manifestations of his disability. This one was atypical and different. For these reasons, this Hearing Officer holds that the Student's conduct in question – possession of the prescription drugs for which he did not have a prescription – was not caused by or had a direct and substantial relationship to the Student's disability. Any procedural violations, if corrected, would not change this result.

As to the second issue, the Hearing Officer concludes that the Student's misconduct was the direct result of the District's failure to implement an IEP for the Student. This Hearing Officer recognizes that there is a thin line to walk here between these two issues. The quick answer, and the one advocated by the Guardians, is that there was no IEP in place at the time of the misconduct, so it is simply not possible to know whether an IEP would have saved the Student from engaging in the

conduct at issue. While tempting, a more complete analysis would include looking at the Student's current IEP and, assuming something similar would have been adopted prior to March 3, 2015, analyzing whether it would have prevented the misconduct from occurring.

The thin line, then, is the tension between an IEP that arguably does not address the misconduct directly – for, if it did, one could reasonably argue that the behavior manifested from his disability, since the IEP is directly focused on correcting it – and one that is broad enough to cover the behavior generally. It is this Hearing Officer's opinion that the goals for the current IEP are sufficiently broad enough to prevent the Student from repeating the conduct, if the IEP is employed properly and if the minutes per week for social work services are increased significantly (as four out of the five goals require social work services in order to be achieved). With proper social work and achievement of the goals as drafted, it is this Hearing Officer's opinion that the misconduct of bringing drugs to school will not reoccur. Conversely, then, the failure to have an IEP in place prior to March 3, 2015, likely contributed to the Student's poor decision to bring drugs to school, so much so as to reasonably conclude that the Student's misconduct was the direct cause of the District's failure to implement an IEP for the Student.

D. ISSUE FOUR: THE REMOVAL OF THE STUDENT FROM THE GENERAL EDUCATION SETTING WAS A VIOLATION OF 34 C.F.R. § 300.530

Given this Hearing Officer's finding in Issue One that the District had knowledge of the Student's disability prior to March 3, 2015, the conclusion that the removal of the Student from the general education setting violated 34 C.F.R. § 300.530 is not difficult to reach. Under 34 C.F.R. § 300.530(e), a manifestation determination must occur within 10 days of any decision to change the Student's placement, something that did not occur here. Moreover, as discussed above, the IAES could only have been for 45 days; yet, here, it has lasted months beyond this limitation. Finally, it appears as if the removal did not provide for all of the services called for under the Student's IEP, another procedural violation. For all of these reasons, this Hearing Officer holds that the removal of the Student from the general education setting was a violation of 34 C.F.R. § 300.530.

V. CONCLUSION AND ORDER

As noted above, this Hearing Officer has held as follows:

1. The District had knowledge of the Student's disability prior to March 3, 2015.
2. The removal of the Student from the general education setting to an interim alternative education setting was inappropriate.
3. The Student's misconduct was a direct result of the District's failure to implement an IEP for the Student.
4. The removal of the Student from the general education setting was a violation of 34 C.F.R. § 300.530.

As a result of these holdings, this Hearing Officer hereby Orders as follows:

1. The Student shall be immediately returned to the general education setting of his home school, now [redacted] High School.

2. The District shall immediately rescind its Stay of Expulsion by the Board of Education relating to the Student's March 3, 2015 conduct.

3. The District shall not proceed with any further disciplinary action relating to the Student's March 3, 2015 conduct.

4. Pursuant to 105 ILCS 5/14-8.02a(h), the District shall submit evidence of compliance with this Order to the Illinois State Board of Education no later than 30 days after receipt of this Order.

VI.
NOTICE OF RIGHT TO REQUEST CLARIFICATION

Pursuant to 105 ILCS § 5/14-8.02a(h), either party may request clarification of this Final Decision and Order 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 Final Decision and Order 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, Illinois 62777. The right to request clarification does not permit a party to request reconsideration of the Final Decision and Order itself, and the Hearing Officer is not authorized to entertain a request for reconsideration.

VII.
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 Final Decision and Order 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.

SO ORDERED.

Dated: January 19, 2016

/s/Kenneth J. Ashman
Kenneth J. Ashman, Hearing Officer
[redacted]
[redacted]
[redacted] (p) | [redacted] (f)
[redacted]

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

Student,

v.

School District.

Case No: 2016-0176

Kenneth J. Ashman
Due Process Hearing Officer

CERTIFICATE OF SERVICE

I, Kenneth J. Ashman, certify that on January 19, 2016, I caused copies of the Final Decision and Order issued in this case to be served upon the following persons in the manner indicated:

Sent via Certified Mail, First Class, Postage Prepaid, and Electronically via Email

Sent Electronically via Email Only

Andrew Eulass, Esq. (aeulass@isbe.net)

Dated: January 19, 2016

/s/Kenneth J. Ashman
Kenneth J. Ashman, Hearing Officer

(p) | (f)