

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

████, a minor, by and through)	
her parents, █████ and █████ ¹ ,)	
)	
Petitioners,)	
)	Case No. 2019-0047
- v -)	
)	
Community High School District █████)	Alan G. Schuster
)	Hearing Officer
Respondent.)	

DECISION AND ORDER

I. JURISDICTION:

Jurisdiction to adjudicate the issues raised in Petitioner’s (████ or “████ or “Student”) Amended Complaint is afforded under the Individuals with Disability Education Act (“IDEA”), 20 USC §1400, *et seq.* and the Illinois School Code, 105 ILCS 5/14-8.02a, *et seq.*

II. PROCEDURAL HISTORY:

On July 27, 2018 Petitioners served the Community High School District █████ (“Respondent” or “District █████ or “District”) its Due Process Complaint Notice (“DPCN”) requesting the appointment of an impartial due process hearing officer to determine whether or not the District has denied the Petitioner the right to a Free Appropriate Public Education (“FAPE”) under IDEA. This Hearing Officer (“IHO”) was appointed by the Illinois State Board of Education (“ISBE”) to hear this matter on August 3, 2018. The Student is represented by and through her parents, █████ and █████² (“Parent” or “Parents”). The District is represented by its

¹ Personal identification information is provided in Appendix A.

² Student’s parents, █████ and █████ were in attendance each day of the Hearing. █████ appeared on first day of the Hearing after the Hearing was adjourned for the day for purposes of an informal introduction to this IHO.

attorneys, Ms. Jessica Nguyen and Ms. Michelle Todd of Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP.

On August 3, 2018 this IHO set the matter for an initial status conference on August 16, 2018 to learn of the status of the parties' resolution efforts and to set a Prehearing Conference date. On August 6, 2018, by agreement, the initial status conference call was continued to August 16, 2018.

On August 10, 2018, this IHO entered a Temporary Stay Put Order following Petitioner's emergency oral motion and following a teleconference hearing with both parties, on the issue presented.

On August 15, 2018, Petitioner filed her Motion For Determination Of Stay Put to which the District filed a written Response on August 18, 2018.

On August 16, 2018, this IHO served his Notice of Prehearing Conference which was scheduled for September 11, 2018.

On September 5, 2018, this IHO entered his Order On Parent's Motion To Establish Stay-Put.

On September 13, 2018, the matter was continued to September 26, 2018 for a Prehearing Conference to allow the parties additional time to complete a reevaluation of [REDACTED]

On September 26, 2018, the matter was continued to November 19, 2019 for a Prehearing Conference to allow the parties additional time to complete [REDACTED]'s reevaluation.

On September 29, 2018, the parties' Joint Motion To Continue was granted extending the 45-Day timeline to December 21, 2018.

On November 12, 2018, the matter was continued to January 18, 2019 at the request of the parties to allow additional time to complete [REDACTED]'s triennial evaluation. The 45 day timeline was extended by agreement to February 15, 2019.

On January 18, 2019, the matter was continued to February 8, 2019 to allow the parties to time to convene for an IEP meeting and to complete their settlement efforts.

On February 8, 2019, this IHO granted Parent's counsel's Motion For Leave To Withdraw As Counsel and continued the matter to February 28, 2019 to set a Prehearing Conference date.

On February 12, 2019, the parties Joint Motion To Extend the 45-Day Timeline was granted and the 45-Day Timeline was extended to March 29, 2019.

On February 28, 2019 the matter was set for a Prehearing Conference for March 14, 2019 which was subsequently rescheduled to March 29, 2019 by agreement.

On March 18, 2019, Petitioners serve their Amended DPCN.

On March 29, 2019, the matter was continued to April 5, 2019 for a report on the parties' resolution efforts and to set a Prehearing Conference date.

On April 5, 2019, this IHO served his Notice setting the matter for a Prehearing Conference on April 22, 2019.

On April 5, 2019 Petitioners filed their Motion To Modify Hearing Dates And Times to which the District filed a written Response which was responded to by Petitioners' written Response (Reply).

On April 10, 2019, following a hearing by teleconference, this IHO denied Petitioners' Motion To Modify Hearing Dates And Times.

On April 12, 2019, this IHO granted the parties Joint Motion For Continuance thereby extending the 45-Day Timeline to June 12, 2019 to allow sufficient time to conduct a Hearing and for this IHO to issue his Decision.

On April 14, 2019, Petitioners filed their Motion To Modify Hearing Dates which on April 15, 2019 was set for hearing on April 22, 2019, by teleconference.

On April 22, 2019, this IHO issued his Order denying Petitioners' Motion To Modify Hearing Dates.

On April 22, 2019, following a Prehearing Conference, this IHO issued his Prehearing Report And Order setting this matter for Hearing on May 21, 22, 24, 28, 2019.

The Hearing commenced May 21, 2019. [REDACTED] was represented by her Parents. The District was represented by its counsel. The parties both provided opening statements, and each called their respective witnesses to testify under oath³. Following the testimony of Petitioner's witnesses, the District moved for a "directed finding," which this IHO denied. At the conclusion of all witness testimony, each party offered their respective documents into evidence at which time objections were heard and ruled upon⁴. The Hearing was concluded and closed on May 28, 2019 following presentation of closing arguments.

III. ISSUE PRESENTED FOR ADJUDICATION:

ISSUES:

1. WHETHER OR NOT THE MAY 14, 2018 INDIVIDUALIZED EDUCATION PLAN (IEP) OFFERED THE STUDENT WAS REASONABLY CALCULATED TO ENABLE THE STUDENT TO MAKE PROGRESS APPROPRIATE IN LIGHT OF THE STUDENT'S CIRCUMSTANCES THEREBY PROVIDING THE STUDENT A FREE

³ Each party was allowed to conduct their respective direct and cross-examinations of each witness when first called to avoid having to recall the witness at a later time or date.

⁴ The District objected to Petitioner offering into evidence its Exhibits 2-3 based upon relevancy which this IHO overruled. The District also objected to Petitioner offering into evidence its Exhibits 4-7 based upon failure to timely disclose these documents under the "5-Day Disclosure Rule" which this IHO overruled based upon a lack of showing of undue prejudice or harm.

APPROPRIATE PUBLIC EDUCATION (FAPE) IN THE LEAST RESTRICTIVE ENVIRONMENT (LRE)?

2. WHETHER OR NOT THE MARCH 5, 2019 IEP OFFERED THE STUDENT WAS REASONABLY CALCULATED TO ENABLE THE STUDENT TO MAKE PROGRESS APPROPRIATE IN LIGHT OF THE STUDENT'S CIRCUMSTANCES THEREBY PROVIDING THE STUDENT A FAPE IN THE LRE ?

3. WHETHER OR NOT THE DISTRICT PREDETERMINED THE STUDENT'S MAY 14, 2018 IEP AND IF SO, WHETHER OR NOT THE STUDENT WAS DENIED A FAPE?

RELIEF REQUESTED BY PETITIONER:

A. FOR THIS IHO TO FIND THE MAY 14, 2018 AND/OR THE MARCH 5, 2019 IEP FAILS TO PROVIDE THE STUDENT A FAPE IN THE LRE;

B. FOR THIS IHO TO ORDER STUDENT'S MARCH 5, 2019 IEP TO BE IMPLEMENTED AT THE ALEXANDER LEIGH CENTER FOR AUTISM FOR THE 2019-2020 ACADEMIC SCHOOL YEAR, AT THE DISTRICT'S EXPENSE, INCLUDING TRANSPORTATION COSTS.

RELIEF REQUESTED BY RESPONDENT:

A. THE DISTRICT DENIES THAT IT HAS FAILED TO PROVIDE THE STUDENT A FAPE AND REQUEST THIS IHO TO DENY EACH OF THE PETITIONER'S CLAIMS AND THE RELIEF REQUESTED.

VI. WITNESS PRESENTED FOR TESTIMONY AT HEARING⁵:

On Behalf of Petitioner :

- Student's father ("█")
- Student's mother ("█")
- CHSD⁶ █ Special Education Divisional Leader ("█")
- CHSD █ Director of Student Services ("█")
- CHSD █ Social Worker ("█")
- █ School District █ Outplacement Coordinator ("█")
- █ Occupational Therapist ("█")
- █ Music Therapist ("█")
- █ Special Education Teacher ("█")
- █ Executive Director ("█")

On Behalf Of Respondent:

⁵ Not necessarily called to testify in the order listed

⁶ CHSD (Community High School District)

⁷ ALCA (Alexander Leigh Center for Autism)

[REDACTED] - CHSD [REDACTED] Director of Student Services (“[REDACTED]”)
 - CHSD [REDACTED] Special Education Divisional Leader (“[REDACTED]”)
 - CHSD [REDACTED] Special Education Teacher (“[REDACTED]”)
 - CHSD [REDACTED] Speech and Language Pathologist (“[REDACTED]”)
 - CHSD [REDACTED] Occupational Therapist (“[REDACTED]”)
 -CHSD [REDACTED] Physical Therapist (“[REDACTED]”)
 - CHSD [REDACTED] Social Worker (“[REDACTED]”)
 - CHSD [REDACTED] School Psychologist (“[REDACTED]”)
 - CHSD [REDACTED] School Nurse (“[REDACTED]”)
 - CHSD [REDACTED] Vision Itinerant (“[REDACTED]”)
 - CHSD [REDACTED] Behavioral Specialist (“[REDACTED]”)
 - [REDACTED] Executive Director (“[REDACTED]”)
 - [REDACTED] School District [REDACTED] Outplacement Coordinator (“[REDACTED]”)
 Student’s mother (“[REDACTED]”)
 Student’s father (“[REDACTED]”)

VII. DOCUMENTS OFFERED AND ADMITTED INTO EVIDENCE:

Petitioner’s Exhibit Nos.⁸: 2, 3, 4, 5, 6, 7

District’s Exhibit Nos.⁹:1, 2, 4, 5, 6, 7, 9, 10, 12, 18, 19, 20, 21, 22, 24, 25

Joint Exhibit Nos.¹⁰: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 17

Hearing Officer’s Exhibit Nos.: IHO 1- (Joint Stipulations Of Fact)

VIII. BURDEN OF PERSUASION:

With respect to the Petitioner's request for a due process hearing, in general the Petitioner has the burden of persuasion concerning the issues presented for adjudication , *Schaffer v. Weast*, 546 U.S. 49, 56-62; 126 S.Ct. 528 (2005); 105 ILCS 5/14-8.02(b). Additionally, under Illinois law, the District must provide evidence that it has appropriately identified the Student’s educational needs and that the special education and related services are adequate, appropriate, and available, however this does not shift the burden of proof to the District, *City of Chicago Public School District 299*, 108 LRP 43065 (IL SEA, 2008); 105 ILCS § 14-8.02a(g).

⁸ Petitioners’ Exhibits are designated with a “P” followed by the Exhibit number.

⁹ District’s Exhibits are designated with a “R” followed by the Exhibit number.

¹⁰ The parties Joint Exhibits are designated with a “JE” followed by the Exhibit number.

IX. FINDINGS OF FACT:

This Hearing Officer did not have the benefit of having the official transcript of the Hearing proceedings when writing this decision. Therefore, the following is based upon this Hearing Officer's personal notes, recording of the hearing, and recollection. This Hearing Officer has considered the testimony of the witnesses presented and the documents introduced and admitted into evidence when rendering this final determination. After considering the evidence, as well as the arguments of both the District's counsel and Student's Parent, this Hearing Officer's Findings of Fact are as follows:

A. BACKGROUND INFORMATION:

1. [REDACTED] is a 15-year-old 9th grade student currently attending the Alexander Leigh Center for Autism ("ALCA"), a private therapeutic day school located in McHenry, Illinois. She is presently eligible, under the Individuals with Disabilities Education Act ("IDEA"), for special education and related services under the disability categories of Intellectual Disability, Visual Impairment, Other Health Impairment, and Autism. Her special education and related services are provided her under an Individualized Education Plan ("IEP"), (Ex. IHO 1; JE 5; P 6).

2. Due to several complex medical diagnoses, including WAGR syndrome (a rare genetic disorder), Wilm's tumor, aniridia¹¹, cataracts, Attention Deficit Hyperactivity Disorder, and Autism Spectrum Disorder, the Student is significantly delayed across all domains, namely, cognitive, academic, functional performance, communication, motor abilities, health, hearing/vision, and social/emotional, (Ex. IHO 1; JE 6-11; Test. ES¹², TJ¹³, MP¹⁴, JP¹⁵, AC¹⁶, CB¹⁷, CS¹⁸, DK¹⁹, CK²⁰, KP²¹).

¹¹ A condition of the eye where the iris is absent.

¹² ES received a B.A. in Special Education from Roosevelt University, Chicago, IL and received her LBS-1 certification from ISBE in 2008. She has been employed with the District as a Special Education teacher for the past 11 years, (Test. ES; Ex. R 25).

3. [REDACTED] disabilities have been chronic. She initially became eligible for special education and related services on April 12, 2007 under multiple disabilities classifications specifically meeting the criteria for Mental Retardation, Other Health Impairment ("OHI"), and Visual Impairment, (Ex. IHO 1).

4. Beginning with the 2011-2012 school year [REDACTED] has been attending the Alexander Leigh Center for Autism who has been implementing [REDACTED] IEP. Crystal Lake School District 47²² ("District 47") has had the responsibility for [REDACTED] IEP during her tenure at ALCA. Under this IHO's Stay-Put Order dated September 5, 2018, [REDACTED] 11/13/17 IEP is presently being implemented at ALCA. (Ex. IHO 1, P 2,3; Test. KD²³).

¹³ TJ received her B.S. in Speech/Language Pathology from Marquette University, Milwaukee, WI in 1998, She received a M.A. degree in Speech and Hearing Science from the University of Illinois-Urbana, Champaign, IL in 2000. She has been employed with various Illinois school districts as a Speech/Language Pathologist for the past 19 years, (Test. TJ; Ex. R 25).

¹⁴ MP received his B.A. in Psychology from Elmhurst College, Elmhurst, IL in 1998. He received an M.A. degree in Professional Counseling from Argosy University, Schaumburg, IL in 2003. MP has been self-employed as a Therapist since 2009. He holds a Licensed Clinical Professional Counselor's license from the State of Illinois, (Test MP; Ex. P 7).

¹⁵ JP received a B.A. in Psychology from Illinois State University in 1999 and received a D.C. (Doctor of Chiropractic) degree from the National University of Health Sciences in 2017. She holds a State of Illinois D.C. license, (Test KP; Ex. R 25).

¹⁶ AC has both a B.S. in Psychology and an M.S.W. Social Work degree from the University of Illinois-Urbana-Champaign. She has held a School Social Worker license since 2004 with ISBE. She has been a school social worker with the District since 2005, (Test. AC; Ex. R 25).

¹⁷ CB received both an M.A. in Psychology in 2011 and a Ph.D. in Psychology in 2014 from Northern Illinois University. She has worked as a School Psychologist in various Illinois school districts since 2012. She has been employed with District [REDACTED] since 2016, (Test. CB; Ex R 25).

¹⁸ CS has been a licensed Certified School Nurse since 1999 and has held a Type 73 Certification from ISBE since that time. She has been employed with District [REDACTED] as a School Nurse for the past year, (Test. CS; Ex R 25).

¹⁹ DK has been a Special Education teacher teaching the vision impaired for about 15 years. She has been employed with District [REDACTED] for about three years. She graduated from Northern Illinois University in 1991 and received certifications from ISBE in 2001 to teach special education students who are blind or visually impaired, (Test. DK; Ex. R 25).

²⁰ CK has been employed by the Special Education District of McHenry County, IL as social worker and behavior specialist. She received a B.A. in Psychology from Eastern Illinois University in 1985 and a M.S.W. degree from the University of Illinois-Chicago in 1987. She has held a Type 73 Certificate from ISBE since 1990, (Test. CK; Ex. R 25).

²¹ KP has been employed as a Physical Therapist since 1996. She has been employed by the District first as an employee and most recently as an independent contractor. She received an M.A. in Physical therapy from the University of Baroda, India in 1996 and has been an Illinois licensed Physical Therapist since 2002.

²² Crystal Lake School District 47 is not a named party in this proceeding.

²³ KD has been the Director of Student Services at District [REDACTED] since 2013. She received a B.A. in Science for Special Education with a minor in Psychology from the Illinois State University in 1994. She then attended

5. When ██████ was in the sixth grade (2015-2016 school year), District 47 completed a reevaluation for her. The IEP team convened on November 17, 2015 and found her eligible for special education and related services under the categories of Intellectual Disability, OHI, and Autism. Visual Impairment was dropped at that time as an eligibility classification, (Ex. IHO 1).

6. During the following year, on November 16, 2016, the IEP team reconvened for ██████ annual review and agreed to maintain her placement at ALCA for the 2017-2018 school year, (Ex. IHO 1).

7. The next year, on November 13, 2017, the IEP team met for ██████ annual review. Representatives from District ██████ District ██████, ALCA, and the Parents were present at this meeting. The IEP team agreed to maintain ██████ placement at ALCA for the remainder of the 2017-2018 school year. The IEP team agreed to schedule another meeting to discuss ██████ transition from her middle school district (District ██████) to her high school district (District ██████). At this meeting ██████ expressed strong feelings that ██████ would not be transferring from ALCA to any program at the Carey Grove High School (“over his dead body would ██████ be going to District ██████ (Ex. IHO 1, JE 3, Test. DT²⁴).

8. On May 14, 2018, ██████ District ██████ convened ██████ IEP team for a transition meeting at ALCA to further discuss and plan for the ██████ transition to high school. Representatives from District ██████, ALCA, District ██████ and the Parents were present at this meeting. Those attending including ██████ parents, ██████ and ██████, District ██████ Outplacement

Roosevelt University, Chicago and in 1998 received an M.A. in Reading Specialist, in 2001 an M.A. in Counseling-Type 73, and in 2004 a degree in Educational Administration. She received an Ed.D. degree in Educational Administration Studies from Aurora University, Aurora, IL in 2016 and received her Superintendent’s Endorsement in 2017 from that same institution, (Test. KD; Ex R 25).

²⁴ DT is presently the Division Leader at Carey Grove High School with oversight of its FCS program. She has been employed by the District 7 years and had been a special education and general education teacher since 2001. She received a B.A. in Special Education and General Education from the Northern Illinois University in 1991 and a Master’s degree in Leadership from that same institution in 2001. She holds ISBE certifications in School Administration, Special Education and Board Certified Behavior Analyst, since 1993, (Test. DT, Ex. R 25).

Coordinator NM²⁵, District [REDACTED] Director of Student Services KD, District [REDACTED] Special Education Divisional Leader DT, ALCA Executive Director KW, and [REDACTED] Special Education teacher [REDACTED], (Ex. IHO 1, JE 4).

9. At the transition meeting the team reviewed [REDACTED] records including academic and functional performance, her needs, current goals, the special education and related services being provided [REDACTED] at ALCA. Following this review, the team recommended that [REDACTED] remain at ALCA through the end of the school year and during ALCA's Extended School Year ("ESY") program to August 2, 2018, and begin in District [REDACTED]'s Functional Skills Program ("FSC") beginning August 15, 2018 for the 2018-2019 school year. The May 14, 2018 IEP offered by District 47 also offered Physical Therapy related services through the end of the school year and noted related services minutes for Occupational Therapy, Speech/Language and Physical Therapy would be added to [REDACTED] IEP by District [REDACTED] when she begins in the FSC program in August 2018, (Ex. JE 4).

10. Both the notes of the IEP meeting (prepared by District [REDACTED]) and much of the witness testimony adduced at the Hearing indicates the IEP team considered various Placement Options for [REDACTED] ranging from a lesser restrictive general education high school setting with related services to a more restrictive private therapy day school setting. The team rejected the general education setting on the basis this type of setting would not provide [REDACTED] the supports she needs. The team also rejected the private therapy day school setting on the basis that setting would provide [REDACTED] little opportunity for exposure to typical peers. The team recommended a less restrictive Placement namely the FCS program located as Carey Grove High School. The

²⁵ NM has been employed by District 47 since 1978 in various capacities including as a special education teacher, school administrator and more recently as its student Outplacement Coordinator. She received a B.S. in Special Education from Illinois State University in 1978 and a M.S. degree in School Administration from North Central College, Naperville, Il in 1998, (Test. NM).

IEP team recommended this Placement as being appropriate to meet [REDACTED] needs. In this setting [REDACTED] would be exposed to a general education setting part of her time and the remainder of her time she would be educated in a special education setting. The IEP notes of the meeting reflect [REDACTED] parents did not want a Placement change and wanted [REDACTED] to remain at ALCA because of the progress she has made there. [REDACTED] became very upset with the Placement recommendation being offered by District [REDACTED] and reacted by lashing out at one of the representatives from District [REDACTED] [REDACTED], reportedly calling her a “F’ing C.” The intensity of [REDACTED] emotions resulted in local police being called to remove [REDACTED] from the meeting which resulted in the meeting ending prematurely. [REDACTED] attributes his aggressive reaction to the team’s Placement recommendation as being a feature of his own intense anxiety concerning the matter as well as a feature of his Post Traumatic Stress Disorder, (Test. KD, MP, JP, Ex. IHO 1, JE 4).

11. Parents disagreed with the Placement being offered by [REDACTED] District [REDACTED] at the May 14, 2018 IEP meeting which resulted in the filing of their DPCN on July 27, 2018, (IHO Ex. 1).

12. On September 5, 2018, this IHO ruled on Petitioner’s Motion to Establish Stay-Put resulting in [REDACTED] Placement remaining at ALCA through the completion of this proceeding. ALCA has been implementing [REDACTED] November 13, 2017 IEP since the time this IHO’s Stay-Put Order, (Ex. IHO 1).

13. In the fall of 2018, District [REDACTED] completed a comprehensive triennial reevaluation of [REDACTED] across all domains which included classroom observations, staff and parent interviews, review of records, standardized assessments, and consultation with outside providers. The District completed the following reports for the reevaluation: psychoeducational, academic, speech and language, social history, physical therapy, occupational therapy, functional vision

assessment, orientation and mobility, health history update, and audiological, (Ex. IHO 1, JE 7, 8, 9, 10, 11).

14. [REDACTED] IEP team met on January 17, February 28, and March 5, 2019 to review and discuss the results of her reevaluation and to develop an IEP for her. Representatives from District [REDACTED] ALCA (via teleconference), and the Parents were present and fully participated in all three IEP meetings, (Ex. IHO 1, JE 4, 5).

15. District [REDACTED] provided the Parents and their attorney with draft copies of the reevaluation reports and IEP prior to these meetings, (Ex. IHO 1).

16. At the January 17, 2019 IEP meeting, the IEP team reviewed the results of the reevaluation. The reevaluation indicated [REDACTED] exhibited significant deficits in the areas of cognitive, academic, adaptive, speech and language, occupational therapy, physical therapy, vision, orientation and mobility, social/emotional, and behavioral skills. [REDACTED] scores on the Comprehensive Test of Nonverbal Intelligence- Second Edition indicated a full scale IQ of 42, falling under the <1 percentile rank. [REDACTED] overall functioning is similar to that of a child of toddler age (33 months old), (Ex. IHO 1, JE 5, Test. KD, ES).

17. At the January 17, 2019 meeting, the IEP team determined [REDACTED] eligible for special education and related services under the primary category of Intellectual Disability and secondary categories of Visual Impairment, Other Health Impairment, and Autism, (Ex. IHO 1, JE 5).

18. District [REDACTED] convened the IEP team for a meeting on February 28, 2019. At this IEP meeting, the IEP team reviewed all aspects of the Student's IEP, except [REDACTED] educational placement. The IEP team, including ALCA and the Parents, agreed to the recommended IEP goals, transition plan, and accommodations. Due to time constraints, the IEP team agreed to

reconvene on March 5, 2019 to discuss [REDACTED] related services and educational placement, (Ex. IHO 1).

19. At the March 5, 2019 IEP meeting, the IEP team, including ALCA (via teleconference) and the Parents, discussed and agreed to the proposed related services. Shortly after 2:00 p.m., ALCA staff members joined the IEP meeting via teleconference which was about one hour after the time the meeting started. Based on [REDACTED] s current functioning levels across all domains, District [REDACTED] recommended the FCS Program as the most appropriate placement to address [REDACTED] educational needs, specifically her functional and academic performance, life skills, communication skills, social/emotional skills, vision, physical therapy, occupational therapy, and behaviors. At this time, the District agreed to maintain [REDACTED] placement at ALCA through the 2019 ESY period in order to allow the Parents, ALCA, and the District to collaborate and prepare for the [REDACTED] transition to the District's FCS Program at the beginning of the 2019-2020 school year. The IEP team agreed to schedule another meeting with ALCA, Parents, and the District at the end of the 2018-2019 school year to plan for [REDACTED] transition from ALCA to the District's FCS Program, (Ex. IHO 1, JE 6).

20. The Parents continued to disagree with the District's placement recommendation and filed an amended due process complaint on March 18, 2019²⁶, (Ex. IHO 1).

21. The persons who were in attendance at the March 5, 2019 IEP included MP, JP, KD, DT, DK, MM, CS, AC, TJ, CK, H. Libert (teacher of the visually impaired), CB, M. Elliot (orientation and mobility), J. McDonald (special education teacher), M. Manning (general education teacher), and the District's counsel Michelle Todd. ALCA team members also participated in the meeting by phone. ALCA joined the discussion about one hour after the

²⁶ District [REDACTED] is not a named Respondent in Petitioner's Amended DPCN.

meeting began. The ALCA team members included KW²⁷, Terry Patterson (student services coordinator), SK²⁸, Megan Elisius (program manager), Kelsey Klien (behavioral analyst), Courtney Ryan (behavioral consultant), Brooke Marshall (speech language pathologist), MH²⁹, Caylee Jessen (speech language pathologist). The purpose stated for this meeting was to “finalize [REDACTED] IEP,” (Ex. JE 6).

22. At the meeting AC reviewed her report including [REDACTED] social history and the results from Vineland 3 assessment she administered. The team discussed [REDACTED] relative strengths (socialization skills) and relative weaknesses (life skills). A Functional Behavioral Assessment was reviewed to address potential safety issues concerning [REDACTED] history of self-injurious behaviors, head-banging and floor dropping. The team also reviewed the Behavioral Intervention Plan formulated to address these safety concerns and noted, based upon information provided by ALCA and the Parents, that in recent years these maladaptive behaviors have either stopped occurring entirely or have diminished significantly. District [REDACTED] also made comment that all of [REDACTED] providers would be trained in PCM³⁰. The team noted [REDACTED] current IEP at ALCA does not provide her significant access to typical peers as she is taught in a one-to-one setting throughout her day. The team also noted [REDACTED] emerging functional skills and shared its belief she is ready to generalize these skills across varied settings. Also at this meeting, with

²⁷ KW received a B.A. in Business from Valparaiso University, Valparaiso, IN in 1984. She is the co-founder and Executive Director of ALCA, which was formed in 2004, (Test. KW).

²⁸ KH received her B.A. Music from Illinois State University in 1991. She has been employed by ALCA as a Music Therapist since 2007. In 2013, she was certified as a Board Certified Music Therapist by CBMT (Test. KH, Ex. P 5).

²⁹ MH received a B.S. in Occupational Therapy from the University of Illinois in 1998. He is in private practice and has worked for ALCA since 2008. MH has held an Occupational Therapist license with the State of Illinois since 1998 and has worked in this filed since 1998, (Test. MH, Ex. P 4).

³⁰ Professional Crisis Management (PCM) is a program designed to prevent high intensity behaviors from occurring.

feedback from ALCA and the Parents, agreed upon goals for ██████ were finalized to address her needs, (Ex JE 6, Test. JP, CS, SK³¹).

23. The IEP offered by the District on May 5, 2019 provides for ██████ to attend the Functional Communication Skills Program in a special education classroom for most of her day and to attend Adapted Physical Education and Lunch in a general education setting with aides and support services. The IEP also offers ██████ Related Services including Occupation Therapy (90 minutes /month direct services; 30 minutes /month consultation services), Physical Therapy (30 minutes/month direct services; 30 minutes/month consultation services), Speech/Language (90 minutes per month direct services; 60 minutes per month consultation services), Vision Itinerant (45 minutes per month direct services; 30 minutes per month consultations services), and Social Work services (180 minutes per month direct “push-in” services in her classroom; 90 minutes per month consultation). These related services are “embedded” into ██████ various education settings throughout her school day. These services may be provided ██████ inside the classroom setting (“push-in”) or outside the classroom setting (“pull-out”), as needed. The finalized May 5, 2019 IEP, as written, was acceptable to the team’s members, including ALCA and the Parents³². This includes the Vision and Physical Therapy services which are not currently provided ██████ under the operative IEP now being implemented at ALCA. (Ex. JE 3, 6; Test. ES, KW).

24. The Functional Communications Program as Carey Grove High School is designed to impart functional communication and independent living skills to its students which may then be generalized to real life environments. The program has a surrogate apartment setting in the

³¹ SK received her B.A. in Special Education from Saint Louis University in 2012. She has been employed by ALCA as a Special Education Teacher since 2012. She has held a Special Education certification from ISBE since 2013, (Test.SK, Ex.P 6).

³² The team also discussed if a change to the FCS program at Carey Grove results in ██████ regressing, her Placement in that program would be revisited.

classroom to facilitate the learning of practical functional skills the student may need to function independently in a real life residential setting such as cooking, doing laundry, making a bed. The program teaches functional academic skills in math and reading to impart skills a student may need to navigate in the real world. The program provides opportunity for the student to learn in a general education setting such as when the student participates in the program's music, art class or adaptive physical education classes. The special education classroom comprises about 6-8 students. Students range in age (developmentally) from 2 years-old to 9 years-old. The makeup of disabilities of the student body varies and includes disability classifications of Intellectual Disability, Autism, Down Syndrome, Other Health Impairments, and Vision impairment. The adaptive and behavior skills of these students are similar to [REDACTED]. The physical makeup of the classroom includes 6-8 desks, a number of work stations and a sensory room located adjacent to the classroom, (Test. ES, KD).

25. Petitioners are of the view the FCS program at Carey Grove High School is not an appropriate Placement to implement [REDACTED] IEP because:

a) The FCS program employs "push-in" services to educate its students in a classroom group setting whereas [REDACTED] learns best in a "pull-out" or non-group individual one-to-one setting;

b) "Push-in" services often requires the student to wait to be attended to which may trigger [REDACTED] to dysregulate;

c) The sensory room located at Carey Grove poses a safety issue due to its cluttered environment and [REDACTED] mobility and visual disabilities;

d) Carey Grove has only one designated sensory room and it does not have a "swing" which helps [REDACTED] when dysregulated;

e) The hallways at Carey Grove may cause [REDACTED] to dysregulate when crowded with other students due to overstimulation, may cause safety issues due to her visual and mobility impairments, and she may have difficulty with walking the distance from the special education classroom to the cafeteria, due to exhaustion;

f) The socialization component of the FCS will provide [REDACTED] no educational benefit because of her lack of social awareness and skills, her lack of interest to engage with her peers, and her speech and language impediment prevents her from engaging meaningfully with her peers;

g) The demands on [REDACTED] in the FCS program may cause [REDACTED] to become dysregulated in her home environment resulting in otherwise unnecessary demands and distress on her Parents; (Test. MP, JP, MM, KW, MH, KH, SK).

26. The District's witnesses opine the FCS program is an appropriate Placement in the LRE for [REDACTED] at this stage of her development because:

a) All provisions of [REDACTED] IEP can be implemented through the FCS program in contrast to ALCA which is not properly staffed to implement the Physical Therapy, Vision, and Social Work related services now called for under [REDACTED] March 5, 2019 IEP;

b) [REDACTED] shows readiness to transition to a less restrictive Placement as her past maladaptive behaviors have either discontinued or have diminished to levels which are manageable through appropriate interventions;

c) The FCS program provides [REDACTED] educational benefit because it provides her an educational environment to learn needed functional communication and behavioral skills, in an embedded provider milieu throughout her school day, which facilitates both the generalization and transfer of those practical skills to other real life environments and activities;

d) The FCS program at Carey Grove High School is [REDACTED] LRE because it will provide her an opportunity to be exposed to her non-disabled peers which provides her the opportunity learn from her peers through engagement and modeling in contrast to ALCA which does not provide [REDACTED] this opportunity during her school day, (Test. KD, DT, AC, ES, TJ, MM, KP, CK, DK, CS).

X. CONCLUSIONS OF LAW:

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

A. APPLICABLE LEGAL PRINCIPALS:

21. The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a Free Appropriate Public Education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living; and (2) to ensure that the rights of children with disabilities and their parents are protected, (20 U.S.C. § 1400(d)(1)).

22. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP, (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17). Special education is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. §1401(29); 34 C.F.R. § 300.39). Related services are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34).

23. In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel,

that describes the child's needs, academic and functional goals related to those needs, and specifies the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, *and participate in education with disabled and non-disabled peers*. (emphasis added, 20 U.S.C. §§ 1401(14), 1414(d)(1)(A)).

B. HAS THE STUDENT BEEN OFFERED A FREE APPROPRIATE PUBLIC EDUCATION IN THE LEAST RESTRICTIVE ENVIRONMENT?

24. A FAPE required by the IDEA must be tailored to the unique needs of a particular child, *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 553 IDELR 656 (U.S. 1982).

25. Further, a district must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances, and it must be *appropriately ambitious* in light of [the student's] circumstances, (emphasis added), *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S.Ct. 988, 69 IDELR 174 (U.S. 2017).

I. THE MAY 14, 2018 IEP:

26. Petitioners have alleged the May 14, 2018 IEP denies ██████ a FAPE because it does not offer to implement the IEP in the LRE contending ██████ present private therapeutic day school (ALCA) is the appropriate LRE for ██████

27. As a matter of law, under the IDEA, a state educational agency ("SEA") is charged with overall compliance with its statutory requirements, (20 U.S.C. § 1401(32)). In turn, the SEA delegates authority to a local educational agency ("LEA"), usually the local school district, which also receives federal funding by complying with the IDEA, (20 U.S.C. §§ 1401(19), 1414(a)). As a condition of receiving federal funding, each LEA, at the beginning of each school year, is required to develop and implement an IEP for each child with a disability who resides within the

LEA's jurisdiction, (20 U.S.C. § 1414(d)(2)(A)). When a child with a disability transfers into the LEA's jurisdiction during the school year, the LEA "shall provide such child with a free appropriate education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the LEA adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law," (20 U.S.C. § 1414(d)(2)(C)(i)(I)).

28. The issues presented by the Petitioner focus on ██████ IEP's dated May 14, 2018, when she was a middle school student in District █, and her March 5, 2019 IEP, following the time she transferred to a high school student status in District ██████

29. In 2018, prior to the time ██████ transferred to her high school district (District ██████ her middle school district (District █) held the responsibility, under IDEA, to provide ██████ an IEP which offered her a FAPE.

30. The facts adduced at Hearing clearly shows the IEP dated May 14, 2018 IEP was an IEP offered ██████ by District █³³. It was not an IEP ever offered by District ██████ The facts further show this May 14, 2018 IEP was never adopted as written or implemented by District ██████³⁴.

31. Because District █ had no legal responsibility for the development of the May 14, 2018 IEP, and because District ██████ never adopted the May 14, 2018 IEP offered by District █, it cannot, as a matter of law, be held responsible for any of the denial of FAPE claims advanced by Petitioner with respect to the provisions of the May 14, 2018 IEP.

³³ District █ convened and managed the IEP meeting and the IEP offered was written by District █ on District █'s letterhead, (see Ex JE 4).

³⁴ District █ did not adopt the May 14, 2018 offered by District █. Instead it administered and completed a comprehensive reevaluation of ██████ in the fall of 2018. After a number of meetings with the IEP team from District █ ALCA and the Parents, District █ finalized and offered its IEP to the Parents on March 5, 2019.

32. Because District [REDACTED] was the LEA responsible for formulating and implementing [REDACTED] May 14, 2018 IEP, Petitioner's claims relating to this IEP should have been more properly directed toward District [REDACTED], not District [REDACTED]. Further, a review of Petitioner's DPCN, as amended, does not name District [REDACTED] as a party Respondent and nowhere in Petitioner's DPCN have claims been made against District [REDACTED] or ALCA the school which undertook responsibility for implementing the IEP offered by District [REDACTED].

33. Because District [REDACTED] is not the party legally responsible for the May 14, 2018 IEP, Petitioner's claims against District [REDACTED] with respect to this IEP are simply untenable, including Petitioner's claim the May 14, 2018 IEP (which was offered by District 47 to the Parents) was somehow "predetermined" by District [REDACTED]. Since Petitioner's claims relating to the May 14, 2018 IEP against District [REDACTED] are not viable as a matter of law, those claims are denied.

II. DOES THE MARCH 5, 2019 IEP OFFER KADINA A FAPE IN THE LRE?:

34. At Hearing, the witness testimony clearly reveals the parties agree the March 5, 2019, IEP, (which is the IEP presently being offered by District [REDACTED] appropriately identifies [REDACTED] needs, appropriately identifies her eligibility for special education and related services, appropriately sets forth goals to address her needs and appropriately offers her special education and related services reasonably calculated to provide her the opportunity to receive an educational benefit from her IEP programming. Because these core features of [REDACTED] IEP were not in dispute at Hearing, and after having reviewed these features of [REDACTED] IEP, this IHO finds the FAPE requirement under IDEA is shown to have been met by District [REDACTED].

35. The issue which remains for adjudication between the Petitioner and the District is whether or not the location where the District has offered to implement [REDACTED] IEP, namely the FCS program at Carey Grove High School, provides the Least Restrictive Environment for

██████ to receive the special education and related services provided for under the March 5, 2019 IEP.

36. The District contends the Carey Grove High School Placement satisfies the Least Restrictive Environment mandate under IDEA. IDEA requires *“To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily,”* 20 USC 1412 (5); 34 CFR § 300.114(2)(i, ii). Thus, this LRE mandate requires that school districts *must* educate handicapped children with nonhandicapped children whenever possible, (emphasis added); *Beth B. –v- Van Clay*, 282 F.3d 493 (7th Cir. 2002); *Hendrick Hudson Dist. Board of Educ. –v- Rowley*, 458 US 176, 102 S.Ct. 3034 (1982);

37. In deciding this issue, this IHO has carefully considered the opinions of the witnesses offered by Petitioner as to why the District’s High School program is inappropriate and is not the LRE Placement for ██████. Likewise, this IHO carefully considered the opinions offered by the District’s witnesses as to why the District’s FCS program is appropriate and the LRE Placement for ██████. In considering the testimony and opinions offered by the witnesses presented, including the District’s staff (most of whom also served as IEP team members), the staff and IEP team members from ALCA, and the testimony of the Parents, this IHO finds all witnesses to be credible in the testimony and opinions given. However, this IHO gives greater deference to the expert opinions offered by the District’s witnesses based upon their individual and collective educational backgrounds, work experience in educating students with disabilities

such as [REDACTED] experience and success in educating students with disabilities such as [REDACTED] in the District's FCS program, understanding of [REDACTED] past and present needs and abilities as gleaned from school records, interviews conducted with [REDACTED] providers and her Parents, consideration of the results [REDACTED] recent reevaluation relating to her present academic and behavioral functioning, as well as the observations of [REDACTED] noted during the administration of assessment instruments at the time of her reevaluation as well observations of her functioning in and around her classroom setting at ALCA.

38. While the District offered testimony to show why ALCA is an inappropriate Placement for [REDACTED] that is not the ultimate question to be answered by this IHO which is whether or not [REDACTED] given her circumstances, may receive an educational benefit by being educated in a school setting which offers her exposure to being educated among her peers.

39. As reported during the January 17, 2019 IEP team conference meeting, the Speech and Language evaluation reveals [REDACTED] primarily communicates to request things, to protest things, to gain attention, to socially greet others, to label things, to terminate activities and to express her choices. She is shown to respond to one and sometimes two-step directives. She can identify familiar people and enjoys socializing with her teachers. She seeks out assistance from adults to assist her and communicate with her. While the testimony notes [REDACTED] rarely initiates socialization with her peers, she does respond to peers when they initiate socialization or when [REDACTED] is prompted to initiate by another.

³⁵ For example the District points out ALCA is an inappropriate Placement because it failed to offer [REDACTED] Vision or Physical Therapy services which this IHO acknowledges has been a significant and apparent need of [REDACTED] during her tenure while at ALCA. However, whether or not the IEP being implemented by ALCA is or is not appropriate is not an issue presented by Petitioners for adjudication in this proceeding.

40. Upon review of the results of ██████ reevaluation, the District's IEP team at the 01/17/19 IEP conference notes ██████ "can benefit from increased opportunities to socially reference expected behaviors with developmentally typical peers."

41. Based upon the testimony of the District's expert witnesses, this IHO was convinced that ██████ may receive an educational benefit by being educated in a school environment among her peers. ALCA does not provide ██████ such an opportunity under the operative Stay-Put IEP. Because this IHO finds ██████ may receive an educational benefit by being educated in a school environment among her peers, which is a less restrictive environment than ALCA, in order to comply with IDEA's mandate and consistent with caselaw, the District must be provided the opportunity to educate ██████ in its FCS program, (a therapeutic day school is not the least restrictive environment where the student may be educated in a classroom setting while also having contact with peers during the school day), *Porter -v- Illinois State Bd. of Ed.*, (1st Dist. IL, 2014), 62 IDELR 267, 114 LRP 7103.

42. Whether or not ██████ will ultimately receive an educational benefit by participating in the District's FCS program can not be determined until after she has participated in the program for a reasonable period of time. If it is shown that she is not receiving an educational benefit in the FCS program or if it is shown she has regressed which is the Parents worst fear, then a change from her FCS Placement may then be revisited as the District had previously discussed with Parents during their previous IEP meetings.

43. Therefore, for the reasons stated above, this IHO finds ██████ LRE is the FCS program at Carey Grove High School.

XI. ORDER:

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

1. Petitioner's Stay-Put Placement under this IHO's Order dated September 5, 2018 is hereby dissolved;

2. Petitioner's claims against District [REDACTED] and the relief requested are denied;

3. [REDACTED] Placement shall remain at ALCA through completion of ALCA's ESY program through the summer of 2019;

4. The District is to implement [REDACTED] March 5, 2019 IEP through the FCS program at Carey Grove High School beginning in fall at the start of 2019-2020 academic school year;

5. Within 20 calendar days, the District is to convene a transition meeting with the Parents to include IEP team members from District [REDACTED] and ALCA to address any transition issues which may be anticipated;

6. The District shall offer the Parents Wraparound related services to address any transition issues [REDACTED] may experience in her home environment as a result of her change of Placement;

7. Nothing in this Decision And Order should be construed or deemed an adjudication of any putative claim(s) Petitioner may have against [REDACTED] District [REDACTED] and/or ALCA;

8. Within 30 calendar days of receipt of this Order, Community High School District [REDACTED] shall submit proof of compliance with this Order to:

Illinois State Board of Education
Program Compliance Division
100 North First Street
Springfield, Illinois 62777-0001

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.

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: June 10, 2019



Hearing Officer

Alan G. Schuster,





APPENDIX A

[REDACTED]
Case No: 2019-0047

[REDACTED]	[REDACTED] -Student
[REDACTED]	[REDACTED] -Student's Father
[REDACTED]	[REDACTED] - Student's Mother

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

██████, a minor, by and through)
her parent, ██████)
)
Petitioners,)
)
- v -)
)
CHSD ██████)
)
Respondent.)

Case No. 2019-0047

Alan G. Schuster
Hearing Officer

CERTIFICATE OF SERVICE

I, Alan G. Schuster, certify that on June 10, 2019, a copy of my Decision And Order was served upon the following persons in the manner indicated:

Sent via Certified Mail and Email

████████████████████
████████████████████
████████████████████

Sent via Certified Mail and Email

Ms. Michelle A. Todd, Esq.
Hodges, Loizzi, Eisenhammer, Rodick
████████████████████
████████████████████

Sent via Email Only

Illinois State Board Of Education

Andrew Eulass
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Wanda Schoneweis
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Dated: June 10, 2019

Alan G. Schuster
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Hearing Officer