

Case Number: 2008-0289

Hearing Officer: Sheana Hermann

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

## Impartial Due Process Hearing Decision Cover Page

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District Name  
Superintendent  
Address  
Represented by

Phone:

Parent Name  
Address  
Represented by

### Date and Timelines

Date of Written Request: 01/07/2008  
Date of Pre-hearing Conf: 02/26/2008

Date of Hearing: 04/01/2008 to 4/1/2008  
Date of Decision: 4/11/2008

### Summary of Decision

Parent of Student filed a due process hearing request after the IEP team determined that the Student needed a more restrictive setting. The District determined that the most appropriate placement for the Student is its special education cooperative program at a non-neighborhood school. The Parent stated that the District failed to provide the Student with FAPE and that the District is required to provide the Student with services in his neighborhood school and should hire a teacher to provide a program for the Student. It was determined that the District failed to properly implement the Student's IEP, however it was also determined that the Student needed more services and that the District was not required to structure a program for the Student in his neighborhood school. The Student was awarded compensatory education in the form of tutoring services or payment of tuition at a GED program.

ILLINOIS STATE BOARD OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)  
) **ISBE CASE NO. 2008-0289**  
)  
) **Sheana Hermann**  
) Impartial Due Process  
) Hearing Officer

**HEARING DECISION AND ORDER**

This matter comes before this hearing officer on the Impartial Due Process Hearing Request of the Student by and through his parents [REDACTED] ("Parents"), non-attorneys against [REDACTED]. Neither of the parties is represented by attorneys. The District is represented by [REDACTED], the Director of [REDACTED] [REDACTED] and [REDACTED], the Superintendent of [REDACTED]. This Hearing Officer has jurisdiction to hear and decide this matter under 105 ILCS 5/14-8.02(a) et. seq., 23 Illinois Administrative Code 226.600 et. seq., The Individuals with Disabilities Improvement Act 20 U.S.C. 1415, and 300 C.F.R. 507 et. seq. The parties were informed of their rights according to 105 ILCS 5/14-8.02(a), 23 Ill. Admin. Code 226, subpart G, 300 C.F.R. 300.512.

**Procedural History**

The Parents' request for an Impartial Due Process Hearing dated January 6, 2008 was received by the Illinois State Board of Education (ISBE) on January 14, 2008. The case was originally assigned to [REDACTED] who assigned a pre-hearing conference and hearing date for February 13 and March 26, 2008 respectively. Hearing Officer Gordon subsequently recused herself and this hearing officer received the assignment on February 13, 2008 and immediately contacted the parties. The parties engaged in a resolution session but were unsuccessful. The pre-hearing conference in this matter was held on February 26, 2008. (IHO. Ex. A). The Hearing was conducted on April 1, 2008 at the District Administrative Offices located at [REDACTED] Illinois. The Student turned 18 years of age on [REDACTED] and agreed on the record and in writing to allow his Parents to represent him (IHO Ex. A). Both parties stipulated to allowing additional documents to be submitted on the day of hearing. The Parents' and District's documents were admitted into evidence. The parties received their rights. The following witnesses testified at the hearing: [REDACTED] [REDACTED] Education Teacher; [REDACTED] Dean of Students at [REDACTED]; [REDACTED], [REDACTED] school social worker; [REDACTED] Student's grandmother; [REDACTED] Student; [REDACTED] father of Student; [REDACTED], special education teacher,

[REDACTED], history teacher at [REDACTED]; [REDACTED], computer teacher [REDACTED], [REDACTED] Technical Assistant; [REDACTED] math teacher, [REDACTED]; and [REDACTED] Student's stepmother.

### **Issues Presented**

The Parent believes the following to be at issue:

Whether the Student shall remain in his regular high school or whether the District's proposed placement in an ED program in a different location is appropriate and meets the needs of the Student in the least restrictive environment as required by law? In particular the Parent has stated that the District has discriminated against the Student and has not given the Student appropriate support to allow him to be successful in the regular educational environment.

### **Relief Sought**

The Parent seeks the following remedy:

The Student shall remain at his regular school, [REDACTED] School.

### **Finding of Fact**

The Student is a male 18 year old with a birth date of [REDACTED] and is presently in the his Junior year of High School.

His qualifying disability under the Individuals with Disabilities Education Improvement Act (IDEIA) is emotional disturbance (SD Ex. Pp. 28-46).

During the hearing the Parents and Student also testified that the Student has attention deficit disorder, which the District was aware.

The Student is in all regular educational classes with special education monitoring pursuant to an August 23, 2007 individualized education plan (IEP) which is also his stay-put placement. (SD. Ex. Pp. 44-68). In the IEP it was noted that the Student displays defiant behavior to authority figures, is disruptive and distracted. His Behavior Intervention Plan called for the District to contact the Student's father when he was late or missing homework and it also provided that if the Student had three (3) significant offenses, he would be referred to [REDACTED] (AJ), at the [REDACTED]. (SD Ex. P. 66). The IEP team met on December 19, 2007, and determined that a change of placement was needed and recommended returning the Student to the program at [REDACTED] (SD Ex. Pp. 28-46).

Ms. [REDACTED] the Student's special education teacher during the time period of August 24, 2006 through December 2006 at [REDACTED] provided very credible evidence. She stated that the program has 8 to 12 students with two aides. It is

highly structured. She also testified that the Student did very well in the highly structured setting in which he was closely supervised and monitored. (SD. Ex Pp. 69-78). She also testified that the District's special education teacher Ms. [REDACTED] does not have time to deal with emotional disabled students due to her high case load.

Mr. [REDACTED] the District's Dean of Student's testified to the Student being written up 25 times since the start of the school year (SD Ex. Pp. 10-23). He stated that the Student often threatened him and used extremely foul language on him.

Ms. [REDACTED], the [REDACTED] social worker performed a "Functional Behavior Assessment" on March 25, 2008. This assessment was not conducted with the Student or Parents' notice or consent. Ms. [REDACTED] testified that she attempted to observe the Student in math but he did not attend and she was told by the math teacher that he was probably talking in the office with Staff. (SD Ex. Pp. 84-89). She later observed him talking in the front office.

The Student's grandmother who is a cook in the cafeteria testified that she has observed the Student being treated differently than other students. She said she observed him being reprimanded when other students were not, such as being told to take off his hat while others were allowed to keep theirs on.

During the hearing the Student appeared to be a likeable, articulate young man. He testified that he did not want to be an IEP student, that he would quit school if ordered to go to the District's proposed placement. He also testified that he is having a difficult time in keeping up in certain classes which is one of the reasons he skips class. He stated that he was upset at his History teacher for ripping up his assignment and did not believe he was given credit when he completed his work. He stated this is one of the reasons he has refused to go to class. Student also acknowledged cursing at his teachers and threatening them, stating that if his teachers "run their mouth at him, he would run his mouth back."

The Student's father testified to a long history with the District. He testified that Staff other than the current Superintendent Mr. [REDACTED] has been rude to his family and harassed them. He does not feel that the Student's IEP has been followed for six years. He acknowledged that the Student has problems and that he wants the District to hire a special teacher to provide services so the Student can attend [REDACTED] School. He also stated that he did not receive daily emails and he was not notified when the Student was absent from class pursuant to the August 23, 2007 IEP (SD Ex. P. 66). He also stated that the Student does not like the special education teacher at [REDACTED] School and would refuse to go to her if she was his assigned teacher.

Ms. [REDACTED] the special education teacher at [REDACTED] school, testified. It is apparent from her testimony that she was to monitor the Student's progress

and provide the regular education teachers assistance, but it does not appear that this was done or if it was done, it was not done in any sort of consistent manner. In fact when the Student skipped classes she failed to contact the Student's Parents instead she left it to the Student's individual teachers. She also engaged in improper name calling of the Student while discussing the Student with an aide; she referred to the Student as a [REDACTED] Student. This aide had no direct educational impact with the Student. She also testified to having a heavy case load.

Mr. [REDACTED], the Student's history testified. He stated that he had heard a rumor that the Student's girlfriend did his homework and upon reviewing it determined that it was incomplete. He stated that he did not rip up the homework. He discussed not contacting the Parents even after the Student missed 25 days of his class. He thought the office was going to contact the Parents. He also testified that Student used very crude language towards him and threatened him. He stated that the Student only did work that he was interested in. He also offered to help the Student if the Student wanted to seek a GED.

Ms. [REDACTED] Student's "Word Keys" teacher, testified to having a good relationship with the Student. She stated that the Student has missed a significant amount of school days since winter break. She stated that she had worked out a verbal contract with the Student to attend class. She also stated that the Student seems unhappy to her, that this school year has been different for him.

Mr. [REDACTED], [REDACTED] technical assistant supervisor, testified regarding development of the Student's current IEP. He testified that the District was considering recommending a more restrictive placement at the end of the 2006/2007 school year after the Student was having difficulty being mainstreamed. At the August 26, 2007 IEP meeting the team determined that it would attempt to allow the Student to remain in [REDACTED] School and that he would be able to see the Superintendent and his grandmother if he needed to discuss issues. Unfortunately the Student's behavior made a downward spiral and was too disruptive for the general education population and the team met in December 2007 and determined that the last placement at [REDACTED] was more appropriate for the Student. He also stated that if he was in the Student's shoes, he would go to a GED program.

Ms. [REDACTED] the Student's math teacher, stated that the Student was often disruptive, sang in class loudly, was often off task, he would lie down on the floor. She also testified that the Student told her to take a "f-ing" tampon out of her ass." She stated that she rarely tried to confront him due to his verbally abusive nature. She stated that she has observed him yelling at other staff. She also stated that she did not notify the Parents on a consistent basis when the Student failed to attend class.

██████████ the Student's step-mother, testified. She is a licensed social worker. She stated that the hearing could have been avoided if the Student was initially provided services. She did acknowledge that the Student had issues. She stated that she wanted District to provide a program to the Student in his neighborhood school.

Mr. ██████████ District Superintendent, testified that he was hopeful that the Student would be able to remain at ██████████ at the beginning of the 2007-2008 school year, but as the year progressed the Student's behavior deteriorated and he believes that the Student would be better served at ██████████. It was clear from his testimony and the Student's and Parents' that he was respected and liked by the Student and Parents.

The Student has missed close to half his classes in English. Work Keys. Agriculture Business. U.S./World History and Geometry (SD p. 90).

The Parents and the Student stated that if this hearing officer determined that ██████████ was the appropriate placement, that the Student would quit school.

### **Conclusions of law**

Under the Individuals with Disabilities Education Act as amended in 2004 (IDEIA), a school district is required to provide a free appropriate public education (FAPE) in the least restrictive environment. 20 U.S.C. Section 1412(a)(1)(a).

The Supreme Court in its landmark decision in *Board of Education of the Hendrick Hudson School District v. Rowley*, 428 U.S. 176 (1982), established a two prong test to determine whether FAPE has been provided to a qualifying student, *Id.* at 200. The first prong is whether the school has complied with procedures as set forth in IDEIA. The second prong in *Rowley* is whether the IEP sets forth a placement and services which address the unique needs of the child and is reasonably calculated to enable the child to receive an educational benefit.

Addressing the first prong of the *Rowley* test, the District failed to provide the Parents proper notice of the "assessment" it had conducted of the Student on March 4, 2008 by Ms. ██████████. 34 CRR 300.503(b)(3) requires that a school district disclose to parents a description of each evaluation procedure, assessment, record or report that it considered as a basis for a placement or program decision. The District contends that they are entitled to conduct a functional behavior assessment without parental consent; however a functional behavior assessment is conducted after there is a manifestation determination conducted by the IEP team and the team determines that the behavior that requires the assessment is related to the disability. 34 CFR 300.530(f). In this instance, the IEP team did not meet. It appears that the evaluation was conducted for hearing; however, it mostly supports the fact that the District was

aware of significant attendance issues yet did nothing to stop it. This will be discussed below.

During the hearing the Parents stated that they were not notified of a spring 2007 IEP meeting, however, the District later conducted the IEP in August of 2007 in which the Parents did attend. These two procedural errors do not amount to a denial of FAPE.

As to the second prong of the *Rowley* test, it does appear that certain District personnel have in fact acted inappropriately and the District has failed to implement the August 2007 IEP. During the hearing Ms. [REDACTED] testified that she had called the Student a [REDACTED] student to another district employee within ear shot of the Student. While she stated that she made this comment to assist the Student, the comment, which was not true and actually labeling, was made to an individual who did not directly serve the Student. Of greatest concern is the District's lack of monitoring of the Student. He missed many classes, but his father was never notified. During the hearing none of the district personnel took responsibility for this very important action, a simple notification to the Parents that the Student was not in class.

Despite the District's failure to implement the August 2007 IEP, the written evidence and testimony supports that the Student acts in a very disruptive, demeaning, defiant and threatening manner to staff and teachers at [REDACTED]. The Student has motivational issues. If he does not like a teacher or the actions of the teacher he refuses to attend class. He stated he would not go to the special education teacher if she was assigned to him. The setting at [REDACTED] does not provide adequate support for the Student. He needs more monitoring and structure that just is not present in a mainstream program. The Student previously thrived at the more restrictive setting of [REDACTED]. At [REDACTED] he skips class and refuses to do work. He has stated that he needs more help. The Parents agree that the Student has issues and needs the type of services that he was receiving at [REDACTED] however, the Parents want the District to provide those services at [REDACTED] School. The law does not support the Parents' and Student's position that District is required to provide a program such as the one at [REDACTED] at [REDACTED] School. During the hearing it became very apparent that even if the District created a program for the Student, he still may refuse to go if he did not like the teacher. He has previously stated that he would refuse to attend Ms. [REDACTED] class.

IDEIA through its regulations 34 CRF Sec. 300.116(c) does not mandate placement in a neighboring school if the IEP team makes another determination.

Furthermore, case law does not support an absolute right to placement in the neighborhood school. *Schuldt v. Mankato Indep. Sch. Dist. No. 77*, 18 IDELR 16 (8th Cir. 1991); *White ex rel. White v. Ascension Parish Sch. Bd.*, 39 IDELR 182 (5th Cir. 2003). At most, IDEIA creates a preference for the neighborhood school. *Murray v. Montrose County Sch. Dist. RE-11*, 22 IDELR 558 (10th Cir.

1995). Accord *Urban v. Jefferson County Sch. Dist. R-1*, 24 IDELR 465 (10th Cir. 1996); *Flour Bluff Indep. Sch. Dist. v. Katherine M.*, 24 IDELR 673 (5th Cir. 1996). Districts have latitude to determine placement among alternative school locations.

Districts are granted discretion when determining the program, whether the program is appropriate and would offer the student an opportunity to interact with non-disabled peers; whether the location is within a reasonable distance, and whether the other location benefits and advantages that the local school does not, *Schuldt v. Mankato Indep. Sch. Dist. No. 77*, 18 IDELR 16 (8th Cir. 1991); *Flour Bluff Indep. Sch. Dist. v. Katherine M.*, 24 IDELR 673 (5th Cir. 1996).

The 8<sup>th</sup> Circuit found "IDEA mandates individualized appropriate education for disabled children, it does not require a school district to provide a child with the specific educational placement that [his] parents prefer." *School District of St. Louis County: Missouri Department of Elementary and Secondary Education*, 449 F.3d 816 (8<sup>th</sup> Cir. 2006) citing *Blackman v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, at 658 (8<sup>th</sup> Cir. 1999).

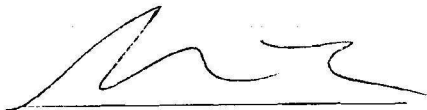
While the Student's and Parents' wishes to have the District create a program at [REDACTED] such as the one at [REDACTED] are understandable, they are just not required by law. The Student previously thrived at the more restrictive setting at [REDACTED]. He most likely should have been in that placement for the entire 2007-2008 school year. However, the District agreed to work with the Parents and Student to attempt to keep the Student at [REDACTED]. Unfortunately, he needs more services and support than can be provided in the mainstream program.

**IT IS HEREBY ORDERED:**

1. The District's proposed placement at [REDACTED], the [REDACTED] Special Education Joint Agreement is the appropriate placement;
2. The District failed to provide the Student with adequate monitoring or to notify his Parents of his lack of class attendance and the Student is awarded 40 hours of tutoring in all failing subjects as compensatory services;
  - a. The District shall make arrangements directly with the Student for a mutually agreed upon time;
  - b. The District shall determine the tutor and location of tutoring services within a reasonable distance for the Student's home;
  - c. The 40 hours of tutoring services shall be provided by April 11, 2009 if the Student fails to take advantage of the tutoring services within such time, the District's commitment shall be deemed fulfilled;

3. The Student has indicated that in the event that an aware is made determining ● as the appropriate placement, that he would withdraw from school; in such event, the District shall pay for the tuition at a GED program for the Student;
  - a. The District shall provide the Student with the name of three GED approved programs;
  - b. The District's obligation to pay for tuition at a GED program shall expire on April 11, 2009;
4. The District, as compliance to this order, shall send a letter to the Illinois State Board of Education, Due Process, by May 9, 2008, to advise of the actions it has taken to enforce this order.

**ENTERED THIS 11<sup>th</sup> DAY OF APRIL, 2008**



Sheana Hermann  
Impartial Due Process Hearing Officer

**Finality of Decision:**

This decision shall be binding upon all parties.

**Right to File Civil Action:**

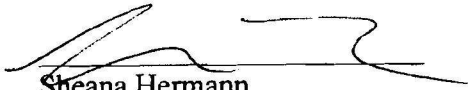
Any party to this hearing aggrieved by the final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 ILCS 5/14-8.02(i), that civil action shall be brought in any court of competent jurisdiction within 120 days after this decision was mailed.

**Right To Request Clarification**

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) 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(ies) and to the Illinois State Board of Education. **The right to request such a clarification does not permit a party to request reconsideration of the decision itself, and the hearing officer is not authorized to entertain a request for reconsideration.**

## CERTIFICATE OF SERVICE

The undersigned hearing officer certifies that she served copies of the aforesaid Decision and Order upon Parents and Student (7007 2560 0000 7376 2587), District (7007 2560 0000 7376 2594) and [REDACTED] (7007 2560 0000 7376 2600) at their respective addresses by depositing same with the United States Postal Service in Lake Forest, Illinois with proper certified postage paid and by UPS next day mail to Illinois State Board of Education (00053311) before 5:00 p.m. on April 11, 2008.



Sheana Hermann  
Impartial Due Process Hearing Officer