

Case Number: 2009-0049  
Fenton CHSD 100  
Hearing Officer: Lynette Lewis

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

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SECTION

## 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 [REDACTED] Phone: [REDACTED]  
Superintendent [REDACTED]  
Address [REDACTED]  
Represented by [REDACTED]

Parent Name [REDACTED]  
Address [REDACTED]  
Represented by [REDACTED]

### Date and Timelines

Date of Written Request: 08/20/2008  
Date of Pre-hearing Conf: 10/21/2008

Date of Hearing: 11/17/2008 to 11/18/2008  
12:00:00 AM  
Date of Decision: December 1, 2008

### Summary of Decision

The Parent brought a due process hearing request on behalf of the student. The request was prompted after the student was reevaluated and the IEP Team determined that the student needed a more restrictive setting. The District determined that the most appropriate placement for the Student was an alternative day program at [REDACTED]. The Parent stated that the District should allow the student to return to [REDACTED] and attend regular classes. It was determined that the District has provided the student with a FAPE in the least restrictive environment. The hearing officer also found that the District appropriately disciplined the student. The Hearing Officer denied the Parent's request for an Order changing the Student's placement to [REDACTED].

ILLINOIS STATE BOARD OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)  
) ISBE CASE NO. 2009-0049  
)  
) Lynette Lewis  
) Impartial Due Process  
) Hearing Officer

**HEARING DECISION AND ORDER**

**Jurisdiction**

This matter is before the undersigned hearing officer on the Impartial Due Process Hearing Request of the Student by and through his parent [REDACTED] ("Parent"), a non-attorney against [REDACTED]. This Hearing Officer has jurisdiction to hear and decide this matter under 105 ILCS 5/14-8.02(a) et. seq., 23 and Illinois Administrative Code 226.600 et. seq., the Individuals with Disabilities Act, as amended 20 USC 1400 (IDEA) and 34 CFR 300.507 et seq. The parties were informed of their rights under IDEA 2004, 20 U.S.C Sec. 1401 et. seq., under the Illinois School Code, 105 ILCS 5/14-8.02(a), the Code of Federal Regulations, 34 C.F.R. Part 300, and the Illinois Administrative Code, 23 Ill. Admin. Code 226,.10 et seq.

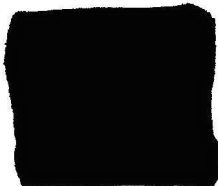
**Procedural Background**

The parent submitted a due process complaint notice dated August 20, 2008. That request was received by the school district on August 20, 2008 and forwarded to the Illinois State Board of Education (ISBE). The Complaint was received by the Illinois State Board of Education on August 21, 2008. By letter dated August 25, 2008, **LYNETTE LEWIS** was appointed to serve as the hearing officer. The parties participated in a resolution meeting but were unable to resolve any of the issues. The District asked that the hearing officer clarify the stay-put placement of the student. The District's Response to Parents Due Process Complaint Notice was tendered to the Hearing Officer by Kathryn Vander Broek on October 3, 2008 at the Prehearing Conference

On September 3, 2008 the hearing officer issued a Scheduling Order and Notice of the Prehearing Conference. The Prehearing Conference was scheduled for September 19, 2008 and rescheduled to October 3, 2008 at the parent's request and without objection from the District. The Prehearing Conference commenced on October 3, 2008. The school district was represented by Attorney [REDACTED] and the Parent was pro se. A polish interpreter was available for the parent on October 3, 2008. During the Prehearing, the Parent withdrew her allegation that the District failed to provide the Student with a sign language interpreter. The Prehearing conference was continued to October 14, 2008 and again to October 21, 2008 via telephone for status on the Parent's submission of her Prehearing disclosure statements. On October 23, 2008, The Hearing Officer issued a preliminary Pre-hearing report and an order finding that the student's

stay-put placement shall be [REDACTED] The Due Process Hearing commenced on November 17, 2008 at [REDACTED] Illinois and concluded on November 18, 2008 at the same location. The Student turned 18 years of age on September 7, 2008 and has executed an Educational Power of Attorney allowing his Mother to continue to make education decision on his behalf. (P Ex. #1). The Parent's and District's documents were admitted into evidence. The parties received their rights.

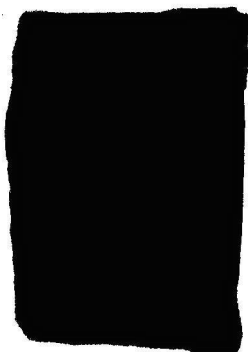
The parent and the district jointly presented the following witnesses:



Superintendent  
Police Officer  
Speech Language Pathologist  
Math Teacher  
School Nurse

The parent presented the following witnesses: Parent

The district presented the following witnesses:



Principal at [REDACTED]  
Paraprofessional  
School Social Worker  
Behavior Consultant  
Driver's Ed Instructor, Coach  
Special Ed Teacher  
Hearing Itinerant  
Dean of Students  
Special Ed Coordinator

**Issues Identified and Remedies Requested**  
**At the Prehearing Conference**

**Parent's Issues**

Whether the student's IEP dated February 28, 2008 denies the student FAPE?

Whether the student should be placed in regular education classes at [REDACTED]  
[REDACTED]

Whether the District appropriately disciplined the Student?

**Remedies Requested**

The Parent seeks the following remedy:

A finding that the February 28, 2008 IEP could not provide a free appropriate public education to the Student.

An Order changing the student's placement to regular education classes at [REDACTED]

A finding that the District inappropriately disciplined the student

### School District's Response

The District contends that the Student's placement at [REDACTED] is appropriate and provides him with a free and appropriate public education (FAPE) as he is entitled. The District further contends that the Student was appropriately disciplined.

### **STIPULATIONS**

The parties stipulated to the following facts which were admitted into evidence:

#### Student Background Information

1. DU is a student eligible for special education services under the Individuals with Disabilities Education Improvement Act of 2004.
2. DU currently is 18 years of age and has executed an Educational Power of Attorney allowing his Mother to continue to make educational decisions on his behalf. Student was under the age of 18, however, at all times relevant to the issues in this hearing.
3. DU's current eligibility categories are Hearing Impairment and Emotional Disturbance.
4. The Emotional Disturbance eligibility was added at the 2/28/08 IEP meeting, following Student's reevaluation.
5. Parent does not believe Student has emotional problems.
6. Student attended classes at [REDACTED] for the 2006-2007 school year and part of the 2007-2008 school year.
7. Student's last day of attendance at [REDACTED] was Friday, March 7, 2008.
8. On March 7, 2008, Student was on track to graduate on time in June, 2009.

#### Placement

9. After March 7, 2008 Parent withheld Student from attending school because she did not agree with the IEP Team's recommended placement at [REDACTED] and the IEP Team would not reconsider allowing Student to continue to attend classes at [REDACTED]

10. The District made several efforts to get Parent to visit [REDACTED] and to consider allowing Student to attend classes there, including:
  - a. a meeting between Parent and the District's placement coordinator from [REDACTED]
  - b. [REDACTED]
  - c. telephone discussions between Parent and [REDACTED] the District's then Special Education Coordinator; and
  - d. sending Parent a letter dated March 6, 2008 encouraging her to visit [REDACTED] and reminding Parent of the District's willingness to provide educational services to Student in accordance with his IEP if she changed her mind.
11. Parent did not visit [REDACTED] other than to drive by the outside, until October or November, 2008.
12. Student was not kept out of school from March 10, 2008 to the present because of a medical condition for which he could not attend school. He was kept out of school because Parent did not want to place him at [REDACTED].
13. The District would not agree to provide education services to Student at home.

#### Hearing Loss and Use of Hearing Aides

14. Student has a moderate binaural sensorineural hearing loss.
15. Student's hearing loss is correct to almost normal when he wears his hearing aides.
16. Student chooses not to wear his hearing aides in school.

#### Speech/Language

17. Student's 2/26/07 IEP and 2/28/08 IEP both call for Student to receive speech/language services.
18. Student received the speech/language services listed in his IEPs while he was attending school in the 2006-2007 and 2007-2008 school years.
19. [REDACTED] progress in speech/language has been limited, and in the 2/28/08 IEP the amount of speech/language services was increased from 15 minutes per week to 30 minutes per week.

#### Health – Allergies

20. Student does have an allergic reaction to cold exposure (Urticaria) for which he has been prescribed Periactin.
21. Periactin (cyproheptadine) is an antihistamine, a medication used to treat allergy symptoms. One of its main side effects is drowsiness.
22. The District has never had to give Student Periactin at school.
23. Student was allowed to rest in the Health Office on November 2, 2007 following Parent giving him Periactin. On that day he reported that he was tired and dizzy. He was in the Health Office from 10:25 a.m. to 11:30 a.m.
24. Student also came into the Health Office on December 3, 2007 to rest because he was tired. He had been given Periactin at home by Parent. He was allowed to sleep in the Health Office and then returned to class.
25. Student did not receive discipline referrals on November 2, 2007 or December 3, 2007.

Miscellaneous

26. Student did not like having a 1:1 Aide or paraprofessional assigned to him.
27. Student is cooperative in school if he likes the subject he is being taught, such as Math and Science.

**Findings of Fact**

1. The IEP notes that the student needs to be in a smaller learning environment, there needs to be available trained staff to provide immediate interventions for the student when his behaviors are inappropriate.
2. [REDACTED] is the Principal at [REDACTED] (hereinafter referred to as [REDACTED] and was so employed in this capacity during the 2006-2008 school years. [REDACTED] testified that she has observed the student in unstructured environments on various occasions. She expressed concern about his frustration level, name calling and aggressiveness. [REDACTED] does not feel [REDACTED] can meet the student's needs. She also testified that she has never received allegations of discrimination against the student regarding his handicap or race.
3. Officer [REDACTED] is the Security Resource Officer at [REDACTED] and was so employed during the 2006-2007 and 2007-2008 school years. Officer [REDACTED] testified that on one occasion the Student called him a bone head. He also has observed the student upset, angry, agitated and clenching his fists and teeth. Officer [REDACTED] testified that is concerned that the student may harm a faculty member or other students. He stated that he does not believe the student would succeed in a regular education class due to his behavior.

4. [REDACTED] has a Master's Degree in Speech Language Pathology. She began her employment at [REDACTED] in January of 2007 as a Speech/Language Pathologist. [REDACTED] provided the Student with direct speech and language services during the 2007-2008 school years. She testified that the Student resisted communicating with her. She also testified that the Student said he does not like to wear his hearing aid (J Ex. P. 186). Based on the Student's behavior during sessions, [REDACTED] agreed with the District's recommendation of changing the Student's placement to [REDACTED]
5. [REDACTED] Annual Speech-Language Therapy Review dated March 5, 2007 notes that the student has used inappropriate language during the sessions and does not respond when directed or corrected. It also noted that his progress has been minimal due to his behavior during the sessions (J Ex. P. 041).
6. [REDACTED] Speech and Language 3 Year Reevaluation Report notes that the student's communication progress is negatively affected by his behavior. It also notes that the student stated that "I can't control my rage." (J Ex. P 188)
7. [REDACTED] was the student's math teacher. He testified that the student liked math and did well in his class. He also testified that sometimes student got agitated when he did not understand a concept. He stated that he was concerned about the student's behavior. [REDACTED] also testified that the student would have a difficult time keeping up in regular math classes.
8. A student disciplinary referral dated February 9, 2007 notes that the student called [REDACTED] stupid (J 048).
9. [REDACTED] is the Principal at [REDACTED]. She testified that [REDACTED] provides services to students with behavioral and emotional problems. She further testified that the isolation rooms have rubberized material on the walls to prevent students from injuring themselves. [REDACTED] stated that she does not feel the isolation rooms are inappropriate or damaging to the student.
10. [REDACTED] was assigned to the Student during the period January 2006 through June, 2007 as a 1 to 1 aide. She testified that the Student has normal hearing with his hearing aids. She further testified that the Student was disruptive in class, exhibits inappropriate behavior in class and intimidates other students. On a couple of occasions, [REDACTED] also testified that on a couple of occasions said she felt a little threaten as she did not know what the student would do. [REDACTED] stated that she believes the student's anger stems from more than his hearing impairment.
11. [REDACTED] is a social worker at [REDACTED] who provided the student with social work support for the last two years. [REDACTED] testified that the student is disrespectful to authority figures. She testified that the student told her he has pain, anger, and hatred. She states that she believes the student has some deep emotional scars that impact his behavior and social misconduct. She also stated

that she does not feel [REDACTED] can provide the services to meet the student's needs.

12. [REDACTED] is a Behavior Consultant for [REDACTED]. He testified that the Student was referred to him in the spring of 2006 to analyze his behavior and prepare a plan to address the concerns. [REDACTED] testified that he was never able to establish long term consistency in the Student's positive behavior. He testified that the Student's behavior improved and then deteriorated. (J Ex. Pp. 101-4). He stated that he does not believe [REDACTED] can provide the Student with the services he needs. He further stated he has knowledge of [REDACTED] and believes this is an appropriate placement for the Student. [REDACTED] also testified that he is familiar with notes regarding the Student's aide, [REDACTED] (D Ex. P. 033) and believes she acted appropriately and did not cause the student to get disciplinary referrals.
13. [REDACTED] has worked at [REDACTED] for sixteen years. He serves as a Physical Education Teacher, Driver's Education Instructor and Coach. He was the Student's Physical Education Teacher and Driver's Education Instructor. [REDACTED] testified that the Student was sometimes aggressive in PE class and did not pay attention. He described the Student as a class clown. [REDACTED] testified that during the 2006-07 school year the student called him "Stupid" during an incident in the locker room (J Ex. P. 030). He also testified that the student said "F \_\_ K You" to him. [REDACTED] testified that the student was disruptive in Drivers Education Classes. He stated that he believes the student is functioning on a 4<sup>th</sup> or 5<sup>th</sup> grade level socially. [REDACTED] testified that he agrees with the student's change of placement to [REDACTED].
14. The Intervention Strategy Team Consultation Report dated February 27, 2008 notes that the student's behavior often involves name calling, foul language, refusal to move, or other responses that significantly disrupts the learning environment of the student and others (J Ex. P. 098))
15. [REDACTED] is a Special Education Teacher at [REDACTED]. She taught the Student English during the 2007-2008 School Year. [REDACTED] testified that the Student interacts poorly with adults and peers. She testified that she never observed the Student's aide, [REDACTED] act inappropriately with the Student. She further testified that she does not believe Fenton is unable to meet the Student's needs. [REDACTED] also testified that she is familiar with the program at [REDACTED] and she believes the Student can benefit from their services.
16. [REDACTED] is a Hearing Itinerant and has been employed by [REDACTED] for the past four years. She has a B.A. in Special Education and a Masters in Reading. She also has experience with the deaf and hard of hearing. [REDACTED] testified that she began working with the Student in March of 2006 to April of 2008. She testified that the Student sometimes refused to work with her. She stated that the student would say he couldn't control his anger. [REDACTED] testified that she was sometimes concerned for her safety.

17. [REDACTED] is Assistant Principal and Dean of Students at [REDACTED]. He testified that he worked with the Student during the 2006-2007 and 2007-2008 School Years. [REDACTED] testified that by February, 2008, the Student had 24 referrals discipline referrals. [REDACTED] testified that all of the referrals were appropriate. [REDACTED] testified that an November 15, 2007 allegation of sexual harassment of the Student by his aide [REDACTED] was investigated and unfounded. (J Ex. 217) [REDACTED] also testified that due to the Student's behavior, he agrees with the District's recommendation to change the Student's placement to [REDACTED].
18. [REDACTED] is the Special Education Coordinator at [REDACTED]. [REDACTED] testified that [REDACTED] can not address the Student's emotional and social needs. She further testified that she does not think General Education classes or home instruction is appropriate. She also testified that she has visited [REDACTED] and feels it is an appropriate placement for the Student.

### Conclusions of Law

In an administrative hearing, the party seeking relief bears the burden of proof. Schaffer v. Weast, 126 S.Ct. 528 (2005). Therefore, in this matter the parent has the burden of proof as to issues above, as she filed the due process complaint.

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).

1. Whether the student's IEP dated February 28, 2008 denies him a free and appropriate education?

In Board of Education, Hendrick Hudson Central School District v. Rowley, 458 US 176 (1982) ("Rowley"), the Supreme Court set forth a two pronged test to determine whether a school district has offered a student FAPE. The first inquiry to be made is whether the school district has complied with the statutory procedures required by IDEA (20 U.S.C. 1401 et seq.) Parents are entitled to relief for procedural violations only if the alleged violations resulted in substantial harm to the student. W.G. v. Board of Trustees, 960 F.2d 479, 1484 (9<sup>th</sup> Cir. 1992). In this case, there was no allegation of any procedural violation or failure to evaluate by the District. Consequently, there was no loss of education opportunity because of procedural violation in this case.

The second prong of the *Rowley* test is whether the district has developed an IEP reasonably calculated to enable the child receive an educational benefit. *Rowley* at 206-07. To meet that obligation, *Rowley* requires a school district to provide a "basic floor of opportunity" in the form of specialized instruction and related services which are individually designed to provide an educational benefit to the handicapped child. *Id.* at 201.

The Parent is the moving party in this matter. Therefore, she has the burden of persuasion to show that the February 28, 2008 proposed by the District is not reasonably calculated to provide the Student with more than de minimus educational benefit

[Schaffer v. Weast, 44 IDELR 150 (U.S. 2005)]. The Parent failed to present any credible evidence that the student's IEP was not reasonably calculated to enable the student to receive an educational benefit. All of the testimony and written evidence indicates the student's social skills are poor and his aggressive behavior escalated during the 2007-2008 school year. The evidence also shows that the student's emotional and behavior needs were not being met under the provisions of his previous IEP. [REDACTED] was very unlikely to confer on the student any educational benefit. Despite these facts, the Parent requests that the student return to regular classes at [REDACTED]

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

Although the student's parent requests that the District allow him to attend [REDACTED] they are not required by law. The student needs more services and support than can be provided at [REDACTED]. An IEP that provided for the student to remain at [REDACTED] would violate IDEA and be unlawful, see 20 U.S.C. Sections 1412(a)(5)(A) and 1413(a)(1).

2. Whether the district inappropriately disciplined the student?

The parent contends that the district's use of detentions and taking away the student's privileges was inappropriate. The parent's contention is inaccurate as a matter of law. School personnel have the authority, if not the responsibility, to administer discipline to students with disabilities who violate the school code of conduct [34 CFR 300.530 (b)(1)]. Further, the student's behavior intervention plan provides for the use of detentions in response to his outbursts and inappropriate comments. The parent did not present any evidence that the District acted outside of the scope of the student's behavior intervention plan. Rather, she objected to the implementation of the plan simply because she did not want the student punished. The District's discipline of the student was in compliance with the Illinois School Code and the student's behavior intervention plan.

**Order**

**IT IS HEREBY ORDERED THAT:**

1. the student IEP dated February 28, 2008 provides him with a free and appropriate public education;
2. the parent's request to have the student's placement changed to [REDACTED] is denied; and
3. the District appropriately disciplined the student;

### Finality of Decision

This decision shall be binding upon all parties.

### 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 the Illinois State Board of Education. After a decision is issued, the hearing officer may not make substantive changes to the decision. **The right to request such 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.**

### Right to File Civil Action

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

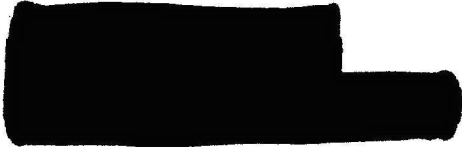
ISSUED: December 1, 2008



Lynette Lewis  
Due Process Hearing Officer

CERTIFICATE OF DELIVER BY MAIL

The undersigned hereby certifies that a true and correct copy of the Decision and Order was sent by certified mail with return receipt from Chicago, Illinois, and directed to:



Andrew Eulass  
Due Process Coordinator  
ISBE  
100 North First Street  
Springfield, IL 62777

Before 5:00 p.m. on December 1, 2008

A handwritten signature in cursive script that reads "Lynette Lewis".

Lynette Lewis  
Due Process Hearing Officer  
3502 W. 95<sup>th</sup> Street  
Evergreen Park, IL 60805  
708/425-8883  
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