

Case Number: 2008-0424

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

Instructions: Complete this form and return it along with the decision. The information collected on this form will be used for the purpose of indexing the decision by subject matter as required by 23 Illinois Administrative Code 226-695

District Name
Superintendent
Address
Represented by

Phone:

Parent Name
Address
Represented by

Date and Timelines

Date of Written Request: 04/03/2008
Date of Pre-hearing Conf: 05/09/2008

Date of Hearing: 07/08/2008 to 7/22/2008
12:00:00 AM
Date of Decision: August 1, 2008

Summary of Decision

District prevails in a due process request brought by parent. The Parent is seeking reimbursement for her unilateral placement of her child after the Student who was given a 30 day notice of termination of services from a private therapeutic day school, which was implemented by the District. The District treated the termination as a transfer of location rather than a change in placement and did not conduct a new IEP after one had been conducted the month prior which address behaviors which the Student had exhibited. Parent failed to sustain her burden of persuasion that the District's proposed therapeutic programs were inappropriate.

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)
) ISBE CASE NO. 2008-0424
)
) 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 [REDACTED] ("Parent") by and through her attorney [REDACTED] against the [REDACTED] ("District") represented by [REDACTED] and [REDACTED], of the Due Process and Medication Department of the [REDACTED]. This Hearing Officer has jurisdiction to hear and decide this matter under 105 I LCS 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 Parent's request for an Impartial Due Process Hearing dated March 31, 2008 was received by the Illinois State Board of Education (ISBE) on April 3, 2008. This hearing officer received the case on April 11, 2008 and contacted the parties within five days and advised the parties of her prior employment with the District and her willingness to recuse herself from the case; neither party objected. (See IHO Exhibit 1). The parties engaged in a resolution session on April 30, 2008. The pre-hearing conference was conducted on May 9, 2008. The Hearing was originally scheduled for June 4 and 5th, 2008. However due to a conflict with witness schedules, the hearing was rescheduled for July 8, 9 and 10, 2008. On June 6, 2008, the District's attorney advised the hearing officer and Parent's attorney that two district personnel who were on the Parent's witness list would be on vacation. The District did not request a continuance in the hearing but an additional day of testimony. On July 8, 2008, the first day of hearing, this hearing officer heard the Parent's objection to allowing an additional day of testimony. The Parent's objection was noted for the record however the District was granted an additional day to have the District personnel testify. The additional day was July 22, 2008. During the testimony of the second witness on July 22, 2008, the Parent's attorney requested to recall the mother as a rebuttal witness as a concession for having an additional day of testimony. The Parents' were granted this request over District's objection. The Hearing was conducted at [REDACTED] Illinois. The Parent's and District's

documents were admitted into evidence. The Parent and District provided copies of case law in support of their position which is made part of the record. Both parties are duly represented by attorneys who are well versed in the IDEIA along with its implementing regulations. The following witnesses testified at the hearing: [REDACTED], Social Worker and Clinical Director of [REDACTED]; Social Worker at the Day School; [REDACTED], Director for [REDACTED]; [REDACTED], mother of Student; Student; [REDACTED], Director and Co-founder of [REDACTED], M.D., Student's psychiatrist; [REDACTED] Educational Director of [REDACTED]; [REDACTED] Therapeutic Manager of the Day School; [REDACTED] Placement Coordinator Administrator for the District; and [REDACTED] Case Manager at the District.

Issues Presented

The Parent believes the following are at issue:

- a) [REDACTED] did not provide a free and appropriate education during the period from January, 2008 through the present time based on:
 - i. Failure to develop an effective functional behavior analysis and behavior intervention plan for the student following discharge from [REDACTED];
 - ii. Failure to offer a placement in a private therapeutic day school that offered a therapeutic milieu that was appropriate for the student to make reasonable academic, social, developmental and functional progress.

Relief Sought

The Parent seeks the following relief:

- a. Private therapeutic day school placement at the School [REDACTED] at public expense;
- b. Direct that [REDACTED] reimburse student for tuition and transportation expenses incurred following unilateral placement at [REDACTED] in April 2008;
- c. Direct [REDACTED] to provide compensatory education services in the form of an additional 30 minutes per week psychological counseling for one year;
- d. Direct [REDACTED] to convene an IEP meeting that will implement the foregoing relief; and
- e. Other relief that will be determined after the receipt of additional school records.

Finding of Fact

The Student is a male 16 year old with a birth date of [REDACTED] and completed his sophomore year of high school.

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

The Student's parents are his maternal grandmother and step grandfather, who adopted the Student. His mother has sole custodial rights of the student.

The Student first enrolled at [REDACTED] on June 23, 2004. The placement was made upon settlement of a previous due process hearing request. He had previously attended [REDACTED] a public school in the District. While at [REDACTED], the Student exhibited disruptive and uncooperative behavior. He felt he was being teased mercilessly; he had significant losses in his personal life. It was determined that a small academic setting with a clinical approach would benefit the Student (P. Ex. 308). His current diagnosis is depression in which he receives daily prescribed medication. (P. Ex. 075, 225). His last triennial evaluation was conducted in the fall of 2006. (P. Ex. 224). In his last psychological evaluation October 6, 2006, the school psychologist, [REDACTED], summarized his cognitive ability in the low average to average range with working memory skills and visual processing speed within the same range. He academically earns scores commensurate with his cognitive ability (P. Ex. 230). She also noted that when comparing the parent's rating and teacher's rating on the behavior rating scale, there were commonalities in the Student. He threatens/bullies others and is often easily annoyed by others, he has significant difficulties in the areas of emotional self-control (loses temper easily, easily upset, poor self-control) and negative emotionality (easily upset, stubborn, argues, upset when plans are changed). Both also expressed concern with adaptability (difficulty adapting to change in plan), anger control (stubborn, argues when denied own way), executive functioning (uses foul language, easily upset, changes mood quickly) and resiliency (easily upset and annoyed by others). She also noted that the parent reported depression, statements that he has no friends and wants to kill himself, and cruelty to animals. (P. Ex. 230)

In his report card for the first quarter of the 2007 school year, he received mainly B's with two A's and an F in math. (P. Ex. 262).

[REDACTED], a social worker and clinical Director of [REDACTED], testified. Her testimony was helpful. She offered insight into the Student's behavior at [REDACTED]. She stated that the Student's behavior deteriorated in his transition to the high school program and that this year was especially difficult. During the December 11, 2008 IEP the school and his family had many concerns. The Student exhibited major trust issues; he had difficulty seeing his role in problems; he used the AIM (time out) room to avoid classes. (P. Ex. 001). She stated that the Student was not using art therapy effectively and his relationship with his psychiatrist was of more benefit to him. The progress report of November 2007 which shows that the Student was not meeting his art therapy goals with corroborates her statement (P. Ex. 226-267). On January 31, 2008, [REDACTED] sent the Parent a letter indicating that it would be terminating its contract with the

District in thirty days due to the Student's third incident report (P. Ex. 380, 381, SD. Ex. 228). The final action which precipitated the letter was a statement by the Student that he drop kick another student. The other incidents were an IM (Instant Messaging) threat made on October 11, 2007 (SD. Ex. 216) and on October 31, 2007 where he stated he would bite another student's ear off (SD. Ex. 224). Ms. [REDACTED] stated that the Student has a history of making intimidating statements to others. The Student did not want to be at [REDACTED] and that he felt as if he was leaving anyway. The staff at [REDACTED] was concerned that the Student was acting in a manner that would require restraint. [REDACTED] tried to make the Student understand that he was intimidating other students, however, the Student would respond that he was joking. The staff tried everything in its current setting but felt they could not meet the Student's needs. She stated he demonstrated uncooperativeness regarding school rules.

[REDACTED] a social worker the [REDACTED], the District's proposed placement, testified. She presented as a credible witness. She stated that the [REDACTED] serviced emotional and behaviorally disabled students and that the [REDACTED] did not exclude based on certain behaviors. She did not state any knowledge as to students who had probation officers or conduct disorders. The [REDACTED] implements physical restraint when a student is a danger to himself or others. The school also implements a time out room. Some of the students are from juvenile detention. She reviewed the Student's last December 11, 2007 IEP along with the psychological assessments and other reports in his file. She stated that the [REDACTED] could implement the Student's IEP. She stated that the program has three social workers, a crisis management team, case managers and along with individual therapy, group therapy. She stated that the behavior modifications used are individualized to each student. The program does not have a gym, but one is available down the street. They have a basketball hoop. They have had an art program in the past but do not currently have one. The school may implement a program in the fall depending on the needs of the students. She recalls meeting the Parent and Student and states they stayed for fifteen minutes and then the Parent stated she needed to leave. [REDACTED] stated that intakes usually last longer. After reviewing the Student's IEP and Functional Behavior Analysis (SD. Ex. 164-196, 188), she stated that the Student's behavior was similar to the behavior of the other students at the [REDACTED]. She stated that the [REDACTED] has zero tolerance for gangs and she is not aware of any gang problems at the school.

[REDACTED], the Director at the [REDACTED] testified. He is Student's art therapist, testified. At [REDACTED], the Student engages in art therapy and participates in storytelling, drama, and creative arts therapy. His testimony corroborated the Student's experience at [REDACTED]. He has known the Student since August of 2005. He has seen him weekly, summers and holidays. He stated that the Student had difficulty expressing himself verbally; he was working on his ability to socialize, advocate for himself and work on his relationship with his family. He stated that he was aware that the Student was

unhappy [REDACTED]. He was not aware that [REDACTED] had advised the Student in January that they were terminating the Student's services. He stated that the Parent first contacted him in March for placement options. He was not aware that the District had offered the Student two programs. He acknowledged during testimony that he was unfamiliar with the [REDACTED]. He was only able to testify from knowledge to a brochure that he was given by the Parent's attorney. His knowledge base is not sufficient to form an opinion as to the appropriateness of the [REDACTED] for the Student.

The Student's mother testified. She presents herself as being very intelligent, friendly and familiar with the due process procedures. She is a disabilities specialist at the Attorney General's Office. She is the Student's biological grandmother however she and the step-grandfather adopted the Student. Both the Student's parents are divorced and it appears that the mother has primary responsibility to determine the Student's education; however, the father is very active and involved with the Student. Despite an illness, he was present on all days of the hearing. Both Parents present themselves as very loving and nurturing parents. They have actively engaged the Student in performing arts as an outlet; in addition to [REDACTED] he takes guitar and voice lessons. The Mother expressed that the Student has experienced significant losses, his biological mother died and his parents are divorced. His father also has significant health issues. She stated that she was in agreement to the statement made by [REDACTED] on June 12, 2007 that the Student had regressed in functioning (P. Ex. 360). She stated that she participated in the December 11, 2007 IEP and that the IEP accurately reflects her concerns that the Student's depression and anxiety have increased; he does not participate in any after school programs; he continues to express himself; he has a lot of anger; he is mouthy at home and locks himself up; he wants to leave [REDACTED], and blames his mom for not leaving; he tends to fixate on things and lacks coping skills to think things through; and he does not have a realistic view of work or the real world. (P. Ex. 003). The IEP notes that the Parent's idea for enhancing the Student's education is to develop coping skills and anger management and increase interpersonal skills (P. Ex. 003). When she received the notice of termination from [REDACTED] she contacted [REDACTED] from the District to discuss her concerns that the Student did not receive a hearing, and to determine placement. She received a call from [REDACTED] who gave her a school to visit, [REDACTED]. After visiting the District's first recommended placement, the Mother stated that the school was on lock down. She stated that she thought the school was more restrictive and she thought the Student needed a less restrictive environment. She said the Student seemed anxious when he observed the school. She called the District and advised them that she would not accept the school and the District provided her with the name of another program, at the [REDACTED]. She stated that she was concerned with the severe behavioral disabilities of the [REDACTED] students. She was also concerned that the [REDACTED] used physical restraint and that there was no art program. After contacting [REDACTED], he recommended the [REDACTED] in [REDACTED], Illinois. She stated that at [REDACTED], the Student is doing well, engaged in sports

and theater. His behavior at home was okay and that she was not aware of any disciplinary issues at [REDACTED].

The Student's testimony in particular was of interest. He presents himself as very personable and was cooperative in the process. He stated that when he first visited the other programs, his impression was neutral. He had heard from his therapist and [REDACTED] that [REDACTED] was not appropriate and that they used restraint as a method of behavior modification which would not be appropriate for him. During testimony from the [REDACTED], the Student did not seem to have a significant opinion against the program. He also stated that when he first went to visit [REDACTED] his impression was neutral. He liked the activities at [REDACTED] such as basketball, football and sports. After prompting from his attorney, he stated that he like the arts programs too.

[REDACTED], Director and co-founder of [REDACTED], testified. She stated that [REDACTED] has 80 students encompassing ED, secondary LD, autism, OHI. Most of the students have ED. The school uses crisis intervention to manage behavior. The school uses physical restraints; it does not have a time out room. It uses a point and level system. She also stated that the Student needs a more restrictive environment. She was asked many questions in regards to the District's proposed program the [REDACTED], but admitted that she has no firsthand knowledge about the program at the [REDACTED]. She stated she briefly visited the [REDACTED] six years ago. Because of her limited knowledge of the [REDACTED] [REDACTED] she does not have the ability to form an opinion as to its program.

[REDACTED], the Student's psychiatrist, testified that he started seeing the Student in February, 2008. He has seen the Student four to five times. He stated that the Student had a diagnosis of major Depressive disorder (moderate) and anxiety disorder NOS. He stated that he has no direct knowledge of the [REDACTED] and that he called the front desk to obtain information. In a letter submitted by the Parent on March 28, 2008, [REDACTED] states that he is familiar with the [REDACTED] from experience. (SD Ex. 258). During his testimony it is very apparent that [REDACTED] has no firsthand knowledge of the [REDACTED] or its programs and is unable to give credible testimony regarding the program. He stated that he did not discuss [REDACTED] with the Parent of Student. He also relayed information regarding the Student previously trying to harm himself with a knife which resulted in hospitalization. He did express his concern for the Student as possible confrontation if he is subject to physical restraint or aggression.

[REDACTED], the Director of [REDACTED] testified. She stated that the Student was personable, polite, a good student, but he has difficulty with peer relations. His behavior has changed over the last three years; he has become more oppositional and his peer relationships have become problematic. He has been unable to accept direction; he was not willing to see his part in the way he was making other students feel. He threatened a student and the student felt

unsafe with him. She stated that the staff thoroughly investigated the reports of misconduct. When an incident takes place, it is brought to the attention of the administration, all parties are interviewed and the parent is contacted. She stated that the Student was not using his art therapy effectively, the Student was resistant to suggestion for improvement, he displayed oppositional behavior, he would follow teaches directions, he had difficulty with peer relations and students started feeling unsafe with him. He also stapled his are in October, 2007 causing self injury. During the December 11, 2007 IEP meeting a new behavior management plan was created (P. Ex. 026). [REDACTED] testified to the handling of an incident of bullying reported by the Student, his dissatisfaction with his homeroom and P.E. group (SD. Ex 242). [REDACTED] switched his homeroom and PE class.

[REDACTED] the Therapeutic Manager of the [REDACTED], testified. She stated that the [REDACTED] implements programs dependant on the nature of their student body, which changes from year to year. She stated that the [REDACTED] implements behavior modification points and a level system. She stated that the [REDACTED] plans to initiate in the fall a positive behavior intervention and support system (PBIS). [REDACTED] is working with the school to implement the program. She testified to the creative outlets program; electives that the students may partake such as African Dance, cooking, youth speak (poetry-rap expression), computer programs and yearbook. The students also have the opportunity to engage in vocational education; students research jobs, visit employers, visit schools and colleges. The school will have a fulltime art or music teacher in the fall. The school offers family therapy as well as individual therapy. Art would be used if it was determined as needed in the IEP. The goal of the school is to reintegrate the students back to their home schools.

[REDACTED] testified. She is the Placement Coordinator Administrator for the District. She also coordinates the high school transcripts. She first received the Student's file on February 14, 2008 for placement. She stated the Student's placement was treated as a transfer, not a change in placement. It was a transfer to one therapeutic program to another. She reviewed the Student's file including his IEP, and records, reading assessment, psychological, social work and related services reports. She determined that [REDACTED] would fit those needs and was within close proximity to the Student's home and could address the requirements of his IEP. She stated that she was familiar with the program and that she thought it would a very good placement for the Student because of its strong art program, which included a Golden Apple Award winning art teacher. The Parent contacted her and advised her that she would not accept the school because the students did not have the same type of disabilities. [REDACTED] advised the mother that it had students with the same disability and could implement the IEP. She gave the mother the name of another placement, the [REDACTED]. She sent the packet to the [REDACTED] which said it would be happy to have the Student. [REDACTED] set up the bus services (P. Ex. 382) because she wanted to ensure that the Student did not miss more school. The Parent rejected the program and

asked her to consider [REDACTED]. After reviewing whether it was on the State approval list, she determined that the location was too far, in Lombard, and that she was not familiar with its curriculum or program. She also stated that she observed that the Student's received art in the [REDACTED] program as she reviewed the transcripts of [REDACTED] students and that they receive art credit.

[REDACTED], the Student's case manager, testified. She was responsible for monitoring the Student's IEP and being a liaison between the District and the Student's private school. She attended the Student's last two IEP meetings. She noted that the Student was doing okay academically but he was non-compliant. When she received the letter from [REDACTED] dated January 31, 2008, she put a packet together which included the Student's most current IEP, 3 year evaluation, assessments, status information medical reports and report card. She stated that there is not protocol to conduct an IEP meeting if a private school terminates services, unless a parent requests it. She stated that the parent did not request an IEP meeting verbally or in writing. She did say that she was in frequent contact with the Parent. She stated that after the Parent received the 30 day notice, the Parent did not send the Student back to [REDACTED] nor did she meet with the school as requested in the January 2008 letter. [REDACTED] offered therapy; however, the parent was not receptive.

In rebuttal the Parent testified that she had indeed asked for an IEP meeting by email and by telephone. However, she did not include the email transmission with her evidence packet and it was not allowed as a submission of evidence.

Conclusions of law

Both parties agree that the Student needs a private placement. However their dispute is over the particular private school, and a whether the District's proposed placements are appropriate. The Parent contends that the District has failed to offer an appropriate placement and thus her unilateral placement of the Student in [REDACTED] is justified. She has rejected the District's programs based on the disabilities of the student population, stating that they have behavioral disabilities which may lead to physical aggression, method of behavior modification such as the use of restraints, and her belief that do not have the ability to provide art therapy, the [REDACTED] did not have an art program for the 2007-2008 school year. She also contends that the District failed to develop an IEP and conduct a functional behavior analysis.

Burden of Proof

In a due process hearing, the party commencing the action bears the burden of persuasion in demonstrating that the District's IEP is inappropriate and that their placement is appropriate. *Schaeffer v. Weast*, 546 U.S. 49, at 57-58 (2005). 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).

Free Appropriate Education

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.

Procedural Requirements

The Parent contends that the District denied procedural protection under IDEIA in failing to have a hearing to determine the appropriateness of the termination of ██████'s contract with the District, failing to conduct a functional behavior assessment when the Student was suspended in January 2008, and failing to have an IEP due to change in placement and due to parental request.

Upon review of the evidence, the District nor ██████ is required to have a hearing to determine termination of their contract. While the Student was suspended for 10 days, he was welcome to return to ██████ for the remainder of the thirty days period. The staff at ██████ also offered to meet with the Parent. The Parent chose not to return the Student. The offense which led to the termination was the Student's third offense. The evidence provided establishes that the school had strict rules which the Student did not take seriously. The staff at ██████ testified that other students felt that they were unsafe with the Student. The Student was unhappy with his placement at ██████ and the staff did not use restraints, which they felt may be needed due to the Student's verbally aggressive behavior and infliction of harm upon himself. The Student also has a disregard for the school's policies regarding verbal threats whether made in jest or seriously. ██████ stated that the Student's behavior had worsened over the three years and was not typical of the student body. She also stated that the school rarely terminates its services to a student. This statement is significant because it demonstrates the level of the Student's behavior is more severe.

The Parent states the District failed to conduct a functional behavior analysis. Congress specifically removed from IDEIA the requirement to conduct a functional behavioral assessment or review and modify an existing behavioral intervention plan for all children within 10 days of a disciplinary removal, regardless of whether the behavior was a manifestation or not. Whether the facts support that the Student was "removed" from his program and a change of placement occurred will be discussed further. The District's functional behavior

analysis of December 11, 2007 (P. Ex. 025) also addressed the behavior that the Student was exhibiting.

A new IEP is warranted if there is a change in placement. Courts use a case-by-case analysis to determine such a change. In order to determine whether there is a change of placement courts look to see whether change materially or substantially alters a student's program, is the IEP being revised concurrently, will the student be educated with nondisabled peers to the same extent; will the student have the same opportunities to participate in extracurricular and nonacademic services; and is the new location is the same option on the continuum of alternative placements. *Letter to Fisher*, 21 IDELR 992 (OSEP 1994); *Letter to Green*, 22 IDELR 639 (OSEP 1995).

Changes in methodology are not considered to be changes in educational placement or programming. Generally, if an item need not be addressed in an IEP, then it is not considered an item of educational programming or placement for purposes of triggering procedural safeguards. *Tuscaloosa County Bd. of Educ.*, 21 IDELR 826 (SEA AL 1994); *Granite Sch. Dist.*, 19 IDELR 402 (SEA UT 1992). The Parent takes issue as to the available programs at the District offered programs and the fact that both use restraints. The last IEP developed for the Student does not prohibit physical restraints. Both programs offered by the District have stated their ability to implement the Student's IEP. The Parent is concerned with the art therapy component, but no credible evidence was offered which would indicate that either of these programs were not able to offer this service.

In considering changes of placement of a publicly placed student from one private school to another, courts looked to determine whether there is a change simply in location or if the change includes a change in programming that would substantially or materially alter the student's current educational program. If the change is only a change in location and the student's most recent IEP was developed within the last 12 months, then the district is not required to hold an IEP meeting prior to implementing the change. Changes in programming do warrant an IEP meeting. However, if the district believes that an IEP meeting is necessary to ensure effective implementation of the existing IEP, it may choose to hold one before the change takes place. *Letter to Green*, 22 IDELR 639 (OSEP 1995). See, e.g., *City of Chicago Sch. Dist. No. 299*, Cook County, 21 IDELR 889 (SEA IL 1994) (district not required to convene an IEP meeting to consider the transfer of a 15-year-old student with severe mental retardation from one private school to another where transfer involved the implementation an existing, valid IEP in the new facility).

An IEP was developed on December 11, 2007. At this time the Student had already exhibited the behavior which lead [REDACTED] to give the Student a 30 day notice. The IEP as developed remains intact and the finding of a therapeutic day program remains. Educational Placement, as used in IDEIA, means educational program-not the particular institution where that program is implemented. Eg.,

Sherri A.D. v. Kirby, 975 F.2d 193 (5th Circuit, 1992) ("educational placement" not a place, but program of services); *Weil v. Board of Elem. & Secondary Educ.*, 931 F.2d 1069 (5th Cir. 1991).

The Parent also states that she requested an IEP in February, 2008. However, the evidence as presented to the hearing officer is inconclusive as to whether the Parent made such a request. Furthermore, the evidence supports that the IEP conducted in December of 2007 adequately addressed the Student's needs, as he had exhibited the types of behavior which subsequently lead to [REDACTED] termination prior to that IEP meeting along with his depression. The December 11, 2008 IEP addressed the District's and Parent's concerns with regards to the Student's threatening behavior and persuasive depression and a functional behavior assessment and behavior management plan was developed.

Does The IEP Confer an Educational Benefit

As to the second prong of the *Rowley* test, the District provided the Student with an appropriate IEP in December 11, 2008. The Parent was able to fully participate in developing the IEP and it was determined in that IEP that the Student needed to be placed in a therapeutic setting.

A school district offers a FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction" (*Rowley*, 458 U.S. at 203). However, the "IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP" (*Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 130 [2d Cir. 1998]; see *Rowley*, 458 U.S. at 189). The statute ensures an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents" (*Walczak*, 142 F.3d at 132, quoting *Tucker v. Bay Shore Union Free Sch. Dist.*, 873 F.2d 563, 567 [2d Cir. 1989] [citations omitted]; see *Grim*, 346 F.3d at 379). Additionally, school districts are not required to "maximize" the potential of students with disabilities (*Rowley*, 458 U.S. at 189, 199; *Grim*, 346 F.3d at 379; *Walczak*, 142 F.3d at 132). Nonetheless, a school district must provide "an IEP that is 'likely to produce progress, not regression,' and ... affords the student with an opportunity greater than mere 'trivial advancement'" (*Cerra*, 427 F.3d at 195, quoting *Walczak*, 142 F.3d at 130 [citations omitted]; see *Perricelli*, 2007 WL 465211). The IEP must be "reasonably calculated to provide some 'meaningful' benefit" (*Mrs. B. v. Milford Bd. of Educ.*, 103 F.3d 1114, 1120 [2d Cir. 1997]; see *Rowley*, 458 U.S. at 192).

The District is not required to maximize the Student's potential, however, the program at the [REDACTED] seems to be very appropriate.

The 8th 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 (8th Cir. 2006) citing *Blackman v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, at 658 (8th Cir. 1999). Parents, no matter how well motivated, do not have a right under [the IDEA] to compel a school district to provide a specific program or employ a specific methodology in providing for the education of their handicapped child," *cert. denied Rowley* 488 U.S. 925, 109 S.Ct. 308, 102 L.Ed.2d 327 (1988).

While [REDACTED] appears to be a wonderful program, the Parent has not met her burden in showing that the District's IEP is inappropriate or that the placements as proposed by the District are not appropriate. None of the Parent's witness could testify with actual knowledge as to the inappropriateness of the programs. The Parent is concerned that the [REDACTED] harbors students who are in the legal system, uses restraint, and does not have art therapy. No evidence corroborates that the student body would affect the ability of the school to provide an appropriate education. The District has the ability to choose the methodology implemented such as restraint and a point system and in fact, [REDACTED] also uses restraint and a point system. The [REDACTED] stated that it could implement the IEP, which means it must honor the art therapy component.

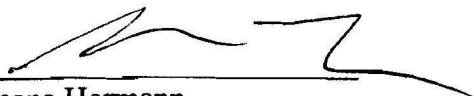
In determining whether parents are entitled to reimbursement for their unilateral placement, the Supreme Court established a two prong test. 1) was the IEP proposed by the school district inappropriate; 2) was the private placement appropriate to meet the child's needs. *Burlington v. Dep't of Educ.*, 471 U.S. 359 at 370 (1985). In this case, the Parent has failed to prove that the District's proposed placements are inappropriate and is not entitled to reimbursement.

The Parent's request for reimbursement and placement at [REDACTED] is understandable, but is just not supported by the facts of the case or by law. Although [REDACTED] terminated its contract with the District to provide services to the Student, this did not change the placement determination as made on the December 11, 2007 IEP, (the Student had exhibited the behaviors of concern when the IEP was created), and thus did not require an additional IEP meeting. The District is allowed to choose the location that it will provide services and unless the Parent can show that those programs are inappropriate, a finding must be made in favor of the District.

IT IS HEREBY ORDERED:

1. The Parent's request for relief is denied;
2. The District is the prevailing party; and
3. The District need not take any further action.

ENTERED THIS 1st DAY OF August, 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 the attorney for the Parent (7007 2560 0000 7376 2853) and the attorney for the District (7006 0810 0002 1560 2022) 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 (0054044) next day mail to Illinois State Board of Education before 5:00 p.m. on August 1, 2008.