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

**SPECIAL EDUCATION  
SERVICES**

[REDACTED]

Petitioner,

- against -

[REDACTED]

Respondent.

Case No. 2016-0183

Jennifer A. Leisner,  
Hearing Officer

**FINAL DETERMINATION AND ORDER**

**BACKGROUND**

[REDACTED] (the "Student"), through his mother (the "Parent") filed a due process complaint notice ("DPCN") on October 25, 2016 pursuant to the *Individuals with Disabilities Education Act* ("IDEA"), 20 U.S.C §1415(b)(6) and the *School Code of Illinois* ("School Code"), 105 ILCS 5/14-8.02a(f) and their respective implementing regulations. At the time of filing, the Student was a fourteen (14) year old [REDACTED] with a primary disability eligibility designation of Multiple Disabilities ("MD") and a secondary disability eligibility designation of Speech/Language Impairment ("S/L"). (School District #1)<sup>2</sup> Also at the time of filing the Student was in his second year of eighth grade at [REDACTED]

<sup>1</sup> The Student turned fifteen (15) during the pendency of this hearing. (School District #1).

<sup>2</sup> School District exhibits will be referred to as "School District #\_\_", and Parent exhibits will be referred to as "Parent #\_\_".

(“[REDACTED]”).<sup>3</sup> The Student is in a self-contained private program, and uses a wheelchair at school and at home. The subject matter of the DPCN was two-fold: (1) the Parent alleged that at an IEP meeting on October 22, 2015 she was unable to meaningfully participate due to the seating arrangements at the IEP, differences between her printed copy of a draft IEP and the draft being projected on a screen, a general hostility from the school-based members of the IEP team; and (2) that the School District refused to sign a Medicaid Letter of Need to allow growth adjustments to the Student’s wheelchair.

This Hearing Officer was appointed by the Illinois State Board of Education on November 17, 2016, twenty-three (23) days after the Parent filed her DPCN. This Hearing Officer sent out initial correspondence, the rights of the parties, hearing process guidelines and a preliminary order on November 20, 2016, that noted the fact that the deadlines for the School District’s response and notice of insufficiency had passed. The parties held a status conference on November 23, 2016 by which time the Parent had already filed a Motion for Stay Put placement (pursuant to her previous appeal in ISBE Case No. 2015-0491). The parties asked for an extension of the 45 day deadlines in order allow the School District to respond to the Parent’s Motion for Stay Put and to file a Motion to Dismiss (and to allow the Parent to respond, accordingly), and an Amended

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<sup>3</sup> May 9, 2016 Transcript, p. 17. Also, prior to the filing of the DPCN that is the subject of this hearing, the Parent had filed two other DPCNs against the District: ISBE Case No. 2015-0149 and ISBE Case No. 2015-0491. The Hearing Officer in ISBE Case No 2015-0491 order a stay put placement in the 8<sup>th</sup> grade at [REDACTED] and subsequently dismissed the case at hearing for want of prosecution. The Parent had filed a timely appeal of ISBE Case No. 2016-0491, thus invoking a stay put placement at [REDACTED]. As described below, one of the issues to be presented in this matter was the determination of the proper grade level for the Student at his stay-put placement at [REDACTED].

Notice of Prehearing Conference was set for December 15, 2015.<sup>4</sup> The School District filed its response on December 2, 2015.<sup>5</sup> After numerous extensions of the 45-day deadlines at the Parent's request<sup>6</sup>, the Prehearing Conference was concluded on February 23, 2016, and another extension of the 45-day deadlines was granted and hearing dates for March 23-24, 2016 and April 19-22, 2016 were set. The Parent opted for an open hearing.

Hearing commenced on May 23 and 24, 2016.<sup>7</sup> However, due to a last minute health issue of the Student, hearing could not take place on April 19-22, 2016.<sup>8</sup> Another extension of the 45 day deadlines was entered to allow hearing to

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<sup>4</sup> In fact the Parent filed several intervening motions at this time, to which the School District was given an opportunity to respond, and which were ruled upon in a timely manner.

<sup>5</sup> The Parent has consistently objected to the fact that the School District's response was late; and, accordingly has raised a consistent objection to the fact that this Hearing Officer accepted the response when it was filed. Given the late appointment of this matter by ISBE and the multiple cross-motions that were filed by the parties immediately after this Hearing Officer's appointment, this Hearing Officer concluded that the School District was not acting in bad faith in filing the response when it did. As is discussed further below, this Hearing Officer has granted numerous extensions of time to accommodate the unrepresented Parent throughout these proceedings, and therefore the acceptance of the late response by Hearing Officer is not indicative of preferential treatment of the School District.

<sup>6</sup> See, Order dated February 17, 2016 and the Preliminary Prehearing Report and Order dated February 18, 2016.

<sup>7</sup> Appendix A is attached to, and made part of this Final Determination and Order. It contains a list of all of the witness called in this matter. This Hearing Officer has noted in this Final Determination and Order only that witness testimony which was relevant to her findings and conclusions at the due process hearing.

<sup>8</sup> Prior to reconvening on April 19, 2016, the Hearing Officer had granted the parties an opportunity to amend their five (5) day disclosures to include documents that had previously been attached to motions in this case, as long as the amended disclosures were made five (5) days before April 19, 2016. The Hearing Officer denied the Parent's attempt to add over 300 new documents not covered by her Order (and, had also denied the School District's attempt to add a document) that had neither been previously disclosed nor attached to a previous motion. The Order denying the inclusion of these non-conforming documents was dated April 17, 2016. On the morning of April 19, 2016 just before hearing was to commence, the Parent notified the Hearing Officer via email that the Student was experiencing diarrhea, and that she could not go forward with hearing for the remainder of the week. (Transcript, April 19, 2016 pp. 1 – 21). The Parent produced a doctor's note clearing the Student to return to school on April 21, 2016. (IHO Exhibit #1). An attempt was made to take testimony on April 21, 2016; but the Parent stated that the Student was still symptomatic, and that she could not manage him and participate in hearing, even via telephone. In fact the Student was vocalizing into the phone receiver that made it impossible for the hearing to take place. (Transcript, April 21, 2016 pp. 1-44).

conclude on April 27, and April 29, 2016 and May 9, 2016<sup>9</sup>, with closing briefs due on May 19, 2016 (the last day of hearing for purposes of calculating the 45-day deadlines).<sup>10</sup> The Parent entered Parent Exhibits #1-11 into evidence; the School District entered School District Exhibits #1-9 into evidence; and, the Hearing Officer entered IHO Group Exhibit #1 into evidence. At the hearing the Parent was unrepresented by counsel, and the School District was represented by [REDACTED], Esq.

### ISSUES

The issues to be determined are as follows:

A. **Issue #1:** *Whether the School District committed a procedural violation of the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq. ("IDEA") during the Student's October 22, 2015 IEP meeting by:*

- (1) failing to accommodate the Parent's request for preferential seating;*
- (2) by providing a hard copy of the draft IEP that was different than the IEP being used on a projection screen during the meeting;*
- (3) by demonstrating hostile behavior towards the Parent resulting in the Parent being unable to meaningfully participate in the decision-making process concerning the provision FAPE to the Student;*
- (4) denied the Parent access to meaningful Student information relevant to the IEP during the IEP meeting; and,*
- (5) predetermining the goals, objections, equipment and placement in a manner to deny FAPE to the Student and to deny the Parent meaningful*

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<sup>9</sup> The Student attended the hearing at the Parent's request on March 23, 2016 (3/23/2016 Transcript, p. 4), April 27, 2016 (4/27/2016 Transcript, p. 3), April 29, 2016 (4/29/2016 Transcript, p. 231) and May 9, 2016 (5/9/2016 Transcript, p.6). The Hearing on May 9, 2016 was two (2) hours late in starting due to the Parent's absence due to car trouble. (May 9, 2016 Transcript, p. 3-6, 224-225).

<sup>10</sup> The School District submitted its brief and authority on May 19, 2016. However, the Parent filed her brief and authority the next day due to an alleged electrical failure at her home. This Hearing Officer accepted her brief over the School District's objections via Order of May 22, 2016 finding that the delay of less than one day did not unfairly prejudice the School District nor necessitate a recalculation of the 45-day deadline.

*participation in the decision-making process regarding the provision of FAPE to the Student?*

- i. The Parent submits that the School District violated the IDEA's procedures at the Student's October 22, 2015 IEP meeting by failing to accommodate the Parent's legitimate request for preferential seating, by using a hard copy of the draft IEP that was not identical to the one being projected on the screen, by engaging in hostile behavior toward the Parent, by failing to provide an original communication book to the Parent at the meeting when requested, and by pre-determining goals, objectives, equipment and placement items in the IEP. The Parent further submits that these procedural violations denied the Student a free appropriate public education ("FAPE") and significantly impeded the Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student.
- ii. The School District denies all of the Parent's allegations; and, submits that it did not deny the Student a FAPE nor significantly impeded the Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student.

**B. Issue #2:** *Whether during the October 22, 2015 IEP meeting information provided by the Parent was appropriately considered by the IEP team during that meeting and appropriately documented in the IEP document produced at that meeting?*

- i. The Parent submits that she provided the School District with her concerns and additional information in writing before the October 22, 2015 meeting; and that the School District failed to appropriately consider these concerns/information or document them in the IEP.
- ii. The School District denies the Parent's allegations and submits that at the October 22, 2015 IEP meeting the School District appropriately considered and documented the Parent's concerns and documented them properly in the IEP.

C. **Issue #3:** *Whether the School District violated the IDEA when it did not submit a Medicare Letter of Need regarding the Student's wheelchair maintenance?*

- i. The Parent submits that the Student's IEP provides that he be provided a wheelchair in order to access his special education and related services; and, that the wheelchair requires routine maintenance to adjust for growth to be effective. The Parent further submits that the School District used the Parent's Medicare to acquire the wheelchair utilized at school; and that Medicare requires a Letter of Need to be submitted to make these routine adjustments. The Parent submits that the School District has denied the Student a FAPE by failing to submit the required Letter of Need to Medicare.
- ii. The School District submits that the issue of wheelchair maintenance was addressed and settled in a previous litigation; and that a Letter of Need is not required in order for the Student to access his special education and related services pursuant to his IEP. The School District also submits that it did not deny the Student a FAPE as a result of failing to sign the Letter of Need.

D. **Issue#4:** *Whether the correct stay-put classroom assignment of the Student is the eighth grade or the ninth grade at [REDACTED] School?*

- i. In this Hearing Officers Ruling on the Parent's previous Motion for Stay Put, the Hearing Officer had previously ruled that because the Parent had filed a timely appeal in a previous DPCN, that [REDACTED] School would be the Student's stay-put placement for the duration of that appeal.
- ii. The Parent submits that the Student, currently an eighth grader should remain in his current grade until the appeal is concluded.
- iii. The School District submits that the appropriate stay put placement during the pendency of the appeal is in the ninth grade.

**E. Relief:**

- a. The Parent requests finding in favor of the Parent, a facilitated IEP meeting and an order compelling the School District to sign the Letter of Need.
- b. The School District requests a finding in favor of the School District and denying the Parent's claims for relief.

**FINDINGS OF FACT**

After considering all the evidence, as well as the arguments of both parties, this Hearing Officer's Findings of Fact are as follows: the Student is a now fifteen-year old boy, with a medical diagnosis of cerebral palsy and legal blindness who also has a significant communication impairment. (Parent #1, School District #3). The Student is currently in his second year of eighth grade, and attends school at ██████████ Academy ("██████"). (School District #1, #3)

**A. The Student's Wheelchairs.**

The Student utilizes two wheelchairs to access his education, and they are listed as a form of assistive technology ("AT") in his last two Individualized Education Plans ("IEPs"). (School District #1, #3) In his 2014 IEP his AT was described as follows:

*[The Student] utilizes a variety of AT: including classroom switches, power link and switch interface, classroom computers, the classroom Smartboard, tangible symbols, Tactile Symbol Communicator, Tactile yes/no board, stander, scoop bowl, built up utensils bench w/angle, KAFO's, [C]onvoid [C]ruiser, reverse "Kaye" walker, adapted PE equipment, and his manual wheelchair.*

(School District #3)

In his October 2015 IEP, both the Convaid EZ Cruiser (“Convaid Cruiser”) (a portable type of wheelchair)<sup>11</sup> and his manual wheelchair are listed as assistive technology in his IEP. (School District #1) There is no dispute that the Student requires the use of either his manual wheelchair or his Convaid Cruiser to access the special education and related services provided in his IEP. (School District #1, #3, May 9, 2016 Transcript, p. 226).<sup>12</sup> Periodic adjustments to the wheelchairs are necessary to accommodate the Student’s growth. (3/24/2016 Transcript, pp. 140 -168)

There is some evidence that Parent’s Medicaid was accessed to purchase the Student’s current manual wheelchair (Parent’s #6, School District #9; May 9, 2016 Transcript, p. 221), and that the School District purchased the Convaid Cruiser wheelchair (Parent’s #6, 4/29/2016 Transcript, p. 119, 5/9/2016 Transcript p. 183). No direct evidence was introduced from either party in the form of an invoice or other Medicaid paperwork establishing how the wheelchairs were originally purchased. However, the School District’s refusal to sign a Letter of Need for growth adjustments to the manual wheelchair was based on a prior settlement agreement, and not because the manual wheelchair wasn’t purchased with Medicaid funds. (School District #9)

Ms. J, the School District’s Director of Special Education, testified that the Convaid Cruiser was purchased by the School District at the Parent’s request so

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<sup>11</sup> For the remainder of this opinion, the Convaid EZ Cruiser will be sometimes referred to as a wheelchair, as it serves that purpose for the Student.

<sup>12</sup> The Convaid Cruiser is primarily used for transporting the Student to and from school on the bus. (3/24/2016 Transcript, p. 145) Transportation is a related service under the Student’s 2014 and 2015 IEPs. (School District #1, #3)

that the Parent could transport him to school on days when he had a medical appointment. (5/9/2016 Transcript, pp. 163, 183)<sup>13</sup>. Additionally, the Parent submitted a copy of a quote dated 10/21/2013 indicating that the quote was delivered to “private pay” for a Convaid EZ Cruiser<sup>14</sup> (Parent’s #3, 3/24/2016 Testimony, pp. 165), which is the Convaid Cruiser referenced in the Student’s 2014 and 2015 IEPs. (Parent’s #3, School District #1, #3).

1. Growth Adjustments/Letter of Need.

██████ offers wheelchair clinics on campus during school hours as a courtesy for the families in order to allow them to interface with their respective wheelchair vendors for repairs and adjustments. (March 24, 2016 Transcript, p. 117, School District #2). The Student’s wheelchair vendor is a company named NuMotion, and his rehab specialist is Mr. C. (Parent #3, 3/24/2015 Transcript, p. 126-173). Mr. C testified that he has known the Student for over five (5) years and that during that time has made growth adjustments for the Student’s wheelchairs, sometimes at home and sometimes at ██████. (Parent #3, March 24, 2016 Transcript, p. 130, 140 -168). Mr. C testified that he often helps the families he services to coordinate with their insurance; their therapists and the school to make sure the wheelchairs are in good order. (3/24/2016 Transcript, p. 128-29, 152-53). Mr. C could not recollect if the Student’s wheelchairs required a Medicaid Letter of Need. (3/24/2016 Transcript, pp. 152-56)<sup>15</sup>

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<sup>13</sup> See also, 4/27/2016 Transcript, p. 120.

<sup>14</sup> While the document does not indicate to what “private pay” refers, Mr. C indicated that it could refer to the School District. (3/24/2016 Transcript, P. 142).

<sup>15</sup> The Parent testified that Mr. C had instructed her that a Letter of Need was necessary before he could adjust the Student’s manual wheelchair. (April 29, 2016, p. 126)

The Parent submitted evidence that she made a request of the School District to provide a Letter of Need to Medicaid in the fall of 2015. (Parent #6) The request was denied by the School District because of a previous settlement agreement entered into by the parties. (School District #9).

2. Prior Settlement Between the Parties.

On January 14, 2015, as part of a separate litigation between the Parent and the School District (and other third parties) in the United States Court for the Northern District of Illinois,<sup>16</sup> the parties executed a Settlement Checklist/Term Sheet. (School District #5) The document, a court form containing handwritten information, was executed by counsel for the parties, and provided for the payment of \$7000.00 to the Parent (divided between the co-defendants) “which is inclusive of the costs towards a wheelchair.” The settlement was for a release of claims prior to January 15, 2015 and in consideration for the monies paid, the Parent agreed specifically to dismiss her then-pending DPCN (ISBE Case No. 2015-0149). (Id.). The checklist was memorialized in a separate Settlement Agreement dated later in 2015, which was signed by the Parent and School District. (School District #7). The School District paid the Parent in September 2015. (Parent #9). Notwithstanding, the above, school-based members of the IEP Team admitted that if assistive technology is listed in the IEP, then the

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<sup>16</sup> ██████████ *et al.*, ██████████. Also, at this time ISBE Case No. 2015-0149 was pending. In that DPCN, the Parent alleged that the “servicer contacted [the Student’s] mom by phone to inform her that [the Student’s] wheelchair settings have reached or exceeded maximum growth adjustments. He indicated that [the Student] requires a larger wheelchair to accommodate further growth adjustments.” (School District, #6). As a remedy in ISBE Case No. 2014-0149, the Parent stated: “Student requires a new manual wheelchair to accommodate growth as has he has outgrown the current mobility support assistive technology device.” (Id.) (See also, April 29, 2016 Transcript, pp. 137-38, 149-154, 160, 168-169.

School District is required to pay for it. (May 9, 2016 Transcript, pp. 116-117, 218-219).

3. Status of Manual Wheelchair.

At the time of hearing, the Parent testified that she had not acquired a new wheelchair; and, that Medicaid barred her from using the funds paid to her to pay for growth adjustments to the Student's current manual wheelchair. (April 29, 2016 Transcript, pp. 258-261). The Parent did not provide any documentation or other authority substantiating her claim that she was unable to use private funds to pay NuMotion for the growth adjustments to the Student's wheelchair.

**B. October 22, 2015 IEP Meeting.**

On October 22, 2015 the Student's IEP Team convened an IEP meeting. (School District #1)<sup>17</sup> The purpose of the October 22, 2015 IEP was to update the IEP and to plan the Student's transition to High School, and representatives of the High School (a different local education authority than the School District) were invited to attend. (Parent's #7)<sup>18</sup> The Conference Notes to the IEP provide in full:

*"General IEP Notes:*

1. *"High school representatives did not attend meeting per parent request.*

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<sup>17</sup> The October IEP had to be rescheduled more than once due to the fact that the Parent had been ill. (Parent #8A)

<sup>18</sup> At this time, the Parent's previous DPCN, ISBE Case No. 2015-0491, was still pending. The hearing officer for this IEP encouraged the parties to have this IEP. (April 29, 2016 Transcript, p. 62) The Parent had contacted the School District and asked that the meeting be rescheduled due to her health (Parent #8A, April 29, 2016 Transcript, p. 53) but that she attended even though she wasn't feeling well because the School District informed her that they would conduct the meeting in her absence. (April 29, 2016 Transcript, p. 54).

2. *"IATP: Speech is recommending discrete trials for simple voice outlet switch.*
3. *"Parent request VI notes and meeting times and questioned reading on learning media assessment.*
4. *"Braille was discussed re: tactile defensiveness and cognitive levels.*
5. *"Parent requests learning media assessment.*
6. *"Team discussed behaviors as not impacting his education; parent respectfully disagrees.*
7. *"Hands over ears/not participating 'seems' to be on days he is 'uncomfortable' or 'bloated; belching, extended stomach'. Parent shares just recently that the belching/gas has improved after she reported doctor worked out plan for gas.*
8. *"Classroom management plan exists.*
9. *"Parent requested it recorded in IEP notes that she is uncertain of goals and does not see how they tie into transition plan. Team members explained correlations.*
10. *"Parent requested training on partner assisted scanning and PODD type book and was invited to Elim to observe and be trained at parent's earliest convenience.*
11. *"Discussion on communication and sensory tie to goals as well as to academics.*
12. *"[Parent] feels that IEP did not 'finish', however, only section [Parent] did not participate in discussion was placement section with no changes from previous IEP.*
13. *"Team did share all information."*
14. *"Entire [REDACTED] team feels he should be in high school – 9<sup>th</sup> grade this school year to ensure that he receives appropriate life skills and is eligible to participate in a 18-22 old program for four years; continued placement in 8<sup>th</sup> grade would short-change [the Student].*
15. *"[REDACTED] is presently holding 9<sup>th</sup> grade classroom position open for [the Student's] needs for 2015-2016 school year but [REDACTED] cannot guarantee him a 9<sup>th</sup> grade position in 2016-2017.*

16. *“Parent left without finalized copy of IEP as she had to pick up her son.*

17. *“Parent shared that she wanted ten days to review IEP.*

*“Assessments: see parental attachment.”*

(School District #1).<sup>19</sup>

1. Parent’s Written Concerns.

On the day of the IEP, the Parent provided the school-based members of the team a three (3) page single-spaced document entitled “Parent Report and Concerns for Enhancing the Student’s Education” which was attached to and made a part of the IEP. (School District #1). Ms. J testified that she was the note taker for the October 22, 2015 IEP, and that she had the Parent’s Report next to her while she took notes. She also testified that the items in the Parent’s report were discussed during the IEP. (May 9, 2016 Transcript, p.165, 174-75). It is important to note that nothing regarding the previous settlement agreement between the parties was discussed at the October 22, 2016 IEP meeting, nor incorporated into the IEP document. (District #1; April 29, 2016 Transcript, p. 118).

Among the items raised in the Parent’s October 22, 2015 written attachment, were some of the items at issue in this hearing (e.g., the request for the School District to sign a Letter of Need). However the Parent raised other issues as well, including (but not limited to) Visual Itinerant Services, and whether Braille is appropriate for the Student. (School District #1). In addition

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<sup>19</sup> The Parent received a copy of the finalized IEP documents on October 23, 2015 via email. (April 29, 2016 Transcript, p. 238).

she raised several issues regarding transition. (Id.) Both of these were addressed within the IEP document. Mr. B, a vision itinerant specialist was in attendance at the October 22, 2015 IEP meeting and discussed, in addition to his report, whether Braille was appropriate for the Student. (Parent #1; School District #1; March 24, 2016 Transcript, pp. 44-45). Moreover, the Parent's suggestions regarding transition were the subject of discussion with changes made to the IEP as a result of the Parent's input. (School District #1; Parent #2, April 29, 2016 Transcript, p. 240).

2. Seating Arrangements/Draft copy of IEP Given to Parent

The Parent, and her spouse, Mr. B2 (the Student's stepfather), came early to the IEP, which was scheduled to begin 1:30 p.m. (April 27, 2016 Transcript, p. 125; Parent #7). The Parent and her husband then waited approximately fifteen (15) minutes before they were brought into the conference room at Elim, where the other members of the IEP team were already assembled. (April 27, 2016 IEP p. 126, April 29, 2016, pp. 92-93).<sup>20</sup> Parent and her husband testified that when they were brought into the meeting late, it appeared to them as if the team had already met. (April 26, 2016, p. 126, April 29, 2016 Transcript, p. 55-57, 88) The IEP was being projected onto the wall closest to (and perpendicular to) the door the Parent entered. (April 29, 2016 Transcript, pp. 90-93)

The Parent and her husband both testified that the Parent stated that she wanted a seat closer to the door than the one she was offered; and, which was occupied by one of the School District's attorneys. (April 27, 2015 Transcript, pp.

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<sup>20</sup> The conference room at [REDACTED] was the same room at [REDACTED] where the hearing was held on April 19, April 21, April 27, April 29 and May 9, 2016. Several witnesses gave testimony regarding the seating arrangements at the October 22, 2016 IEP by referencing the room in real time during their respective testimony. (April 29, 2016 Transcript, pp. 66-67, 90-93).

125-134, April 29, 2016 Transcript, p. 88-89, 94-94) The attorney, according to the Parent and her husband, refused to move, stating that she was going to sit next to her client; and other IEP team members moved their seats so the Parent and her husband could be seated together at a spot further away from the screen. (April 27, 2016 Transcript, pp. 125-134, April 29, 2016 Transcript, pp. 56-57, 92-93).

According to the Parent, in October 2015 she had a vision impairment that necessitated her sitting closest to the wall where the IEP was being projected. (April 29, 2016 Transcript pp. 57, 93). The Parent did not inform the IEP team of her need for accommodation due to a vision impairment; although she did testify that she said couldn't see the screen clearly. (April 26, 2016 Transcript, pp. 99-100, 183, 206; Parent #5). The Parent was given a draft copy of the IEP being projected on the screen, so that she could follow along. (March 24, 2016 Transcript, p. 106, May 9, 2016 Transcript, p. 214-215; Parent #2).

As the meeting progressed, the Parent made exclamations such as "where are we?" "what page are we on?" and "I can't see." (April 29, 2016 Transcript, p. 98, 230-233) The Parent states that there were page discrepancies between the hard copy of the draft she was given and the copy of the IEP that was being projected on the screen (April 29, 2016 Transcript, pp. 101, 106); and, that she had difficulty keeping track of what part of the IEP the team was discussing. (April 29, 2016 Transcript, p. 229). The Parent admitted that although at times she was unsure of what page they were discussing; but, that every time she voiced a concern, she was directed to the appropriate place in the IEP. (April 29, 2016 Transcript, pp. 206-07) She also admitted that it could have also been difficult to

keep up because she was feeling ill that day. (April 29, 2016 Transcript, pp. 228-229).

The School District witnesses confirm that the Parent requested a seat closer to the projector (May 9, 2016 Transcript, pp. 11-12, 215);<sup>21</sup> and, that she was given a hard copy draft of the IEP to reference as the meeting went on. (May 9, 2016 Transcript, pp. 214-15.) Ms. J testified that as the note taker for the meeting she was accessing her personal computer that was plugged into the wall; and, not easily moveable. (May 9, 2016 Transcript, p. 166). She confirmed that the School District's counsel, Ms. Q,<sup>22</sup> refused to give up her seat, explaining to the Parent that she needed to sit next to Ms. J as she took notes. (Id.). The School District witnesses testified that the Parent never informed them that she had a vision issue or that she could not otherwise see the screen because her vision was impaired. (May 9, 2016 Transcript, p. 12) Ms. J further testified that she was revising the IEP electronically in real time and that each time the document was "refreshed" what was on the screen would change, thus accounting for the discrepancies between the Parent's hard copy and what was being projected on the screen. (May 9, 2016 p. 165, 169-171)

2. Allegation of Hostility From School-Based Members of the Team.

The Parent and her husband testified that from the moment when the School District attorney refused to give up her seat, the meeting took a hostile tone. (April 27, 2016 Transcript, pp. 125-153, April 29 Transcript, pp. 192-193)

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<sup>21</sup> Ms. J testified that she recalled that the Parent simply said "move" to the School District attorney whose seat she wanted. (May 9, 2016 Transcript, p.226)

<sup>22</sup> Ms. Q was not a witness at hearing; and, she is a different attorney than the attorney representing the School District at hearing. Both Ms. Q and the attorney representing the School District at hearing attended the October 22, 2015 IEP meeting. (School District #1)

The Parent and her husband further testified that the IEP meeting went at a fast pace. (April 27, 2016 Transcript, pp. 125-153, April 29 Transcript, pp. 183, 206, 208); although each time she asked the school-based members of the team to direct her to the hard copy of the IEP, they did and it helped her. (April 29, 2016 Transcript, pp. 2-6-207).

The Parent stated that an [REDACTED] representative made an announcement that the meeting would have to end at 3:15 p.m., because that's when the [REDACTED] staff members' workday ended. (April 29, 2016 Transcript, p. 111). The Parent and her husband also testified that she also had to leave the IEP meeting at around the same time in order to meet her son's bus from school. (April 27, 2016 Transcript, p. 132, April 29, 2016 Transcript, p.112-113). The Parent stated as that as the meeting got closer to the time when they needed to leave, she informed the team that she felt the IEP was incomplete and that she wished to reconvene. (School District #1, April 29, 2016 Transcript, p. 112-113, 199) The meeting was not reconvened. (Parent's #11)<sup>23</sup>

No witnesses characterized the behavior of the school-based members of the IEP team as "bullying" or "harassing", including the Parent's husband. (April 27, 2016 Transcript, p. 135-153, 202-203, May 9, 2016 Transcript, pp. 12, 172). The Parent even testified that although she believed the School District attorney was "gruff", no other school-based member of the IEP Team was (April 29, 2016

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<sup>23</sup> The Parent made another written request to have the meeting reconvened on November 11, 2015; but the request was refused via a letter from Ms. J dated November 19, 2015 on the grounds that "[n]othing has changed from the time period of the IEP meeting to the date of the request (or today's date for that matter) to warrant another IEP meeting." Ms. J [REDACTED] also informed the Parent that "unless an order [in the then-pending DPCN, ISBE Case No. 2015-0491] is otherwise entered, [REDACTED] School District [REDACTED] will no longer be the LEA as of November 25, 2015. The IEP will transfer to the high school district, [REDACTED]. You may request an IEP meeting with [REDACTED] when you register [the Student] as a student at [REDACTED]. (Parent #11)

Transcript, pp. 192-93). Several of the school-based members of the team did characterize the meeting as “tense” (April 27, 2016 Transcript, p. 201-202, May 9, 2016 Transcript, p. 172). The Parent felt as though the [REDACTED] staff was “guarded” and did not have a “free-flowing exchange of information that I’m accustomed to since I’ve been attending IEP meetings.” (April 29, 2016 Transcript, p. 193). Ms. J confirmed that that the Parent asked to have the meeting reconvened (May 9, 2016 Transcript, p. 201); and that the Parent had to leave the meeting at around the same time as school-based members needed to leave. (May 9, 2016 Transcript pp. 150-51, 197-98)

4. Denying the Parent Meaningful Student Information During the IEP Meeting.

At the October 22, 2016 IEP meeting, the Parent requested to see the Student’s communication book. (May 9, 2016 Transcript, p. 14-15) The handbook was described by the Student’s former speech/language therapist, Ms. Z as a non-electronic book of about eight to ten pages with vocabulary words on each page. The first page would have the Student’s “quick words” (“more”, “stop”, “my turn”, “something hurts”, etc.). The answer to the quick words corresponds to other pages in the book. (April 27, 2016 Transcript, pp. 100-103). At the time of the IEP meeting, the communication book was in the classroom being used by the Student. (May 9, 2016 Transcript, pp. 14-15). In order to allow the Parent to better understand the communication book, copies of some of the pages were

copied and brought to the Parent during the IEP meeting so she could see them; and, have any questions answered by the speech/language therapist. (Id.)<sup>24</sup>

5. Predetermination.

The Parent claims that the school-based members of the IEP team predetermined the Student's goals, objectives, equipment and placement. The Parent stated that the goals were already written when she came to the meeting and that she did not "participate in the creation" of the Student's goals. (April 29, 2016 Transcript, p. 107). As evidence of this she compared the goals and objectives from the draft copy of the October 22, 2015 IEP (Parent's #2) and the finalized copy of the October 22, 2016. (School District #1). Side by side comparison demonstrated that except for editing a "PODD book" to be a "PODD-type book", the Student's goals and objectives between the draft and the final IEP are virtually identical. (District #1; March 24, 2016 Transcript, pp.110-116). Review of the two versions of the IEP documents also reveals that the AT described for the Student is also identical. (School District #1, Parent #2). Placement was not discussed at all (May 29, 2016 Transcript, p. 206; School District #1), with the School District providing the rationale that "there were no changes from previous IEP." (School District #1).

Notwithstanding the above, the evidence shows that the Parent meaningfully participated in the IEP by:

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<sup>24</sup> The [REDACTED] speech/language therapist acknowledged that it might not be clear to the Parent how the Student's communication system would work simply by looking at the printed pages. (May 9, 2016 Transcript, p. 160).

- Providing a written document of her concerns, which were substantively discussed and attached to and made a part of the IEP (School District #1);
- Taking her suggestions regarding the transition portion of the IEP (School District #1, Parent #2, April 29, 2016 Transcript, p.240);
- Participating in conversations regarding every part of the IEP and being given the chance to give the team her input regarding the goals (April 29, 2016 Transcript, p, 186, 192-193, May 9, 2016 Transcript, p. 13-14, 57, 151)<sup>25</sup>

In addition, at the October 22, 2015 IEP meeting, the [REDACTED] staff informed the Parent that the draft goals were not final, and changes could be made to them. (May 9, 2016 Transcript, p. 80).

The biggest concern raised by the Parent relating to predetermination concerned the pace of the meeting. The IEP meeting started approximately fifteen (15) minutes late, had technical difficulties regarding the projection and getting the Parent a hard copy of the draft, and had a firm ending time of shortly after 3:15 to allow the Parent to meet the Student's bus and to allow the [REDACTED] staff to end their day. (April 27, 2016 IEP pp. 190-192, 126, 214, April 29, 2016 Transcript, pp. 92-93, 208-211, 236-237, May 9, 2016 Transcript, pp. 208-209, 212-15). The Parent was frustrated with the pace of the meeting. (April 27, 2016 Transcript, pp. 200-201, 232, April 29, 2016 Transcript, pp. 206, 235-237).

[REDACTED] staff were concerned about not finishing the IEP on October 22, 2015, because the goals for the Student were different from his 2014 IEP; and they wanted the IEP finalized so that they could begin work on the new goals.

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<sup>25</sup> The Parent admitted that after the October 22, 2016 IEP she did not give the School District any further feedback regarding the content of the IEP (except to file this DPCN). (April 29, 2016 Transcript, pp. 238-239)

(School District #1, School District #3, April 27, 2015 pp. 200-201) In addition, the [REDACTED] staff felt very strongly in October 2015 that although the Student's placement (i.e., self-contained private therapeutic day school) should not change, he should be advanced to the next grade level. (School District #1, April 29, 2016 Transcript, pp. 190, 242). In fact, representatives from the [REDACTED] High School District were invited to the IEP; but, did not attend at the request of the Parent. (School District #1; April 29, 2016 242-243).

The evidence shows that in October 2015 the Student had met his goals for eighth grade. (School District #1, School District 8; May 9, 2016 Transcript, p. 37-38). The [REDACTED] staff were eager for him to begin his mandatory four (4) years of high school, so that he might later maximize his transition programming after high school. (District #1; May 9, 2016 Transcript, pp. 97) The Parent was opposed to transitioning the Student to 9<sup>th</sup> grade at that time, as she felt it wasn't in his best interests to do so. (April 29, 2016 Transcript, 242-243). She filed the instant DPCN three (3) days later.

However, the evidence is clear that the Parent requested the IEP be reconvened in writing in November 2015 and that request was denied by the School District. Ms. J admitted that although placement was an important part of the Student's IEP, and that placement was not discussed at the October 22, 2015 IEP meeting, it was not important enough to justify reconvening the meeting. (May 9, 2016 Transcript, p. 211). Specifically, Ms. J testified that after receiving the Parent's request to reconvene in November 2015, knowing that placement had not been discussed (School District #1), "[i]t's my opinion that in this case, there's never been a ... concern as to placement. As I understand it, it's

a level of support the child receives, and there's never been a discussion that [the Student] does not require therapeutic day placement." (May 9, 2016 Transcript, pp. 204-205). There was no evidence presented at hearing that the School District later recanted its position or that any subsequent IEP meeting after October 22, 2015 took place for the Student.

### **CONCLUSIONS OF LAW**

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

#### **Overview**

Since 1975, when Congress enacted *The Education of All Handicapped Children's Act* (now known as the *Individuals with Disabilities Education Act*, 20 U.S.C. §1400, *et seq.*), it has been federal law that eligible children with disabilities are entitled to a free appropriate public education ("FAPE") in the least restrictive environment ("LRE") ~ that location where an eligible child with a disability may be appropriately educated "to the maximum extent appropriate, with non-disabled children." *Beth B. v Van Clay*, 36 IDELR 121 (7<sup>th</sup> Cir. 2002), *citing*, 20 U.S.C. §1412(5). As the United States Court of Appeals for the Seventh Circuit has stated, "[t]he FAPE provision and the LRE provision are two sides of the same IEP coin." *Id.* This fundamental joining of an appropriate education of eligible children in an environment that will most closely mirror a traditional educational setting meets the *IDEA's* most fundamental purpose: "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to

meet their unique needs and prepare them for further education, employment and independent living.” 20 U.S.C. §1400(d)(1)(A).

The *IDEA*’s other stated purpose is to ensure that the procedural rights of children with disabilities and their parents are protected, and to assist States, localities, educational service agencies, educators and parents to provide for the education of all children with disabilities. *See*, 20 U.S.C. §1400(d). Each state is responsible for ensuring that each public agency establishes, maintains and implements procedural safeguards. 20 U.S.C. §1415(a); 34 C.F.R §300.500. The procedural safeguards delineated by the *IDEA* are: (1) the opportunity to examine records; (2) the right of parents to participate in IEP meetings; (3) the right of a parents to request an independent educational evaluation; (4) the right of the parents and students to receive prior written notice; (5) the right of parents and students to receive a procedural safeguards notice; (6) the right of all parties to engage in mediation and/or to participate in an impartial due process hearing. 20 U.S.C. §§1414(e); 1415(b); 1415(e); 34 C.F.R. §§300.501-507. The purpose of a Hearing Officer is to ascertain if the School District has complied with the procedures set forth in *IDEA*; and (2) is the IEP developed through the *IDEA*’s procedures reasonably calculated to enable the Student to receive an educational benefit. *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v Rowley*, 458 U.S. 176, 206 (1982). Once these requirements are met, the School District has met its obligations under the *IDEA*. (*Id.*)

In this case, the Parent has alleged several procedural violations of the *IDEA*,<sup>26</sup> and two substantive violations of the *IDEA* (the School District refusing to sign a Medicare Letter of Need, and failing to properly consider the written concerns of the Parent provided at the IEP meeting). Also, this Hearing Officer must make a determination with regard to her earlier Order Regarding Stay Put as to the appropriate grade level for the Student. This Hearing Officer will dispense with the substantive violations initially; and then proceed to address each of the procedural violations in turn. Finally, the Hearing Officer will address what grade level constitutes “stay put” for the Student.

**A. Substantive Violations:**

The Hearing Officer’s role in assessing the alleged substantive violations of the *IDEA* is limited:

“Congress left the choice of educational policies and methods where it properly belongs – in the hands of state and local school officials. [The Hearing Officer’s] task is not to second guess state and local policy decisions; rather it is the narrow one of determining whether state and local officials have complied with the Act.”

*White v Ascension Parish School Board*, 343 F.3d 373, 377 (5<sup>th</sup> Cir. 2003), quoting, *Flour Bluff Indep. Sch. Dist, v Katherine M.*, 91 F.3d 689, 993 (5<sup>th</sup> Cir. 1996 (quotation omitted), *cert denied*, 519 U.S. 1111 (1997)). As the *White* court succinctly states, “the IDEA creates a presumption in favor of a school system’s

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<sup>26</sup> The procedural violations alleged by the Parent are: (1) failing to accommodate the Parent’s request for preferential seating; (2) providing a hard copy of the draft IEP that was different than the IEP being used on a projection screen during the meeting; (3) demonstrating hostile behavior towards the Parent resulting in the Parent being unable to meaningfully participate in the decision-making process concerning the provision FAPE to the Student; (4) denying the Parent access to meaningful Student information relevant to the IEP during the IEP meeting; and, (5) predetermining the goals, objections, equipment and placement in a manner to deny FAPE to the Student and to deny the Parent meaningful participation in the decision-making process regarding the provision of FAPE to the Student.

educational plan, placing the burden of proof on the party challenging. *White*, 91 F.3d. at 377.

**1. The School District Properly Considered the Parent's Written Comments at the October 22, 2015 IEP Meeting.**

The Parent alleges that the School District violated the IDEA by failing to properly consider her written concerns at the October 22, 2015 IEP meeting. The Parent provided the written concerns to the School District the morning of the IEP meeting; and Ms. J testified that she had copies of them for the team and kept a copy by her to refer to as she took notes. (May 9, 2016 Transcript, p.165, 174-75.) Ms. J also testified that the team discussed the substance of the Parent's comments, although the document was not discussed, per se. (May 9, 2016 Transcript, pp. 173-176) The document was attached to and made a part of the IEP. (School District #1)

The *IDEA* requires that the Parent have meaningful participation in the IEP process. The IEP team is required to consider the Parent's contributions, and, where possible include them in the IEP. *Deal v. Hamilton County Bd. of Ed.* 42 IDELR 109 6th Cir. 2004), *cert. denied*, 110 LRP 46999 , 546 U.S. 936 (2005), *on remand*, 46 IDELR 45 (E.D. Tenn. 2006), *aff'd*, 49 IDELR 123 (6th Cir. 2008). The School District must do more than simply give the Parent an ability to speak. It must demonstrate open-mindedness to the Parent's suggestions. *R.L. v. Miami-Dade County School Board*, 63 IDELR 182 (11th Cir. 2014).

A review of the October 22, 2015 IEP demonstrates that the school-based members of the IEP team were receptive to many of the Parent's concerns, including (but not limited to) whether braille was appropriate for the Student, as

well as transition issues. (School District #1, Parent #2, March 24, 2016 Transcript, pp. 44-45, April 29, 2016 Transcript, p. 240). This Hearing Officer acknowledges that the Parent and the school-based members of the IEP did not form a consensus about all of the Parent's suggestions contained in her written Parent report for the October 2015 IEP meeting.

But the Parent does not have "veto" power over the IEP process, even though the evidence was clear that she was a fully participating team member on October 22, 2015. (May 9, 2016 Transcript, pp. 170-182) *See, Buser v. Corpus Christi Indep. Sch. Dist.*, 20 IDELR 981 (S.D. Tex. 1994), *aff'd*, 22 IDELR 626 (5th Cir. 1995) ("The Court concludes that equal opportunity to participate and offer input is not equivalent to block voting. To adopt plaintiff's argument would allow parents to prevent the implementation of an IEP anytime there was a disagreement. This is not the intent of the *IDEA*.") Once the IEP team had made a decision regarding the IEP, it is required to provide the Parent with Prior Written Notice of its decision, which it did when it delivered the finalized IEP to the Parent on October 23, 2015. *Letter to Richards*, 55 IDELR 107 (OSEP 2010). (School District #1). (April 29 Transcript, p. 238). This Hearing Officer is satisfied that the Parent's concerns were appropriately considered and incorporated into the October 22, 2015 IEP.

**Ruling: For the School District.**

- 2. The School District Violated the IEP by Failing to Sign the Request Medicaid Letter of Need or Otherwise Make an Independent Assessment to Determine if a Growth Adjustment Was Necessary.**

In her DPCN, the Parent alleges that the School District violated the *IDEA* by failing to sign a Medicare Letter of Need. At the October 22, 2015 IEP Meeting, the Parent requested that a Medicaid Letter of Need to make growth adjustments on his manual wheelchair. (School District #1) The School District's argument has been that the Settlement Agreement and subsequent payment precludes their responsibility to sign a Letter of Need for the Student.

It is clear from the evidence that the School District and the Parent entered into a Settlement Agreement to end pending litigation in 2015, prior to the October 22, 2015 IEP meeting. (School District #5, School District #7, Parent #9). The plain language of the Settlement Checklist was that the monies paid thereunder were to go, at least in part, towards the cost of a wheelchair, that the Parent admits she has yet to have acquired for the Student. (School District #5; April 29, 2016 Transcript, pp. 258-261). Especially since the DPCN pending at the time the settlement was reached<sup>27</sup> involved a request by the Parent for a new wheelchair (School District #6), the School District's frustration at being asked to sign a Letter of Need for a wheelchair the Student had ostensibly outgrown, and for which it had paid the Parent money to replace, is understandable. But this is not an action at contract regarding the enforcement of the terms of the Settlement Agreement. This is a due process hearing whose sole purpose is to ascertain whether the School District fulfilled its requirements under the Student's IEP.

The Student's October 22, 2015 IEP, as well as the 2014 IEP clearly list both the manual wheelchair and a Convaid Cruiser as AT. (School District #1,

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<sup>27</sup> ISBE Case No, 2016-0149.

School District #6). The October 22, 2015 IEP took place *after* the settlement agreement was executed and the checks sent to the Parent. (School District #1, Parent #9). The School District certainly was aware of the settlement and could have indicated in the October 22, 2015 IEP that the manual wheelchair listed as AT was going to be replaced with funds the School District had already paid the Parent. Yet the October 22, 2015 IEP still lists the manual wheelchair as AT with no mention whatsoever of the settlement agreement. Further no witnesses testified that the settlement agreement was discussed at all during the October 22, 2015 IEP meeting: in fact, the Parent specifically testified that the subject of the settlement never came up at the IEP meeting. (April 29, 2016 Transcript, p. 118.)

In *Letter to Stohrer*, 213 IDELR 209 (OSEP 1989) the law is clear:

*“The standard for determining whether a wheelchair must be provided as a related service, as set out in the regulation, is whether it is “required to assist a handicapped child to benefit from special education.” 34 CFR Sec. 300.13(a). In addition, related services includes transportation, which is defined to include travel in and around school buildings and can involve the provision of specialized equipment. 34 CFR 300.13(b)(13)(ii), (iii).*

*Under the regulatory standards cited above, the school district is not required to provide a wheelchair for personal use outside the school but may be required to provide a wheelchair for transportation purposes while the child is receiving special education. This requires an analysis of the facts in each individual case. A parent raising this issue may request a due process hearing or file a complaint with the State.”*

(Id.)

This Hearing Officer concludes, that in the absence of any evidence that the inclusion of the manual wheelchair was either a clerical error or an oversight on the part of the School District, that by continuing to list the manual wheelchair as AT in the October 22, 2015 IEP, the IEP team had concluded for at least the

second year in a row that the Student requires a wheelchair to access the special education and related services provided to him through his IEP, including transportation. If the School District has designated the manual wheelchair as AT, then the Hearing Officer must accept that designation. Once so designated, the School District assumed responsibility to at least ascertain if a growth adjustment was needed; and if so, to pay for it. *Letter to Stohrer*, 213 IDELR 209 (OSEP 1989).

Subsequent to the Settlement Checklist being finalized (School District #7) the Parent made a request to the School District for growth adjustments to the manual wheelchair. (School District #9). On June 29, 2015 the School District declined to sign the Letter of Need *based upon the Settlement Checklist*. (Id.). In October, in her written Parent report that was attached and incorporated into the October 22, 2015 IEP, the Parent again raised the issue of growth adjustments. (School District #1). Without discussing the issue, the IEP team again categorized the manual wheelchair as AT. (Id.) In balancing the evidence of a private settlement agreement with what is contained in the IEP, this Hearing Officer must weigh what is in the Student's IEP more heavily.

The School District never challenged the Parent's request for the Letter of Need as unnecessary either in June 2015 or in October 2015. Since the terms of the Settlement Agreement were never memorialized in the October 22, 2015 IEP, nor even discussed by the IEP team members at the time, there is no evidence to conclude that the manual wheelchair identified as AT under both the 2014 and 2015 IEPs does not need a growth adjustment. Accordingly, it was the responsibility of the School District to ascertain if the growth adjustment was

necessary in order for the Student to use his manual wheelchair at school; and if so, to secure that growth adjustment by whatever means was appropriate, including signing a Letter of Need.<sup>28</sup>

**Ruling: For the Parent.**

**B. Procedural Violations.**

1. Generally.

Although the IDEA requires that the School District provide the Parent with the procedural safeguards discussed on pages 22 and 23 above, this Hearing Officer is not required to hear or rule on any procedural violation that may have taken place. In order for a procedural violation to rise to the level of this Hearing Officer, it must amount to a denial of a free appropriate public education (“FAPE”). 20 U.S.C. §1415(f)(3)(E) and (F), (h)(4) and (o); 34 C.F.R. §300.513. Specifically,

*“in matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies— (i) impeded the child’s right to a FAPE; (ii) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of FAPE to the parent’s child; or, (iii) caused a deprivation of educational benefit.”*

Id. Thus for every allegation of a procedural violation alleged by the Parent, this Hearing Officer will have to determine if one of the above criteria was established.

2. The School District Did Not Violate the IDEA by Failing to Accommodate the Parent’s Request for Preferential Seating.

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<sup>28</sup> The Hearing Officer agrees with the School District that Mr. C’s testimony at hearing as to whether he had recommended that the Parent submit a Letter of Need was unclear. (March 24, 2016 Testimony, p. 156, 170). Nevertheless, contemporaneous documents demonstrate that the Parent requested a Letter of Need, and that the request was denied on the grounds of the settlement, and not because the Student either didn’t qualify for Medicare or otherwise need a growth adjustment. (School District #9). Moreover, Ms. J admitted that she became familiar with Medicaid Letters of need specifically through her experience with the Parent. (May 9, 2016 Transcript, p. 221)

The evidence is clear that although the Parent requested a seat closer to the wall containing the screen upon which the IEP was being projected, she did not inform the IEP team that she could not see the screen due to a vision impairment. (April 26, 2016 Transcript, pp. 99-100, 183, 206; Parent #5) This Hearing Officer concludes that making statements such as “I can’t see” or “Where are we?” do not, in and of themselves, adequately rise to a level where a School District would be on reasonable notice that the Parent suffered from an impairment that required accommodation.

The evidence also shows that there was a reasonable basis for the School District’s attorney, Ms. Q to refuse to relinquish her seat: the note taker for the meeting, Ms. J, was using a laptop to make changes into the IEP; and, that IEP was already plugged into the wall when the Parent came into the room. (May 9, 2016 Transcript, p. 166). Because the IEP meeting was already running behind (April 27, 2016 IEP p. 126, April 29, 2016, pp. 92-93), it makes sense that Ms. J not be asked to move. This Hearing Officer concludes that it is reasonable for the attorney to want to sit next to her client during the IEP meeting.

The Parent submitted a letter from the Office of Special Education Programs (OSEP) dated July 23, 2001 to then-Senator Clinton repeating the language in Answer to Question 29 to Attachment A to the IDEA 1997 Regulations (34 C.F.R. Part 300) in which the presence of attorneys at IEP meetings is discouraged due the possibility of contributing “to a potential adversarial atmosphere of the meeting” that “would not necessarily be in the best interests of the child.” Certainly the evidence shows that there was previous

litigation between the parties and that school-based members of the team were “tense.” However the evidence is unclear as to whether the the school-based members of the team were tense solely due to the presence of two attorneys representing the School District; or, whether they were tense because from the beginning of the meeting, the Parent and the attorney engaged each other in a confrontational manner. In any event, there is no direct prohibition of attorneys from IEP meetings; and, this Hearing Officer concludes that it was reasonable for the School District to have counsel present during a meeting when litigation was pending between the parties.

The Parent’s difficulty following along with the projected IEP on the screen notwithstanding, the evidence shows that she had a hard-copy of a draft of the IEP from the beginning of the meeting; and, as changes were being made on the IEP (thus changing the page numbers on the screen), IEP team members were redirecting the Parent to the appropriate page number so she could follow along. (March 24, 2016 Transcript, p. 106, April 29, 2016 Transcript, pp. 206-07, May 9, 2016 Transcript, p. 214-215; Parent #2) The Hearing Officer finds that this is a sufficient accommodation to the Parent’s difficulty reading the screen, even if it was awkward at times.

There is no evidence that despite the inconvenience, the inability of the Parent to sit in her preferred seat impeded the child’s right to a FAPE, significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of FAPE to the parent’s child, or, caused a deprivation of educational benefit. Accordingly, this Hearing Officer concludes

that the inability of the Parent to sit in her preferred seat was not a procedural violation of the *IDEA*.

**Ruling: For the School District.**

3. The School District Did Not Violate the IDEA by Providing a Hard Copy of the Draft IEP that was Different than the IEP Being Used on a Projection Screen During the Meeting.

The evidence shows that the Parent received a hard copy of the draft of the October 22, 2015 early in the meeting. (March 24, 2016 Transcript, p. 106, May 9, 2016 Transcript, p. 214-215; Parent #2) The evidence also shows that a meaningful difference between the Parent's draft and the IEP being projected on the screen was the page numbers, which were changing as new information was being added to the draft and the image on the projection screen was being refreshed. (May 9, 2016 p. 165, 169-171) However, the evidence also shows that the Parent was being redirected to the correct page on her written draft so she could follow along. (April 29, 2016 Transcript, pp. 206-07)

Other than the confusion that comes from seeing new language on the projected screen, there was no evidence that the differences between the Parent's draft hard copy and the IEP being projected on the screen impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child, or, caused a deprivation of educational benefit. The Parent was redirected the correct portion of her draft during the meeting; and, she received a final copy of the IEP the next day. (April 29, 2016 Transcript, p. 238).

The Parent had the opportunity to bring any issue regarding the finalized IEP to the direction of the School District for correction; but, she chose not to do

so. (April 29, 2016 Transcript, p. 186, 192-193, 238-239, May 9, 2016 Transcript, p. 13-14, 57, 151) As it stands, the differences between the hard copy draft of the IEP and the IEP being projected on the screen were an inconvenience: but they did not amount to a procedural violation of the *IDEA*.

**Ruling: For the School District.**

4. The School District Did Not Demonstrate Hostile Behavior Towards the Parent.

The only member of the IEP Team alleged to have been even remotely hostile towards the Parent during the October 22, 2016 IEP meeting was Ms. Q, the School District's attorney. (April 29, 2016 Transcript, pp. 192-93) Even then, the evidence clearly establishes that, at most, the Parent considered her "gruff." (Id.) In addition, even though the overall mood of the IEP meeting was "tense" and the exchange of information was not "free-flowing," (April 29, 2016 Transcript, p. 193), there was no evidence to demonstrate that the Student didn't receive a FAPE or was denied an educational benefit as a result. The evidence also shows that the Parent was, despite these conditions, able to participate in the decision-making process regarding the provision of FAPE to the Student, even if she was feeling frustrated by the process. (School District #1, Parent #2, April 29, 2016 Transcript, pp. 186, 192-193, 240, May 9, 2016 Transcript, p. 13-14, 57, 151) The Parent's input was considered by the team, and the IEP, especially in the area of transition planning, reflects her participation. (Id.)

**Ruling: For the School District.**

5. The School District Did Not Deny the Parent Access to Meaningful Student Information Relevant to the IEP During the October 22, 2016 IEP Meeting.

The Parent clearly asked for the communication book during the October 22, 2015 meeting (May 9, 2016 Transcript, p. 14-15); and, the evidence also shows that the School District had a reasonable explanation for refusing to bring it to her during the meeting. (May 9, 2016 Transcript, pp. 14-15) The Student's language impairments make him largely nonverbal; and the communication notebook is his primary (if not sole) means of reliably communicating with his teachers and school staff. (School District #1, May 9, 2016 Transcript, pp. 14-15) It is confusing to this Hearing Officer why the Parent would insist in seeing the actual book during the IEP meeting once she was informed that the Student required it to communicate; as, he would then be unable to communicate without it.

Nevertheless, the school-based members of the team copied some pages from the book so the Parent could refer to these during the meeting. (May 9, 2016 Transcript, pp. 14-15) The Hearing Officer concludes that the lack of being able to examine the actual communication device during the October 22, 2016 IEP meeting (and instead being given the copied pages from the book) did not amount to a procedural violation of the IDEA: the Student was not denied a FAPE or an educational benefit (in fact, refusing to take the communication book from the Student arguably preserved FAPE for the Student and guaranteed him an educational benefit). The lack of the actual communication book also did not impair the Parent's ability to participate in the decision making process regarding

the provision of FAPE to the Student, because she had the paper copy to reference during the meeting.

**Ruling: For the School District.**

6. The School District did not Predetermine the Goals, Objectives, Equipment or Placement in a manner to deny FAPE to the Student and to deny the Parent meaningful participation in the decision-making process regarding the provision of FAPE to the Student.

The Parent alleges that the School District predetermined the goals, objectives, equipment and placement in a manner that denied FAPE to the Student and denied the Parent meaningful participation in the decision-making process regarding the provision of FAPE to the Student. The *IDEA* requires districts to ensure that the parents of each child with a disability are members of any group that makes decisions about their child's educational placement. 34 CFR 300.327 , 34 CFR 300.501 (c)(1). The evidence clearly shows that the Parent attended the IEP meeting on October 22, 2015 and participated fully. (District #1; Parent #2, April 29, 2016 Transcript, pp. 186, 192-193, 240, May 9, 2016 Transcript, p. 13-14, 57, 151)

The concept of predetermination (largely used in issues where placement is at issue), rests whether there is evidence that School District personnel came into an IEP meeting with their minds made up, refusing to consider the Parent's input. *See, e.g., Deal v. Hamilton County Board of Education*, 42 IDELR 109 (6th Cir. 2004), *cert. denied*, 110 LRP 46999 , 546 U.S. 936 (2005). As a rule, in order to avoid the appearance of predetermination, IEP teams must not only discuss the Parents' options, they also must consider alternatives to their

recommendations. *See, Reed Union School District*, 52 IDELR 240 (SEA CA 2009).

The evidence shows that when the Parent entered the room, the school-based members of the IEP team had already assembled; and, that they had formulated a draft IEP prior to the Parent's arrival (March 24, 2016 Transcript, p. 106, May 9, 2016 Transcript, p. 214-215; Parent #2). Nothing in the *IDEA* specifically prohibited the School District from presenting a draft IEP to the Parent. Case law is clear that such a document may be used solely for purposes of discussion and development of the child's completed IEP and may not be represented as a completed IEP. *Letter to Helmuth*, 16 IDELR 503 (OSEP 1990). *See also Fuhrmann v. East Hanover Bd. of Educ.*, 19 IDELR 1065 (3d Cir. 1993), *rehearing denied*, 110 LRP 65930 (3d Cir. 06/08/93). As a rule districts must make it clear to parents that the services proposed in a draft IEP are only recommendations for review and discussion with the parents. *See, e.g., Lodi Sch. Dist.*, 46 IDELR 85 (SEA WI 2005). The evidence shows that is precisely what happened in the instant case. (May 9, 2016 Transcript, p. 80).

There is evidence that only a minor change to the goals was made during the IEP (District #1; March 24, 2016 Transcript, pp.110-116), and that goals were discussed late in the meeting. (April 29, 2016 Transcript, 242-243). Similarly, the AT (equipment) designations were identical between the draft IEP and final version. (District #1, Parent #3). If in fact, the Parent had presented evidence that she communicated concerns regarding the content of the goals and objectives, or the Student's AT (either in her written report given to the school-based member of the team on October 22, 2015 (School District #1) or by

providing content-based concerns along with her request to reconvene (Parent #11), there would be a stronger case of true predetermination: as there would be evidence that the School District had actually made its mind up without discussing the Parent's concerns. The Hearing Officer concludes that the School District did not engage in predetermination regarding goals/objectives or AT (equipment).

As to placement, however, this Hearing Officer has significant concerns that the subject was never brought up at the October 22, 2015 IEP meeting; and, was dismissed out of hand by the School District as a reason to reconvene the meeting, when the Parent made a written request to do so. Placement is a central part of any Student's IEP; and, it should be discussed at any comprehensive IEP revision. Even if the School District had, at the time, formed the belief that there was no anticipated change in placement, once the Parent asked to reconvene the IEP meeting so that it could be discussed, the meeting should have been reconvened. (Parent's #11; May 9, 2016 Transcript, pp. 204-205, 211).<sup>29</sup> Therefore, the Hearing Officer concludes that in light of the School District's refusal in November 2015 to reconvene the IEP, and its continued refusal to reconvene the IEP during the pendency of this hearing, it engaged in predetermination regarding the issue of placement, and significantly impeded the

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<sup>29</sup> It appears to this Hearing Officer that at the time the School District informed the Parent in writing that the IEP meeting would not be reconvened (Parent #11), the School District may have been anticipating that the Student would transfer to the ██████ High School District and thus, the School District would have believed that it had no further obligation to engage in educational planning for the Student. (School District #1). Nevertheless, once this instant DPCN was filed, and this Hearing Officer concluded in December 2015 that the Parent's timely appeal of ISBE Case No. 2015-0491 maintained the stay put placement at ██████ to the Student, there was ample time to conduct an IEP meeting to discuss the Parent's outstanding concerns before this hearing (and certainly before the Student turned fifteen on April 30, 2016).

Parent's ability to participate in the decision-making process regarding the provision of FAPE for the Student.

**Ruling: For the School District in Part and For the Parent in Part.**

**C. Grade Level for Stay Put Placement/Compensatory Education.**

In December 2015, the Hearing Officer made a ruling on the Parent's Emergency Motion For Stay Put. The Hearing Officer found that the Parent's timely appeal of ISBE Case No. 2015-0491 continued the stay put placement at [REDACTED] School entered by the previous hearing officer. This Hearing Officer only had an open question as to the appropriate grade level for the Student for the 2015-2016.

At hearing, the School District presented evidence that convinced the Hearing Officer that the appropriate grade level for the Student during the 2015-2016 was ninth grade. (School District #1, School District 8; May 9, 2016 Transcript, p. 37-38). Given the many extensions of time in this hearing process, largely at the Parent's insistence (and making every allowance for this unrepresented Parent to attempt to seek counsel, to participate in a Prehearing Conference, to make proper disclosures and to present her case at hearing in spite of multiple factual circumstances that prevented her from doing so in a timely manner), this hearing took place at the end of the 2015-2016 school year. Because of the Parent's timely appeal of ISBE Case No. 2015-0491, and the maintenance of Student's placement at [REDACTED] the School District would have been financially liable for the majority 2015-2016 school year no matter what grade the Student attended as he was still fourteen (14) years of age. But, so the record is

clear, this Hearing Officer wanted to bring closure to this issue: the appropriate grade level for the Student during the 2015-2016 school year was ninth grade.

### ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered as follows. During this hearing, the Student turned fifteen years of age (District #1)<sup>30</sup>; and, subsequent to the close of testimony in this hearing, the Parent enrolled the Student in the ██████ High School District. As a practical matter, as of the date of this opinion, the Student is no longer a student enrolled in the School District, and the Hearing Officer concludes that she cannot grant any prospective (that is, future) relief for the Parent against this School District. On the first day of hearing, the Hearing Officer invited the Parent to submit evidence on any compensatory education that she thought would be appropriate. (March 23, 2016 Transcript, pp. 9-25), but the Parent did not do so. A careful review of the record also reveals that no evidence regarding the need for compensatory education exists.

Also, the ██████ High School District is not properly before this Hearing Officer as a party<sup>31</sup>, so this Hearing Officer cannot issue an order that the ██████ High School District is obligated to follow. Nevertheless, as stated above, the

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<sup>30</sup> Pursuant to 105 ILCS 5/14-6.01, "high school districts are financially responsible for the education of pupils with disabilities who are residents in their districts when such pupils have reached age 15." When this DPCN was filed, and when this hearing was started, the Student was legally the financial responsibility of the School District. On the first day of hearing, this Hearing Officer again informed the parties (after doing so in her December 2015 Ruling on the Parent's Emergency Motion for Stay Put) about this provision in Illinois law and encouraged the parties to present the Hearing Officer with authority of how this provision should be interpreted in a case such as this, when stay put is invoked through federal court appeal of a previous DPCN. (March 23, 2016 Transcript, pp. 9 - 25) The School District provided legal authority in its closing brief but the Parent did not. This Hearing Officer also independently researched the issue and found no authority, which would not require her to follow this provision of Illinois law.

<sup>31</sup> Nor could ██████ High School District have been joined as a party to this case, as the Student enrolled there after testimony on this case had ended.

Parent and the Student were entitled to a due process hearing under the *IDEA*,<sup>32</sup> and they have received it. If this Hearing Officer had the ability to make a prospective order against the School District, she would order the School District to convene an IEP within thirty (30) days of the date of this opinion; and to determine if the Student in fact required growth adjustments to his manual wheelchair (and sign the appropriate Letter of Need if growth adjustments were required) also within thirty (30) days of the date of this opinion.

However, since the Student is no longer enrolled in the School District and pursuant to 105 ILCS 5/14-6.01, this Hearing Officer can no longer order prospective relief against the School District. In the absence of any evidence for the need of compensatory education, the Hearing Officer makes no award of compensatory education to the Student.

#### **NOTICE OF RIGHT TO REQUEST CLARIFICATION**

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

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<sup>32</sup> 20 U.S.C. §1415(b)(6).

NOTICE OF RIGHT TO APPEAL

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

Dated: May 29, 2016,

/s/ Jennifer A. Leisner  
Hearing Officer

[REDACTED]

**APPENDIX A**

[REDACTED] v. [REDACTED] School District [REDACTED]  
ISBE Case No. 2016-0183

Child	[REDACTED]
Attending School	[REDACTED] School
Child's Parent(s) (specific relationship)/Petitioner	[REDACTED]
Witnesses Called	Witness Designation <sup>33</sup>
Mr. [REDACTED]	Mr. B
Ms. [REDACTED]	Ms. L
Ms. [REDACTED]	Ms. F
Ms. [REDACTED]	Ms. P
Mr. [REDACTED]	Mr. C
Ms. [REDACTED]	Ms. W
Mr. [REDACTED]	Mr. M
Ms. [REDACTED]	Ms. A
Ms. [REDACTED]	Ms. Z
Mr. [REDACTED]	Mr. B2
Ms. [REDACTED]	Ms. B
Ms. [REDACTED]	Parent
Ms. [REDACTED]	Ms. S
Ms. [REDACTED]	Ms. J

<sup>33</sup> This is a listing of all witnesses called at hearing, whether or not they are identified in the Final Determination and Order or whether their testimony was referenced in the Final Determination and Order.

ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING

[REDACTED]

Student,

Case No: 2016-0183

v.

[REDACTED]

Jennifer A. Leisner,  
Impartial Due Process Hearing  
Officer

School District

CERTIFICATE OF SERVICE

I, JENNIFER A. LEISNER, certify that on May 29, 2016, copies of the Final Determination and Order were served upon the following persons in the manner indicated:

**Sent Electronically via Email Only on May 29, 2016 and Sent via Certified Mail, Return Receipt Requested on May 31, 2016 (next legal mailing date):**

[REDACTED]

[REDACTED]

**Sent Electronically via Email Only**

Andrew Eulass, ISBE Due Process Coordinator  
[AEULASS@isbe.net](mailto:AEULASS@isbe.net)

Wanda Schoneweis  
[wschonew@isbe.net](mailto:wschonew@isbe.net)

**Dated: May 29, 2016**

/s/ Jennifer A. Leisner  
Jennifer A. Leisner  
Impartial Due Process Hearing Officer

[REDACTED]

May 29, 2016 is a Sunday, and the following Monday is a legal holiday (Memorial Day). The Hearing Officer has electronically delivered this Final Determination and Order to the parties within the 45-day deadline; and, will mail a copy at the next possible opportunity.