

Case Number: 2009-0039

[Redacted]

Hearing Officer: Joseph P. Senka

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

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### Impartial Due Process Hearing Decision Cover Page

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District Name  
Superintendent  
Address  
Represented by

[Redacted]

Phone:

[Redacted]

Parent Name  
Address  
Represented by

[Redacted]

**Date and Timelines**

Date of Written Request: 08/11/2008  
Date of Pre-hearing Conf: 09/26/2008

Date of Hearing: 10/22/2008 to 10/22/2008  
12:00:00 AM  
Date of Decision: 11/02/2008

**Summary of Decision:** Student's Parents filed a due process complaint requesting that Student be mainstreamed in the main district school. The Parents also requested that the hearing officer: (1) end harassment of the student; (2) enforce a mediation agreement; (3) punish the school district for making unreasonable settlement offers; (4) insure that District staff were properly qualified. Student's Parents also claimed that the procedural aspects of placing the Student were tainted by animus against Student's Parents and that Student's Parents did not give informed consent to the placement. The Hearing officer found that the Student's Placement is the least restrictive environment appropriate, that the Student's Parents gave informed consent to the placement, that the District was not animated by animus against the Parents in placing Student, and that, to the extent the other issues did not relate to the placement or provision of services, the Hearing Officer had no authority to adjudicate the Parents' grievances.

The District was represented by counsel. The Parents proceeded *pro se*.

The Parents initiated the hearing request.

ILLINOIS STATE BOARD OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING

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SPECIAL EDUCATION  
SERVICES

IN THE MATTER OF

[REDACTED]

v.

Egyptian CUSD 5

)  
) ISBE CASE NO. 2009-0039  
)  
) Joseph P. Selbka  
) Impartial Due Process  
) Hearing Officer

HEARING DECISION, OPINION AND ORDER

TO:

[REDACTED]

[REDACTED]

Ms. Mary Long  
Illinois State Board of Education  
100 North First Street  
Springfield, IL 62777-0001

[REDACTED]

[REDACTED]

This matter comes before Us pursuant to the hearing request of Student's parent, [REDACTED] ("Student's Father"), on behalf of his daughter, [REDACTED] ("Student") against [REDACTED] ("School District"). We have jurisdiction to hear this matter pursuant to 105 ILCS 5/14-8.02(a) *et seq.* and 23 Ill.Admin.Code 226.000 *et seq.*

I. Procedural History

Student's Father filed a due process hearing complaint, *pro se*, on August 11, 2008, and has represented his daughter throughout the hearing. Counsel for the school district moved to dismiss the complaint which was denied on September 29, 2008. The District has been represented by [REDACTED]. The hearing occurred at the School District office on October 13 and 14, 2008, and was continued until October 22, 2008, to allow the parties to file briefs in lieu of closing statements. The Due Process Complaint makes three allegations: (1) that Student should be placed in the School District's main school full time; (2) that Student should have full time aides, a quiet room, and be free of harassment in the School District's main school; and (3) that We enforce a mediation agreement between the School District and Student's Parents. The District additionally filed two motions to strike requests by Student's Father to correct a number of alleged failings of the School District which was granted in part and denied in part.

## **II. Issues Identified and Remedies Requested**

1) Whether the District complied with the procedural requirements of the state and federal special education laws. Student's Father contends that: (a) the procedures which led to Student's placement were tainted by animus from School District personnel against Student's Father and a desire by School District personnel to be rid of Student; (b) the School District failed to obtain informed consent from Student's Father prior to implementing Student's current placement. As to issue b regarding procedures, We will have to determine whether this issue was waived.

2) Whether Student's current placement provides Student with a Free Appropriate Public Education ("FAPE") in the Least Restrictive Environment possible ("LRE").

3) Whether the District violated a mediation agreement entered into on May 19, 2008, and relatedly, whether We have jurisdiction to decide this issue.

4) Whether we have the authority to enter a remedy against the District for failing to settle this case on reasonable terms.

5) Whether the District violated state and federal special education laws in regard to discipline of Student, and relatedly, whether this issue was waived

6) Whether the District has properly trained staff—including bus drivers, aides, social workers, and teachers, and relatedly, whether We have jurisdiction to decide this issue.

7) Whether we have jurisdiction to rule upon Student's Parents other grievances.

## **III. Findings of Fact**

### **Student's History up to Her Fifth Grade Year**

1. Student is a Fifth Grader. She was referred for special education and related services in October, 2004 (S-1). She was determined eligible for special education and related services in January, 2005, while she was in first grade (Tr. 370). At the time, Student's Parents stated that Student had been diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD") and Bipolar Disorder (S-4). Student's initial eligibility determination was emotionally disturbed. Student's Individual Educational Program Team ("IEP"/"IEP Team") met for the first time on or about January 18, 2005 (S-4). Student's initial placement was in a regular education classroom with an aide (S-4). Student also had a shortened school day (S-4). Student had behavioral difficulties in a regular education classroom (S-4). Specifically, Student struggled with listening, attending class, interacting with peers, and remaining seated (S-4).

2. In August, 2005, Student's IEP team reviewed her placement for second grade. Student visited a psychiatrist, [REDACTED] every month (S-7, Tr. 371). [REDACTED] believed Student could participate in recess and physical education (P.E.) as long as she wasn't confrontational or overwhelmed (S-7). Student remained in the regular class room (Tr. 373). However, when Student demonstrated inappropriate behaviors of sufficient severity, she would be removed from the regular classroom to a special education cross-categorical class room (Tr. 373-374). Student would also work with [REDACTED] (then the principal) or [REDACTED] (a special education teacher), on alternate behaviors (S-7, Tr. 373). Student continued on a shortened school day (Tr. 373). Student's placement and behavior intervention plan remained the same in her third grade year (Tr. 377-378).

3. In October, 2006, the IEP Team met again (S-10, Tr. 378). Student's behaviors had escalated beyond usual tantrums, and Student's outbursts had become violent (S-10, Tr. 380). Student's classmates had to be evacuated during Student's outbursts (Tr. 380). At home, during one of her outbursts, Student chased her mother and brother around the house with a knife (S-10). Student physically assaulted her teachers (S-10). Student was also missing a great deal of class (including two complete subjects) by having to leave school early for emotional reasons (S-10). In October, 2006, the IEP Team discussed the possibility of alternative placements (S-10, Tr. 379-380). Student's Father did not want an alternative placement and also did not believe that Student had any emotional problems (S-10). The IEP Team meeting was convened, in part, because School District Personnel were required to escalate their use of crisis prevention intervention ("CPI") because of her outbursts (Tr. 379).

4. In November, 2007, the IEP Team met again. Student's behavior prevented her from succeeding in the general classroom (S-12). Student's behavioral problems put her at risk of hurting herself and other students (S-13, Tr. 291, 381). On a nearly daily basis, Student exhibited one or more of the following behaviors, Student: kicked classmates, threw pencils at classmates, turned over bookcases, talked of doing harm to herself or classmates, ran out of the classroom, beat on desks, kicked desks, cried about wanting to go home, made health complaints without basis (S-13). For the remainder of her fourth grade year, Student placement was changed to the School District's cross-categorical special education classroom (Tr. 381-382). Student's Father agreed with the new placement (S-12, Tr. 381-382).

5. Student's placement in the special education cross categorical class room had an initial beneficial effect on Student by reducing the number of her outbursts (Tr. 256-257). However, as the school year progressed, Student was having the same number, if not more emotional outbursts as when she was placed in the regular classroom (Tr. 257).

6. Student had great difficulty coping with the special education classroom (Tr. 244-245). Student would try to hit staff, would throw things in the classroom, throw things at other students, kick, and scream (Tr. 244-245). Student also acted out at home (Tr. 183-185). Student had to be removed from class often (Tr. 249). On April 1, 2008, the rest of the IEP Team informed Student's Father that every placement at the School District's main school had failed, and that the IEP Team had to consider an alternative placement

(Tr. 382). The special education classroom also had several other students who could not protect themselves if Student became violent during one of her outbursts (Tr. 248).

7. In April, 2008, the IEP Team met twice in response to Student's behaviors escalating further (Tr. 382-383).

8. On April 2, 2008, Student had an outburst where she: struck and kicked a teacher's aide several times causing bruises; threatened suicide; bit her wrist and forearm several times; and tried to scratch herself (S-16). See also Tr. 293-294.

9. In April, 2008, Student had an outburst where she: threatened to stab herself; to knock her own brains out; to cut her own fingers off (Tr. 294). The School District contacted "SASS", the State agency which determines whether individuals are dangerous to themselves or others (Tr. 294). Student was hospitalized after this incident (Tr. 295). Student's Father admits that Student has threatened suicide and struck people during her outbursts (Tr. 37, 75)

10. On April 7, 2008, The IEP Team decided on a placement at [REDACTED] a school supported by the [REDACTED] which serves the School District (Tr. 383-384). [REDACTED] is designed for emotionally disturbed students who cannot be placed at their school districts (Tr. 383). Student's Father consented to the placement (Tr. 45).

11. Student's Parents claim that they were unaware of their rights regarding Student's current placement at [REDACTED], and that Student's Father's consent to her placement at [REDACTED] was not knowing and voluntary. Student's Parents claim that they were coerced through a threat of a forty-five day alternative placement. Student's Parents claim that they were told that the District could undertake the placement at the District's sole discretion rather than through a due process hearing. Student's Parents claim that they would have never consented to Student's Placement at [REDACTED] if they had known the actual procedures for the School district to obtain an AES for Student.

This issue of consent was never presented at the prehearing conference or in Student's due process complaint. Moreover, Student's Parents received the portion of "Explanation of Procedural Safeguards" related to alternative placements on March 20, 2008 (S-15, P-6). Page 3 of the "Explanation of Procedural Safeguards" clearly sets out how the District could obtain a 45 day alternative education setting ("AES") (through a due process hearing (see P-6, pg. 3). The written consent of placement signed by Student's Father informed Student's Parents to "Please review the parental rights information in the Explanation of Procedural Safeguards."(S-16). Student's Father also waited a week before agreeing to the placement and visited [REDACTED] prior to consenting to the placement.

12. In May, 2008, the parties reached a mediation agreement wherein the parties agreed to convene an IEP meeting prior to the beginning of the school year to reassess Student's placement and behavioral status in order to determine an appropriate placement for Student's fifth grade year. (P-3).

13. In Summer, 2008, Student was hospitalized due to the intensity of her behaviors (Tr. 107, S-18, P-10). Student's Father initiated the hospitalization (Tr. 107).

**Student's Current Placement (The Subject of this Due Process Hearing)**

14. In August, 2008, the IEP Team met and changed Student's placement so that Student would spend her mornings at the School District main school and her afternoons at [REDACTED] (Tr. 384). This is Student's current placement. Student is obtaining an educational benefit from the current placement and is doing well academically (Tr. 114, Tr. 181, Tr. 336). Student is doing the same academic work as other students in the District's regular classes (Tr. 114-115, 341-342). The current placement does not prevent Student from receiving a full day of school (Tr. 342-343). Student is entitled to go to PBIS parties and to go on field trips in the current placement through [REDACTED] (Tr. 314-315, 360). Student has at least one age appropriate peer at [REDACTED] (Tr. 347). This current placement was negotiated through a mediation mediated by the Illinois State Board of Education (P-4). There is no evidence that The IEP Team placed Student at [REDACTED] pursuant to the District's right to place a student for 10 days after violating school rules.

15. Student's Parents presented no evidence that the staff at [REDACTED] are incompetent or unqualified to do their jobs. Student's Parents have presented no evidence that [REDACTED] staff have done their job improperly in any way. Student's Parents have presented no expert testimony that Student has ever been restrained improperly. Student denied being restrained improperly at Grand Chain this year (Tr. 166-167).

16. Student's Parents have consistently advocated that Student is able to remain in the School District main school (either in the normal classroom or in the special education classroom) with some modifications (S-10, S-16). Student's Parents believe that Student can function in the main District School with: (1) a safe room which is devoid of anything which Student can use to hurt herself; (2) school district aides who can deescalate Student when triggers occur; (3) if School District personnel consistently prevented other Students and the school bus driver from harassing Student (Tr. 25, 27).

17. Student's Parents also contend that Student's new medication limits her outbursts and allows Student to behave properly so that Student is now able to attend the School District's main school (Tr. 31, 100, 107, 175-176). Student's Parents presented a treating physician's assistant, [REDACTED] who also testified that he believes Student's behaviors have modified considerably for the better (P-10, Tr. 141-142).

18. Student's Parents contend that, especially in light of Student's new medication, Student can attend the District main school if she receives the requested accommodations. Student's Parents believe that Student can now be deescalated with a properly trained aide who will intervene when "triggers" to outbursts present themselves

(Tr. 25-26). Student's Parents believe that harassment by staff and other Students are the triggers which cause Student's outbursts.

19. Student's Parents also contend that School District personnel are well aware that Student can be reintegrated into the District's main school, but are retaliating against Student for Student's Father's constant advocacy on behalf of Student (Tr. 90, 108).

20. Student's Parents also make the following claims regarding School Personnel: (1) the school bus driver is incompetent and does not drive safely; (2) the school bus driver treats Student unfairly and allows harassment of Student by other students which often triggers outbursts by Student; (3) school personnel, in restraining Student during her outbursts, cause physical harm to the Student; (4) that Student's aides are generally incompetent and do not do their jobs; and (5) the School District does not prevent bullying of Student on the bus and at school thus triggering further outbursts.

21. Student's Parents also finds Student's current placement wanting in the following ways: (1) Student does not receive physical education; (2) Student does not have any peers at [REDACTED]; (3) Student spends too much of the school day traveling; (4) the food at [REDACTED] is poor compared to the food at the main school; (5) Student misses out on field trips and "PBIS parties" at the main School District; (6) other students at [REDACTED] are a bad influence on Student; (7) Student must occasionally attend school at [REDACTED] when her peers at the School District main school are released early; (8) Student misses out on extracurricular activities at the District's main school.

22. School District personnel (from both the School District main school and [REDACTED]) tell a very different story regarding Student's current behavior. School District personnel contend that Student's behavior has not improved in this school year to the extent necessary to reintegrate Student into the District main school (Tr. 296).

23. School District personnel admit that Student's behavior at the main school (in the morning) is better than she last year (Tr. 264-265). However, Student's behavior deteriorates as the day progresses (Tr. 269, 302, 315-317). Student will often not act appropriately for the classroom by hopping around the class, having outbursts, refusing to work (Tr. 316). Student's behavior has deteriorated further as the school year has progressed (Tr. 317). Student, at best, can be described as having good days and bad days—and only acting appropriately 40-50% of the time (Tr. 297, 301-302).

24. On September 17, 2008, in response to the fact that students at the main school were let out early, Student had an outburst where she cried, threw her shoes, attempted to overturn furniture, tried to hit her teachers, disobeyed her teachers, pulled her hair and eyelashes and had to be restrained on multiple occasions (Tr. 320-324).

25. On September 29, 2008, Student had another outburst (Tr. 326-327). Student's teacher was unable to redirect Student toward work. Furthermore, Student: hooted and yelled during class, slapped herself, slammed textbooks, poked herself with spiral

notebook wires, slammed her table (Tr. 326-327). This behavior continued for forty-five minutes (Tr. 327).

26. On September 30, 2008, Student began her day visibly upset that the bus driver would not allow her to hug other students on the bus (Tr. 251). Student was upset, crying, crossing her arms, shouting, and using rapid speech (Tr. 261). When Student reached [REDACTED] in response to her two aides not cleaning up quickly enough at lunch, Student acted out by: slamming books; pushing tables into teaching assistants; slamming doors; poking at computer printers; jumping around the room; and kicking the classroom wall (Tr. 329-331). Student was then placed into an isolation room where Student banged her head on the floor; tried to scratch her face; pulled her own hair out; kicked a teacher in the head; attempted to break electrical sockets and an air conditioner, and was unable to communicate verbally (Tr. 161-162, 297-298, 331-332). This outburst lasted for two hours (Tr. 298). School personnel had to contact SASS again to evaluate whether Student was a danger to herself (Tr. 333).

27. Student's Parents presented no evidence to contradict District personnel testimony regarding Student's outbursts in September, 2008. Student only vaguely remembered the incidents and partially corroborated School District personnel (Tr. 161-167).

28. Members of the IEP Team who placed Student at [REDACTED] dispute that their actions were motivated by a desire to punish Student's Father. School District personnel contend that they placed Student at [REDACTED] because of her behaviors at the main school (Tr. 249, 293, 384).

29. School District personnel contend that Student's outbursts (this year) are triggered by a number of environmental factors including: being off- schedule, unresolved issues from home, unresolved issues from the main school, perceived unfairness, not getting her way, not wanting to continue with her work, frustration, having unstructured time, and being teased and bullied by her peers (Tr. 245-246, 299, 334).

30. Student is entitled to go on Field Trips at [REDACTED] and attend PBIS parties at [REDACTED] (Tr. 313). Student attends PE at the main school before leaving for [REDACTED] (Tr. 158). School District personnel also monitor Student's peers at [REDACTED] to insure that Student is not placed with individuals who could be dangerous to her (Tr. 315).

31. The School District also contends that Student might be ostracized if the nondisabled students at the main school observed Student's outbursts (Tr. 417-418).

32. At a meeting with School District personnel, the School District offered to increase the amount of time spent at the main school in exchange for dropping the due process request (Tr. 407-409). Student's Father rejected the offer.

33. There is no evidence in the record that Student's placement was influenced by a desire to punish Student's father or to get rid of Student because she is a problem Student.

34. There is currently no age-appropriate special education classroom at the District's main school which Student could attend (Tr. 424-425). [REDACTED] has personnel who specialize in dealing with children with behavior disorders (Tr. 295). [REDACTED] also has facilities necessary to deal with children who have emotionally disturbed labels Tr. 383-384).

35. Student is currently being taught coping strategies at [REDACTED] which are designed with the purpose of reintegrating her into the main school student body (Tr. 390). The School District's main building does not have the personnel or facilities to provide Student with the behavioral training provided at [REDACTED] (Tr. 265, 425).

36. Witnesses [REDACTED] are all credentialed specialists with experience in education and dealing with students with behavioral disorders. [REDACTED] has a bachelor's degree in psychology and a master's degree in social work (Tr. 241). She has also worked in a mental health agency and in the District's main school as social worker. [REDACTED] has a bachelor's degree and a master's degree in social work (Tr. 286-287). [REDACTED] has worked as a social worker for nineteen years and has worked for several years as a behavioral specialist dealing with different students and their behaviors (Tr. 286-288). [REDACTED] has a bachelor's degree in special education and a master's degree in educational administration. (Tr. 363). [REDACTED] was special education coordinator at the School District and is assistant director at the Special Education Cooperative to which the District belongs (Tr. 362-363). [REDACTED] is the Special Education Coordinator for the District and was a special education teacher for fifteen years prior to taking that position (Tr. 422-423).

37. Based upon (1) their personal observations of Student's behavior and outbursts over the course of her school career; (2) the School District's failed attempts to educate Student in the School District's regular education classroom and a special education classroom; (3) their knowledge of school facilities and classroom compositions; (4) their knowledge of educational personnel available at [REDACTED] and the School District main school; their concerns that Student might be ostracized for her outbursts and behavior if she is reintegrated into regular classes now; and (5) their professional training-- School District Witnesses have the following opinions. Witnesses [REDACTED] hold the opinion that Student cannot be educated in any of the School District's main building classrooms without endangering Student or other Students. Witnesses [REDACTED] also hold the opinion that Student's current placement is appropriate in light of Student's behavior. The School District personnel's opinion regarding Student's current placement is based on the following theory—at her current placement at [REDACTED] behavioral specialists are attempting to teach Student coping strategies to deal with the environmental triggers of her outbursts (and other behaviors). These coping strategies are designed to allow Student to control her behaviors and be reintegrated in the classroom (Tr. 390). Until

Student can cope with environmental triggers, Student cannot successfully be reintegrated in the classroom (Tr. 391).

**Inferences Drawn From the Facts Received at Hearing and Credibility Findings.**

After listening to the parties and weighing the evidence, We make the following credibility findings.

38. We find that there is no evidence other than Student's Father's conjecture that the School District personnel are acting in order to punish Student or her family. Based upon the testimony of School District personnel and the lack of evidence to the contrary, We make a credibility finding that School District personnel acted in good faith in determining Student's placement. We find that the School District personnel did not place Student at [REDACTED] and are not keeping Student at [REDACTED] out of personal animus against Student's Parents. We also make a credibility finding that the School District personnel placed Student at [REDACTED] out of concern for Student's education and well being and not because the District wanted to get rid of a problem student. We make a further credibility finding, based upon lack of any evidence to the contrary, that Student was never restrained improperly.

39. We make a further credibility finding that Student's outbursts and behavior at school in September and October, 2008, are extremely severe and as described by School District personnel in paragraphs 22-26.

40. We make a credibility finding that Student's Parents understood and Student's Father agreed in writing to Student's placement at [REDACTED]. We base our credibility finding on the fact that the Student's Parents were explained the special education process in writing, including the steps the District would have to take to change Student's placement without her parents' consent.

We also make the following inferences stemming from the facts determined at hearing:

41. Based upon the District personnel testimony of Student's outbursts and behavior in September, 2008, We find that Student's new medication has not tempered her behavior to the point where she is able to control her behaviors or deescalate on her own. Based upon District personnel testimony describing Student's outbursts and opinions of District personnel, We also find that School District personnel are not able to deescalate Student safely in classrooms full of children.

42. Moreover, based upon the testimony of District personnel regarding Student's outbursts and behavior, and District opinions, We find that Student's current behavior make her a danger to herself and others in a regular classroom or a special education classroom at the District's main school.

43. We find that based upon the credibility findings and factual inferences set out above, that the opinions of School District Personnel in Paragraph 37 of the Findings of

Fact are well founded and presented by qualified experts (to the extent the opinions are expert opinion). We therefore adopt the opinions set out in Paragraph 37 as inferences to be drawn from the facts relied upon by the District personnel in forming those opinions.

44. We also find that, based on the testimony of District personnel, that Student cannot be insulated from triggers in a regular classroom, on the bus, or anywhere in the main school. We find, based upon the testimony of District personnel (set out in Paragraph 29) that it would be impossible to insulate Student from the numerous triggers which occur on every school day.

45. We also find, based on the testimony and opinions of District personnel and Student's previous placement in the regular classroom, that neither school district aides nor anyone else could successfully deescalate Student in a regular classroom in the School District's main school without endangering Student and her classmates.

46. We also find that the construction of a safe room for Student would not be an effective accommodation because there is no evidence that Student would be able to maintain enough composure during her outbursts to make it to the safe room. Moreover, the District presented a great deal of testimony regarding Student's outbursts from which We infer the exact opposite—namely that Student is unable to control herself during her outbursts.

47. We also find that, even if such a safe room existed with enough school personnel to move Student to the safe room, Student would still be a danger to herself and others while she was transported to the safe room.

48. We also find that, if Student's outbursts were observed by her classmates in the Fifth Grade, Student could very well be ostracized. We also find that Student would obtain a limited benefit from having access to the main school extracurricular activities as her behavior deteriorates over the course of the day limiting her ability to take part in after-school activities.

49. We also find that, based upon the fact that Student is obtaining an educational benefit from her current placement, that the placement is designed to provide her with an educational benefit. We further find that Student has access to field trips and PBIS parties at [REDACTED]. We further find that Student is kept segregated from students at [REDACTED] who might harm her, and that Student has at least one peer at [REDACTED]. We find that Student has PE class. We find that the Parents' remaining grievances regarding the placement at [REDACTED] do not arise to a level where services to Student are affected and do not prevent Student from receiving an educational benefit from the placement.

50. We also find that there is no evidence the District ever imposed a 10 day placement as a result of Student failing to follow the School Code of Conduct.

#### **IV. Conclusions of Law**

### **Burden of Proof and The Authority of The Hearing Officer**

51. The Federal and State Special Education Laws are set out in the Individual with Disabilities Education Act, 20 U.S.C.A. 1400 *et seq.* ("IDEA") and Article 14 of the Illinois School Code, 105 ILCS 5/14-8.02a. In enacting IDEA, Congress intended to establish a "cooperative federalism." *Evans v. Evans*, 818 F.Supp.1215, 1223 (N.D. Ind. 1993). Thus, compliance with minimum standards set out by the federal act is necessary, but IDEA does not impose a nationally uniform approach to the education of children with a given disability. *Id.* Thus IDEA does not preempt state law if the state standards are more stringent than the federal minimums set by IDEA. *Id.*

52. In regard to the burden of proof in a special education proceeding, the Supreme Court has held that the ultimate burden of persuasion lies with the party filing the due process complaint. *Schaffer v. Weast* 546 U.S. 49 (2005). However, the Illinois School Code has placed a heightened burden on school districts. 105 ILCS 5/14-8.02a (g-55). In a due process proceeding, the school district has the initial burden of production to show that the special education needs of the student are identified and that the special education program and related services proposed are adequate, appropriate and available. *Id.*

53. In determining whether a placement is proper under IDEA and the School Code, the hearing officer does not need to defer to the school district witnesses. *School District of the Wisconsin Dells v. Z.S.*, 295 F.3d 671, 676 (7<sup>th</sup> Cir. 2002)(like Wisconsin ALJ's, Illinois Impartial Due Process Hearing Officers are presumed to be experts on special education law, see 105 ILCS 5/14-8.02c); *Board of Education of Murphysboro Community Unit School District No. 186 v. Illinois State Board of Education*, 41 F.3d 1162, 1167 (7<sup>th</sup> Cir. 1994)(hearing officer characterized as expert witness in determining whether placement is proper). However, any decision We make must be supported by substantial evidence. *Z.S.* 295 F.3d at 674-675.

54. Substantial evidence means relevant evidence that a reasonable mind might accept as adequate to support Our conclusions. *Frobes v. Barnhart*, 467 F.Supp.2d 808, 817 (N.D. Ill. 2006). Under federal administrative law, hearsay is admissible as long as it is relevant and material. *Otto v. Securities and Exchange Commission*, 253 F.3d 960, 966 (7<sup>th</sup> Cir. 2001). Expert opinions are admissible if the experts are considered qualified under a relaxed standard similar to the *Daubert* standard used in the federal courts. *Pasha v. Gonzalez*, 433 F.3d 530, 535 (7<sup>th</sup> Cir. 2005).

Moreover, hearing officers can make reasonable inferences from the evidence adduced at trial. However, like in all administrative adjudications, the inferences must be supported by facts proved or admitted. *National Labor Relations Board v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 814-815 (1990)(Scalia, j. dissenting). The inferences must be drawn from facts through a process of logical reasoning. *Id.* Thus, the hearing officer must draw an accurate and logical bridge between the evidence and result. *Frobes v. Barnhart, supra.* Similarly, to the extent We rely upon expert opinions, the expert opinions must be inferred ultimately from facts in the record. *Mid- State*

*Fertilizer Co. v. Exchange National Bank of Chicago*, 833 F.2d 1333, 1339-1340 (7<sup>th</sup> Cir. 1989)(in litigation, expert opinions must be grounded in facts and inferred from a process of logical reasoning).

55. Illinois law imposes an even more stringent standard on administrative hearings. In addition to the substantial evidence standard, Illinois law requires that administrative decisions be supported by “competent evidence.” Competent evidence is either: (1) evidence which would be admissible in a trial; or (2) inadmissible evidence of such a character which responsible persons are accustomed to rely upon said evidence in serious affairs (which We can only rely upon if admissible evidence is unavailable). *Starkey v. Civil Service Commission of the State of Illinois*, 105 Ill.App.3d 904, 910 (1<sup>st</sup> Dist. 1983) *rev'd on other grounds* 97 Ill.2d 91(1983).

**Standards for Deciding Whether the Student is Being Educated in the Least Restrictive Appropriate Environment**

56. Under IDEA, the School District has an obligation to educate Student to the greatest extent appropriate with her nondisabled peers. 20 U.S.C.A. 1412(a)(5)(A); *Board of Education of Township District No. 211 v. Ross*, 486 F.3d 267, 277 (7<sup>th</sup> Cir. 2007). Placements which require “special classes, separate schooling, or other removal of children with disabilities from the regular educational environment may occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” *Id.*

57. The Seventh Circuit has “declined to adopt any sort of multi-factor test for assessing whether a child may remain in a regular school.” *Ross, supra. See also Beth B. v. Van Clay*, 282 F.3d 493, 499 (7<sup>th</sup> Cir. 2002). The ultimate question is whether the education in the conventional school was satisfactory, and, if not, whether reasonable measures would have made it so.” *Id.*

In the present case, the School District violated IDEA by placing Student at Grand Chain: (1) if a placement for Student at the District’s main school was providing Student with a satisfactory education; or (2) if reasonable accommodations to Student could have been implemented to provide Student with a satisfactory education in a placement at the District’s main school. *Id.* Otherwise, the School District complied with the statute by placing Student at Grand Chain. *Id.*

In determining whether Student is receiving a satisfactory education, some factors which We use to evaluate the placement are: (1) whether a segregated placement is superior, and if so, whether the services which make the segregated placement superior can be replicated in the classroom, *Board of Education of Township No. 211 v. Michael R.*, 2005 WL 2008919 (N.D. Ill. 2005) citing *Roncker v. Walter*, 700 F.2d 1058 (6<sup>th</sup> Cir. 1983) *affirmed* 486 F.3d 267 (7<sup>th</sup> Cir. 2007); (2) whether there are educational benefits to mainstreaming, *Michael R. supra*, citing *Sacramento v. Rachel H. by Holland*, 14 F.3d 1398 (9<sup>th</sup> Cir. 1994); (3) whether there are non-academic benefits to mainstreaming, *Id.*; (4) whether there is an effect of mainstreaming on the regular classroom, *Id.*; (5) whether

there are other costs to the school district, *Id.*, See also *Z.S., supra*, 295 F.3d at 672.; (6) whether there is a danger that the student is in danger of causing physical harm to herself or other students in the regular classroom, 23 Ill.Admin.Code. 226.330; (7) whether the student is disruptive to her classmates in a regular education classroom. *Z.S., supra*, 295 F.3d at 672; *MR by RR v. Lincolnwood Board of Education District 74*, 843 F.Supp. 1236, 1238 (N.D. Ill. 1994) citing numerous cases.

58. There is no unconditional legal requirement that a district maintain a safe room under state or federal law.

59. Although there is a strong presumption in favor of mainstreaming a student in regular classes, a school district does not need to place a student in a regular classroom if the student would need a "living straitjacket" to attend a regular classroom.

60. There is no need to conduct a manifestation determination unless Student's placement was changed (for a ten day period) due to a violation of the School District's Code of Conduct. 34 CFR 300.530(e).

**Other Issues- The School Bus, Problems With Application of Restraint on Student, Conditions at Grand Chain, Harrassment by Other Students.**

61. Student's Parents have a number of other grievances regarding Student's treatment at the District's main school and regarding conditions at [REDACTED]. To the extent the Parents' grievances do not relate to Student's placement or receipt of services, We have no jurisdiction to adjudicate these types of grievances. *John A. v. Board of Education of Howard County*, 48 IDELR 133, 929 A.2d 136 (My. Ct. App. 2007). Moreover, as to the qualification of district staff, the only way such a grievance can be addressed is through a state complaint. 34 CFR 300.18(f).

**Settlement Negotiations Regarding Placement of Student.**

62. Student's Parents also claim that the District refused to change Student's placement unless the due process complaint was withdrawn pursuant to a settlement between the parties. Student's placement can not be changed except pursuant to a mutual settlement by the parties while the due process complaint is pending. 20 U.S.C.A. 1415(j). To the extent that the District refused to settle this matter, the general policy of courts (and echoed by the Federal IDEA Regulations) is to refuse to hear evidence on the offers or negotiations regarding settlement. See U.S.C. F. R. Ev. 408 (settlement proposals and negotiations inadmissible in federal courts); 34 CFR 300.506(b)(7) (settlement proposals and negotiations made during mediation not admissible in due process hearings); Cleary and Graham's Handbook of Illinois Evidence (7<sup>th</sup> Ed.1999) Sec. 408 (settlement offers inadmissible in Illinois courts). In light of the fact that settlement offers are inadmissible in legal proceedings, We conclude that the law provides no remedy for a school district offering unreasonable terms of settlement.

63. In Student's Due Process Complaint, Student claims the District violated a mediation agreement. We have no authority to enforce such an Agreement as it is enforceable only by a state or federal court. 34 CFR 300.506(b)(7).

#### **Alleged Procedural Violations**

64. Student's Parents claim the entire IEP Process was corrupted by the malicious motives of School Personnel to punish Student's Father for being difficult and to get rid of Student because she was a problem child. Because we made credibility findings to the contrary, this issue is moot.

65. Student's Parents claim that they did not understand their rights regarding the consent signed by Student's Father agreeing to Student's placement at [REDACTED]. As long as Student's Father understood the activity which he was being asked to consent to and agreed in writing, the consent was proper under the law. 34 CFR 300.9(b).

#### **The Complaint and Prehearing Conference**

66. Many of the issues which Student's Parents presented at hearing were not in the due process complaint nor were the issues presented at the prehearing conference. Problems which the Parents wanted to be addressed by a due process hearing officer must be listed in the due process complaint. 34 CFR 300.508(b)(5). Moreover, We lose discretion to allow amendment five days before the hearing begins. 34 CFR 300.508(d)(3)(ii). Moreover, Our pretrial order required a specific identification of each and every issue the party intends to introduce at the hearing for a decision (See Notice of Pretrial Hearing Conference and Standing Procedural Order, 2b.). At the prehearing conference, the parties agreed that the only issue to be decided was whether Student's current placement was proper or whether Student should have a placement in the School District's main school building. We have a right, pursuant to statute, to clarify issues for hearing at the prehearing conference. 105 ILCS 5/14-8/02a(g-40). As such, We have a right (and perhaps an obligation) to consider all issues not presented in the complaint or at prehearing conference waived.

#### **V. Application of Fact to Law**

67. We find that the Student's current placement and IEP is designed to provide Student with an educational benefit as demonstrated by the fact that the placement actually does provide Student with an educational benefit. See Facts, Par. 14.

68. We find that animus by District personnel did not affect the procedures through which Student was ultimately placed at [REDACTED]. See Facts, Par. 38.

69. We find that the issue of whether Student's Father gave informed consent to Student's placement at [REDACTED] was not presented in the due process complaint or the prehearing conference and is therefore waived. Moreover, We find, that, if the issue

were not waived, that Student's Father provided informed consent to Student's placement as he knew he was consenting to Student's placement at [REDACTED]. We also find that the consent was secured in writing. We also find that Student's Parents had been given the notice of procedural safeguards discussing interim placements and, in light of our credibility findings and receipt of that notice: (1) Student's Parents were fully informed of the nature of alternate interim placements, (2) Student's Parents were fully informed of the procedures for school district implementation of alternate interim placements, and (3) Student's Parents were not threatened or coerced, and the District did not secure consent by withholding information from the Student's Parents. See Facts, par. 11, 40.

70. We find that the competence of the school bus driver and the quality of food at [REDACTED] is not related to Student's placement or provision of special education services and thus, we have no jurisdiction to remedy these grievances.

71. We find that Student's Parents presented no evidence regarding whether personnel at [REDACTED] or the School District are incompetent and therefore, Student's Parents have not met their burden of persuasion as to whether the employee competence affects the District's provision of services or Student's placement in any way. See Facts, Par. 15.

72. We find that Student's Parents presented no evidence that Student was improperly restrained, and therefore, Student's Parents have not met their burden of persuasion as to whether District restraint procedures affect the District's provision of services or Student's placement in any way. See Facts, par. 15.

73. We find that We have no authority to enforce any mediation agreement between Student's Parents and the District and no authority to impose any sanction on the District for offering Student's Parents unreasonable terms of settlement of this matter. As such, We have no ability to provide Student's Parents any remedies for this alleged District conduct.

74. We find that Student is being educated in the least restrictive environment appropriate with her nondisabled peers. In making this determination, We find:

a. The placement at [REDACTED] is superior to any placement at the School District's main school. Student is receiving instruction in coping strategies and is receiving behavioral training designed to allow Student to be reintegrated into the main student body. [REDACTED] has instructors and facilities to provide the behavioral training in question. These specialized instructors and facilities are unavailable at the School District's main school. Thus, the specialized behavioral instruction is unavailable in a regular classroom. See Facts, par. 35.

b. There are relatively few educational benefits to mainstreaming Student further. Student is undertaking the same course of study as her peers at the District's main school and doing well academically. Student is entitled to go on field trips and PBIS parties at [REDACTED]. Student goes to PE. See Facts, 14.

c. The nonacademic benefits to mainstreaming Student further are likely to be marginal and could be detrimental. Student might be able to more fully participate in

extracurricular activities. However, given that Student's behavior deteriorates as the day progresses, Student's ability to participate in extracurricular activities is doubtful. Also, there may be nonacademic detriments to further mainstreaming in that Student may be ostracized by her fellow classmates if Student continues to have outbursts in front of her nondisabled peers. See Facts, par. 23, 31, 39.

d. The costs to the school district to mainstream Student further would be extensive. The District would have to have a full time teacher and aide in the classroom in addition to the regular teacher. The District would have to replicate the staff and facilities at [REDACTED] just for Student. The District would also have to find a way to insure that Student is unable to hurt herself or her fellow students. The District would have to find a way to insulate Student from the numerous triggers which trigger Student's outbursts. This would be expensive—even if it were possible.

e. The Student is a physical danger to herself and her classmates and teachers when she has her outbursts. See Facts, par. 3, 4, 6, 8, 9, 22-27, 39, 41-42.

f. Similarly, Student would be disruptive to her classmates because of her outbursts if she were mainstreamed into the regular classroom. See Facts, par. 3, 4, 6, 8, 9, 22-27, 39, 41-42.

g. There is no reasonable manner in which the District could mainstream Student. There is no way in which the District could insulate Student from the numerous triggers which trigger outbursts. The proposed accommodations requested by the parents (an isolation room, listening to Student, quieting Student) are unlikely to change Student's behaviors and/or unlikely to mitigate Student's behaviors in a way that she would not be dangerous or disruptive. In order to mainstream Student, the School District would have to have the equivalent of a "living straitjacket" for Student. This is unreasonable not required by IDEA.

75. As such, We find the District met its burden of production regarding the legality of Student's placement and Student's Parents failed to meet their burden of persuasion regarding the need to change Student's placement under IDEA.

76. We find that there was no need for the IEP Team to conduct a manifestation determination as there was no 10 day change in placement as a result of violations of the school's code of conduct. We also find that there was no mention of discipline in the complaint or at the prehearing conference, and therefore, this issue is waived.

## **VI. Order**

The School District need take no further action with respect to this due process hearing. All of Students' Parents' requests in their Complaint and otherwise are denied.

## **VII. Right to Request Clarification**

Section 14-8.02(a)(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 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.

**VIII. Finality of Decision**

This decision shall be binding upon all parties.

**IX. 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 5/14-8.02a(I) that civil action shall be brought in any court of competent jurisdiction within 120 days after this decision was mailed.



Joseph P. Selbka  
Impartial Due Process Hearing  
Officer

Date: 11-02-07

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CERTIFICATE OF SERVICE

In the Matter of [REDACTED] vs. Egyptian Community Unit School District No. 5  
ISBE Case Number: 2009-0039

The following parties have been served a copy of the Decision and Order.

7004 2510 0001 9573 7065

[REDACTED]

[REDACTED]

7004 2510 0001 9573 7102

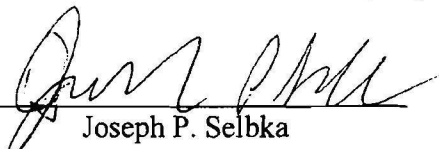
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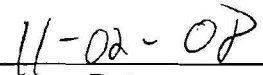
7004 2510 0001 9573 7119

[REDACTED]

7004 2510 0001 9693 9550

Ms. Mary Long  
Illinois State Board of Education  
100 North First Street  
Springfield, IL 62777-0001

  
\_\_\_\_\_  
Joseph P. Selbka  
The Hearing Officer

  
\_\_\_\_\_  
Date