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ILLINOIS STATE BOARD OF EDUCATION
DUE PROCESS HEARING

SPECIAL EDUCATION
SERVICES

IN THE MATTER OF

CASE # 2009-0064

[REDACTED]

VS.

D. MICHAEL RISEN PH.D.
IMPARTIAL DUE PROCESS
HEARING OFFICER

[REDACTED]

PROCEDURAL INFORMATION

On Thursday, November 13, 2008 at 9:00 AM, an Impartial Due Process Hearing was convened by D. Michael Risen, the Hearing Officer, on behalf of [REDACTED] hereinafter referred to as the Student, at the Office of the Superintendent of [REDACTED] hereinafter referred to as the District) located at [REDACTED] IL. A transcript was completed and ordered to be delivered to all. The Parties declined to submit Post-Hearing briefs. The Hearing Officer has jurisdiction to hear and decide this matter under 105ILCS 5/14 – 8.02a et seq., 23 Illinois Administrative Code 226.600 et seq., the Individuals with Disabilities Education Act 20 USC 1400 (IDEIA), and 34 CFR 300.507 et seq. The parties were informed of their rights under 105 ILCS 5/14 – 8.02 et seq., 23 Illinois Administrative Code 226.636 and CFR 300.509.

The District filed a request for a due process hearing on September 9, 2008. The District letter to ISBE and the accompanying ISBE form labeled “District Request for an Impartial Due Process Hearing Officer” was date stamped at ISBE on September 11, 2008 by the Division of Program Compliance. On the same day, ISBE mailed the notice of appointment to the Hearing Officer and the appointment and aforementioned letter and form were received on September 12, 2008.

On September 12, 2008 the Hearing Officer notified [REDACTED] attorney for the District and [REDACTED] parents of the Student the Pre-Hearing Conference would be held on October 10, 2008 which would be more than 30 days from the date the due process request was filed. This notice also included information related to the rights of parties related to hearings, the required disclosure list, a form detailing suggestions for stipulations of fact, and a form entitled “Agreement on Dispute Resolution.” On September 24, 2008, the District provided the Hearing Officer, via facsimile and regular USPS, the completed and signed “Agreement on Dispute Resolution.” On October 6, 2008, the Hearing Officer notified the Parties that the Pre-Hearing Conference date was incorrect and notified same that the correct date was October 16, 2008. On October 9, 2008, the District filed their Pre-Hearing Conference Report, Document List and Witness List. The Parents failed to file a response to the Request for Due Process Hearing, as well as, the Pre-Hearing Conference Report, Document and

Witness Lists. The Pre-Hearing Teleconference was held on October 16, 2008 and the Hearing was scheduled for October 31, 2008. Later in the day, a continuance was granted for the Hearing Date due to a conflict for the parent who contacted the Hearing Officer via telephone and after conferring with the District, the new Hearing date was set for November 13, 2008.

AGREEMENTS

On October 16, 2008 a Pre-Hearing Teleconference was held. Participating in the teleconference were the Hearing Officer, [REDACTED] Wright, attorney for the District, and [REDACTED], father of the Student. The following items were agreed to at the Pre-Hearing:

- 1) Neither party had objections to the Hearing Officer serving in this manner.
- 2) The Parties were informed that the Hearing Officer would rule on any new evidentiary objections at the Hearing and that the Parties could raise such on the record at the beginning of the Hearing any matters where they disagreed with the Hearing Officer's rulings.
- 3) No interpreter was needed.
- 4) All witnesses were to be sequestered prior to their testimony.
- 5) The parents chose for the Hearing to be closed.
- 6) The District would arrange for the court reporter. As Petitioner, the District would present their case first and shoulder the burden of proof.
- 7) Opening statements would be limited to five (5) minutes.
- 8) The five business day rule deadline was at 5:00 PM on November 4, 2008.
- 9) The Parent agreed to provide a written response to the District's request for a due process hearing by October 23, 2008.
- 10) The District agreed to provide the documents that the District would be using in the hearing to the Parents by October 23, 2008 to assist the parent in the proceedings of the case and to avoid duplication wherever possible.
- 11) Both parties agreed to reserve the right to produce additional documents up and until the close of the five (5) business day rule.
- 12) The Parties agreed that written briefs would not be filed at the close of the Hearing.

ISSUES PRESENTED

- 1) The Parents objected to the placement of the Child as stipulated in the most recent IEP dated August 26, 2008 wherein the recommendation of the IEP was placement of the Child in a special education therapeutic day treatment program known specifically as [REDACTED]
- 2) Because of this objection, the Parents demanded a change of placement to the student's home school, regular classroom while foregoing all special education supports and services.
- 3) The District objected to this change of placement request on the basis that the Student was a student who qualifies for special education services and supports.
- 4) The District asserts that as a student eligible for special education services and supports, the Student requires these services and supports in order for the District to provide a Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE).
- 5) The District believes the Hearing Officer should override the parents request of a change of placement to a regular classroom without special education supports and services and order the District to implement the aforementioned IEP as it was developed.

DISTRICT'S POSITION

The District's position, as stated by their attorney in opening and closing statements, is that the Student is a student eligible for special education services and supports and that the Student can only receive a Free and Appropriate Public Education (hereinafter FAPE) if the Student receives the special education services and supports consistent with those identified in the Student's IEP dated August 26, 2008. The District states that the Student was first identified as eligible for special education services when the Student was in the second grade during the 2006-07 year. The primary eligibility for the Student, as determined during the development of that initial IEP, was Other Health Impaired ("OHI") due to a diagnosis of bipolar disorder and attention deficit/hyperactivity disorder ("ADHD"). The District attempted to implement LRE at that time by providing special education services and supports in the Student's neighborhood school through a resource setting for special education and the regular classroom. Due to significant escalations in the Student's inappropriate behaviors that occurred after the commencement of services in second grade, and as documented by numerous behavior reports and communications between the home and the school, the District recommended at the annual review that occurred on May 4, 2007 that the Student should be placed in a more restrictive setting at a different school in the district where the Student would receive services from a more specialized program. The District states that this program is designed to meet the needs of students with more serious emotional and/or behavioral issues. This placement as proposed during the IEP of May 4, 2007 indeed occurred for the Student at the start of his third grade year. The District asserts that an IEP was held on August 24, 2007 out of a concern for providing services in the least restrictive environment and that the result of this IEP conference was a recommendation for a less restricted placement in this same specialized program but in a resource setting of 20% special education services, down from the previous level of services. As the third grade year progressed, the Student began to exhibit substantially more frequent and intense inappropriate behaviors. These incidents of inappropriate behaviors were documented and shared with the parents and included parent involvement in the effort to reduce the frequency and intensity of the behaviors. When the level of these behaviors escalated to a level that became dangerous to the Student himself, his teachers and fellow classmates, the District asserts through the IEP process that an increase in special education services was warranted to address the threatening behaviors and a program was developed as documented in an IEP for the student dated 10/22/07. The District further asserts that these dangerous behaviors continued both in the classroom and on the school bus to a degree that an IEP meeting was held January 11, 2008 to address the district's concerns for the Student's safety and the safety of others at the school. The District asserts that it was at this IEP meeting that the Student received a recommendation to attend the therapeutic day school located within the boundaries of the school district known as [REDACTED] and that the Student's attendance at [REDACTED] could be full time with the district to provide transportation. The District acknowledges that the Parents were not pleased with this recommendation and that the Parents secured an order from their Physician requesting the District provide the Student with Home and Hospital Instruction for the remainder of the 2007-08 school year. The District states that this order was implemented by providing the student with a home-based tutor five hours per week for the remainder of the aforementioned school year. Finally, at an IEP meeting on August 26, 2008, the District discussed a request from the Parents to place the Student in his neighborhood school without the supports and services stipulated in the Student's previous IEP documents. The District states that the District's position as a result of the Parents' request to revoke permission for all special education services and supports was a belief that the District has an obligation to provide the Student with FAPE. Further, the District stated that this obligation can only be met if the student continues to be a student eligible for special education services and supports. Finally, it is the position of the District that these services and supports should be those

services and supports stipulated in the IEP developed on August 26, 2008 that specifically call for placement of the Student at [REDACTED] a therapeutic day school.

PARENTS POSITION

The Parent's believe there has been a lack of communication between home and the District's Special Education Department related to the Student's placement for the 2008-09 school year. The Parent states that the District did not provide any grades for the student at the conclusion of the 2007-08 school year. The Parent further states that he did not have any contact with the Special Education Department of the District related to the Student's placement for this current school year. The Parent states that the Parent contacted the Special Education Department on August 18, 2008 to determine what the proposed placement for the Student would be for the current school year. The Parent acknowledges that there was an IEP meeting held that the Parent participated in on August 26, 2008. The Parent states that the result of that IEP meeting was to recommend placement for the Student at [REDACTED] for the current school year. The Parent further states that the Parent did not agree with this placement recommendation. The Parent states that the Parent made an unscheduled visit to [REDACTED] sometime after the aforementioned IEP meeting. As a result of that visit to [REDACTED] the Parent states the Parent did not believe that "this class would meet any of the educational needs" (HO 0062 - par 2) of the Student. The Parent continues, that as a result of this visit, the Parent informed the Special Education Department that he wanted to revoke consent for Special Education Services and have the Student placed in the Student's home school setting. The Parent asserts that the District responded to this proposed revocation by placing five unnamed stipulations to which the parent refused. The Parent believes this refusal resulted in the District filing for this due process. The Parent asserts that the Student has been off of all medications since March 2008. The Parent also asserts that the Student's pediatrician removed the diagnosis of bipolar disorder from the Student's medical records. As a result of the student's removal from medical treatment, the Parent asserts that the Student has demonstrated increased control of his behavior and has fewer outbursts. The Parent believes the Student is ready to be removed from Special Education eligibility and the accompanying supports and services of Special Education and that placement in the regular classroom in the Student's home school setting would provide the best chance for the Student to regain his educational status as a "regular student" (HO 0062 - par 4)

FINDINGS OF FACT

There were eight witnesses who testified during the one day hearing. Seven of these witnesses were presented by the District during their case-in-chief because they requested the due process hearing and thus bore the burden of going forward as well as the burden of proof. Neither party presented post-hearing briefs nor presented any statement of facts on their own behalf. While a transcript of the hearing was taken, the completed transcript was not available for the writing of this decision. There was one volume of exhibits submitted by the District and concurred to by the Parent and used essentially as the joint volume of exhibits in this hearing. The exhibit consisted of 639 pages. These exhibits are marked as "a1-a199" through "h1-h5." Additionally, the Hearing Officer submitted exhibits from the Hearing Officer consisting of 69 pages and marked as "HO 0001 - HO 0069." The findings of fact that follow represent the most significant and relevant information that the Hearing Officer relied upon when making a final determination and ruling in this matter.

The Student is a male student who was born on December 29, 1999. The student is approaching is ninth birthday. The student has been receiving special education services since December 18, 2006 when the

student was then in the second grade. The stated eligibility was Other Health Impairment (OHI) due to a diagnosed bipolar disorder and (ADHD) attention deficit hyperactivity disorder. The Student was first referred for special education evaluation by his first grade teacher on 5/18/06 as a result of behavioral concerns that the first grade teacher had. An evaluation team meeting was conducted on 9/21/06 and a recommendation for a full case study evaluation was made. A school district psychological evaluation was completed on 10/11/06 by then school psychologist [REDACTED]. The findings of this evaluation were that "...intellectual testing ... reveals that the Student is functioning within the average range of mental ability. When compared to others at his grade level, the Student's academic skills are within the high average range." The report goes on to discuss that the Student displayed a high number of problem behaviors that frequently resulted in numerous in-school and out of school suspensions when the student was a first grader. The school psychologist concluded her report by recommending to the evaluation team that these facts be considered prior to making final determination of eligibility and services (B-52).

The initial IEP was conducted on December 18, 2006 (B 105-114) when the Student was in the second grade at [REDACTED] (home school). Several of the appropriate staff members and the Parent attended the IEP conference. This IEP provided for social work services and behavior intervention strategies for the Student amounting to 20% of the Student's time for special education services with 80% of the Student's time in the regular classroom with no special education interventions and a stipulation of extended time for assignments as a support in the regular classroom (B111-114). The IEP did not include any educational goals for this student as these were deemed not necessary (B109-110). The measurable goals and short term objectives for the Student included: "increase appropriate school and classroom behaviors, increase on-task behaviors in the classroom, decrease talk-outs and distracting behaviors, use an agenda to record and monitor assignments" (B11). The Father of the Student signed the permission form for implementation of this IEP (B113).

On May 4, 2007, an annual review of the Student was completed and an IEP for the coming 2007-08 school year was developed (B115-B126). The meeting was attended by several appropriate staff members and the Parent. The diagnosis of OHI and ADHD were affirmed (B118). Further, it was noted that the student was receiving medical treatment that included 54mg of Concerta in the am and 36 mg in the pm and an unspecified amount of Lamictal daily. It was also noted that the parents were considering outside counseling at this time (B118). The IEP did not note any academic goals as these continued to be noted as being at grade level for the Student. It was also noted that the Parent was concerned the Student was not always taking his medications (B119). Goals noted in this IEP included that the student would: "identify ways to work and play well with others, demonstrate appropriate social and classroom behavior, and accept a consequence for a negative choice he has made without becoming disruptive or disrespectful" (B120). This IEP included a detailed Functional Behavior Assessment (FBA) and Behavioral Intervention Plan (BIP) that detailed behavioral issues and strategies to assist the student in improving these issues (B121-B122). The Student's placement was determined to be at Jefferson Elementary School, another District school, where the Student would receive special education services and supports for more than 60% of the Student's day (B-123). This change of placement for the Student was recommended for the 2007-08 school year which would be the Student's third grade year. A form labeled "Parent Guardian Notification of Change of Special Education Placement" was included in the exhibits but it is noted by the Hearing Officer that there was no signature on the line designated as the line for the Parent's agreement and neither box indicating consent or disagreement was checked (B-126).

On August 24, 2007 an IEP meeting was held and an IEP for the Student was developed. Various appropriate members of the District Staff were in attendance as was the Parent. The meeting was held at

the school where the Student's new placement was to begin, ██████████. Consistent with previous IEP's for this student, there were no academic goals developed in this IEP. It was noted in this IEP that the Parent was concerned the Student was not always taking his medication (B-131). The IEP included another FBA and noted the student continues to display aggression and destruction of property at school as a controlling behavior (B-132). The IEP called for 80 minutes of monthly intervention for issues related to the Student's OHI diagnosis. The IEP also noted 30 minutes of weekly social work services and 30 minutes of monthly social work consultation for a total of 40 minutes of social work services each week (B-133). This IEP changed the percentage of special education services from 60% or more as noted in the previous annual review to 20% of special education services in an attempt to "serve in the least restrictive" (B-133). The Parent signed an agreement form indicating agreement with the recommendations of this IEP (B139).

On September 7, 2007, a District Incident report was filed that described aggressive, angry, profane and hurtful behavior demonstrated by the Student towards himself and staff in particular when he was directed to report to time out to calm down. The Report included descriptions of the Student screaming profanities, threats to blow up the school, kicking his teacher as she walked away from him, banging his own head against the time out room wall, lunging at staff again and kicking them, and then finally the need for restraint administered by the staff using the Children's Control Position (CCP) that staff utilizing this technique testified they had been trained to use the strategy (F-4).

On September 25, 2007 a District Incident report was filed that described aggressive, angry, profane and hurtful behavior demonstrated by the Student towards himself and staff in particular when he was directed to report to time out to calm down. The report detailed a two hour outburst by the Student that included the Student banging his own head against the time out room wall and needed to be restrained using CCP. After he calmed down, he began demonstrating the same behavior as well as making self-deprecating remarks that included desires to hurt himself and others eventually resulting in a need to utilize restraint again. The report detailed that this pattern continued for a two hour period before the Student could calm himself and comply enough to return to his classroom (F-9).

On October 9, 2007, a District Incident report was filed that described aggressive, angry, profane and hurtful behavior demonstrated by the Student towards himself and staff in particular when he was directed to report to time out to calm down. The Student brought a lighter to school and became very agitated when the home room teacher took the lighter from him. The report details the following behavior demonstrated by the Student: yelling profanities at the teacher, throwing coins at the teacher, and then picking up a pair of scissors and acting as if he would lunge at the teacher or throw them at the teacher. The teacher testified that she needed to wrestle the scissors away from the Student. The report details the teacher needed additional staff assistance to remove the Student and that during that removal the Student taunted other students and called their mothers names, attempted to destroy student art displayed in the halls, and grabbed a pencil and began stabbing it into his book (F-25).

On October 22, 2007, an IEP conference was conducted in which several of the appropriate District staff members attended along with the Parent. As with previous IEP conferences, there were no indications of concerns for the Student that would relate to Educational Concerns noted in the IEP. It was again noted that the Parent had concerns that the Student may not be consistently taking his medication. A FBA (B-142) was included in this IEP. Similar conclusions of aggression and property destruction by the Student were noted in the FBA and the reasons cited for these inappropriate behaviors were for the student to control his environment. This IEP called for 1055 minutes per week in the special education classroom for emotionally disturbed children and 180 minutes per month of social work services. The

change of placement recommended in this IEP was placement in the Emotionally Disturbed classroom for all academics except math (B-146).

On November 29, December 10, December 12, December 17, and December 19 all in 2008, incident reports similar in nature and intensity to the three aforementioned incident reports were filed detailing the same type and degree of aggressive, angry, profane and hurtful behavior demonstrated by the Student towards himself and staff in particular when he was directed to report to time out to calm down (F45-F46, F48-F49, F50-F51, F80-F81, F82-F83). Additionally, there are twenty-six (26) classroom referral forms that detail similar descriptions of inappropriate behavior as previously described (F54-F79). A bus incident report was filed on December 19, 2008 that detailed inappropriate behavior from the Student that included calling the African American bus monitor a "nigger," the other students on the bus "niggers," threatening the bus monitor with death, throwing his book bag at the bus monitor, having to be restrained in the principal's office while discussing these behavior incidents and then an attempt to throw his book bag at the principal (F86). As a result of the inappropriate behaviors described in the bus incident and in the principal's office following the bus incident, a notice of suspension (F87) was sent home to the parents who were also informed in this notice that they would need to accompany the Student to school in order for him to return on January 16, 2008.

On January 11, 2008, an IEP conference was held that was attended by several appropriate district staff members and the Parent. This is the first IEP that notes educational concerns in the IEP. The concerns noted directly relate to the students significantly escalating and inappropriate behaviors that include: kicking, cursing, throwing things, threatening staff on more than one occasion with scissors, threatening and derogatory language towards his peers and other adults in the current school setting. It is also noted in this IEP that the result of these inappropriate behaviors is a concern that they are interfering with the Student's educational progress by limiting his access to the regular curriculum to the degree that the staff does not believe they can meet his educational needs in the current setting (B-152 - B153). A FBA (B-155) was included in the IEP and indicated similar results as those previously completed, filed and noted in this decision. The recommendation of this IEP was a change in placement to a therapeutic day school located in the school district and run by the [REDACTED] (B-160). A district form notifying the parents of the change of placement is included in the file and is dated January 11, 2008 but the box to check agree or not is left blank as is the line for the signature of the parent. During testimony taken during the hearing that was given by the District Director of Special Education, [REDACTED] and the Parent, there was agreement that the parent did not agree to authorize this change in placement.

Testimony given by [REDACTED] during the hearing indicated that the result of the parent objecting to the change in placement to [REDACTED] was the parent decided to home school the Student. Then on February 4, 2008 the District received a "Home & Hospital Instruction Program Referral & Medical Certification Form" (B-164) that was signed by the Student's Doctor, [REDACTED]. The Student's physician certified on this form that the child would require home-based instruction for the next 20 weeks. Additionally, the physician noted on this form the following about the impact on the child's education: "without treatment will be inattentive, forgetful, annoying, argumentative and angry. Academic, Social and Emotional problems if no medication" (B-164). During testimony by the Parent, the Parent responded to a question by the Hearing Officer as to whether or not the Parent agreed that the child's physician had indeed noted this on the form, the Parent responded in the affirmative. During testimony by the Director of Special Education, [REDACTED] District provided five hours per week of home instruction on a one to one basis by a certified teacher for the remainder of the school

year. Under questioning by the Hearing Officer as to the accuracy of this testimony, the Parent responded that this testimony by [REDACTED] was indeed accurate.

This then brings us to the IEP that is in question and that is dated August 26, 2008 (B165-B176). This IEP conference was attended by the appropriate District staff and the Parent. The concerns noted in this IEP were consistent with those noted in the last IEP discussed in this decision and that was dated January 11, 2008. Recommendations and goals for the Student contained in this IEP were the same as those listed in the IEP dated January 11, 2008. The placement recommendation was also the same, namely at [REDACTED] the therapeutic day school run by [REDACTED] and located within the boundaries of the district. The parent again objected to the placement but agreed to visit [REDACTED]. As previously mentioned in the discussion about the Parent's position, the Parent found [REDACTED] lacking and did not agree to the placement and requested the student be placed back in his home school setting without special education services and supports, essentially revoking all permissions for special education.

At the hearing, [REDACTED] the third grade teacher of the Student testified first. I found [REDACTED] testimony to be credible and informative. While [REDACTED] is somewhat inexperienced as a probationary third year teacher, my impressions of him were that he was both competent and concerned about the Student. [REDACTED] essentially described the Student as a third grade boy who was of average intelligence but performing in the high average range of academic skills when compared to his peers. [REDACTED] also detailed several of the incidents described previously in this decision related to the incidents of inappropriate behavior. [REDACTED] indicated he began to be capable of predicting when the Student might begin to explode and was able to sometimes head this off by allowing him to leave to go to his special education teacher. [REDACTED] also noted that the behaviors escalated dramatically as the year progressed. This was also consistent with the details provided in the incident reports herein noted and described.

Next to testify was [REDACTED] the teacher assigned to the emotionally disturbed classroom and who worked with the Student in a resource room type placement. [REDACTED] testified that she possessed the appropriate training and certification for her assignment. I also found this teacher's testimony to be credible and she impressed me similarly to be a competent and caring teacher. She not only confirmed and described in detail the incidents contained in the reviewed incident reports, she also noted that she had concerns that she expressed with the parents and other professionals about the Student's somewhat frequent expressions of suicide. Her testimony was enlightening in that it corroborated the testimony given by the regular classroom teacher. She also indicated that it was her impression that the Student frequently acted out the way he did with a purpose in mind. That purpose she believed was to be sent home where the Student expressed that the Student felt he was more safe. There was no testimony at this time as to why the Student felt this way. When asked by the Hearing Officer what [REDACTED] would predict if the Hearing Officer were to rule that the Student should be placed back in his home school with no supports or services from special education, [REDACTED] responded on her own that she believed the Student would be expelled by the school district.

Following [REDACTED] was [REDACTED] who was an eight year experienced behavior interventionist assigned to the emotionally disturbed classroom. I found her to possess the appropriate training and certification and her testimony to be credible and informative. [REDACTED] was also able to provide for the Hearing Officer a description of the time out room referred to in other testimony and in the documents submitted and this description appeared to be consistent with the State's expectations for rooms used for this purpose. [REDACTED] was also able to corroborate the testimony of the previous

teachers as well as the incident documents previously detailed in this decision. When asked by the Hearing Officer what [REDACTED] would predict if the Hearing Officer were to rule that the Student should be placed back in his home school with no supports or services from special education, [REDACTED] responded on her own that she believed the student would be expelled by the school district.

The next witness called by the District was the principal of the school where the Student is currently placed, [REDACTED]. I found [REDACTED] to be more than qualified and appropriately certificated to fulfill the duties of his position. Additionally, I found [REDACTED] testimony to be credible. I was also impressed by the degree of caring and concern that was expressed in the principal's testimony and in his responses to the questions posed by the District's attorney. Similarly to the previous two special educators, when asked by the Hearing Officer what [REDACTED] would predict if the Hearing Officer were to rule that the Student should be placed back in his home school with no supports or services from special education, [REDACTED] testified that he believed the Student would be expelled by the school district.

[REDACTED] Assistant Superintendent for Finance was the next witness called by the District. Prior to [REDACTED] current assignment, he was principal of [REDACTED] when the Student was in the second grade. [REDACTED] credentials were similar to [REDACTED] and I also found his testimony credible. He provided more detailed information as to the extremes of many of the Student's behaviors while the student was in the second grade in his school. He provided testimony designed to confirm information contained in the documents labeled E36, E37, E40, E49, E54, E58, and E94 in which the student was reported to have said or done the following: "shoot her when she was dead," "find you in your grave and kill you," "kicked the glass located in his classroom door," "shut the fuck up or I will shoot you with an M16," called a teacher "a mother-fucker," and then "committed multiple assaults on the building secretary and wished her dead." I found [REDACTED] testimony on these items to be one of genuine concern for the Student. I also believed that he felt that these instances of misbehavior were of a very serious nature for a student this age who was attending a public school.

The District then brought in to testify the current principal of [REDACTED] who is in her first year as the principal. I also found her to have the appropriate training and certifications to fill this position and I also heard her testify to an appropriate level of experience prior to coming to this position that should enable her to be effective as the principal. Her testimony came across as credible and I was particularly informed that she personally spends considerable time with the students at [REDACTED] in 'one to one' sessions assisting the students to achieve their goals related to achieving appropriate behavior. She testified that the pupil to teacher ratio in [REDACTED] was 5 to 1 and that each classroom had a certified teacher and two other full-time support staff. When asked by the Hearing Officer how this Student, who has been described in the IEP information as a student who is high average in academic performance but displays significant inappropriate behavior issues that interfere with his learning, would fit in with her program she responded without hesitation that she believed the program at her school would benefit this Student. She also responded to a question by the Hearing Officer that indeed the District provides free transportation for the student and that she is providing training to the bus drivers of the District busses who transport these students on ways to better interact with the students. Her testimony affirmed that she believed the documentation provided by the District and the information shared with her by the staff confirmed that the Student was eligible for this program and that it would fulfill the Least Restrictive Environment provision of IDEA.

The District then called the Director of Special Education Programs, [REDACTED] to testify. Again, I found that [REDACTED] possessed the appropriate training and certifications to hold this position. [REDACTED]

Taylor testified she knew the Student and the Parents through her work in the District. I found her testimony to be credible and the most convincing. [REDACTED] is very qualified and her testimony was the most helpful to this hearing officer. The attorney for the District carefully guided [REDACTED] through the documents contained in the District's document submission that provided the history and progression of the issues for this Student and the District's frequent and documented attempts to provide a Free Appropriate Public Education for this student in the Least Restrictive Environment. [REDACTED] testimony was clear and persuasive that the District has consistently made the efforts to respond appropriately to this student's needs through special education services, supports and changes in these services and supports. When asked by the attorney for the District what she would predict if the student were placed back in the home school setting without any of these supports and services, she testified that she believed that this now eight year old student would be expelled by the District because of his extreme inappropriate behaviors. It was informative to this Hearing Officer that the Parent was asked by the Hearing Officer if the testimony of [REDACTED] seemed to be essentially accurate and on target with what has occurred with the Student, the Parent responded in the affirmative that he agreed she had testified accurately.

The last witness to testify in this case was Mr. [REDACTED] the father of the child. The Hearing Officer asked all of the questions of this witness. I found the father's testimony to not only be credible, but heart felt. I want to say at the outset that this father came across as caring and concerned for his son and in fact, believing in his son's ability to perform at an appropriate and effective level within the regular school environment. One concern I noted in the father's testimony was that he testified that if his request to return his eight year old son to the regular classroom without supporting special education services and supports was granted by this Hearing Officer and then his son was subsequently expelled for similar behaviors, the father testified he would be okay with that. A follow up question to that by the Hearing Officer as to whether or not he thought an eight or nine year old student like his son should be in school, the father testified that indeed he did think such a student should be in school. The Hearing Officer also queried as to whether or not the father would characterize the relationships between the home and school as positive or negative and the father testified that these were generally positive. The father testified that the Student had been molested when he was younger by a cousin in the family and that this molestation has caused the student to feel unsafe anywhere but at home. The father also testified that he agreed his physician had recommended medical treatment but that the father believes the Student is better behaved without the medication and has taken the Student off of all medication since early this year. He also testified that the Student has not seen a physician since February of 2008. The father testified the Student was at one time receiving outside professional counseling but is no longer receiving any counseling. The Father testified the Student had two or three good friends in his neighborhood and that he got along well with those friends. The Father testified that he is opposed to the recommended placement at [REDACTED] because he does not believe that the school has any academic curriculum because The [REDACTED] told the Father during his visit that the Student would be the only fourth grader in the program and would be in a classroom with children who were both younger and older than the Student. The father testified that he did not believe this was a good program because of that lack of peer availability and what he perceived as no academic program. The Father was present during the testimony of the principal of [REDACTED] who testified to this issue and indicated that the academic program would be that of the Belleville SD #118 for fourth graders but would be individualized for this student. She further testified in the father's presence that this 'one on one' instruction should enable this student to actually progress through the regular curriculum at a more rapid pace. The Father testified that the student does have some similar inappropriate behaviors at home and that the Parents deal with this through time out or sending him to his room. The Father testified this approach is usually effective. Finally, the Father testified that he was

asking that the Hearing Officer give his son, the Student, a second chance and that if this is done and the student was expelled then that would be okay.

In closing the hearing, only the District's attorney, [REDACTED] made a closing statement. Essentially, [REDACTED] summarized the District's position as stated earlier in this decision. [REDACTED] also noted that the District has not only already given this student a second chance as requested by the Parent, but also has provide a third, fourth and so on chance. Finally, [REDACTED] provided both the Parent and the Hearing Officer with copies of Case Law that [REDACTED] asserts have bearing on this case and that [REDACTED] believes are both informative and controlling on the decision before this Hearing Officer.

CONCLUSIONS OF LAW AND OPINION

The Hearing Officer has read and considered the positions of the District and the Parent in their written submissions requesting and then responding to the due process procedure and the 69 pages of exhibits as submitted by the Hearing Officer. Also, partially read and considered are the 639 pages of exhibits submitted by both parties, the contemporaneous notes of the Hearing Officer and the Hearing Officer has consulted the electronic record of the Hearing that was kept by the Hearing Officer.

When considering a dispute regarding a student with a disability and the student's school district, the Hearing Officer must first begin by considering the Supreme Court decision in Rowley (Board of Education of the Hendrick Hudson School District, Westchester County et al. V. Rowley by her Parents, Rowley et ux. 458 U.S. 167 (1982).) In Rowley, the decision is directed by the Supreme Court which set forth a two pronged test for determination of a Free Appropriate Public Education (FAPE) in the least restrictive environment (LRE). The first prong directs the decision to determine whether or not the District has complied with the statutory procedures required by the Individuals With Disabilities Education Act (IDEA) 20U.S.C. 1401 et seq. Rowley indicates that any substantial denial of procedural safeguards that results in adverse impact on the parents' participation or the Student's education in so much as the result is a loss of educational opportunity then there has been a denial of the law's requirement for FAPE. This first test of Rowley provides for relief only when the procedural violations result in substantial harm to the student (W.G. v. Board of Trustees, 960F.2d 1479, 1484 (9th Circuit 1992)). The only possible procedural violation raised by the parent in this case was an alleged breakdown in communication between the home and the special education office of the District at the close of the 2006-07 school year. There was no evidence submitted either in the exhibits or in the testimony to support this allegation. As such no substantial violation of the procedures as described herein is found in this case.

The second prong of the Rowley test is to determine whether or not the individualized program developed through such procedures is reasonably calculated to enable the Student to receive educational benefit. The District, in its closing arguments, correctly noted that the 7th Circuit Court of Appeals in Alex R. v. Forrestville Valley C.U.S.D., 375 F. 3d 603 (7th Cir. 2004) reinforces this notion that the IEP needs to be reasonably calculated to provide FAPE. The 7th Circuit in its decision of Alex R. stated the following that is on point with this case: "From September through November of 2001, the District acted reasonably in attempting to deal with an increasingly difficult situation affecting not only Alex but other students as well. The District acted reasonably in attempting to enable the child to receive educational benefits." This assessment by the 7th Circuit Court is more than parallel to this case, it is completely on target. From the beginning of school in August of 2007 through the next three months of the school year, the record in this case demonstrates that the District conducted three separate IEP

conferences that the Parent attended. At each IEP conference, the record indicates that the District made efforts to provide the appropriate special education services and supports to address increasingly inappropriate, and sometimes, violent outbursts of the student. Additionally, the record reflects eight (8) different incident reports describing these behaviors and detailing the steps and actions the professional staff took to alleviate these outbursts and redirect the Student in a manner that would enable him to return to the regular classroom to receive the benefits of that instruction. These efforts support the notion that the District has demonstrated an appropriate level of concern for the safety of the Student and his classmates. Additionally, the District's documented efforts support programming designed for the development of the Student and for keeping the Student with his non-disabled peers whenever possible. Further, the record reflects that when the Student's physician filed a written request for a home-based instructional program, the District responded properly and within the guidelines of IDEA (20 U.S.C. par. 300.115(b)(1)).

The facts in this case are clear and undisputed by the parent. The testimony of the Director of Special Education, [REDACTED], documented in great detail the various IEP's developed for the student and described in this decision. Her testimony was descriptive of the District's efforts from the date of eligibility determination dated December 18, 2006 up to and including the IEP currently in dispute dated August 26, 2008. The Parent's own testimony confirmed his belief that the testimony of [REDACTED] was essentially accurate and reflective of the events described in her testimony. Her testimony, along with all six of the professional staff members of the District, established that the Student requires intense and regular special education services and supports consistent with the recommended therapeutic day school. This is further corroborated by the child's physician, [REDACTED] in his written request for home/hospital instruction dated February 4, 2008 (B163-B164). The eight District behavior incident reporting forms and 26 classroom referral forms for inappropriate behavior that were entered as exhibits in the record and previously described in this decision support beyond any reasonable doubt that there is an actual need for the prescribed special education supports and services as detailed in the disputed IEP dated August 26, 2008.

For the Hearing Officer to sustain the demand of the Parent to provide the Student with a "second chance" by ordering the Student's placement in the home school setting of the Student without any special education supports and services would, in effect, remove the protections afforded the Student as prescribed by the Individuals with Disabilities Education Act 20 USC 1400 (IDEA), and 34 CFR 300.507 et seq. The result of such a decision would surely result in the permanent expulsion of the Student at a time when the Student is indeed in his most formative years. Such an order, in the opinion of this Hearing Officer, would go not only against the manifest laws as detailed in the various statutes and case law, but would be cavalier and irresponsible.

DECISION ON ISSUES

1. The IEP dated August 26, 2008 meets both prongs of the Rowley test in that there were no substantive procedural violations and the services and supports prescribed by the IEP should enable the child to receive educational benefit.
2. Sustaining the Parent's demand for placement in the Student's home school is not warranted.
3. The District's position that the Student is indeed a Student who is eligible under the Individuals with Disabilities Education Improvement Act 20 USC 1400 (IDEA), and 34 CFR 300.507 et seq. is affirmed.

4. The District's assertion that the Student requires special education services and supports in order for the District to provide FAPE under the Individuals with Disabilities Education Act 20 USC 1400 (IDEA), and 34 CFR 300.507 et seq. is also affirmed.
5. The District's request is also approved that the Hearing Officer override the Parent's revocation of consent for special education services and supports which if approved would thereby result in a change of placement to a regular classroom without special education supports and services.

ORDER:

1. The District is ordered to implement the IEP for the Student dated August 26, 2008.
2. If the parents remove the student for home-schooling as alleged by the Parent at the close of the hearing and then attempt to re-enroll the student within six months of removing the Student, the District may elect to implement the IEP Dated August 26, 2008.
3. If the parents remove the Student for home-schooling as alleged by the Parent at the close of the hearing and then attempt to re-enroll the Student at a date later than six months of removing the Student, the District shall reconvene the IEP team and complete a new IEP for the Student.

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 parties 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.**

RIGHT TO FILE A CIVIL ACTION

This decision shall be binding upon the parties unless a civil action is commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-8.01(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.

CERTIFICATE OF SERVICE

The undersigned Hearing Officer certifies that he served copies of the aforesaid Decision and Order upon Counsel for the District and to the Parents by email on November 18, 2008 and the Illinois State Board of Education at their stated addresses by depositing same with the United States Postal Service at East Peoria, Illinois with certified postage prepaid before 5:00pm on November 18, 2008.

 11/18/08
D. MICHAEL RISEN, PH.D.
ISBE IMPARTIAL DUE PROCESS HEARING OFFICER

ENTER: November 18, 2008