

Case Number: 2008-0127

Hearing Officer: James Wolter

Illinois State Board of Education
Special Education Services
100 North First Street
Springfield, Illinois 62777

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Impartial Due Process Hearing Decision Cover Page

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District Name [REDACTED] Phone: [REDACTED]
 Superintendent DR [REDACTED]
 Address [REDACTED], IL [REDACTED]
 Represented by [REDACTED]
 Parent Name [REDACTED]
 Address [REDACTED]
 Represented by [REDACTED]

Date and Timelines

Date of Written Request: 10/10/2007
Date of Pre-hearing Conf: 12/17/2007

Date of Hearing: 02/14/2008 to 2/14/2008
12:00:00 AM
Date of Decision:

Summary of Decision

The parent filed a due process complaint to challenge the district's recommendation to change the student's special education placement from a self-contained ED class in a regular education high school to a separate public special education day school for students with emotional disorders. The district prevailed in demonstrating the student was unable to benefit from his current placement, the proposed IEP and placement was calculated to provide him educational benefit and his continuation in the current placement was disruptive to the education of other students. The district was ordered to implement the student's IEP at the separate public special education day school.

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)
) **ISBE CASE NO. 2008-0127**
)
) **James Wolter**
) Impartial Due Process
) Hearing Officer

PROCEDURAL BACKGROUND:

The parent filed a due process complaint by letter dated October 12, 2007. It was received by the district on or about that date. The complaint was forward to the Illinois State Board of Education on October 15, 2007 and assigned to this hearing officer on October 22, 2007. The parties participated in a resolution session which was not successful and subsequently requested a series of continuances to utilize State of Illinois sponsored mediation. However, after the parties failed to meet with a mediator, a pre-hearing conference was conducted by teleconference on December 17, 2007. The parties were sent a copy of the pre-hearing report by U.S. Postal Service on December 17, 2007,

The due process hearing date was set for February 5, 2008. The parties requested another continuance to participate in State of Illinois sponsored mediation. After the parties failed to meet with a mediator, the due process hearing date was set for February 14, 2008.

On February 13, 2008 the parent initiate a telephone call to the hearing officer to announce that she desired a continuance because she had a death in her family. The hearing officer set up a teleconference with the parent and attorney representing the district. The district was unwilling to join the parent in her request for a continuance because it was concerned that the student's stay-put placement was detrimental to his education as well as the education of other students in his class. The hearing officer denied the parent's request for another continuance.

The parent stated that she would not attend the due process hearing. When she did not appear at the hearing on February 14, 2008, the hearing officer called her on a speaker telephone. She stated that she was unable to attend the hearing but agreed to participate in the hearing over the speaker-phone. After making her opening statement, listening to the district's opening statement and listening to the district's first witness, the parent stated that she had to go but requested a copy of the proceeding. The district agreed to provide the parent with a transcript of the hearing.

The district submitted documents consisting of 826 pages that were accepted into evidence. The parent did not submit documents for placement into evidence.

The district presented the following witnesses:*

1. [REDACTED] School Psychologist
2. [REDACTED] Special Education Teacher
3. [REDACTED] Principal of Special Day School

*The witnesses will be referred to by title rather than name in the remainder of this document to ensure the privacy of the student. In addition, the public day school will not be identified by name for that same reason.

The due process hearing was closed and the student was not present per the parent's decision at the pre-hearing conference. Witnesses were sequestered during the hearing and instructed not to discuss their testimony until the hearing was completed.

Legal counsel represented the district. Legal counsel did not represent the parent.

The 45-day timeline for conducting the due process hearing was exceeded because of multiple mutual requests for continuances by the parties.

The hearing officer has jurisdiction to hear this matter under PA 94-1100, Section 14.02(g) of the Illinois School Code, 34 CFR 300.506-509, and 23 Illinois Administrative Code 226 Subpart G.

ISSUES: The issue of this due process is:

1. Whether the student requires a more restrictive special education placement in order to obtain a free appropriate public education

RESOLUTION: The resolutions sought in this due process hearing are:

1. The parent desires the hearing officer to order the district to provide the student with a special education placement in his neighborhood school.
2. The district desires the hearing officer order the district to provide the student with a special education placement in a separate special education day school operated by the special education cooperative.

Findings of Fact:

1. The student is a 16 year 6 month old male who is eligible for special education under the criteria for emotional disorders and learning disabilities. He has received special education services since kindergarten.
2. The district recommended the student's special education placement be changed from a self-contained special education class in a regular education high school to a separated public special education day school at the October 2, 2007 IEP meeting [Exhibit B299, 303 & 307]. The parent was provided written notification of the meeting on September 20, 2007 [Exhibit B287]. She was also notified by telephone on September 12, 2007 [Exhibit B288]. The district attempted to reach the parent by telephone six times on October 2, 2007 when she did not appear for the IEP meeting [Exhibit B298]...
3. The parent stated that she was opposed to the student attending the separated special education day school because he would be exposed to inappropriate behavior of other students, other students would exacerbate his problems and two students attending the school have had negative relationships with the student. She stated that, while the student has had difficulty in his current placement, he has profited in that placement. Further, she stated that when the student takes his medication, his behavior is appropriate and he is able to learn.
4. The school psychologist testified that he reviewed and evaluated the student's school records in preparation for a manifestation determination conducted on

April 30, 2007 [Exhibit B263 & 265]. He found the student has experienced behavioral challenges since pre-kindergarten. He believed the behavior under consideration at the manifestation determination was related to the student's disability. The IEP team recommended placing the student in a more restrictive placement rather than expelling him from school. The IEP team changed the student's special education placement from a full-time multiple-class instructional special education placement to a full-day self-contained special education class. The school psychologist stated that he did not participate in the October 10, 2007 IEP team meeting [Exhibit B286-307] but agreed with the recommendation that the student's placement in the self-contained special education class be changed to the separate special education day school because he believed the student was not progressing with the supplemental aides and services provided in his current placement and required the type of direct instruction in behavioral management provided at the special education day school.

5. The student's special education teacher testified that the student is 1 of 7 students in a self-contained class taught by her with the assistance of an instructional aide. The student is not meeting the instructional or behavioral goals of his IEP. He is very intelligent but has failed 3 of 6 courses at the semester [Exhibit F123] and is currently failing 2 of 4 courses. The failures are due to his refusal to do daily class assignments. In addition, he is verbally aggressive to peers and staff, refuses to follow directions, distracts other students by singing rap songs and making other loud noises and comments, does not comply with the school dress code, ignores school rules and encourages other students to ignore school rules [Exhibits F1-266]. The student met behavioral goals for only 3 of the approximately 25 weeks school has been in session this school-year. She testified that she participated in the October 2, 2007 IEP meeting and believes the student's IEP could be implemented at the special education day school because it can provide an environment and services not available in the self-contained class. She stated a smaller school has fewer distractions; it has more social work services and provides direct instruction in behavioral management.
6. The principal of the day school testified that she participated in October 2, 2007 IEP meeting and agreed with the placement recommendation. She stated that the student would benefit from the academic curriculum of the day school because it is closely aligned with the regular education curriculum. He would also benefit from the day school's affective curriculum. The affective curriculum utilizes an Aggression Replacement Training program to create a therapeutic milieu that focuses on character education, empathy training, anger management and skill streaming (i.e. employing learned skills in other than the therapeutic setting). She stated that the students in the day school reinforce each others positive behavior in the program. When asked how the school coped with students who may have had negative interactions with each other prior to attending her school, she responded that her students frequently have problems interacting with peers and others prior to enrolling her school. For that reason, the day school is designed to provide the students with the skills and opportunities to employ those skills in working out their differences. Students receive constant coaching in Aggression Management Training so they internalize those skills and are able to improve their overall functioning by employing them beyond the school day.

DISCUSSION AND CONCLUSION OF LAW:

The first consideration in determining this case is whether the student is obtaining educational benefit from his current placement and whether his behavior has a detrimental impact on other students in the self-contained special education class.

The district presented testimony that the student is not benefiting from his placement in a self-contained special education class within a regular education high school. The written evidence indicates he is not achieving his behavioral goals and failing half the academic subjects that he is taking in that class. The district has recommended a more restrictive placement that will provide him with direct instruction to assist him meet behavioral goals and thereby enable him to meet all of his academic goals in compliance with 34 CFR 300.114(2)(ii); 300.115(a) and 300.116((d)). The student passed 3 of 6 courses the past semester and is passing 2 of 4 courses currently. While it might be argued that passing half the courses constitutes some academic progress, the courts have held that progress must be more than minimal [*Polk v. Central Suquehanna Intermediate Unit 16*, IDERL 130 (EHLR 441:130) (3rd Cir. 1988)]. The court has also held that a district may change a student's placement to a more restrictive setting if that student is not making adequate progress [*Board of Educ. Of Tp High School Dist. V. Ross*, 487 F.3d 267(7th Cir.2007)]. In this case, passing half of the academic subjects over a six month period is too minimal for this student to be considered adequate progress and a change in placement to a more restrictive setting is warranted.

Testimony by the student's special education teacher and the written evidence indicates the student's behavior has a disruptive impact on the behavior of the other students in the self-contained class. The court has held that the disruptive impact a student has upon the other students is a relevant consideration in deciding whether that student's placement appropriate [*Alex R. ex rel Beth R. v. Forrestville Vally Community Unit School Dist. # 221*, 375 F.3d 603 (7th Cir. 2004)]. The student's disruptive impact on the education of other students in the self-contained class warrants a change in placement.

Therefore, the student's current special education placement in a self-contained class within a regular education high school is not appropriate to his special education needs.

The next consideration is whether the October 2, 2007 IEP and recommended placement is reasonably calculated to provide the student with educational benefit. The standard for determining the appropriateness of a proposed placement is the two-pronged *Rowley* test [*Board of Education*, 458 U.S. 176, 102 S.Ct. 3034 (1982)].

The due process complaint filed by the parent did not allege any procedural violations by the district in developing the October 2, 2007 IEP and placement recommendation. Evidence submitted by the district indicates the parent had an opportunity to participate in the October 2, 2007 IEP meeting but elected not to do so. Therefore the parent was afforded the procedural safeguard to participate in the IEP meeting [34 CFR 300. 501(b)] and the placement decision [34 CFR 300. 501(c)].

There was no substantive question raised about the October 2, 2007 IEP itself. However, the parent raised a concern that the student would be exposed to inappropriate behavior of other students, other students would exacerbate his problems and two students attending the special education day-school have had negative relationships with the student. The

principal of the day school addressed these concerns by stating the school was designed to provide all students with Aggression Replacement Training in a therapeutic milieu that focuses on character education, empathy training, anger management and skill streaming. She stated that the students reinforce each others positive behavior in the program. It is apparent from the testimony and written evidence that the student's pressing need is for aggression replacement training.

The district has demonstrated that it has met both the procedural and substantive prongs of the *Rowley* test. Therefore, the October 2, 2007 IEP and proposed placement in the special education day-school is reasonably calculated to provide the student with educational benefit

The finding of fact and application of law warrant issuing the following order:

1. Within one (1) school day receipt of this Impartial Due Process Decision, the district shall hand-deliver a copy of the decision to the home of the parent.
2. Within five (5) school days receipt of this Impartial Due Process Decision, the district shall implement the October 2, 2007 IEP and place the student at the special education day-school operated by the special education cooperative.
3. Within fifteen (15) school days receipt of this Impartial Due Process Decision, the district shall provide the Illinois State Board of Education with written assurance of compliance with these orders.

Right to request clarification:

Section 14-8.02a (h) of the School Code, allows the hearing officer to retain jurisdiction after the issuance of the decision for the sole purpose of considering a request for clarification. A request for clarification must be submitted to me within five (5) days after receipt of the 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 parties and to the Illinois State Board of Education. The request shall operate to stay the implementation of those portions of the decision for which clarification is sought. I shall issue a clarification of the specific portion of the decision or issue a partial or full denial of the request in writing within ten days of receipt of the request and mail copies to all parties to whom the decision was mailed.

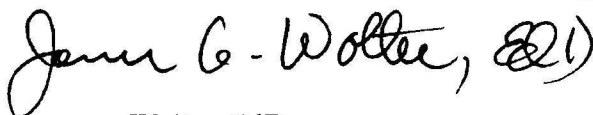
FINALITY OF DECISION: This decision shall be binding upon all parties.

RIGHT TO FILE CIVIL ACTION:

Any party to this hearing aggrieved by the 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) that civil action shall be brought in any court of competent jurisdiction within 120 days after this decision was mailed.

DATE OF DECISION AND ORDER:

This Decision and Order rendered this 16th day of February 2008.



James a. Wolter, EdD.
Impartial Due Process Hearing Officer