

**Illinois State Board of Education
Special Education Impartial Due Process Hearing**

<i>In the Matter of:</i>)	
Jason S.)	
)	No. 004526
v.)	
)	Kathleen Plesko
City of Chicago District 299)	Impartial Hearing Officer

DECISION AND ORDER

This matter is before the Impartial Hearing Officer (IHO) pursuant to the Parent’s request for a Due Process Hearing. The IHO has jurisdiction to hear and decide this matter under 105 ILCS 5/14 - 8.02a et seq., 23 Illinois Administrative Code 226.600 et seq., the Individuals with Disabilities Education Act, as amended 20 USC 1400 (IDEA), and 34 CFR 300.507 et seq. The parties were informed of their rights under 105 ILCS 5/14 - 8.02 et seq., 23 Illinois Administrative Code 226.636 and CFR 300.509.

PROCEDURAL HISTORY

Attorney Michael O’Connor, assisted by Dawn Boer, has represented Pamela S. (the Parent) and Jason S. (the Student) throughout these proceedings. Attorney Nancy Bruggeman represented the Chicago Public School District (District).

The Parent’s Request for a Due Process Hearing is dated April 13, 2005. In a letter dated May 6, 2005 the District forwarded the request to the Illinois State Board of Education (ISBE), where it was received on May 13, 2005. The case was received by the IHO on May 17, 2005. The pre-hearing packet was mailed to the Parties on May 18, 2005, and the pre-hearing Conference was set and held on June 16, 2005. A copy of the pre-hearing Conference Summary was mailed to the parties on June 16, 2005. The Due Process Hearing was set for the first available date for the Parties, August 30 and 31, and September 1, 2005 at Harlan Academy, 9652 S. Michigan Ave., Chicago, Illinois.

Prior to the Hearing the IHO received, signed and returned subpoenas to Mr. O’Connor for service. On August 18, 2005 the IHO received by fax and U.S. Mail a “Motion to Exclude Proposed Evidence and Witnesses” from the District. Mr. O’Connor submitted “Parent’s Response to District Motion [to Dismiss].” The District submitted a “Reply to Parent’s Response” in turn. The IHO issued a Ruling on August 26, 2005, mailed electronically and by U.S. Mail, limiting the witness and document lists. Mr. O’Connor originally submitted 391 pages of documents; the District submitted 89 pages of documents. Parent documents are enumerated with “PD” preceding the number (PD --); District documents are numerically paginated (p. --). Only those documents referenced at the Hearing have been admitted into evidence.

The Hearing was called to order on August 30, 2005 at approximately 9:00 a.m. Ms. Bruggeman immediately objected to Parent’s Documents (PD) 36, 71 and 72.

Objection to PD 36 was overruled, and to 71 and 72 sustained. Objection to PD 81, 82, 83 and 86, correspondence between the attorneys, was sustained. Other correspondence documents remain in the document binders but were not admitted in evidence and are not referenced or relied on in this Decision.

Toomey Reporting stenographers Sherlene Branscomb and Etta Jones generated the record of the hearing.

ISSUES PRESENTED

The Parent alleges that the Student has been denied a Free and Appropriate Public Education (FAPE) during the 2003-04 and 2004-05 school years. Specifically, Parent alleges that the District failed to consistently provide homebound services and failed to provide educational and related services of sufficient intensity to result in an educational benefit. According to the Parent, the Student's IQ, as tested in two previous evaluations, dropped 10 points (from 87 to 77 between 1998 and 2001) and his reading lost ground: he declined from three years below grade level in 2001 to five years below age equivalency in 2004. The Parent attributes these declines to anxiety provoked by threats and intimidation from gang members who "terrorized" the Student in his regular placement. His fear and anxiety manifested in symptoms that impeded learning, including exacerbation of his asthma and night waking and sleepwalking.

The Parent seeks the following relief:

1. Placement in a private therapeutic day school at District expense, preferably at Acacia Academy;
2. An independent educational evaluation to address all areas of need;
3. An IEP to address and implement the new evaluation.

The District's position is that while bullies and gangs indeed cause stress, such issues are not IDEA related. Nonetheless District personnel met with the Parent to attempt to ameliorate the problem. The District contends that the school is safe and the Parent "never gave [the Student] a chance to benefit" from recommendations made by District personnel, all of which were rejected by the Parent. The District concluded that the school complied with IDEA and that the IEPs were and are reasonably calculated to provide educational benefit.

The District wants the Student to remain at Harlan or another Chicago Public School (CPS) setting, with the benefit of information from the Student's health care providers, which would allow the District to better provide educational services.

FINDINGS OF FACT

The Student is fifteen years old and has qualified for IDEA services since the 3rd grade. He has a learning disability (reading and reading comprehension) with related nurse services (PD 164) given his history of asthma. Two major areas of concern are the 10 point disparity between the Student's IQ as tested in October, 1998 putting him in

“low average” range and the September, 2001 evaluation which suggested he functions intellectually within the “borderline” range. There has also been a notable lack of progress in reading. In the October 2004 Triennial Evaluation the Student is assessed as reading at the “well below average range” at grade equivalent 3.7 (PD 166) while the Psychological Evaluation of September 2001 assessed his reading grade equivalency at 2.9 years. (PD 167) This progress is negligible at best but could be consistent with one of two assessments of intellectual functioning. Thus, the issue of accurately evaluating the Student’s intellectual functioning capacity begs examination. IQ can certainly affect appropriate placement; if the Student is “borderline” it is questionable that he can be placed largely in general education classrooms. If he is “low average” then regular education placements with accommodations, particularly in reading, may well be valid.

Acacia Academy, according to Director Kathryn Fouks, (the placement which the Parent requests), is a private therapeutic day school that serves children with disabilities including learning, behavioral and emotional disabilities. The school individualizes instruction in small classrooms, offers open social work services, and has differentiated instruction presented in instructional materials at the children’s intellectual levels. Acadia faculty use a multi-sensory instructional approach (tactile, kinesthetic, auditory, etc.) and emphasize building self-confidence and self esteem.

The Parent is employed by CPS as a school assistant, and the fifteen-year-old Student is the youngest of her four children. She says that he is, “happy...but a loner...” and that he has been “sickly all his life.” He has a history of asthma, which seems to have become worse since the 7th and 8th grades; he was certainly better able to contain it more independently then, and she described him as “healthy, not stressed” in junior high school. The Parent reports increase in the use of the nebulizer to control asthma during his freshman year. He also started sleepwalking and sleep talking in October 2004. He was frightened when she intervened. She told Ms. Pruitt, the Student’s case manager, about her academic concerns and the Student having less help in his classes than he had previously. The only change observed by the Parent consequent to this conversation was “less homework.” The homework the Student did have was “too difficult.” Parent read the homework to him but neither of them really understood, and she so informed Ms. Pruitt. The Parent was unable to attend the October 20, 2004 IEP meeting and asked the Student’s father to attend; she did later review and sign the IEP Conference Recommendations (PD 39; p. 64).

One week in September 2004 the Student refused to go to school. He told the Parent that it was “hell week for freshmen.” He was afraid of gangs and bullying. The Parent called the school and was referred to Mr. Michael White, who said he would check into this assertion. By October 2004 the Student was so afraid that he was running all the way to and from school. The Parent started putting him on the bus in order that he would be taken to the school door. On December 17, 2004 the Student used his cell phone to call the Parent from a classroom, telling her that a girl had just warned him that a group of boys was waiting outside the door to beat him. The Parent asked to speak to a teacher, whom she asked to take the Student to the office; the teacher confirmed to the Parent that “something was going on” and the Student was escorted to the office by security. (PD 003) Her brother-in-law picked up the very upset Student from school on that occasion.

On December 30, 2004 the Parent redoubled her efforts to have her son placed in a different school. These efforts included:

- An appointment on December 30, 2004 with pediatric nurse practitioner Jacqueline Evans, who wrote a prescription for a new educational placement, indicating that the Student "...until high school, was doing well; is now regressing academically and socially, would benefit from special placement and small class size." (PD 195; p. 79) The Parent was told the document was not adequate.
- A January 6, 2005 letter to Mr. Arne Duncan, CPS Chief Executive, expressing concerns about school safety and indicating that her son "was so afraid his asthma has gotten worse he is very nerves [*sic*]." He was "being called dumb stupid M/F [*sic*]." She also notified Mr. Duncan that her son needed to be in a school that would "accommodate his IEP..." "...he is getting the minutes but he is not learning anything..." and that it was "...possible [Student's] Social Skills has [*sic*] dropped." (PD 003)
- Attendance at a meeting on January 21, 2005 convened at the school by Mr. Willie White, evidently in response to her letter to Mr. Duncan. Mr. White had seen neither the medical letter (p. 80; PD 194) nor prescription for alternative placement. (p. 79; PD 195) The Parent requested a change of placement at this meeting but received no guidance as to how to appropriately make such a request. No action resulted from the meeting and there has been no further contact between the Parents and Mr. White or the Student's teachers.
- A second letter to Mr. Duncan sometime prior to March 17, 2005, wherein she reports her unproductive discussion with Assistant Principal White about problems with her son's "health problems, his learning disability, him being unsafe..." and that "the people you are directing me to be [*sic*] too busy to help my child and [he] is missing out on his education," and "he is sick." (PD 013)
- Acquisition and presentation to the Chicago Board of Education of a letter signed by a doctor and amended to recommend homebound instruction. This letter, as the earlier prescription, was deemed inadequate as not in the proper form.
- Homebound instruction was initiated by school nurse Valerie Seats, when she seemed to have the correct form in hand due to the Parent's actions, on March 29, 2005, and was provided by teacher Barbara Flynn. Ms. Flynn testified that the Student was receiving educational benefit from her instruction; she began working with him on March 30, 2005. Instruction was interrupted once because someone at CPS noticed that the long-sought form had been signed by a nurse practitioner rather than a physician; services were resumed briefly until CPS decided that asthma was not a condition that warrants homebound instruction and terminated the instruction.
- Finally, in a letter dated April 16, 2005 the Parent requested a Due Process Hearing.

The Parent gained documentation supporting “a different school where there will be less outside stress such as gang activity and peer problems and smaller classroom size with less distraction” from Jacqueline Evans, M.S., R.N., C.P.N.P. on January 20, 2005. (PD 194) This letter was a follow-up to the prescription for a “special placement” the District deemed inadequate, as noted above. (PD 195) The District likewise rejected the letter because it did not have a physician’s signature. The Parent then acquired the signature of Dr. Rajasekhur on a March 17, 2005, similar version of the letter, addressed to the Chicago Board of Education and recommending “homebound educational services.” (PD 196) Ms. Evans, as a pediatric nurse practitioner, basically performs the more routine aspects of a pediatric physician for Advocate Health Care. While it is not uncommon for her to recommend school placement, she has not visited Harlan Academy, and reported that the complaints of gangs and violence there came from the Parent, not the Student.

Dr. Mary Rosales, a licensed pediatrician, saw the Student on May 13, 2005 as a follow-up to emergency room treatment the previous day for an anxiety attack. (PD 315) The visit, the first between the Student and Dr. Rosales in 2005, also revealed problems with sleepwalking and somnambulism. Dr. Rosales noted the same complaints, among others, on August 17, 2005 and specifically noted that the Student was “very stressed out...[due to] gang problems” in 9th grade, and referred him to Dr. Priolys, a pediatric neurologist.

Dr. Andrius Priolys saw the Student on August 17, 2005, on a referral from pediatrician Dr. Mary Rosales. His recommendations include: (1) ruling out a seizure disorder; (2) developing strategies for managing hyperventilation; (3) “Highly recommend[s]” seeking another educational placement; and (4) seeking psychiatric intervention if the symptoms persist. Dr. Priolys gathered information from the Student and Parent, not school personnel. The Student presented to him as “very normal, nothing unusual at all.”

Mr. Michael White, Dean of Students at Harlan Academy, with thirty-five years of CPS experience at various levels, is in charge of security and essentially serves as the school disciplinarian, ensuring the safety of students at the school; his own son attended Harlan. As Dean of Students he listens to and adjudicates problems, including problems with “bullying.” When brought to his attention he addresses “bullying” by meting out discipline according to CPS guidelines and standards. Generally, he speaks directly with students, as opposed to their parents. He convenes conferences involving students, sometimes parents, and everyone involved in a problematic episode; he notifies Chicago Police if he discerns that a law has been broken. Police officers sit in on disciplinary conferences to “avoid problems” and “keep informed.”

Mr. White does not perceive the Student as a victim either inside or outside the school. He does not recall meeting with the Parent, but thinks he may have had a phone call from her. He does not have the authority to change school placements, nor did he know about the Student’s asthma. Acknowledging the presence of gangs in the school, he characterized it as not “overt” although conceding fights occur between gangs “from time to time.” Security cameras installed two years ago helped create a safer environment on the first floor, and there are two uniformed police officers assigned by the Chicago Police Department in the school; four additional off-duty police officers, hired part-time with discretionary funds, wear security uniforms when in the school.

Dr. Gertrude Hill oversees instructional programs and ensures a safe and secure environment as part of her duties as Harlan Academy Principal. Her staff uses many techniques to enhance learning including tactile and individualized instruction. Referencing a January 18, 2000 letter to the Parent from Dr. Rose Butler Hayes, Deputy Chief School Support Services (PD 014), Dr. Hill cannot recall what she did in response. The Parent had requested a change in placement for the Student, and Dr. Butler Hayes' letter, copied to Dr. Hill, indicated the request had been forwarded to Mary Freeman, Manager of Support Services. Dr. Hill thinks she passed the letter on to Mr. Willie White, Assistant Principal and/or Mr. Michael White, Dean of Students, or perhaps to Special Education. Dr. Hill described police presence in the school as "precautionary" and "not at all uncommon and that there are at least two police officers assigned in all Area 24 CPS."

Mary K. Freeman, CPS Manager, Office of Specialized Services, offered testimony that was inconsistent with the other teachers and the Parent, particularly insofar as it described the Parent as unresponsive. She did not know if there is a file about contacts regarding the Student or Parent, and offered no contemporaneous notes (indicating, "I usually try..."). Ms. Freeman reported a conversation with "someone" who answered the phone at the school where Parent works that was deemed by the IHO to be irrelevant and prejudicial. She said she had neither received nor sent email, but also said that she loses things and receives a lot of email.

Mr. Pittman, Chief Officer of High School Programs, testified that having been delegated by Mr. Duncan the task of responding to the Parent's letter, he in turn delegated the actual writing of a response to Barbara Evans. He also delegated safety concerns to Johnny Owens who, he gathered from an oral report, met with the Parent and offered some options. In response to a question about safety in CPS, Mr. Pittman responded, "We got a battle."

School psychologist Denise Kennedy did not recommend psychoeducational testing because intelligence testing has been administered twice previously. She acknowledged noticing a decrease in IQ scores but thought that might be explained by the use of different tests, though she did not know if, in fact, different tests were used. She also acknowledges "a concern" about the Student's reading grade equivalency at 3.7 (Kaufman) in 9th grade. Asked by the IHO if there generally could be curricular or instructional differences for "borderline functioning" versus "low average intelligence," Ms. Kennedy responded, "It depends." Mr. O'Connor asked to have it noted for the record that this question could have been asked directly if a document submitted pre-hearing had not been excluded from the record.

Ms. Phyllis Pruitt, case manager in Specialized Services, discussed the Student's October 2004 IEP. (p. 45-60) She said the Student's "domain sheet" (p. 43) addressed the areas of health, vision, hearing, social/emotional status, general intelligence and academic performance. His Eligibility Determination (p. 61) included these same areas (with hearing and vision to be tested). No consideration was given to a therapeutic day school. The Student participated in his transition plan, which he may change at any time. According to Ms. Pruitt, the Student was not eligible for ESY services because he failed to meet the criteria as cognitively delayed or emotionally disturbed with a secondary disability. The October 2004 IEP included specialized instruction in Language Arts and Mathematics and regular education participation in Physical Science and Biology, Social

Science (with modifications) and ROTC, lunch and advisory. (p. 54) When Ms. Pruitt received the nurse practitioner's prescription note (PD 195) she gave it to the school nurse. She described the Parent as responsive and reliable.

Special Education teacher Angela Coleman described the Student as "handsome and studious" and said she was "surprised" to learn that he was afraid. She thought the Student's reading might be at 5th grade level and noted his strong work ethic.

Regular education teacher Katrina Carson-Johnson said the Student was "not doing well in [her] class," struggling and missing assignments. She suggested he be removed from her class and placed in a self-contained classroom. She assessed his reading at the 2nd or 3rd grade level.

School nurse Valerie Seats testified that she knows the Student, has followed his physical and immunization records, and has assisted with medication and asthma management; he carries an asthma inhaler. The Student participated in ROTC and regular physical education without incident. She has referred students for homebound instruction based on asthma, using specific criteria. It was she who rejected the December 30, 2004 prescription form for an alternative placement. She read the January 20, 2005 letter in the context of asthma only and evidently did not consider other information about the Student's well-being in that letter, i.e., "trouble sleeping, sleepwalking, and talking in his sleep; and regression in his academic skills." (p. 80)

Nurse Seats ultimately gave the Parent a form (p. 82) to have the medical providers complete to support homebound instruction. The form was deemed to be the wrong one for psychosocial problems. Because the original form has the words "Asthma, LD" in the "diagnosis" box it eventually caused the termination of his services. School personnel did not react to the language in the box immediately under the diagnosis that included "anxiety surrounding school attendance...feels unsafe...psychosocial anxiety also causing night waking and sleepwalking." Ms. Seats did not educate the Parent about using the form for psychiatric homebound services. (p. 89)

Special Education teacher Marieth Mitchell instructed the Student in reading after he was moved from the regular education Language Arts class. She provided services in a self-contained classroom, and used multiple strategies to facilitate learning, including individualized assistance. She estimated the Student's reading performance at the 4th grade level and his speaking and language at the 6th grade level. He seemed happy and worked well in groups, but missed school frequently, as much as once or twice per week. The number of students in her classroom was small, consisting of about 1/3 LD, 1/3 EMH and 1/3 ED students. All were freshmen and their reading levels varied from 1st to 6th grade.

School Social Worker Kim Morris interviewed the Student and Parent and administered the Social Assessment. (p. 67) She recommended, based on the Student's statements that he was "sad and angry" and Parent's report that he cried frequently and seemed depressed and had relationship issues, thirty minutes per month of social work services. Following an emotional breakdown during the November 2005 IEP meeting, she said she was glad she made the referral. She says his complaints were about his family; his mother was mad if he did not do chores, older brothers teased him. She maintains an "open door" policy but she did not meet with teachers about the Student. She was unaware of the complaints of "night-waking and sleepwalking with behavior

changes,” as noted on March 17, 2005 by nurse practitioner Evans; the Student had not attended school at Harlan since December 2004.

Ms. Morris attended the January 21, 2005 meeting convened by ex-assistant principal Mr. Willie White, and remembers discussing the Student’s fears and Mr. White’s addressing safety issues generally, including alternate routes to school. The Parent was also referred to the District Office to see if they could identify an alternate placement.

Mr. Willie White worked at Harlan for fifteen years. He knows the Student only through this case. He remembers the reason given for non-attendance as fear and that the Parent requested alternative placement, that the Parent rejected other options and the outcome was referral to the Regional Office. The Student was not present at the meeting. He never saw the Student victimized or having an asthma attack, and asserts that Harlan Academy is safe.

CPS Manager of Homebound and Hospital Instruction Juanita Martinez explained the criteria for receiving homebound instruction: physiologically based needs must be referred by a physician, psychologically based needs by a psychiatrist. She referred to two CPS forms—one for a physician (p. 88) and one for a psychiatrist (p. 89)—forms that are distributed by the school to the appropriate M.D., come back to the school, then to Ms. Martinez. If the form based on a psychiatric need is submitted, a contractual psychiatrist reviews it. She indicated that the form is optional but the referral must have several components including a diagnosis, the complication of the condition that renders the student unable to attend school, and a beginning and ending date. When the referral is not done correctly Ms. Martinez faxes a checklist back to the school immediately. There are specific requirements for homebound instruction when asthma is the basis for the request: the student must be in distress, unable to move between classes, or unable to be removed from medical equipment.

Ms. Martinez deemed the Parent’s multiple attempts to receive homebound instruction inadequate; the Student’s asthma did not meet the standard, a physician assigning an LD diagnosis was insufficient, and the form failed to address the severity/complication issue. Dr. Gertrude Hill authorized homebound services on March 30, 2005 (PD 306) but Ms. Martinez terminated them less than a month later. She stated that there is no procedure for notifying the parents when homebound instruction is terminated.

The Parent testified in rebuttal to Ms. Freeman and Ms. Martinez. She identified a contemporaneous list she generated (PD 15-19) as she tried to gain help for the Student. In addition to phone calls, the Parent emailed Ms. Freeman on January 23, 2005. When she had one of two conversations with Ms. Freeman she asked for alternative placement, at which time she was referred to Mr. Johnny Owens. Mr. Owens called the Parent on February 16, 2005; he suggested several CPS options that were not acceptable to the Parent. A meeting was set for March 20, 2005, which Parent accidentally missed. She tried to reschedule the next day; her call was not returned.

Parent recalled that it was Ms. Flynn who brought the medical referral document to the Parent at home. (PD 197) The Parent took it to Health Alliance and returned it to the school by fax on March 18, 2005. Ms. Pruitt told her that homebound instruction was stopped due to a nurse’s signature on the form, rather than a physician’s. When the

Parent acquired a physician signature services were briefly reinstated. Ms. Flynn told the Parent “somebody from ‘downtown’ stopped it;” neither she nor Ms. Flynn knew why.

CPS Case Manager at Turner Drew, Pauline Duran, testifying for the District, indicated that in the 2003-04 IEP social work services were deemed sufficient at fifteen minutes per month. The transition plan was done on September 7, 2004 and Ms. Duran thinks it adequate (goal – attend college and in a curriculum related to architecture). Ms. Duran was the Student’s case manager at Turner Drew for 6th, 7th and 8th grades. The level of service for “Direct/Consultative Service in a Separate Class” dropped from 500 minutes per week in 7th grade to 400 minutes per week in 8th grade. PD 295 documents changes in the scores the Student achieved on the ITBS: his reading comprehension declined by one stanine, math concepts decreased by two stanines, and math computation by one stanine. These scores were not considered in developing the IEP. Even with “major modifications” (PD 379), the Student’s performance showed significant deterioration. Ms. Duran did not know why there were two meetings, one for ESY (subsequently discontinued) and one for the transition plan.

Kesha Wells, Special Education teacher at Turner Drew, was one of the Student’s teachers in 7th grade and was present at the 8th grade IEP meeting. She worked one-on-one with the Student, not because he was a behavior problem, rather he needed help staying on task. It was determined at the IEP meeting that he did not need ESY because of his progress. The Parent had input in the Transition Plan (p. 40) through a questionnaire, and did not attend. The Student can change the Transition Plan at will. In the October 22, 2002 IEP meeting the ITBS scores were used as a measure of performance (PD 72), contrary to the 2003-04 plan. Ms. Wells does not think the Student’s reading scores really deteriorated.

Turner Drew school nurse Sandra Beck served the Student for two years. His nursing services included typical duties, monitoring immunization and physicals. She assessed the Student in the Re-Evaluation Form (p. 21) and distributed an asthma plan to his teachers. She has a record of progress from November 5, 2002 to November 7, 2003, representing six “encounters” with no more entries, leading her to surmise she did not see him again. The November 7, 2003 IEP recommended fifteen minutes per month of direct and consultative services. His gym activity was not restricted. During 2003-04 she had no complaint related to the Student’s asthma. She conceded that she did not meet time requirements established in the IEP. There was an emergency plan for the Student’s asthma in place; she was at the school one day per week.

APPLICABLE LAW

The law applicable to the facts in this matter is set forth in the Individuals with Disabilities Education Act (IDEA), 20 USC sec.1400, et seq., and its federal regulations, 34 CFR 300.507 et seq, the School Code of Illinois, 105 ILCS 5/14 - 8.02 et seq., and state administrative rules, 23 Ill. Admin. Code 226.636. The Local School District (LEA) is required to prove that it properly identified the nature and severity of the Student’s disability, and, if appropriate, that it offered the Student a free and appropriate public education in the least restrictive environment, consistent with procedural safeguards. The essence of FAPE is the provision of an education that is reasonably calculated to provide

the Student with educational benefit. Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176 (1982)

Rowley set forth a two-pronged method for evaluating whether a school has complied with special education law. First, there must be procedural compliance with the statute. Second, more importantly, the individualized education plan (IEP) developed consistent with these procedures must be reasonably calculated to enable the student to receive educational benefit.

Each school district is responsible for actively seeking out and identifying all children from birth through age twenty-one within the district who may be eligible for special education. Important to the instant case, the district is also responsible for ongoing reviews of each child's performance and progress. These reviews are conducted by teachers and other professional personnel in order to refer those children who exhibit problems which may interfere with their educational progress and/or their adjustment to the educational setting. 23 Ill. Admin. Code 226.100(a)(2)

A complete IEP must cover all domains—health, vision, learning, social and emotional status, general intelligence, academic performance, communication status and motor abilities. A student's educational performance means academic achievement but also addresses the child's ability to establish and maintain social relationships and experience sound emotional development in the school environment. The district must arrange for such tests and other evaluation procedures necessary to develop any additional information as needed. 23 Ill. Admin. Code 226.75; 226.120 (2003) Districts shall reevaluate any eligible child as warranted or when a parent or teacher so requests, but at least once every three years and any time before determining that a child is no longer eligible. 23 Ill. Admin. Code 226.190 (2003)

A specific learning disability is "a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations..." 105 ILCS 5/14-1.03(a)

Illinois regulations define the disability Emotional Disturbance as a condition exhibiting one or more of the following characteristics over an extended period of time and to a marked degree over an extended period of time and to such degree that symptoms adversely affect educational performance: An inability to learn that cannot be explained by intellectual, sensory, or health factors; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of anxiety or unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. 23 Ill. Admin. Code 226.75

The IEP of a student who has reached fourteen must contain a description of transition service needs with specific reference to courses of study. 23 Ill. Admin. Code 226; 230 (c)

A district is entitled to establish its own curriculum and instructional techniques as long as they successfully meet students' needs, providing FAPE. If the district does not develop and/or implement an IEP that provides the student with FAPE, parents may request that the district pay for private instruction and/or related services in order to provide FAPE, or they may request compensatory education. Florence County School Dist. V. Carter, 510 U.S. 374 (1993); Burlington School Committee v. Massachusetts Dept. of Educ., 471 U.S. 374 (1985). While the IEP must be provided in the least

restrictive environment “to the maximum extent appropriate,” the law also allows removal to more restrictive environment as necessitated by the nature and severity of the child’s disability. 105 ILCS 5/14-8.02(d) (2002)

CONCLUSIONS

The preponderance of the evidence shows that the Student was denied FAPE in 2002-03 and 2003-04 by virtue of the District’s failure to appropriately assess his general intelligence and failure to develop IEPs reasonably calculated to enable him to receive educational benefit. The District also failed to identify and address the Student’s social/emotional status and needs. The denial of FAPE is most evident in the actual regression of his academic achievement, conflicting IQ scores indicative of differing levels of intellectual ability, and the District’s insistence on ignoring his social and emotional status. At the same time the Student’s academic scores, as reflected by ITBS, were declining, his IEP services were being decreased. There is a definite progression downward on ITBS measures of reading: while in 7th grade in 2002 reading comprehension was at stanine 3 (14th percentile); in the 8th grade in 2003 at stanine 2 (10th percentile); and in 2004 as a freshman he regressed to stanine 1 (2nd percentile).

This regression is further reflected in psychological evaluation scores which found him to be “low average” in 1998 and “borderline intellectual functioning” in 2001. No attempt was made by the District to resolve this discrepancy. The District could not and did not develop and implement appropriate IEPs in the absence of a solid understanding of the Student’s capacities.

The District determinedly ignored language used repeatedly by medical providers, arranged and paid for by the Parents, that the Student was “regressing academically and socially...” that “stresses...[caused] an increase in his asthma...sleepwalking and talking...” and “...regression in his academic skills...” Also, his “...asthma has worsened with anxiety and stress.” On his medical provider’s fourth attempt to satisfy the District on the proper form provided by the District (but later deemed not to be in the proper form after all) the provider made a bureaucratically fatal error in writing “Asthma, LD” in the “diagnosis” box. Immediately beneath that information is “Asthma flares with anxiety surrounding school attendance where he feels unsafe; psychosocial anxiety also causing night waking and sleepwalking.” It is clear that the *exacerbation of asthma is a symptom* of social/emotional factors, not the basis *on its face* for a different placement for the Student.

In light of the Parent’s experience with the District, which delegated her many attempts to get help from the highest level down through the bureaucracy with no relief ever ensuing, she is right to have no faith that CPS will provide FAPE for her son.

Thus it is ordered:

1. That District pay for placement in a private therapeutic day school.
2. That District pay for cognitive, psychosocial, speech/language, and assistive technology assessments either administered by the therapeutic day school or by independent evaluators .

RIGHT TO REQUEST CLARIFICATION

Either party may request clarification of this decision by submitting a written request to the undersigned Hearing Officer within five (5) days of receipt of this decision pursuant to 105 ILCS 5/14-8.02(i). The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party and to the Illinois State Board of Education. *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.*

RIGHT TO FILE A CIVIL ACTION

This decision is binding upon the parties unless a civil action is commenced. Either party to the hearing aggrieved by the Hearing Officer's final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 ILCS 5/14-8.02(i), a civil action may be brought in any court of competent jurisdiction within 120 days after the mailing of this decision.

Dated: _____

Kathleen Plesko
Due Process Hearing Officer