ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

I. Case Number: 02558

II. Name of Case: W. F. v. Flossmoor School District 161

III. Hearing Officer: Dr. Richard W. Brimer

IV. Name of District: Flossmoor School District 161 (Cook County)

V. Superintendent of Schools: Dr. Donna C. Joy

VI. Address: Normandy Villa Administrative Center; 41 East Elmwood Drive; Chicago Heights, Illinois

VII. Telephone Number: (708) 647-7000

VIII. Counsel for District: Ms. Christina Sepiol and Mr. Kevin B. Gordon; Scariano, Ellch, Himes and Petrarca; 1450 Aberdeen; Chicago Heights, Illinois 60411 (708) 755-1900

IX. Name of Parent: Mr. J. and Mrs. C. F.

X. Address: (Redacted for privacy)

XI. Telephone Number: (Redacted for privacy)

XII. Counsel for Parent: Mr. Sheldon B. Nagelberg, Ms. Lara A. Cleary and Mr. Brooke R Whitted; Whitted and Cleary; 3000 Dundee Road; Suite 303; Northbrook, Illinois 60062

Dates and Time Lines

Date of Written Request: December 11, 2001

Prehearing Conference: July 9, 2001

Dates of Hearing: July 16 and 17 and August 5 and 6, 2002

Date of Briefs: August 31, 2002

Date of Decision: September 29, 2002

XIII. Witnesses for the Parent:

1. Dr. Mariam Redleaf
2. Ms. Cheryl Flink
3. Dr. Michele Wilkins
4. Ms. Elsa Auerbach
5. Mrs. Colleen [redacted]
6. Ms. Jean Moog

XIV. Witnesses for the School District:

1. Ms. Judith Green
2. Ms. Donna Carraher
3. Ms. Kelly Vinehout
4. Dr. Carol McDonald Connor
5. Ms. Mary Ellen Strezo
6. Ms. Jennifer Washington
7. Ms. Jodie Z. Brugler
8. Dr. Patricia Scherer

XV. Others Present:

1. Ms. Anne Aboushousha
2. Ms. Lynn M. Anna
3. Ms. Venetta Anna
4. Mr. William Anna

5. Ms. Pamela Armstrong

6. Ms. Doreen Bishop

7. Ms. Cathy Bullard

8. Ms. Debbie Craven

9. Mr. Michael Drakulioch (Star Newspapers Reporter)

10. Ms. Donna C. Joy

11. Mr. Mark LaMet (WGN-TV Producer)

12. Ms. Nancy Leli

13. Ms. Erika Millhouse

14. Ms. Kathy Pacult (Certified court reporter, August S and 6, 2002)

15. Mr. Ted Parra (WGN-TV Camera and Sound Technician)

16. Ms. Cynthia A. Pavesich (Certified court reporter, July 16 and 17, 2002)

17. Ms. Annette Rodgers

18. Ms. Carrie Rinker-Schoeffer

19. Ms. Gina Syluster (Court reporter intern)

20. Ms. Shauni Zerante

Summary of the Decision

The Student is a three-year-old boy who was diagnosed with a profound hearing lost at the age of six months. A little over the age of one, the Student received a cochlear implant from a university hospital. Somehow, the electrodes to this implant became detached and the Student received a second cochlear implant approximately 18 months after the first implant. The Student greatly benefited from this second implant. At the recommendation of their otolaryngologist and their clinical audiologist, the Parents enrolled the Student in a private day school which focused on an "oral-aural" program. Since enrolling in this program, the Student made significant progress in receptive language, expressive language, behavior, and socialization skills. The School District held an IEP meeting in September of 2001. At that time, the School District recommended a cooperative total communication program for the Student.

The two-prong test of *Rowley* was used to determine whether the Student was provided with a FAPE. The School District committed substantial procedural errors rendering the School District's proposed program inappropriate under *Rowley.* In addition, the School District's IEP did not address the substantive requirements of *Rowley.* In contrast, the private day school provided an appropriate program that met the Student's needs.

DECISION AND ORDER

This matter is before the undersigned for an impartial due process hearing on whether the School District offered the Student a free appropriate public education. The due process hearing was held in a conference room of the Normandy Villa Administrative Center, a facility within the School District. The Parents and the Student reside within the School District's boundaries. The hearing officer has jurisdiction to hear and decide this matter under 105 Illinois School Code (ILSC) 5/14-8.02 (1999), 34 Code of Federal Regulations (CFR) 300.506 through 300.509 of the Individuals with Disabilities Education Act (IDEA) (2000) and the 23 Illinois Administrative Code (ILSC) 226 Subpart J (1996). The parties were informed of their rights under Section 14-8.02(g) of the ILSC, 34 CFR 300.508 and 300.509, and 23 ILAC 226 Subpart J.

Procedural History

The Student is a three-year-old boy who was diagnosed with a profound hearing lost at the age of six months. A little over the age of one, the Student received a cochlear implant from a university hospital. Whereas the cause is unclear, somehow the electrodes to this implant became detached. Apparently, the Student received little benefit from this implant. A little over a year later, the first implant was removed and the Student received a second cochlear implant. The Student greatly benefitted from this second implant.

The basis of the Parents' decision to obtain a cochlear implant was to provide their child with the opportunity to hear and use oral language. Essentially, the Parents wanted their child to be able to speak.

At the recommendation of their otolaryngologist and their clinical audiologist, the Parents enrolled the Student in a private day school that focused on an "oral-aural" program. While enrolled in this program, the Student made significant progress in receptive language, expressive language, behavior, and socialization skills.

The School District acknowledges the Student has significantly progressed while enrolled in the day school program. But, the School District assert that he would have advanced in their program. In contrast to the oral-aural program offered by the day school, the School District provides its students with a total communication program. The School District contends that it could provide the Student with a free appropriate public education (FAPE) in that program. The School District contends that it complied with all the procedural safeguards set up in the IDEA and the IEP is reasonably calculated to enable the child to receive educational benefits.

Issues Presented

During the prehearing conference, the Parents raised three issues in this matter. The issues the Parents raised are as follows.

1. Whether the individualized education program (IEP) proposed by the School District for the 2001 - 2002 school year is reasonably calculated to provide the Student with a FAPE.

2. Whether the School District committed procedural violations at the Student's IEP meeting.

3. Whether the Student's placement at Child Voice School is reasonably calculated to provide the Student with a FAPE.

Findings of Fact

In the Spring of 2000, the Student received his first cochlear implant. Shortly after the implant, the Parents contacted the School District to obtain information about the special education process and to discuss placement options when the Student turned three years of age. Apparently, the School District did not contact the Parents or shared the requested information with them. On August 26, 2001, the Student turned three years of age.

In the Spring of 2001, the School District commenced an initial eligibility determination on behalf of the Student. During this period, it was determined that the implanted electrodes were detached from the cochlear, and a second implant was necessary. (Consequently, some of the testing for the eligibility determination was conducted on the Student when the implant was not functioning properly.)

On September 6, 2001, the School District held an eligibility determination meeting followed by an IEP meeting. Attending these meetings, besides School District representatives, were a Parent, the clinical audiologist, a speech pathology assistant, and the director of the day school program. Also, reports were provided by two of his doctors and the clinical audiologist. The meetings were scheduled to last approximately one and a half hours. The clinical audiologist described the meetings as being "rushed... and that it was being pushed along very rapidly" (p. 192).

The Parent and the clinical audiologist visited the program proposed in the IEP: a half-day total communication program offered through the local cooperative. The primary method of communication was sign language. A national authority in the field of deaf education likewise visited the program proposed in the IEP. The director of deaf education for the cooperative took her to observe a full-day program offered through a neighboring cooperative. She also visited the private day school program which the Student currently attended. The Parent, the audiologist and the nationally renowned expert felt the program specified in the IEP did not addressed the Student's needs. The outside expert felt that the program offered by the neighboring cooperative also did not

addressed his needs; but the private day school program, she felt, did address the Student's needs.

Conclusions of Law

The IDEA mandates that all school districts have in effect a policy which assures that all children with disabilities have a "free appropriate public education" (FAPE). A FAPE tailors the educational program to the unique needs of a student with disabilities through an individualized education program (IEP). The IEP must be prepared and reviewed at least annually by the student's parents or guardians and school district representatives.

The Supreme Court in *Rowley* established a two-prong analysis to determine whether a child has been provided with a FAPE. The first determination is whether the School District has complied with the procedural safeguards specified in the IDEA. The second determination is whether the IEP proposed by the School District can be reasonably calculated to confer an educational benefit on the student *[Board of Education of the Hendrick Hudson Central School District v. Rowley* 458 U.S. 176, 206-07, 102 S. Ct. 3034, 3051 (1982)].

Procedural Issues. The IDEA requires that the IEP team includes the Parents and various School District representatives. Procedural errors which "seriously infringe the parents' opportunity to participate in the IEP formulation process clearly result in a denial of a FAPE" [W. G. v. *Board of Trustees of Target Range School District No. 23, 960* F. 2d 1484 *(9th* Cir. *1992)](Target Range).* The importance of the parents' participation in developing their child's IEP is paramount. This participation has been strengthened since the 1997 reauthorization. Appendix A to the revised Federal Regulations, 34 CFR 300 describes this new emphasis:

> "The Congressional Committee Reports on the IDEA Amendments of 1997 express the view that the Amendments provide an opportunity for strengthening the role of parents, and emphasize that one of the purposes of the Amendments is to expand the opportunities for parents and key public agency staff to work in new partnerships at both state and local levels."

In addition, Question 5 of Appendix A comprehensively addresses the parent's collegial role in the decision making process for their child with a disabilities:

> "The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's

> need for special education and related services and supplementary aids and services; and (3) join with other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting."

In *Target Range,* the Ninth Circuit ruled that a school district that fails to include the parents as "equal participants" in the IEP process denies the child a FAPE. In *Target Range,* the parents of a student with learning disabilities placed their child in a private school but attended an IEP meeting with school district representatives to discuss programming options. The Court found the school district unilaterally determined which educational program it would use, and did not discuss the parent's requested alternative or other alternatives, and further failed to include individuals from the private school in the IEP decisions.

> "Target Range proposed an IEP that would place R.G. in a preexisting, predetermined program. At the IEP meeting, the Target Range special education teacher advocated the use of the Scott Foresman Focus Program, and no -alternatives to that program were considered, despite the objections of W. G. and B. G. [the parents]. W. G. testified that the District assumed a'take it or leave it' position at the meeting... The Act imposes upon the school district the duty to conduct a meaningful meeting with the appropriate parties. Target Range failed to do so. Target Range failed to fulfill the goal of parental participation in the IEP process and failed to develop a complete and sufficiently individualized educational program according to the procedures specified by the Act" (p. 1484 - 1485).

Similarly, in *Briere v. Fair Haven Grade School District* [948 F. Supp. 1242, 1254 (D.Vt. 1996)], the Court determined that a school district's "IEP Team meeting inhibited meaningful parental involvement and contravened the letter and the spirit of the statute" (p. 12 54) . Citing *Honig v. Doe,* the Court stated:

> "Parents are to have an opportunity for meaningful input into all decisions affecting their child's education"' (p. 1254). This opportunity for meaningful input into all decisions definitely involves the IEP."

The evidence demonstrates that the Parents were not treated as "equal participants" during the September 6, 2001 IEP meeting. The School District never discussed or considered placing the Student in the private day school. This is evidenced in the testimony of the witnesses, as well as the IEP document itself which never mentions the private day school or the use of an oral-aural program. The director of the private day

school program indicated that she felt as an "outsider" and not as a member of the team. She later stated: "In my opinion, there was tone or a climate within the room that was not supportive to the parents to be part of the team and to share their information" (p. 678). She added: "I had a sense that we were on the clock and we needed to get through the business at hand in a relatively short period of time. I have attended eligibility meetings that go into the IEP goal writings and they are lengthy at least and this definitely had a sense of pressure on time" (p. 677). The clinical audiologist stated: "I was a little surprise, that we were invited by the parents, myself and [the director of the private day school], and the speech pathology assistant, to support the parents and that we did not -- were not allowed to offer our opinions" (p. 192 - 193).

The testimony and the documents presented demonstrates the School District's failure to include the Parents as equal participants in the IEP on behalf of their son. The Parent testified that she began contacting the School District more than one year prior to her son turning three years of age and was repeatedly ignored and denied the opportunity to obtain information regarding the special education process or to observe any of the School District's programs. The Parents' request to obtain the School District's evaluation results in advance were denied, not because they were not ready, but rather because the superintendent and the assistant superintendent felt that they didn't have to share that information with them. Moreover, the School District did not convene the eligibility determination and the IEP meeting at a mutually agreeable time and date for the Parents and when they did convene the meeting, they ignored the Parents and their experts. The Parents' experts were the only ones in the meeting who had worked directly with the Student.

It should be noted that the IEP meeting was held on September 6, 2001 clearly after the Student turned three on August 26, 2001. Holding the meeting on that date, was in contravention of 23 ILAC 226.260(b)(1) which requires a school district to hold an eligibility meeting and an IEP meeting and have an IEP "in effect" on the child's third birthday. The School District had ample time to ensure that an IEP was "in effect" for the Student's third birthday since the Parents began contacting the School District well in advance of that date.

The refusal of the School District to include the Parents as equal participants in the development of the Student's IEP is a significant procedural violation which constitutes a denial of FAPE. For about eighteen months prior to September 6, 2001, the Parent contact the School District several times in order to obtain information about special education services for their son. The Parent was looking to the School District to provide information regarding educational options that the School District could provide for the Student. Instead, the School District ignored the Parents' request for information and observations, refused to consider the Parents' and their representatives' recommendation for the Student's education and ignored the Parents and their representatives during the September 6, 2001 IEP meeting.

The School District's refusal to consider the private day school as a possible appropriate placement for the Student contravenes the requirements of 23 ILAC 226.300 which

requires the School District to make the entire continuum of placement options available to each identified child with a disability who might require such placements. In recognizing that a general education placement may not be appropriate for all students with disabilities, each school district must provide a full continuum of alternative placements to meet the unique needs of each child with disabilities. Moreover, OSEP has also recognized that it is "especially important" that the full continuum of alternative placements be considered to meet the "unique communications and related needs of deaf and hard-of-hearing students" (Letter to Cohen, 25 IDELR 516 (OSEP 1996).

At the time of the IEP meeting on September 6, 2001, the School District was well aware that at least three of the experts who had worked with the Student, two medical doctors and the clinical audiologist were recommending that the Student be placed in the private day school. While the School District openly acknowledged these recommendations on the first page of the IEP, they refused to allow any discussions regarding the private day school and did not consider that placement anywhere in the IEP document. The director of hearing impaired programs for the cooperative acknowledged that she does not "remember discussing [the private day school] as an option." The Parents recommendations for their son, as well as the recommendations of every expert who worked with the Student, were effectively ignored.

These procedural violations have deprived the Student of a FAPE. A significant component of FAPE is the umbrella of procedural safeguards that has been created to ensure meaningful parental participation of the child's educational program placement alternatives. As the Ninth Circuit Court acknowledged in Target Range, procedural violations of this magnitude require no further analysis into the second prong of Rowley, but instead require a decision in favor of the parents.

The IEP Document. Assuming, the School District did comply with most of IDEA's procedural guarantees, the Supreme Court requires a second inquiry: whether the IEP can be reasonably calculated to confer on the student an educational benefit. "The IDEA specifically requires school districts to provide a formal written offer before either initiating a placement for a disabled child or otherwise providing FAPE to the child" [Knable v. Bexley City School District, 238 F. 3d 755,768 (6th Cir. 2001)].

> "We find that this formal [written IEP] requirements is not merely technical and we therefore believe it should be enforced rigorously. The requirement of a formal written, [IEP] offer creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered... Furthermore, a formal specific offer from a school district will greatly assist parents in presenting complaints with respect to any matter relating to the educational placement of the child" *[Union* School District v. Smith, 15 F 3d. 1519, 1526 (9th Cir. 1994)].

Upon completion of the IEP meeting, the only placement recommendation made for the Student was the half-day program operated by the local cooperative. According to the testimony of the Parents and their experts placement in the neighboring cooperative was not discussed at the IEP meeting. The assistant superintendent's testimony also suggested that the local cooperative program was the only program discussed: "there was discussion about the program that the [local] cooperative was able to provide to accommodate [the Student's] needs, and I do recall [the cooperative's director of programs for students with hearing impairments] indicating that she felt that the program was appropriate based upon the IEP" (p. 49).

Further supporting this position, the School District can provide no documentation that a referral to the neighboring cooperative program was ever made; however there were several documents referencing the local cooperative. The cooperative's director of programs for students with hearing impairments acknowledged that the neighboring cooperative has its own referral forms, but these forms were not utilized during this meeting (p. 300) further suggesting that the local cooperative programs were the only one considered at the IEP meeting.

The School District's testimony regarding which cooperative program was recommended at the conclusion of the IEP meeting is unclear. The assistant superintendent indicated that the local cooperative was the only program discussed. The itinerant teacher of students with hearing impairments clearly "agreed that [the Student] should be placed in the full-day [neighboring cooperative] program, rather than the one-half day [local cooperative] program" (p. 384). In contrast, the cooperative's director of programs for students with hearing impairments stated that she explained what both the [neighboring] and the [local] cooperatives could offer [the Student] during the IEP meeting, but then stated in the rebuttal examination that there was no specific discussion of placement options at the IEP meeting, and that the team did not specifically discuss whether they would recommend a half-day or full-day program. There is no evidence, and the School District is unsure about what program was recommended during the IEP meeting. On the other hand, the Parent and their witnesses are insistent that the only program discussed was the program offered through the local cooperative and the neighboring cooperative programs were not discussed during the IEP meeting.

The importance of this discussion should not be overlooked. The only program recommended during the IEP meeting appears to be the half-day program offered through the local cooperative. The School District has conceded the program offered through the local cooperative is not appropriate for the Student. To the question by the School District's attorney: "And in your mind, what would have been the most appropriate program for [the Student]" the cooperative director of programs for students with hearing impairments simply stated "A full day" program. Therefore, the director feels that the neighboring cooperative program is, to her, the appropriate program. The itinerant teacher responded "Oh definitely" to the question: "In your professional opinion, do you think that it would be appropriate for [the Student] to be in a full-day program as opposed to a half-day program" (p. 386). Also the Parents' expert and the clinical audiologist both observed the local cooperative program and also concluded, like these two School

District witnesses, that the program was inappropriate. Thus, there is agreement by both the School District representatives and the Parents' representatives that the program proposed in the IEP was inappropriate.

The oral-aural approach is what the Student requires due to his unique communication needs in order to learn to speak. The federal regulations to the reauthorization of the IDEA as well as the Illinois special education rules specifically require IEP participants to consider the unique "language and communication needs" of children with hearing impairments when developing the child's IEP [34 CFR 300.346(a)(iv), 23 ILAC 226.220(d)].

The importance of recognizing a child with hearing impairment unique needs was articulated in two due process hearings. In the first hearing, Gina S. *v. Duarte Unified School District/Alhambra City Elementary School District [26* IDEAL 351 (Ca. 1997)], the parents of a child with a cochlear implant challenged the school district's recommended placement in a total communication classroom and requested placement at a school that utilized the oral-aural approach. The hearing officer held for the parents, finding that the school district's proposed total communication program was not appropriate to meet the student's unique communication needs which included the need to use and strengthen her oral and auditory skills. Specifically: "The hearing officer concluded the student required placement in a class that was primarily oral, as this would increase the oral communication abilities and increase her limited use of the cochlear implant" (p. 24).

In the second case, *Eureka Union School District/Placer County Office of* Education [28 IDELR 513 (Ca. 1998)], the parents of a child with a severe hearing loss with almost normal hearing (through the use of hearing aids), rejected the total communication classroom offered by their school district and sought placement in an oral-aural program. Ruling for the parents, the hearing officer determined that a total communication program did not address the child's auditory skills and would have required him to learn a new communication mode.

An oral-aural approach to teaching a child with a cochlear implant is not a methodology issue, but rather what the child needs to satisfy the goal of talking. Likewise a multisensory approach to teaching a child to read is not methodology issue, but rather, what that child needs to satisfy the goal of reading [see *Briere v. Fair Haven Grade School District*, 948 *F. Supp. 1242 1254 (D.* Vt. 1996)]. In this case, Elizabeth Briere, due the intensity of her learning disabilities, required instruction utilizing a multisensory approach in order to benefit from education. If the goal is to teach a child to read, one could use a variety of different approaches such as phonics, whole language or phonographic to achieve that goal. However, some students, such as was articulated in *Briere*, may need a multisensory approach, because like Elizabeth Briere, that is what the child needs to learn to read, due to his or her disability. The *Briere* case is analogous for this Student. If the goal for this Student is to *use* his cochlear implant to learn to talk, he needs a highly intensive oral-aural approach to reach this goal. The Parents sought a cochlear implant for him because they wanted their son to be able to utilize oral language

as his sole means of communicating with society. For him, to be placed in a different program, would be potentially harmful in that it consumes valuable time in a narrow window of opportunity.

A nationally-renowned expert testified that there is a "critical period or critical window" for a young child to learn spoken language. The clinical audiologist testified that the Student has a vital need for an intensive oral program as he was "significantly behind" in his ability to develop oral language due to his original implant was nonfunctioning for almost two years. The expert testified that based on her knowledge and observation of the Student, he requires:

> "A program that is very focused on learning to talk. I think that he is going to need some very structured speech work and he is showing that he still needs a lot of structure in the classroom. He needs to be dependent on it. He needs to be taught it all day long" (p. 909 - 910).

Like the child who is the subject of the Duarte case, with his implant, the student has almost normal hearing. Accordingly, he has the ability to listen and talk exactly the same as a child without a disability if he has access to an exclusively oral education. Successful and life-long integration with peers without disability is the ultimate goal of special education in this country. As the Supreme Court articulated in *Rowley*, one of the goals of the IDEA is to provide disabled children with an attainable degree of personal independence.

Only one of the eight witnesses the School District presented in this matter had any working knowledge with the Student, and she had never worked with a child with a cochlear implant. In contrast, all of the Parents' witnesses had experience either working directly with the Student or observing the Student at the private school or both. The IDEA requires that each IEP for a special education student be individualized to meet the unique educational needs of that student [20 USC 1414 (d) (1) (A)]. Although the School District argues that it did individualized the Student's IEP, but how can an IEP be individualized for a child without direct working experience with the child and/or reliance on information provided by individuals who have had such experiences? The School District's decision-making process in this matter is suspect. There was no individualization; there was no consideration of the Student's unique needs; there was limited input from the Parents' representatives.

The evidence is clear: the placement proposed by the School District for the Student during the 2001 - 2002 school year is not appropriate to meet his needs. The documents presented and the testimony given in this hearing contains no evidence that the local cooperative or the neighboring cooperative could teach the Student to use oral language. While a kindergarten and first grade classroom teacher of students with a hearing impairment testified in this matter, she is not the teacher the Student would have, if he was enrolled in the cooperative program. Instead, information about this program must be provided by the observations of this teacher and the analyses of outside expert. This

expert stated that the Student needs an intensive, highly-structured focus on oral language development. She added, "deaf children cannot learn to talk even with cochlear implants simply by hearing other people talk... for deaf children to learn to talk they really have to be taught. Someone has to teach them" (p. 904) . According to this expert, the program offered by either the local or the neighboring cooperative is not appropriate to teach this Student to talk.

In the School *Committee of the Town of* Burlington, *Massachusetts v. Department of Education [471 U.S. 359, JOS* S. Ct. 1996 (1985)1 the Supreme Court unanimously held that a court may order retroactive reimbursement and prospective placement in favor of parents who withdraw their child from a public school that offers an inappropriate IEP under the IDEA, and unilaterally places the child in an appropriate private placement. For the Student and his Parents to receive relief, it must be determined that the School District's recommended IEP placement was inappropriate under the IDEA, and the private school placement made by the Parents was appropriate.

The record clearly proves that the IEP proposed for the Student by the School District for the 2001 - 2002 school year is not appropriate, as it is not reasonably calculated to meet the Student's unique educational needs. Therefore, the Parents were forced to seek out the current placement at the private day school, a school that was, and continues to be, the setting capable of providing the Student with the educational benefit he requires to utilize his cochlear implant and learn to speak. By any means through which one may want to measure, the Student has made remarkable and impressive progress at this private day school.

The program at the private day school is appropriate to meet the Student's needs. Four of the Parents' witnesses testified to the academic and social/emotional progress the Student has made since attending the private day school. Even the School District acknowledges that the Student has significantly progressed while enrolled in the private day school. This school has provided the Student with a structured, individualized, supportive environment in which to utilize his cochlear implant and to learn and use oral language. The testimony of the Student's teacher, who has over 39 years of experience working with children with hearing impairments, indicated that the private day school program is tailored for children like the Student and is designed to provide him with a significant educational benefit. Unlike the School District's program that teaches 120 minutes of language per week, the private day school program teaches speech and language all day, every day. This instruction is very focused and the class sizes are small, a 2:1 students to teacher ratio, permitting individual attention and systematically monitoring the children's rate of acquisition.

In addition, the instructors are qualified to teach children with cochlear implants and monitoring of the children's cochlear implants is done on an ongoing basis, as approximately seventy percent of the children at the private day school have cochlear implants. Finally the private day school offers a social skills curriculum to help children to understand their deafness, specialized ongoing education for teachers, support for

parents, and specialized playground equipment that permit students to use their cochlear implants during recess.

Order

Pursuant to the above findings of fact and conclusions of law, the hearing officer hereby orders:

1. The appropriate placement for the Student during the 2001 - 2002 and 2002 - 2003 school years shall be the Child's Voice School.

A. The Student shall continue to be educated at Child's Voice School for the 2002 - 2003 school year. The School District shall pay the child's tuition and arrange to transport the child from his home to Child's Voice School and back from Child's Voice School to his home. In not more that 6 calendar days after receipt of this order, the School District shall inform the Parents of the relevant information for transporting the Student (see Section 1 C below). In not more than 10 calendar days after receipt of this order, the School District shall begin transporting the Student from his home to Child's Voice School and back from Child's Voice School to the Student's home. The School District shall insure that the Student arrives at Child's Voice School at least 15 minutes and not more than 30 minutes prior to the start of school day, and begins the return trip to the Student's home in not more that 15 minutes after the conclusion of the school day.

B. The School District shall pay the tuition for Child's Voice School on a monthly basis. The School District shall forward the tuition payment to Child's Voice School so that Child's Voice receives the tuition payment on or before the 10th day of the month. The School District shall make the first payment on or before October 10, 2002. The November 10, 2002 payment shall include the tuition payment for the month of November and all outstanding tuition bills which have not yet been paid. Ten calendar days after receipt of this order, Child's Voice School shall forward to assistant superintendent for special services an itemized bill specifying the tuition costs for the month of November and the outstanding tuition bills which are presently unpaid. Thereafter, the tuition payment shall be made on or before the 10th day of the month for the remainder of the 2002 - 2003 school year.

C. The School District shall arrange to transport the Student from his home to Child's Voice School and back from Child's Voice School to the Student's home. In not more than 6 calendar days after receipt of this order, the School District shall provide the Parents with all the relevant information concerning the transportation of the Student. The relevant information shall include, but not be limited to (1) the time the Student will be picked up at his home and the time the Student will be dropped off

at his home, (2) the date in which this transportation will begin, (3) the name of the person who is primarily responsible for transporting the Student, (4) the telephone number of the person who is primarily responsible for transporting the Student, (5) the name of the agency or the name of the supervisor of the person primarily responsible for transporting the Student, (6) the telephone number of the agency or the supervisor of the person primarily responsible for transporting the Student, and (7) how the School District will transport the Student if the person primarily responsible for transporting him is unable to transport the Student (e.g., illness). In not more than 10 calendar days after receipt of this order, the School District shall begin transporting the Student from his home to Child's Voice School and back from Child's Voice School to the Student's home.

2. The School District shall reimburse the Parents for tuition and transportation costs for the 2001 - 2002 school year and from the start of the 2002 - 2003 school year to the present.

A. The School District shall reimburse the Parents for all tuition costs which they paid to educate their son at Child's Voice School from August 26, 2001 to the present time. The Parent shall submit all receipts to the assistant superintendent for special services. (The receipts may be receipts from Child's Voice School or the front and back copies of canceled checks.) In not more than thirty days after receiving the receipts (or canceled checks), the School District shall reimburse the Parents for the total amount of the tuition which they paid. The Parents will be responsible for lunch costs, clothing costs, and all other costs with the exception of tuition and transportation. (See Section 2 B below)

B. The School District shall reimburse the Parents for the costs of transporting their son from their home to Child's Voice School and from Child's Voice School back to their home. If the Parents paid another person or agency to transport their child, then the School District will reimburse the Parents for the amount they paid to that individual or agency. (The Parents shall provide the School District with a copy of the receipts or the front and back copies of their canceled checks.) These receipts or copies of the canceled checks will be given to the assistant superintendent for special services. The School District will be responsible for the costs of transporting the Student from the last day which the Parents paid until the day the School District takes over the responsibility of transporting the Student. In not more than thirty days after receiving this information, the School District shall reimburse the Parents for their transportation costs.

If the Parents (or a relative) transported the child to Child's Voice School, the School District will reimburse the Parents for the number of miles

from the Student's house to Child's Voice School. The School District will reimburse the Parents for the daily round trip costs at 34.5 cents per mile. The Parents shall provide to School District: (1) the number of miles from the child's home to Child's Voice School and from the Child's Voice School back to the Student's home (i.e., round trip) and (2) and the number of days in which the Student was transported from his home to Child's Voice School and from Child's Voice School back to his home. (If there is a dispute between the Parents and the School District on the total number of miles between the Student's home and Child's Voice School, that is round trip, then 72.0 miles will be used as the basis for daily round trip reimbursement.) This information will be given to the assistant superintendent for special services. In not more than thirty days after receiving this information, the School District shall reimburse the Parents for their transportation costs.

3. School District representatives, the Parents, and the Parents' representatives shall meet on or before April 15, 2003 to discuss the Student's attendance in an extended school year programming over the Summer. If a consensus is not reached at this meeting, then the opinion of the Student's current teacher at Child's Voice School shall determine if the Student requires an extended school year programming. If it is the decision of the participants in the meeting or the Student's current teacher to provide an extended school year programming, then the School District will be responsible for tuition and transportation. If the Student is determine eligible for extended school year programming, the School District will pay tuition to Child's Voice on or before the 10th day of the month.

On or before March 15, 2003, the Parents shall provide the School District with 5 possible dates and times for this meeting. These dates and times shall be given or sent to the assistant superintendent for special services. The School District shall accept one of the proposed dates and times and inform the Parents at least 10 days prior that meeting of the date and time. The School District may not schedule this meeting on a date or at a time that was not one of the 5 dates or times given to the School District by the Parents.

4. School District representatives, the Parents, and the Parents' representatives shall meet on or before April 15, 2003 to develop a new IEP on behalf of the Student that would go into effect during the 2003 - 2004 school year. On or before March 15, 2003, the Parents shall provide the School District with 5 possible dates and times for this meeting. These dates and times shall be given or sent to the assistant superintendent for special services. The School District shall accept one of the proposed dates and times and inform the Parents at least 10 days prior that meeting. The School District may not schedule this meeting on a date or at a time that was not one of the 5 dates or times given to the School District by the Parents.

5. The School District shall submit proof of compliance with this order to the Illinois State Board of Education, Program Compliance Division, 100 North First Street;

Springfield, Illinois 62777-0001 within 60 days from receipt of this decision and order and then updates of additional compliance every 30 days thereafter until the order is met.

Right to Request for Clarification

Either party may request clarification of this decision by submitting a written request for such clarification to me within five days of receipt of this decision. 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 a clarification does not permit a party to request a reconsideration of the decision itself, and I am not authorized to entertain a request for reconsideration.

Right to File Civil Action

This decision shall be binding upon the parties unless a civil action is commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 ILSC 5/18-8.02(1) that civil action shall be brought in any court of competent jurisdiction with 120 days after a copy of this decision was mailed to the party.

Certificate of Service

The undersigned hearing officer certifies that he served copies of the aforesaid Decision and Order upon the Parents, the attorney representing the Parents, the attorney representing the School District, the assistant superintendent for special services of the School District and the ISBE at their stated addresses by deposition same with the United States Postal Service.

Richard Brimer

Impartial Due Process Hearing Officer

Date: September 29, 2002
cc: Ms Bobbie Reguly