

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

JUL 28 2008

[REDACTED]

Student

vs.

[REDACTED]

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Case No. 2008-0423

Alfred A. Spitzzeri, Hearing Officer

DECISION AND ORDER

Preliminary Information

The matter in this due process hearing concerns the rights of a 17 year old boy with an eligibility determination of learning disabled to receive social work services at the [REDACTED] where he is a student. The undersigned Hearing Officer has jurisdiction to hear and decide this case under 105 ILCS 5/14-8.02a of the Illinois School Code. The parties were informed of their rights concerning due process hearings under the Illinois School Code (105 ILCS 5/14-8.02a), the Code of Federal Regulations (34 CFR Sec. 300.509) and the Illinois State Board of Education Regulations concerning special education hearings (23 Ill. Admin. Code Sec. 226(g)).

Procedural History

The request for a due process hearing was filed by [REDACTED] the minor's guardian/great aunt. See Group Exhibit A, pp. 131-134. The request was dated March 19, 2008 and received by the [REDACTED] on April 3, 2008. The guardian's request was forwarded to the Illinois State Board of Education (ISBE) by letter dated April 3, 2008. See Group Exhibit A, pp. 135-136. The undersigned received his appointment as the Hearing Officer in this case by way of a letter dated April 8, 2008. See Group Exhibit A, pp. 137-147. The district filed its response to the due process request, with attachments labeled "A-F", and also offered resolution/mediation in a letter dated April 21, 2008. See Group Exhibit A, pp. 148-155. Notice of the prehearing conference was sent to the parties on May 16, 2008, following an unsuccessful resolution session. See Group Exhibit A, pp. 156-159. The original date for the prehearing conference was set for May 23, 2008. On the motion of the school district's attorney, due to a scheduling conflict, the initial prehearing date was stricken and continued to June 5, 2008. The prehearing was held on June 5, and the report of the prehearing conference was also written on said date. See Group Exhibit A, pp. 160-164. The prehearing conference report contained a typo as to the date of the hearing, and was subsequently corrected via an exchange of e-mails dated June 9, July 3 and July 4, 2008. See Group Exhibit A, pp. 165-169, 170-171, and 172.

The hearing was held on July 16, 2008 at the [REDACTED] located at [REDACTED] [REDACTED] s. Appearing on behalf of the school district was attorney [REDACTED]

██████████ Appearing on behalf of the student was his guardian, ██████████. The court reported was ██████████ of ██████████, ██████████, IL ██████████. The court reporter's phone number is ██████████.

The school district introduced into evidence 172 pages in a black bound folder, including a 3-page index of special education records (pp. 1-118), other student records (pp. 119-130) and hearing documents and due process correspondence (pp. 131-172) which were marked at the hearing as School District Group Exhibit A for identification dated July 16, 2008. ██████████ introduced a letter from the school social workers at ██████████ dated May 23, 2008 which was marked as Guardian's Exhibit 1 for identification dated July 16, 2008. All of these exhibits were admitted into evidence (the school district's attorney did object to the introduction of Guardian's Exhibit 1 on the grounds that ██████████ introduced the exhibit during her closing argument as opposed to during her case in chief. The Hearing Officer notes that the document was tendered to the school district and to the undersigned well in advance of the five-day discovery cut-off rule. The Hearing Officer also noted that although the objection was technically correct, since the guardian was proceeding pro se, the Hearing Officer allowed the exhibit into evidence over the school district's objection and allowed ██████████ to reopen her case in chief for the sole purpose of introducing said document into evidence).

Three witnesses were sworn in and testified at the hearing: (1) ██████████, the I ██████████ Case Manager; (2) ██████████, the I ██████████ Social Worker; and (3) ██████████ guardian.

In her brief opening statement ██████████ asserted that ██████████ should be entitled to school social work services pursuant to a previous IEP. She contended that she was not made aware of the termination of social work services until after the fact and despite requests to reinstate these social work services, the school district has declined to do so.

On behalf of the school district, ██████████ argued that ██████████ had received a free, appropriate public education and that based upon his evaluations and related services which he had received in the past, as well as his current eligibility determination (learning disabled, not emotionally disturbed) social work services were no longer warranted for him.

Remedies Sought

██████████ requested that the school district be ordered to provide ██████████ with school social work services for the 2007-08 school year.

Findings of Fact

██████████ is a 17 year old enrolled at the ██████████ High School on the south side of Chicago. Pursuant to his most recent IEP/Annual Review on December 13, 2007, ██████████ is classified as a learning disabled student. (See Group Exhibit A, pp. 98-116). Participants at the IEP conference that date included ██████████, a special education teacher, a regular education teacher, the student himself and his guardian, ██████████. The purpose of the conference was for transition planning. It was said that ██████████ liked to play baseball, was sociable with his peers, and

had good communication skills. Recent testing indicated that his math ability was at a 7.6-grade level equivalent and that his English ability was at a 7.5 grade level equivalent. His guardian's concerns were that he complete high school and become a responsible and independent adult. She also wanted his school counselor/social worker to assist him in his employment search for the summer of 2008 and his upcoming senior year during the 2008-09 school year. [REDACTED] also expressed her desire that the school help [REDACTED] learn to focus, be responsible and independent. She also wanted the school to teach him to learn the importance of education. No functional behavioral analysis or behavior intervention plan was deemed necessary by the IEP team. The goals and objectives which were developed dealt strictly with academic achievement such as the social sciences, biological and physical sciences, mathematics and language arts/English/reading. No one descended from these findings.

A three year re-evaluation of [REDACTED] was completed a year before in December of 2006. An IEP meeting was held on December 19, 2006 to discuss the results of the three year re-evaluation. Participants included the case manager and district representative, [REDACTED], a special education teacher, a regular education teacher, the student, the student's guardian, [REDACTED] the school psychologist and school social worker, [REDACTED]. See Group Exhibit A, pp. 72-91.

The school district also introduced into evidence a special education summary form showing that [REDACTED] primary disability was learning disabled. See Group Exhibit A, p. 71.

[REDACTED] is the case manager for the [REDACTED]. She has been so employed for the 2007-2008 school year. She holds Master's degrees in both learning disabilities and administration and supervision. She holds a Type 10 certificate in special education, a Type 9 certificate in general education, a Type 75 certificate in administration and supervision and a Type 3 certificate in preschool education. Before assuming the role of case manager, she taught at [REDACTED] for two years. The first year she taught science, the second year she taught math. Both were team/cooperative assignments with the general education teachers. She has been employed as a teacher by the [REDACTED] for a number of years. Before being assigned to [REDACTED], she also taught at [REDACTED] for four years and at [REDACTED] for 12 years.

As the case manager, [REDACTED] is responsible for scheduling meetings, annual reviews, three-year re-evaluations, writing IEPs, collaborating with general education teachers and setting up workshops for teachers. She testified that there were over 300 special education students at [REDACTED]. She is the records custodian for those special education students.

Coincidentally, [REDACTED] also happened to be [REDACTED] science teacher during his freshman year of 2005-06. She testified that he was well behaved and did his work for her class. She testified that [REDACTED] was respectful to her and to his peers and that he could interact with the other students.

[REDACTED] was initially identified as being eligible for special education services at [REDACTED] at an IEP conference held on February 19, 2004. See Group Exhibit A, p. 17. At that time his primary disability was identified as emotionally disturbed and learning disabled. See Group Exhibit A, p. 20.

An annual review was held on December 15, 2005. See Group Exhibit A, p. 37. According to the cover sheet "Parent invited. Did not attend. Gave permission by phone to conduct meeting without her." See Group Exhibit A, p. 37. Participants at the IEP conference at that time included the case manager at the time, [REDACTED], a special education teacher, a regular education teacher, and a transition representative. [REDACTED] testified that she did not recall ever receiving notice of this conference, and testified that it would be rare for her to miss such a conference. The conference notification form dated November 22, 2005, indicated that both the guardian and the student were invited to the conference, along with the other participants identified above. See Group Exhibit A, p. 36. The IEP form contains a summary of comments made by [REDACTED] to the service provider via a phone conversation. See Group Exhibit A, p. 38. During that conversation, it was reported that [REDACTED] wanted [REDACTED] to be able to do his best in achieving a good education as he prepares for graduating from high school. The IEP also contained the observation that [REDACTED] had shown himself to be a well behaved student with good academic attitude. There was no need for a functional behavioral analysis or for a behavior intervention plan. See Group Exhibit A, p. 40. Modifications and accommodations related strictly to academic type concerns, such as extending time for classroom and homework assignments, explaining directions and giving concrete examples, allowing the use of a calculator, etc. See Group Exhibit A, p. 42. Goals and objectives centered on English, math, social science, and science. See Group Exhibit A, pp. 43-46. A provision was made for [REDACTED] to receive social work services, 30 minutes a month, to address social emotional issues (to seek assistance when needed and to utilize available support systems). See Group Exhibit A, pp. 48 and 49.

Another IEP conference was held on December 19, 2006. See Group Exhibit A, p. 72. This was a three year re-evaluation. At that time [REDACTED] was in 10th grade. At that time [REDACTED] classification was changed from LD/ED to strictly LD. See Group Exhibit A, p. 76. The listing for ED on p. 72 of Group Exhibit A was described as a clerical error.

The next witness in the case was the school social worker at [REDACTED], [REDACTED]. [REDACTED] holds both a bachelor's degree and a master's degree in social work from the University of Illinois at Chicago. She holds a Type 73 pupil personnel certificate and has been a licensed social worker in Illinois since 1981. She is employed by the [REDACTED] district and has been assigned to [REDACTED] for eight years. Previously she worked at [REDACTED] and at [REDACTED]. She has been employed as a school social worker for a total of 24 years. Her duties involve helping students address social emotional and behavioral issues as it impacts their academic performance. In assessing whether a student's social emotional or behavioral issues affects their ability to learn, she factors in both the frequency and duration of these issues.

[REDACTED] offers social work services for all the students at the high school, both general education and special education. She estimates that she has about 65 special education students on her case load, and also services about 50 general education students.

[REDACTED] first became familiar with [REDACTED] in the 2005 school year. This was based upon his classification as emotionally disturbed and the need for social work services which were identified in this original IEP of February 19, 2004 and at his annual review held on December 15, 2005. See Group Exhibit A, pp. 17 and 37. She completed a social work assessment of [REDACTED] on December 8, 2006. See Group Exhibit A, pp. 66-70. The social assessment included an interview of the

guardian, the student, his teachers and a review of the previous social assessment conducted on February 18, 2004. At the time of the re-evaluation, [REDACTED] had received social work services for three years. Services were provided to him to help him manage his emotions and to increase his motivation. Since the inception of social work services, [REDACTED] had displayed improvement both academically and socially. He has been able to exercise self control and to increase his academic effort and achievement. At the same time, he was receiving social work services through [REDACTED] in conjunction with his diagnosis of ADHD (Attention Deficit Hyperactive Disorder). [REDACTED] concluded that as of December 19, 2006, [REDACTED] did not require any further social work services. Therefore, his services were terminated, based upon his ability to be more focused, his decreased impulsivity, and his being better able to attend to the task at hand. Additionally, his behavior was more positive and less hostile than previously, and he also was demonstrating a reduction in his defiant behavior as it related to both adults and peers. See Exit Form for school social work services dated December 19, 2006, Group Ex. A p. 70..

[REDACTED] saw [REDACTED] for social work services for a period of 14 months. She saw him in the context of a group counseling situation with other students with similar issues. She developed good rapport with him. In terminating social work services, she explained to [REDACTED] that he could always come to see her if he felt the need to do so.

[REDACTED] asserted that [REDACTED] was still in need of school social work services. In support of her position, she introduced into evidence a one paragraph letter from [REDACTED] dated May 23, 2008. Guardian's Exhibit 1. The letter was signed by a social work intern named [REDACTED] and co-signed by his supervisor [REDACTED]. The letter basically states that it was his recommendation that "social work services outlined in his IEP be continued..." It is unclear what IEP he was referring to, since the most recent social work assessment and IEP available indicated that [REDACTED] primary disability was a learning disability and in the opinion of the school social worker who had been working with [REDACTED] for a period of 14 months, he has shown improvement both academically and behaviorally and was no longer in need of social work services at the school. Since no one from the staff at [REDACTED] testified in person, no foundation was laid for such an opinion, the letter is hearsay and given little weight by this Hearing Officer. For the record, the school district's attorney did object to the admission into evidence of said letter and said objection was overruled. Since the guardian was proceeding without the benefit of an attorney, the Hearing Officer gave her the broadest possible latitude in the conduct of the hearing.

Conclusions of Law

The issue in this case is whether [REDACTED] offered [REDACTED] a free, appropriate public education (FAPE) as required under the Individuals with Disabilities Education Act (IDEA). [REDACTED] most recent IEP classifies him as learning disabled and not emotionally disturbed. The goals and objectives developed for him center on substantive, academic areas and not social emotional/behavioral ones. Both the guardian and the student participated in the development of the IEP. No dissents were expressed at the time of the IEP.

Under *Schaffer v. Weast*, 546 US 49 (2005), the party filing the request for due process bears the burden of persuasion. In this case, the guardian [REDACTED] bears this burden having filed

the request for a due process hearing. [REDACTED] great aunt, is to be commended for the burden that she, herself, has assumed in raising [REDACTED] and in serving as his guardian. The record indicates that she is very involved in his education and regularly attends IEP conferences and annual reviews.

In determining whether a school district has provided FAPE, the Hearing Officer must determine whether the school district: (1) Complied with IDEA's procedural requirements; and (2) Developed an IEP that is "reasonably calculated to enable the child to receive educational benefits." *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). In the present case, the guardian claims she was not aware that social work services had been terminated until after the fact. The evidence in the record is to the contrary. The school district regularly sent notices of IEP conferences and annual reviews to the guardian and also to the student himself once he had obtained the age of 17. See Group Exhibit A, pp. 10, 36, 60, 96-97. The guardian was also provided with the notice of procedural safeguards and consent forms to exchange information and to conduct the re-evaluation. See Group Exhibit A, pp. 1-3, 16, 58-59, 93-94, 118. In fact, the evidence in the record is that the guardian did attend every IEP/Annual Review for [REDACTED] with one exception, wherein it is noted that she consented to allowing the conference to go forward in her absence via a telephone conversation. While the guardian testified that she did not recall this occurrence, circumstantial evidence exists indicating that such a telephone conversation did take place as a summary of the guardian's comments made to the service provider during said telephone conversation is noted in the IEP. Thus, the Hearing Officer concludes that the [REDACTED] did comply with IDEA's procedural requirements in this case.

The second issue is whether the IEP was reasonably calculated to enable [REDACTED] to receive educational benefits. In the case at bar, there was no evidence that any social emotional issues or behavior on [REDACTED] part impeded his learning in the classroom. Neither his case manager, [REDACTED], who also served as his classroom teacher for science one year, nor his school social worker, [REDACTED] who saw him on a monthly basis for 14 months, were of the opinion that he required any school social work services at this time. The Hearing Officer also notes that [REDACTED] who will turn 18 years of age on September 16th, did not testify at the hearing or ask for school social work services on his behalf. The Hearing Officer agrees with the observations and opinions of the school social worker that the frequency and duration of [REDACTED] social emotional/behavioral issues do not warrant the intervention of a school social worker at this time. Of course, [REDACTED] is free to seek out the services of the school social worker at any time, as any other student in the general education population. The school's social work services are available to all students at [REDACTED] and an IEP is not required in order to obtain such services. Under IDEA, local educators enjoy latitude in developing the IEP most appropriate for a disabled student and may apply their professional judgment. *Hartmann v. Loudoun County Bd. of Educ.*, 118 F. 3d 996, 1001 (4th Cir. 1997). An IEP passes muster when it is reasonably calculated to allow the student to obtain educational benefits or, i.e., when it is "likely to produce progress, not regression or trivial educational advancement." *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F. 3d 245, 248 (5th Cir. 1997). In consideration that the fact that [REDACTED] has made regular advancement from grade to grade and achieved generally passing grades, he has shown satisfactory progress. . The Hearing Officer finds that [REDACTED] most recent IEP is reasonably calculated to provide [REDACTED] with an educational benefit. Thus [REDACTED] has complied with the substantive provisions of IDEA as well.

ORDER

Pursuant to the above findings of fact and conclusions of law, the Hearing Officer hereby orders that:

1. The parents' request for social work services for [REDACTED] for the 2007-08 school year is denied.

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 party and to the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, Illinois 62777. 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. **THE EFFECTIVE DATE OF THIS DECISION IS THE DATE OF RECEIPT OF ANY CLARIFICATION OF THIS DECISION.**

RIGHT TO FILE A CIVIL ACTION

This decision shall be binding upon the parties unless a civil action is commenced. Any party to this hearing aggrieved by this decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-8.01(i), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision was mailed to a party.

Dated this 25th day of July, 2008



ALFRED A. SPITZER
Impartial Due Process Hearing Officer

CERTIFICATE AND AFFIDAVIT OF DELIVERY BY MAIL

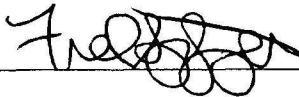
The undersigned hereby certifies that a copy of the Decision and Order was placed in the U.S. Mail at Naperville, Illinois, by certified mail and directed to:

[REDACTED]

[REDACTED]

[REDACTED]

on July 26, 2008



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