

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]
ISBE CASE NO. 2008-0211

-) **James Wolter**
-) **Impartial Due Process**
-) **Hearing Officer**

Procedural Background:

The parent requested a due process hearing by letter from their attorney dated November 5, 2007. It was received by the local education agency (district) on November 8, 2007 which extends the statute of limitation in this matter back to November 8, 2005 [Hearing Officer Exhibit A]. The request was forward to and received by the Illinois State Board of Education on November 16, 2007. The attorney for the district filed a response on November 18, 2007 [School District Exhibit pages 112-113; hereafter SD 112-113]. The case was assigned to this hearing officer on November 21, 2007 [Hearing Officer Exhibit B].

The parties waived the mandatory resolution session in writing on December 11, 2007 [Hearing officer Exhibit C] thereby making fixing January 25, 2008 as the last day of the 45-day timeline for conducting a due process hearing. The due process hearing was conducted at the student's school on January 15, 16 & 18, 2008. The parent elected to have the due process hearing closed to the public and not to have the student present. This due process hearing was completed within that timeline.

The pre-hearing conference was conducted by teleconference on December 10 and 11, 2007. The parties were sent a report of the pre-hearing conference on December 13, 2007 [Hearing Officer Exhibit D].

The hearing officer received a motion to strike eight parent witnesses on January 14, 2008 [Hearing Officer Exhibit F]. The motion was denied because the district had not previously objected to the witnesses at the pre-hearing conference. The parent requested permission to substitute a witness representing a private residential facility with another witness from that agency. The district objected to the substitution. The parent's request was granted with the proviso that the witness' testimony would be limited to a description of the facility, observations the witness has made of the student and what services the student might access at the facility.

The parent submitted 358 pages of documents for inclusion into evidence. The district

submitted 142 pages of documents for placement into evidence. All documents submitted by the parents and district were placed into evidence.

The parent and the district jointly presented the following witnesses:*

1. [REDACTED] Speech Pathologist
2. [REDACTED] Principal
3. [REDACTED] Itinerant Hearing Impaired Specialist
4. [REDACTED] Teacher of Hearing Impaired
5. [REDACTED] School Psychologist
6. [REDACTED] Case Manager
- [REDACTED] Mother

The parent presented the following witnesses:*

1. [REDACTED] Hospital Teacher
2. [REDACTED] Special Education Assistant
3. [REDACTED] Regular Education Teacher
4. [REDACTED] DCFS Investigator
5. [REDACTED] Psychologist; Residential Facility Representative
6. [REDACTED] Psychiatric Fellow (by telephone)
7. [REDACTED] Attending Hospital Psychiatrist (by telephone)

The district presented the following witnesses:*

1. [REDACTED] Classroom Aide
2. [REDACTED] Librarian
3. [REDACTED] Physical Education Teacher

* 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 private day school will not be identified by name for that same reason.

ISSUES: The issues of this due process are:

1. Whether the district failed to provide the student with a free appropriate public education from November 5, 2005 to the present.
2. Whether the district failed to provide the student with adequate assessments in all potential areas of disability and if so, whether this resulted in the district inadequately addressing the student's learning impediments.
3. Whether the district failed to accurately state the student's present levels of performance on his IEP, goals that respond to identified learning needs and objectives reasonable to the student's needs.
4. Whether the district failed to provide an adequate functional behavior analysis and an appropriate behavior intervention plan.
5. Whether the student required and the district failed to provide the student instruction and support to learn alternative forms of communication.
6. Whether the student required and the district failed to provide the student with a special education placement in a residential school.

REMEDY: The remedy sought in this due process hearing are:

1. The parent desires the hearing officer order the district to provide the student with a special education placement in a residential school.
2. The parent desires the hearing officer order the district to pay for independent educational evaluations in areas of identified needs.
3. The parent desires the hearing officer order the district to provide the student with sufficient services of adequate intensity to allow the student to access educational opportunity.
4. The parent desires the hearing officer order the district to provide compensatory education services [12 hours of speech/language therapy] as remediation for loss of FAPE since November 5, 2005.
5. The parent desires the hearing officer order the district to convene an IEP meeting to consider evaluations and the foregoing relief.
6. The parent desires the hearing officer order the district to provide other such relief as determined appropriate after receipt of additional school records.
7. The district desires the hearing officer find that the district has provided the student with a special education placement that constitutes a free appropriate public education in the least restrictive environment.

Attorneys represented both parties through out this matter.

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.

FINDINGS OF FACT:

1. The student is a 13 year 11 month old male currently not attending his self-contained special education class because his mother placed him in a psychiatric hospital in August 2007. He is eligible for special education and related services under multiple categories; Sever/Profound Cognitive Impairment, Hearing Impairment, Speech/Language Impairment and Other Health Impairment. The Cognitive, Hearing and Other Health Impairments have been present since birth. He is non-verbal and uses total communication including basic functional signs, pointing, showing, pictures, touch, body movement, facial expressions, non-verbal vocalizations for receptive and expressive communication. His family consists of his mother, step-father, two younger sisters and on weekends two of his step-father's younger children. The student was provided over-night respite care by a community agency on weekends prior to his hospitalization
2. The mother testified that when she picked the student up from respite care on August 19, 2007, she was told by a staff member that the student had hit another student and would not be allowed to continue in respite care if that behavior continued. She stated that it was difficult to get him into her car and when she arrived home he became physically aggressive with her. He then turned on his younger sisters. The sisters ran to their bedroom and locked the door. The student

proceeded to break in the door. His step-father had to control him while his mother called The Illinois Department of Health and Family Service to obtain permission from a Screening, Assessment and Support Services (SASS) worker to hospitalize the student. The mother testified the SASS worker agreed the student required hospitalization when he observed the broken door and when the student lunged at the SASS worker.

3. The record indicates the student was admitted to an acute psychiatric hospital on August 19, 2007 [PD 335]. The treatment plan included family therapy with the goal of returning the student home [PD 336]. However the mother testified that it was not her intent to have the student return home. The record shows she refused to take him home when he was discharged. She testified that she visited the hospital about ten times since August 19, 2007 and met with staff but she has not participated in family therapy and has refused to see the student because she states it would be too emotional for her and him.
4. The hospital teacher testified that the hospital made a referral to the Illinois Department of Child and Family Services (DCFS) when the mother refused to accept the student home upon discharge and the student has remained in the hospital. The hospital teacher testified that he received the student's IEP from the district but he was unable to implement it because the hospital lacks the resources to do so. He testified that he has a teaching certificate but is not a certified special education teacher and does not know sign language. He testified that the hospital does not have personnel able to provide speech/language or hearing impaired services. The student receives one hour of tutorial service per school day at the hospital. He has hit another student, but it is noted that student did not require medical attention as a result of being hit. He took food out of the garbage while not closely supervised and walked out of his room without clothes on one occasion.
5. The DCFS investigator testified that she visited the student's home, interviewed the family and interviewed hospital personnel as a result of the report from the hospital. DCFS held a clinical meeting and determined that the student could not return home due to his needs as well as the needs of his younger sisters. She stated that DCFS concluded the student required a residential placement because of the aggression he exhibited at home and at school. There was no written evidence submitted to document the DCFS investigator's home or hospital interviews. There was no written documentation of the DCFS clinical meeting submitted into evidence. However, an unsigned and undated document entitled Social and Developmental History that appears to have been produced by a community agency indicates the student presents a threat to his younger sisters [PD 347-349]. The DCFS investigator acknowledged during cross-examination that she did not speak to any school personnel or review any school records. She had no first-hand knowledge of the student's behavior at school but based her conclusions on information provided by the mother. During redirect, she testified that she believed the mother was a reliable reporter.
6. Evidence from a community health clinic indicates that the parents reported the student was not exhibiting aggressive behavior; he was sleeping well and doing

well in school as late as July 3, 2006 [PD 327]. The parents also started looking for a residential placement for him at that time [PD 328]. By February 1, 2007, the clinic documented that the mother reported the student was being sent home from school for disruptive behavior and the mother was talking to the clinic's social worker about obtaining a residential placement for the student and the clinic was of the opinion that the school would have to pay the educational costs of a residential placement [PD 325-326].

7. On February 14, 2007 the mother took the student to a child and adolescent psychiatric fellow [PD 288] for a consultation. The psychiatric fellow testified by telephone that she recommended the student be hospitalized based upon information provided by the mother concerning the student's aggressive behavior at home and school as well as her observations of the student's behavior in the clinic. This testimony is consistent with the written record [PD 288-293]. She called a SASS worker to obtain permission for an emergency hospitalization. The SASS worker evaluated the student and turned the request down. She testified that the next time she recommended hospitalization she instructed the parent to take the student to the emergency room because SASS workers tend to approve hospital admission more readily when a patient is at an emergency room as opposed to a clinic. The student was approved for and admitted as an inpatient on March 7, 2007 and discharged on March 13, 2007 [PD 298].
8. The psychiatric fellow testified that she also sent a letter [PD 294] to the school stating that it was her understanding the school had not began teaching the student sign language or other non-verbal communication skills and recommending that they do so. Under cross-examination, she acknowledged she did not speak to any school personnel about the student's school program or examine any school records. She had no first-hand knowledge of the student's behavior at school or his educational progress but based her conclusions on information from the mother. On re-direct she testified that she believed the mother was a reliable reporter.
9. The student's attending psychiatrist testified that he is unable to communicate with the student because the student is non-verbal and the psychiatrist does not know sign language. He treats the student by reviewing his medical chart and monitoring his medication. He believes the student will require an individual care grant (ICG) for a long term care facility upon discharge [PD 333] and testified the student cannot go home because of aggression exhibited at home and school. He acknowledged that he has not spoken to school personnel or reviewed the school records about the student's behavior in school. He had no first-hand knowledge of the student's behavior at school or his educational progress but has relied on the mother as a source of information. He stated that he believed the mother was a reliable reporter.
10. The residential facility representative/psychologist testified that the student has been accepted for admission at her agency's residential facility. Student with severe/profound cognitive disabilities benefit from the constant repetition and reinforcement of the signs they have learned in a 24 hour 7 day a week setting that uses sign and other non-verbal communication. Students with limited cognitive

ability require constant repetition to gain and retain signing skills. She has witnesses students improve their ability to sign. Under cross-examination, she clarified that students learn basic functional signs commensurate with their cognitive ability. Students at the residential facility do not carry on a spontaneous conversation in sign. She stated that she attempted to teach the student a sign but he was not successful because he was unable to concentrate on the task. She said that he lunged at her when she first was introduced to him but stepped out of the way so that she was not hit.

11. Testimony by the principal, case manager, special education assistant, classroom aide, librarian and physical education teacher contradict the mother's reports that the student was physically aggressive at school and had to be restrained by the physical education teacher and/or sent home. The principal testified she never experienced or witnesses or received reports of the student being aggressive and/or violent. She stated that the student was never sent home for aggressive behavior. If he were, it would have had to be recorded on an early dismissal form. There is no such form on record. The case manager, special education assistant and classroom aide testified the student was not sent home for aggressive behavior. They testified that he was sent home on one occasion because he soiled himself and he did not have a change of clothes at school. Contrary to finding the student aggressive, school personnel describe him as a loveable child. They further testified that the student met his IEP goals. The parent questioned the appropriateness of a benchmark that stated, "(the student) will listen to a story" when that child is deaf. The case manager pointed out that the benchmark actually states, "(the student) will listen to a story and/or look at books for two out of five minutes". The special education assistant testified that she pointed to pictures as the teacher read stories. She stated that she also used manipulatives such as a toy bear when a story was read about a bear. All school personnel testified that the student achieved his IEP goals. The parent presented no credible rebuttal testimony or evidence to contradict this conclusion.
12. The mother presented no documentary evidence to support her claim that she was frequently called by the school to take the student home because he was exhibiting aggressive behavior. She stated that she did not keep records of the times she had to go to school to pick the student because of his behavior.
13. The parent contends the student's behavior indicated he requires a functional behavior and a behavior intervention plan. The school psychologist, case manager, special education assistant and classroom aide testified that the student's behavior analysis was not so atypical for students with sever/profound cognitive impairments that he required a behavior intervention plan and that his behavior was manageable within the routine and techniques employed as a matter of course in the self-contained classroom with the assistance of an instructional aide. The parent presented no credible rebuttal testimony or evidence to contradict this conclusion.
14. The physical education teacher contradicted the mother's testimony that he frequently was called by the classroom teacher to restrain the student. Specifically, the physical education teacher stated that he was never called to the student's

classroom to restrain him and he did not have to restrain him during physical education. The student was cooperative and responded to his directions within a regular education physical education class. He describes the student as an enthusiastic participant. He stated that the student smiles at him in recognition when passing in the hallway. The student presented no problems and derived educational benefit from regular physical education. The parent presented no credible rebuttal testimony or evidence to contradict this conclusion.

15. The librarian testified that the student attend library two times per week with regular education classes. His special education aide accompanies him. She described the student as attentive during story time and presenting no problems. He was able to follow along as she pointed to the story book. In summation, the student presented no problem and derived educational benefit from regular education library. The parent presented no credible rebuttal testimony or evidence to contradict this conclusion.
16. The school psychologist testified that the instrument used to assess the student psychologically (PD 46-49) was appropriate and accurately reflected his ability as verified by his daily functioning. She testified that the statement in the psychological evaluation, "On occasion (the student) has been known to hit others when he doesn't get what he wants and/or when frustrated. His teacher indicated concern regarding the safety of his classmates" must be read in its entirety to understand the full meaning of the statement. The full statement reads, "His teacher indicated concern regarding the safety of his classmates, which were primarily related to his size and strength when these behaviors are exhibited". The school psychologist stated that the concern was related to the student's size and strength not uncontrolled aggressive behavior. She believes the student's IEP and placement in the self-contained special education class is appropriate. She believes the student has made progress commensurate with his ability. She stated, given the student's cognitive ability, progress for the student will be slow over a long period of time. Eventually the progress will plateau and require repetition to retain what he has learned. The parent presented no credible rebuttal testimony. Or evidence to contradict this conclusion.
17. Similarly, school personnel testified it would be inaccurate to interpret the affirmative check mark on the WORKSHEET A: DETERMINATION OF THE NEED FOR INDIVIDUAL ASSISTANCE to the question, "Does the student demonstrate behavior that is a danger to self or others" with the description of that behavior being, "...hits, pushes and pinches students and adults" [SD 14 & 41] as an indication that the student's behavior was not under control with the assistance of an instructional aide. Specifically, it is a justification to provide the student with an instructional aide. That assistance was provided by the special education assistant and the classroom aide. The special education assistant testified that the student has slapped another student and hit her on one occasion. However, neither she nor the other student required medical attention. She testified that if the student were left unsupervised he would slap at and pinch other students but he stops when she intervenes. The classroom aide testified that occasionally the student will attempt to take other student's food. But she is able to stop him by

redirecting him and having him sign for more food and then giving him more food. She testified the student has made progress in conforming to the class routine, matching colors, dressing himself and toileting himself.

18. The speech pathologist testified consultative service was appropriate for the student because the teacher and aides used multiple modes of communication with the student in the classroom including gestures, body language, pictures and pointing to communicate. She did not think he required direct speech/language service. This is supported by the written record (SD 87). She believes the student's IEP and placement in the self-contained special education class is appropriate. She believes the student has made progress commensurate with his ability. The parent presented no credible rebuttal testimony or evidence to contradict this conclusion.
19. The teacher of hearing impaired and itinerate hearing impaired specialist testified consultative hearing impaired services were appropriate and the student did not require direct hearing impaired service. He has learned and retained approximately ten functional signs and communicates through total language. This conclusion is supported by the written record (SD 87). They believe the student's IEP and placement in the self-contained special education class is appropriate. They believe the student has made progress commensurate with his ability. The parent presented no credible rebuttal testimony or evidence to contradict this conclusion.
20. It is noted that the student's IEP called for him to have 6 weeks of extended school year service [SD 78]. However the principal and the case manager testified that the student only received 4 weeks of extended school year service (ESY) because a decision was made at the central office that cut ESY for the student's with cognitive impairments at the student's school. There is no evidence that the district convened an IEP team meeting to discuss the possible detrimental effect, if any, upon the student of cutting ESY by one-third or reviewing possible alternatives with the mother. This resulted in the student being denied 2 weeks of ESY service as required by his 2006-2007 IEP.
21. In summary, the parent is seeking a special education placement in a residential facility at district expense. She has presented witnesses, most notably the psychiatric fellow, the student's attending psychiatrist and the DCFS investigator to support the student's need for a residential placement based upon aggressive behavior exhibited at home and in school. The parent contends the student's, psychological evaluation IEPs and four incident reports document the student's aggressive behavior at school. Additionally, the parent is seeking compensatory education on the contention that the student's needs were not appropriately identified, his IEP was flawed, he has not made academic progress, he required but did not receive a behavior intervention plan and his behavior regressed. The testimony of the principal, case manager, school psychologist, speech pathologist, physical education teacher, librarian, hearing impaired, itinerate hearing impaired specialist, special education assistant and classroom aide contradict the testimony of the parent and her witnesses. Additionally school personnel testified that they believe the student's IEP and placement in the self-contained special education

class is appropriate and has provided him with meaningful educational benefit. As has been noted, the psychiatric fellow, attending psychiatrist and DCFS investigator, having not spoken to district personnel or examining the student's school records, were totally reliant upon reporting from the mother regarding the student's functioning and behavior at school.

DISCUSSION AND CONCLUSION OF LAW:

The central issue of this matter is whether the student requires a residential school placement at district expense to obtain meaningful educational benefit from his special education services. The parent offered three prongs of argument in favor of obtaining a residential placement at district expense.

- First, the parent contends that the student's behavior is so aggressive and unmanageable at school that he cannot be educated in a public school setting. The parent contends that the special education teacher had to call the physical education teacher several times to physically restrain the student. She further contends that on several occasions she was called to school to take him home.
- Second the parent contends that the district failed to adequately assess all of the student's special education needs; failed to provide the student with an IEP that reflected his needs, failed to conduct a functional behavior analysis and to construct and implement a behavior intervention plan. The parent further contends that this led to the student not obtaining educational benefit from his special education placement and the student ultimately becoming frustrated by an inability to express his needs which in turn resulted in him exhibiting aggressive and violent behavior at school and at home.
- Third, the parent argued that it makes no difference whether the student exhibited aggressive behavior in school or only at home. If he required a residential placement because of aggressive behavior at home, the district was still responsible for providing the student with a free appropriate public education and therefore responsible for providing the student with a residential placement.

The district countered the parent argument stating:

- The student did not exhibit aggressive behavior at school, he did not have to be restrained by the physical education teacher and he was not sent home because of unmanageable behavior.
- The assessments provided to the student were adequate, his IEP is appropriate, he did not require a behavior intervention plan and he obtained benefit from his special education placement.
- There is a difference in whether the student exhibits aggressive behavior in a school setting or a non-school setting. If the student requires a residential placement for behaviors exhibited in a non-school setting but is deriving educational benefit from his school placement, it is not the school district's responsibility to provide a residential placement.

A discussion of each of the issues submitted in the parent's initial complaint will be examined in addressing the above arguments.

Whether the district failed to provide the student with a free appropriate public education from November 5, 2005 to the present.

The parent is the moving party in this matter. As such, she had the burden of proof in this matter [*Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005)]. She failed that burden. A preponderance of evidence as indicated in the finding of fact indicates the district provided the student with a free appropriate public education since November 5, 2005 [Findings of Fact 11, 14, 15, 16, 18, 19,]. However, the student's 2006-2007 IEP called for him to receive 6 weeks of ESY but he only received 4 weeks of ESY [Findings of Fact 19]. Therefore, while the student received FAPE during the regular school year, he was denied 2-weeks of FAPE during the summer of 2007.

Whether the district failed to provide the student with adequate assessments in all potential areas of disability and if so, whether this resulted in the district inadequately addressing the student's learning impediments.

The parent is the moving party in this matter. As such, she had the burden of proof in this matter [*Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005)]. She failed that burden. A preponderance of evidence as indicated in finding of fact indicates the district provided the student with appropriate assessments in all potential areas of disability [Findings of Facts 16, 18, 19].

Whether the district failed to accurately state the student's present level of performance on his IEP, goals that respond to identified learning needs and objectives reasonable to the student's needs.

The parent is the moving party in this matter. As such, she had the burden of proof in this matter [*Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005)]. She failed that burden. A preponderance of evidence as indicated in finding of fact indicates the parent had an opportunity to be a full participant in IEP meetings and that those meeting developed IEPs that accurately stated the student's present level of performance, goals and benchmarks [Findings of Fact 11, 16, 17, 18, 19].

Whether the district failed to provide an adequate functional behavior analysis and an appropriate behavior intervention plan.

The district acknowledges that it did not conduct a functional behavior analysis and did not construct a behavior intervention plan. However, a finding of fact indicates the student's behavior was not so atypical that he required a behavior intervention plan and that his behavior was manageable within the routine and techniques employed as a matter of course in the self-contained classroom [Findings of Fact 11, 13, 14, 15, 16, 17, 21].

The only testimony that the student exhibit inappropriate behavior at school came from the mother, the psychiatric fellow, the attending psychiatrist and the DCFS investigator. However, it is noted that the psychiatric fellow, the attending psychiatrist and the DCFS investigator acknowledged that they did not talk to school personnel or review the student's school records but relied on reports from the mother. In effect they had no first-hand knowledge of the student's behavior or progress at school and their testimony is merely a repeat of what they had been told by the mother [Findings of Fact 5, 8, 9].

This leaves the mother's testimony in contrast to and contradicted by the principal, Case manager, school psychologist, speech/language pathologist, teacher of hearing impaired, itinerate hearing impaired specialist, librarian, physical education teacher, special education specialist and classroom aide. The preponderance of the testimony indicates the student was not exhibiting aggressive behavior or other behavior at school that would necessitate a behavior intervention plan [Findings of Fact 21].

Whether the student required and the district failed to provide the student instruction and support to learn alternative forms of communication.

The parent is the moving party in this matter. As such, she had the burden of proof in this matter [*Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005)]. She failed that burden. The preponderance of evidence indicates the district provided the student with appropriate instruction and adequate support to learn alternative forms of communication [Findings of Fact 11, 15, 18, 19].

Whether the student required and the district failed to provide the student with a special education placement in a residential school.

As indicated above this is the central issue of this due process hearing. The parent offered a three pronged argument in favor of obtaining a residential placement at district expense.

The parent, as the moving party in this matter, had the burden of proof to demonstrate the student requires a residential school because of aggressive behavior at school [*Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005)]. She failed that burden. The preponderance of evidence in this case indicates the parent's allegation that the student requires a residential placement because of aggressive behavior at school is without foundation [Findings of Fact 11, 12, 13, 14, 15, 16, 17, 21]. This aspect of the issue is without foundation.

The parent presented an alternative argument that the student must be provided a residential school placement because the district failed to adequately assess all of the student's special education needs; failed to provide the student with an IEP that reflected his needs, failed to conduct an analysis of functional behavior and to construct and implement a behavior intervention plan. The standard appropriateness test in *Rowley* [*Board of Education*, 458 U.S. 176, 102 S.Ct. 3034 (1982)] is that the placement provide "some" benefit. The preponderance of evidence indicates the student derived benefit from his special education placement [Findings of Fact 11, 14, 15, 16, 17, 18, 19, 21]. Additionally the benefit must be more than *de minimus*. While the benefit documented in the evidence was minimal, if compared to students without severe/profound cognitive impairments, for this student the benefit was commensurate with his ability. The testimony of the school psychologist and the attempt by the residential facility psychologist to teach the student one sign verify the level of difficulty the student experiences in learning what normally would be considered a minimal task [Findings of

Fact 10, 16]. Both psychologists testified that students with sever/profound cognitive impairments require constant repetition over a long period of time to obtain and retain skills [Findings of Fact 10, 16].

Finally, the parent argued that it makes no difference whether the student exhibited aggressive behavior in school or only at home. The parent contends that if the student required a residential placement because of aggressive behavior at home, the district has the responsibility for providing the student with a free appropriate public education and therefore responsible for providing the student with a residential placement *Independent School Dist. No. 284* F 3d 769, 77 (8th Cir 2001). The district countered that educational needs for residential placement and non-educational needs for residential placement are distinguishable and relevant in determining whether the district is required to provide a student with a residential placement *Dale M. v. Bd. Of Ed. Of Bradley-Bourbonnas High School Dist.No. 307, 237* F.3d 813, 817 (7th Cir. 2001).

This due process hearing is taking place in the 7th circuit. As such the *Dale M.* ruling has precedence. However, the court in *Independence School District No. 307* specifically criticized the *Dale M.* decision stating that a problem resulting from a disability is not separable from the learning process if it prevents the student from receiving educational benefit. The parent produced a decision from another 7th circuit due process hearing ISBE Case Number 003550 at (105 LRP 2601) that applied the 8th circuit reasoning in ordering a district to provide a student with a residential placement.

The facts of the *Independent School Dist. No. 284* differ significantly from this case. The student in that case did not have sever/profound cognitive or hearing impairments but had emotional and behavioral problems. She also was unable to learn in a special education placement within the public school or a separate public school special education day school and the district had declared her eligible for a private special education day school outside the district. The circumstances of *Independent School Dist. No. 284* ISBE are similar to ISBE Case Number 003550, in that the student was not deriving educational benefit from his special education placement at a private special education day school designed for students with emotional and behavioral problems. However, in this due process hearing the preponderance of evidence indicates the student was able to benefit from his self-contained special education placement in regular education public school. In this case the primary reason the parent is seeking a residential placement is because of problems in the home. Specifically, the parent is primarily seeking a residential placement for the student because she fears for the safety of her two younger daughters. Therefore, the reasoning in *Dale M.* is binding on this case and this hearing officer is precluded from ordering the district to provide the student with a residential placement.

This issue is without foundation in its entirety. EndofDecisionSummary

The above discussion warrants the following rulings:

The parent desires the hearing officer order the district to provide the student with a special education placement in a residential school.

The hearing officer is sympathetic to the mother's desire but the law, as applied to the facts of this case, provides no basis to order the district to provide the student with a special education placement in a residential facility.

This remedy is denied.

The parent desires the hearing officer order the district to pay for independent educational evaluations in areas of identified needs.

The parent proffered no specific independent educational evaluations or specific needs that she desired to have evaluated. The parent presented no evidence nor could the hearing officer find a need for additional independent evaluations.

This remedy is denied.

The parent desires the hearing officer order the district to provide the student with sufficient services of adequate intensity to allow the student to access educational opportunity.

The preponderance of evidence indicates the student has received appropriate services in adequate intensity and that he has derive meaningful educational benefit from his special education placement.

This remedy is denied.

The parent desires the hearing officer order the district to provide compensatory education services [12 hours of speech/language therapy] as remediation for loss of FAPE since November 5, 2005.

The only justification available to the hearing officer in ordering 12 hours of speech/language therapy as compensatory education is if the district failed to provide the student with the amount of speech/language service he required to derive benefit from his educational placement. A preponderance of evidence in the finding of fact indicates the student obtained benefit from his special education placement. He received speech/language service on a consultative rather than on a direct service basis [Findings of Fact 18]. This was appropriate and adequate to his needs.

This remedy is denied.

The parent desires the hearing officer order the district to convene an IEP meeting to consider evaluations and the foregoing relief.

There are no additional evaluations nor is it necessary to have an IEP meeting based upon the relief awarded.

This remedy is denied.

The parent desires the hearing officer order the district to provide other such relief as determined appropriate after receipt of additional school records.

A finding of fact indicates the student was denied 2 weeks of ESY. An appropriate remedy to compensate the student for the instruction he missed would be to order the district to provide him with the equivalent of 10 hours (one hour for each day of instruction missed) of individual tutoring by a special education teacher after school. However, since the mother is adamant that the student will not return home, he will not be returning to school. This remedy cannot be delivered to the student.

The parent requested, in closing arguments, that the district pay for the parent's visits if and when he is placed in a residential facility. This remedy is not an appropriate remedy since it has no relationship to the student missing 10 days of ESY during the summer.

The most plausible remedy is to provide service to the student through the hospital teacher. Since the hospital teacher indicated he is not certified in special education, does not know sign and does not have the resources to teach the student, the compensatory service most practical and most closely related to his lost ESY would be to provide the hospital teacher two 1-hour sessions of consultative service from a district specialist in teaching students with hearing impairments.

This remedy is granted in the order below.

The district desires the hearing officer find that the district has provided the student with a special education placement that constitutes a free appropriate public education in the least restrictive environment.

The testimony as supported by the written evidence indicates the district has provided the student with a free appropriate education with the exception of denying the students two weeks of ESY as described above.

This remedy is granted with the exception that the student is to be provided compensatory education as indicated in the Decision and Order.

Decision and Order:

1. The district is the prevailing party in demonstrated that it provided the student with a free appropriate public education during the regular school year. The district is not required to provide the student with a residential school placement.
2. Within ten (10) school days receipt of this Decision and Order, the district is to offer the hospital teacher, on behalf of the student, two 1-hour consultation sessions by a specialist in the field of hearing impairment.
3. Within twenty (20) school days receipt of this decision and Order, the district shall provide proof of compliance to the Illinois State Board of Education.

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 24th day of January 2008 .

James A. Wolter, EdD

Impartial Due Process Hearing officer

CERTIFICATE OF SERVICE

In the Matter of: [REDACTED] vs. [REDACTED]
ISBE Case Number: 2008-0211

The following parties have been served a copy of the Decision and Order in the above matter by certified mail:

7003 0500 0004 3387 6822
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

7003 0500 0004 3387 6839
[REDACTED]
[REDACTED]
[REDACTED]

7003 0500 0004 3387 6860
Andrew Eulass, Esq.,
ISBE Due Process Coordinator
100 North First Street
Springfield, IL 62777-0001

James A. Wolter, EdD
James A. Wolter EdD

Date
1/24/2008