

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

FEB 23 2009

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)
) ISBE CASE NO. 2009-0232
)
) Sheana Hermann
) Impartial Due Process
) Hearing Officer

OFFICE OF THE
SPECIAL EDUCATION
HEARING OFFICER

HEARING DECISION AND ORDER

This matter comes before this hearing officer pursuant to the Individuals With Disabilities Education Act of 2004 (IDEA) on the Impartial Due Process Hearing Request of [REDACTED] ("Parent") a non-attorney on behalf of her son ("Student"), against the [REDACTED] represented by its attorney [REDACTED] of the District's Due Process and Mediation Department. This Hearing Officer has jurisdiction to hear and decide this matter under 105 ILCS 5/14-8.02(a) et. seq., 23 Illinois Administrative Code 226.600 et. seq., The Individuals with Disabilities Improvement Act of 2004 (IDEA) 20 U.S.C. 1415, and 300 C.F.R. 507 et. seq. The parties were informed of their rights according to 105 ILCS 5/14-8.02(a), 23 Ill. Admin. Code 226, subpart G, 300 C.F.R. 300.512.

Procedural History

The Parent filed an Impartial Due Process Hearing Request dated December 19, 2008 on December 24, 2008. It was received by the Illinois State Board of Education (ISBE) on January 2, 2009. This hearing officer was assigned the case on January 7, 2009. On January 10, 2009, the hearing officer contacted the parties to advise them that she was assigned to the case and to apprise the parties that she worked for the District in the capacity as a Due Process Coordinator and that she would recuse herself if either party wished. Both parties acknowledge the prior employment but agreed to allow the hearing officer to remain on the case. (IHO Ex. 1 and 2). The District failed to contact the Parent to schedule a resolution session. On January 10, 2009 the Parent filed a request for sanctions against the District. On January 14, 2009, this hearing officer pursuant to 34 CFR 300.00 set the matter for a pre-hearing conference on January 20, 2009, the date previously set by the Illinois State Board of Education's ("ISBE") automated system which sets hearing and pre-hearing dates when a case is received by ISBE. A prior notice was sent out by ISBE on January 6, 2009. During the pre-hearing conference, the Parent presented her document list but was not calling any witnesses and the District did not have either set of lists available. During the pre-hearing conference, the Parent was advised that she would bear the burden of persuasion in the matter. The Parent agreed to submit a witness lists and the District's attorney stated that he would submit a document and witness lists however, none was provided. On

the disclosure deadline date of February 2, 2009, the Parent provided a witness list and a document list, however, the District did not provide any lists or documentation. The Parent moved to bar the District from presenting any witnesses and documents. At which point the District stated that the Parent in fact had not exchanged her documents. The parties agreed on the morning of the hearing to allow the opposing parties' documents. It should be noted that upon review of the evidence submitted by both parties, that the documents submitted by both parties were documents that both parties had in their possession or had access to. The District was barred from calling any additional witness beyond those of the Parent. The hearing was held on February 9, 2009 at [REDACTED]

[REDACTED]. The Student was present for a portion of the hearing and the District had [REDACTED] as its representative. The following witnesses testified: [REDACTED], case manager; [REDACTED] security guard and off duty police officer; The Student; [REDACTED] Dean; [REDACTED] special education teacher; [REDACTED] school psychologist; and the Parent. The parties' documents were entered into evidence. The parties acknowledged receiving their rights.

Issues in Dispute

The Parent states the following issues are in dispute:

1. In the December 16, 2008 Individualized Education Plan (IEP) meeting:
 - a. The District failed to Provide the parent with proper notification of the meeting;
 - b. The District failed to consider the Student's previous December 2, 2007 IEP's eligibility determination of LD and instead incorrectly found the student eligible for special education services under ED;
 - c. The District failed to develop an IEP which provides related services with adequate intensity, which fails to use appropriate instructional methodology with adequate intensity, and fails to provide the student with an appropriate educational benefit;
 - d. The District in development of this IEP failed to adequately test and evaluate the Student;
 - e. The District improperly predetermined the student's eligibility and selected certain aspects of the tests and evaluations to fit the eligibility of ED.
2. The District has repeatedly failed to adhere to procedures such failing provide the parent with ten days notice of IEP meetings, has altered IEP forms after the meeting on November 4, 2008, has failed to provide the parent with complete copies of the IEP, and has not considered the parent's concerns including not monitoring of his behavior intervention plan.
3. The District has improperly suspended the student.

The Parent Seeks the Following Relief

The Parent is requesting the following as relief:

1. That the District conduct a full and individualized independent evaluation at the district's expense;
2. That the District cease classifying the student as having an emotional disturbance until a complete evaluation is given and that in this evaluation, the evaluators consider the student's ADHD;
3. That the District place the student in a private school through the 2009-2010 school year at the District's expense;
4. That an IEP is developed by an independent agency at the District's expense.

District's Position

The District states that it has at all times provided the student with an appropriate education and that the IEPs including the December 16, 2008 IEP is appropriate and provides the student with education benefit as required by the Individuals with Disabilities Education Act as Amended in 2004 (IDEA).

Finding Of Fact

The Student is a freshman at the District School [REDACTED] [REDACTED] is part of a large high school campus on the [REDACTED]. The Student is currently 14 years and will be 15 years. His eligibility pursuit to IDEA is learning disability (LD). However, after the IEP meeting of 12/16/08, and the subject of this dispute, he was found to be eligibil with a learning disability, emotional disturbed (ED) and other health impairment. The Student is currently receiving special education services in a separate class room setting for language arts, mathematics, and social science; he is in a combined class for science; and is receiving 120 minutes per month for social work services (SD Ex. 117). The Student was also given psychological consulting service (SD. Ex. 112). The Student was given significant modifications and also had in place a behavior intervention plan (BIP) which was to be reviewed every ten weeks (SD Ex. 123-124). Parent did not agree that ten weeks was sufficient to review the BIP.

The case manager [REDACTED] presented testimony regarding notifying the Parent regarding the annual IEP meeting at the beginning of October. She testified since the beginning of the school year the District started having concerns regarding the Student's behavior and wanted to have the school psychologist and social worker present at the IEP meeting to discuss the District's concerns with the Student's behavior. The Parent was initially notified on October 2, 2008 of the annual review to be held on October 23, 2008 (P Ex. 109). Mom was not able to make that meeting. On October 9, 2008 [REDACTED] [REDACTED] sent to Parent three additional dates in which the social worker and

psychologist could be present on October 9, 2008. (P. Ex. 110). A notice was sent to mom by certified mail for the new date of November 4, 2008. (P. Ex. 111). [REDACTED] did not do any follow up to determine whether Parent received the notice.

After what appeared to be friction between [REDACTED] and the Parent, a new [REDACTED] took over the role of notifying the Parent. The Parent at some point filed a complaint against [REDACTED] in November of 2008 and was concerned that the District was retaliating against her and the Student with suspensions

Parent signed procedural safeguards on November 4, 2008 (SD Ex.125).

A manifestation determination review meeting took place on December 2, 2008 after an incident on November 25, 2008 in which the Student threatened to shoot another student. (P Ex. 16-22). The Parent stated that she never received notice of the meeting and in fact did not know about the meeting until the morning of December 2, 2008 (P. Ex. 20).

The Parent signed the 10 day waiver on December 9, 2008 for the meeting to be conducted on December 16, 2008 (P. Ex. 15).

A meeting was held on December 9, 2008 for educational planning of services.

Student had a plethora of significant behavioral issues starting since the beginning of the school year. His behavior deteriorated towards the end of the year. The Student is still displaying significant aggressive verbal behavior. In fact on the morning of the hearing he threatened to "take a teacher down."

On January 15, 2009 he threatened to shoot another student (P Ex. 7 and 8)

The Parent consented to a special evaluation on December 9, 2008 (P Ex. 13). In the Consent for evaluation the domain sheet shows that an additional evaluations for the Student's health, social and emotional status which will include interviewing the Student, Parent and teachers and available data. A new evaluation for general intelligence and academic performance are not need as prior psychological evaluation was conducted on October 10, 2007. (P. Ex. 14).

His medical history indicates asthma and ADHD (SD Ex. 136).

Student has previously been in a therapeutic program in the first half of the 2008-2009 school year but was transitioned back during the second half. (SD.

Ex. 149). The prior IEP of December 4, 2007 identifies that the Student was displaying much of the same behavior that the staff at [REDACTED] have concerns over. He was described as having aggressive behavior towards peers and adults, shutting down, being manipulative, lying, cheating, failing to comply with directives (P. Ex. 80-84). His behavior intervention plan also confirms this behavior (P. Ex. 88). Furthermore, the psychological evaluation conducted in December of 2009, indicates a history of aggressive behavior and a prior qualification as ED. (SD. Ex. 152-154).

Written evidence and testimony support that the Student has not adjusted well to the academic environment of [REDACTED]. He has had a history of being verbally aggressive to peers and authority figures. (SD Ex. 210-235).

[REDACTED] testified to an incident in which the Student threatened a teacher the morning of the hearing. He has witnessed emotional and angry outbursts, threatening and bilergerant behavior.

[REDACTED] the dean of students testified. Stated that the student was suspended the first week and a half after school started. The Student has been suspended for a total of 6 days this school year. The student's behavioral issues are triggered by if he is challenged he fights back, wants control he has constant conflict with another student and does become combative with other teachers anstaff.

[REDACTED] also testified that it was the consensus of the team at the MDR meeting that the Student's behavioral infraction was not related to disability. He stated that he observed the Student's behavior getting worse throughout the school year. At the beginning of the year, the Student would have a incident every week and a half or so, then the behavior progressed at first he would threaten students but towards the end he also started threatening staff. He tried to get the Student involved in a mentoring program. He said he does not know what triggers the Student's behavior. He believes that he has much anger. Feelsthat the current placement cannot provide for him.

[REDACTED] the school psychologist, testified. She has been seeing the Student on a monthly basis since the beginning of the 2008-2009 school year. She said that she was consulting with the staff on an ongoing basis regarding the Student's behavior. She testified that she had concerns with the Student's behavior since the beginning of the school year. She became particular concerned when the Student threatened to shoot another Student, stopped doing his work, and stopped going to the social worker. She also conducted the evaluation on the Student in December of 2008 and strongly feels that the Student meets the criteria of ED and is in need of a therapeutic placement. (SD Ex. 152-164).

The Student was given a two day suspension on January 15, 2009 in which he threatened another student with shooting him and told the student to watch his back. (P. Ex. 8).

The Parent testified that the District waited too long to reevaluate the behavior management plan. The Parent also indicated her concern that she felt that the District, in particular, [REDACTED] failed to provide her proper notification of IEP meetings and the manifestation determination and that after she filed a complaint with the Illinois State Board of Education (ISBE), the District started retaliatory action against her. At the end of her testimony the Parent stated that she wants her child out of [REDACTED]. She expressed great frustration with the school personnel and the whole hearing process in general. At one point during the hearing she stated that "this is crap."

After listening to testimony, it does appear that [REDACTED] failed to adequately inform the Parent of meetings and did have lack of communication with the Student, however, it does not appear that any action on the part of the District was retaliatory in nature, rather the Student's behavior is very significant and serious, and that the District must take immediate action especially where the safety of this Student, other student's and the District staff are in jeopardy.

From the testimony and evidence, it also appears that the current placement is not appropriate for the Student due to his significant behavioral issues.

It does not appear that the District has modified the substance of the documents to the extent that they materially altered them.

The Parent did acknowledge that the Student has behavioral issues, but feels that the District has not provided enough support for the Student. She testified that the Student did not use his planner and that the District staff did not follow through with the planner. She testified that she wanted the District to provide a mentor for the Student. [REDACTED] testified that he gave the Parent information regarding a mentoring program but the Student did not follow through.

Conclusions of Law

The U.S. Supreme court case places the burden of persuasion in a due process hearing on the party challenging the IEP *Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005). In this instance the Parent is seeking to determine the IEP as established on December 16, 2008 is not appropriate. This IEP will essentially change the Student's placement to a private therapeutic program. There are several different factors in which the Parent is relying to determine that this IEP is inappropriate. First, the District failed to adhere to proper procedures, second, the District failed to implement an appropriate behavior intervention plan, three

the evaluation that was performed on the Student was invalid as it only concentrated on the Student's behavior. It is very clear that the Parent cares very deeply for her child and is a parent who despite work obligations and her own school obligations, has made herself very available to the District and this Student. It does appear that the District failed in providing the Parent proper notice, however, it is also very evident that the Student is not in the correct placement and needs more services than [REDACTED] can provide. The Student has a disability which requires a significant amount of intervention by properly trained staff and that the regular education setting at [REDACTED] is not appropriate.

After conducting an additional evaluation, the Student was found appropriately to meet the definition of ED. The Parent has failed to provide any outside expert testimony or evaluations which contradict the District's evaluations and findings. In fact the evidence supports that the Student's behavior is very serious and severe in that he is threatening to harm both students and staff. It also seems to be undisputed by the Parent that the Student needs additional support. His behavior is too extreme to be controlled by simple accommodations in a high school setting.

The landmark case of *Board of Education of the Hendrick Hudson Central School District, Westchester County vs. Rowley*, 458 US 176, (1981) outlines a two part analysis to determine whether FAPE was provided: first, has the District complied with the procedures set forth in IDEA and second: is the IEP reasonably calculated to enable the child to receive educational benefit?

Procedural Violations

The Parent contends that the District was improper in its suspensions of the Student. The law supporting IDEA is clear that a school district may not suspend a student with a disability for more than 10 consecutive school days for conduct related to his disability. *Honig v. Doe*, 559 IDELR 231 (1988). In the Student's case the Student was not suspended for over 10 days. Evidence and testimony indicate that he was suspended for 6 days. In fact when a serious incident occurred in which the Student threatened to shoot another student, the District soon conducted a meeting to discuss the Student's conduct. After which the District met to evaluate the Student's emotional needs and conducted the IEP on December 16, 2008 and determined that the placement was not appropriate.

The Parent also contends that the District failed to provide her proper notice of the meetings on November 4, 2008 and December 2, 2008. Note that IDEA 2004 codified the circumstances in which a hearing officer, in matters alleging a procedural violation, may find that a child did not receive FAPE. While a hearing officer may still order a district to comply with procedural requirements, according to 20 USC 1415 (f)(3)(E)(ii) a denial of FAPE may be found only if the district's procedural inadequacies: (I) impeded the child's right

to a free appropriate public education; (II) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or (III) caused a deprivation of educational benefit.

It does appear that the District did not document the attempts to notify the Parent of the meeting on November 4, 2008. However, the Parent was still able to attend and participate. The meeting on December 2, 2008 was a manifestation meeting which must be conducted within ten days of the violation. 34 CFR 300.530(e). This is not the same as an IEP where 10 days notice is necessary. However, the District should have notified the Parent earlier than the morning of the meeting. (If the district determines that a student's misconduct was not related to his disability, then the student is subject to the same sanctions for misconduct as a nondisabled student, with one important exception calling for the continuation of educational services. The District found that the Student's disability did cause his behavior).

The Parent also states that the District redacted the IEP's however, there is no evidence which corroborates this, rather the evidence shows that the District gave additional time for the Parent to submit her dissent. The District may have not had all the documents present at the end of the meetings, however, there is no evidence that the District changed the substance of the information on the IEP.

When viewing a District's failure to follow proper procedure, it is necessary to determine whether that failure resulted in a denial of FAPE. It is widely accepted by the courts that procedural violations will warrant a finding in denial of FAPE when the failures result in a loss of educational opportunity, *Evanston Community Consol. School Dist. No. 65 v. Michael M.*, 356 F.3d 798, 804 (7th Cir. 2004); *Edwin K. v. Jackson*, 2002 U.S. Dist. LEXIS 11913, No. 01 C 7115, 2002 WL 1433722 (N.D. Ill. July 2, 2002). Courts have found that procedural errors are found to be a denial of FAPE except when it is minor or technical error and does not result in a loss of opportunity to participate. *Heather S. vs. State of Wisconsin*, 125 F.3d 1045, 1059 (7th Circuit 1997).

Courts have further found that not all procedural errors, including the failure to give notice, automatically result in a denial of FAPE. If the parents have not been denied the opportunity for meaningful participation and the student has not suffered any loss of educational opportunity, then the student may have received FAPE, notwithstanding any procedural errors. See, e.g., *Tennessee Dept of Mental Health & Mental Retardation v. Paul B.*, 24 IDELR 452 (6th Cir. 1996); *Myles S. v. Montgomery County Bd. of Educ.*, 20 IDELR 237 (M.D. Ala. 1993). Contrast with *Max M. v. Thompson*, 556 IDELR 227 (N.D. Ill. 1984).

The District was rather lax on the manner in which they notified Parent and the testimony of [REDACTED] indicates that she had sent notice by certified mail but never did any follow up to determine whether the Parent was aware of

the meeting. However, despite these failures, the Parent was able to take part in the meetings and provide her input into the meetings as demonstrated by her written dissents.

Parental Role in IEP Process

Also of great concern to the Parent is her expressed dissent to the IEP's as developed and the District's failure to consider her input. The regulations state that parents have a right to participate in the placement process, although they do not have a right to unilaterally control or veto the outcome of placement decisions. See 34 CFR 300.116 ; 34 CFR 300.501. Parents expressly do not have the right to veto the placement decision made by the group of individuals designated in 34 CFR 300.116 (a)(1). Although parents are "equal" participants in the IEP process, they do not have veto power over the IEP. Nor is there any "majority vote" rule for IEP team meetings. According to the ED, if the team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program. See, e.g., *Buser v. Corpus Christi Indep. Sch. Dist.*, 20 IDELR 981 (S.D. Tex. 1994), *aff'd*, 22 IDELR 626 (5th Cir. 1995

The Parent has also raised concern as to the District's implementation of the behavior management plan. Courts look to see the reasonableness of the plans to determine appropriateness. In *Eric J. v. Huntsville City Board of Education*, 22 IDELR 858 (N.D. Ala. 1995), the court adopted the *Rowley* standard when it rejected the parents' claim that the district had not provided an appropriate BMP for their son. The district had developed a plan that was reasonably calculated to enable the student to attend a regular education public school and to confer an educational benefit despite his behavioral problems. The behavioral management component of the student's IEP assisted him in identifying inappropriate conduct and its consequences. The component offered him an opportunity to acquire appropriate social skills, and it was not required to cure the student of ADHD. The 7th U.S. Circuit Court of Appeals underscored that neither Congress, the ED or any statute or regulation "created any specific substantive requirements for the behavioral intervention plan contemplated by [the IDEA]." *Alex R. by Beth R. v. Forrestville Valley Community Unit Sch. Dist. #221*, 41 IDELR 146 (7th Cir. 2004). The content of a BIP is a matter of best practice, assuming no controlling state law or regulation. It is critical that the form or format of the BIP not control its content. *Id.*

The Parent has stated that the District did not implement an appropriate behavior plan, the requirements in 34 CFR 300.324 are not intended to imply that a particular method, strategy, or technique should be used to develop a child's IEP. "For example, while 34 CFR 300.324 (a)(2)(i) requires the IEP Team to consider the use of positive behavioral interventions and supports, and other strategies, it does not specify the particular interventions, supports, or strategies that must be used." 71 Fed. Reg. 46683 (2006). A BIP need not be in writing,

although it is certainly preferable to do so. *School Bd. of Indep. Sch. Dist. No. 11 v. Renollett by Renollett*, 45 IDELR 117 (8th Cir. 2006). In that case, the 8th U.S. Circuit Court of Appeals ruled a district offered FAPE to a high school student with multiple disabilities, even though it failed to put his behavioral intervention plan into writing. Although the parties intended to attach a written BIP to the student's IEP, neither state nor federal law required the district to do so. The 8th Circuit determined that although the student's IEP "was not perfectly executed," its procedural inadequacies did not deny him FAPE. Staff responded to behavioral incidents with set procedures and documented each incident.

There is nothing to indicate that the BIP was inappropriate or that a ten week review was improper, and in fact it is apparent that despite the BIP in place, the Student was still engaging in serious behavior. The District acted appropriately by trying to get the input of the social worker and the psychologist.

Appropriate Placement

The second prong in *Rowley* is whether the IEP sets forth a placement and services which address the unique needs of the child and is reasonably calculated to enable the child to receive an educational benefit. The IEP does not need to conform to the parent's wishes in order to be deemed sufficient or appropriate. *Id.* At 207. The Court in the 8th Circuit found "IDEA mandates individualized appropriate education for disabled children, it does not require a school district to provide a child with the specific educational placement that [his] parents prefer." *School District of St. Louis County: Missouri Department of Elementary and Secondary Education*, 449 F.3d 816 (8th Cir. 2006) citing *Blackman v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, at 658 (8th Cir. 1999).

Districts should consider the parents' suggestions and, to the extent appropriate, incorporate them in the IEP. See, e.g. *Deal ex rel. Deal v. Hamilton County Bd. of Educ.*, 42 IDELR 109 (6th Cir. 2004) (district's predetermination of autism methodology denied student FAPE, but note that the District Court at 46 IDELR 45 subsequently determined that the district's eclectic program was substantively appropriate); and *Fuhrmann v. East Hanover Bd. of Educ.*, 19 IDELR 1065 (3d Cir. 1993) (although the district did not agree to provide the programming and placement advocated by the parents, the parents had an opportunity to participate in the IEP formulation process in a meaningful way, where the IEP team considered parent suggestions and incorporated some of them, resulting in changes to the draft IEP). See also *J.D. by Davis v. Kanawha County Bd. of Educ.*, 48 IDELR 159 (S.D. W.Va. 2007) (Draft IEPs developed in preparation for IEP meetings are not necessarily evidence of predetermination. The district's inclusion of several goals and objectives requested by the child's

parents undermined the parents' claim that the district did not consider the child's individual needs.)

It is clear that the District has attempted to work with the Parent. Even going as far as assigning another person to take over the case manager's position. Furthermore, the Student's actions are very significant and severe. The Student is refusing to do his assignments, refuses to go to social work services, and is verbally threatening people in the harshest manner.

Courts have often imposed a more restrictive environment where a student threatens the safety of other students or poses a danger to himself if placed in the regular classroom *Clyde K. ex rel. Ryan K. v. Puyallup Sch. Dist.*, 21 IDELR 664 (9th Cir. 1994) other behavior would require so much modification in the curriculum that the regular program has to be altered beyond recognition *Lachman ex rel. Lachman v. Illinois State Bd. Of Educ.*, 441 IDELR 156 (7th Circuit 1988). The District in this case is not an appropriate environment for the Student as he needs a more self-contained services with more of a therapeutic milieu.

The Parent also disagrees with the District's psychological evaluation which emphasized the Student's behavioral and eventually deeming that the Student is ED eligible. The Student was reevaluated in the late fall of 2007. The testimony and evidence support that another full case study was not warranted. However, the Student's escalating aggressive behavior and the District's inability to educate him in his current setting, along with his history of behavior issues (Sd Ex. 152-154) justify revisiting whether the Student qualified for services under an emotional disturbance. However, IDEA does not have any requirement that a reevaluation be conducted.

Conclusion

The Parent's concerns and feelings of frustration are understandable, however, the Parent has simply failed to sustain her burden of showing that the December 16, 2008 IEP is inappropriate or that the procedural violations have amounted to a loss of FAPE. In fact after weighing all the evidence and case law, it is clear that the therapeutic placement is warranted as soon as possible. The Parent has provided her own opinions, however, these are not sufficient to overcome those of the school's experts who must be given deference in the matter of educational needs. While the District has been very lackadaisical regarding its notice to the Parent, it would be a great disservice to this Student to let these technical errors bar the Student from receiving the more structured setting of services that he truly needs.

IT IS HEREBY ORDERED:

1. The placement finding in the December 16, 2008 IEP of a therapeutic day program is appropriate;
2. The District shall implement the placement immediately;
3. As a courtesy to the Parent, the District shall discuss placement options with the Parent, however, the District has full authority to dictate which therapeutic day school meets the needs of the Student pursuant to his December 16, 2008 IEP;
4. The District shall submit a letter of compliance on or before March 3, 2009.
- 5.

ENTERED THIS 19th DAY OF FEBRUARY, 2009



Sheana Hermann
Impartial Due Process Hearing Officer

Finality of Decision:

This decision shall be binding upon all parties.

Right to File Civil Action:

Any party to this hearing aggrieved by the final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 ILCS 5/14-8.02(i) that civil action shall be brought in any court of competent jurisdiction within 120 days after this decision was mailed.

Right to Request Clarification

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party(ies) and to the Illinois State Board of Education. **The right to request such a clarification does not permit a party to request reconsideration of the decision itself, and the hearing officer is not authorized to entertain a request for reconsideration.**

CERTIFICATE OF SERVICE

The undersigned hearing officer certifies that she served copies of the aforesaid Decision and Order upon Parent, District's counsel, and the Illinois State Board of Education at their respective addresses by depositing same with the United States Postal Service [REDACTED] Illinois with proper certified postage paid before 5:00 p.m. on February 19, 2009.



Sheana Hermann
Impartial Due Process Hearing Officer