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SPECIAL EDUCATION SERVICES

ILLINOIS STATE BOARD OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)  
)  
) ISBE CASE NO. 2009-0368  
)  
) James Wolter  
) Impartial Due Process  
) Hearing Officer

**PROCEDURAL BACKGROUND:**

The parent filed a written due process complaint dated March 6, 2009. The complaint was received by the Illinois State Board of Education on March 23, 2009. The Illinois State Board of Education [hereafter (ISBE)] assigned the case to this impartial due process hearing officer [hereafter (IHO)] by letter dated March 25, 2009. The IHO contacted the parties by telephone to set a date, time and place of the due process hearing. The IHO sent a letter on March 27, 2009 setting, April 13, 2009, as the date for the pre-hearing conference. The parties mutually requested and were granted continuances to enable the parent to obtain independent evaluation and to provide the parties an opportunity to utilize mediation to resolve their differences. The pre-hearing conference was conducted by teleconference on June 22, 2009 and a copy of the pre-hearing conference report was sent to the parties on June 22, 2009. The parent requested the due process hearing be expedited because the private school they desired for the student requested partial tuition to secure a placement for her. ISBE denied the request because the matter in dispute did not meet the criteria for an expedited due process hearing. The district requested the due process hearing be continued because school was on summer recess and district witnesses were not available to provide testimony. The parent refused to agree to a continuance and the due process hearing was held on July 30 and 31, 2009 in the district's administrative offices.

The due process hearing exceeded the 45-school day timeline for conducting a due process hearing because the parent and district mutually requested continuances.

The parent elected to have due process hearing closed and elected not to have the student present at the due process hearing.

Legal counsel represented the district and legal counsel represented the parent at the pre-hearing conference and the due process hearing. The due process hearing took place over two days. The parent was present for the first day of the hearing but not present for the second day.

The parent submitted a document packet of 301 pages that was accepted into evidence.

The district submitted a document packet of 222 pages that was accepted into evidence.

On the day of the due process hearing both parties moved to strike portions of the opposing party's documents from the record. The IHO denied both parties motions to strike because the motions were not filed in time. The parent objected to the district not providing protocols for all of the district testing. The IHO offered to recess the due process hearing until the district produced and the parent examined the protocols. The parent withdrew the objection and elected to proceed with the due process hearing.

Witnesses were sequestered during the hearing and instructed not to discuss their testimony until the hearing was completed.

The following witnesses were called to provide testimony by the parent on July 30, 2009:

[REDACTED]

Student's Private Psychologist

[REDACTED]

Mother

[REDACTED] Therapist

The following witnesses were called to provide testimony by the district on July 31, 2009:

[REDACTED]

Specialized Services Coordinator

Crisis Specialist

The hearing officer has jurisdiction to hear this matter under PA 94-1100, Section 14-8.02(b) of the Illinois School Code, 34 CFR 300.506-509, and 23 Illinois Administrative Code 226.655 Subpart G.

**Issues:** The issues of this hearing are:

1. Whether the student required and the district failed to provide her with an appropriate case study evaluation within prescribed time lines.
2. Whether the district's school psychologist lacked appropriate qualifications to review the parents' private neuropsychological evaluation and psychiatric evaluations.
3. Whether the district was required but failed to state which aspects of the parents' private evaluations it accepted and which it rejected.
4. Whether the district initially determined that the student was not eligible for special education and related services and if so whether it erred in that determination.
5. Whether the district intentionally stalled considering the parent's request for a case study evaluation, conducting a case study evaluation, holding an IEP meeting and moving forward on the parent's due process complaint.
6. Whether the student was entitled to special education and related services during the 2008-2009 school year and if so whether the district provided those services.
7. Whether the district's proposed IEP for the 2009-2010 school year is reasonably calculated to provide the student with a free appropriate public education in the least restrictive environment.
8. Whether the student requires a placement in a private special education day school in order to receive a free appropriate public education in the least restricted environment.

**Remedies:** The parent seeks the following remedies:

1. The parent desires the hearing officer order the district to provide the student with a special education placement at a private special education day school such as [REDACTED] for the 2009-2010 school year.
2. The parent desires the hearing officer order the district to provide the student with compensatory education, for the 2008-2009 school year, in the form of an additional year at [REDACTED]

**Findings of Fact:**

1. The student is a 17 year 3 month old female from an English speaking home. She has completed 11<sup>th</sup> grade in a private parochial school [Parent Exhibit Page 0102 (hereafter PE 102)]. She has attended private parochial school for all of her schooling except for attending public school kindergarten. The mother testified that the student taught herself to read in kindergarten and had achieved excellent grades through 7<sup>th</sup> grade. She was adopted as an infant and returned to [REDACTED] during the summer between 7<sup>th</sup> and 8<sup>th</sup> grade to visit her biological mother and family. [REDACTED], the student's mother, and [REDACTED] the student's private clinical psychologist, testified that the student entered therapy prior to returning to [REDACTED] to assist her prepare for that return and meeting her biological family. She has continued in therapy with [REDACTED] since that time and has subsequently also received treatment from a [REDACTED] a psychiatrist. [REDACTED] testified that the visit to [REDACTED] was emotionally difficult for the student and that the student was dealing with feelings of abandonment by her biological mother and guilt in that her biological sibling in [REDACTED] were living in comparatively primitive conditions as opposed to the student's living conditions in the United States. [REDACTED] and [REDACTED] testified that the student's school performance started to slip in 8<sup>th</sup> grade. However, [REDACTED] testified that the student was still one of few students from her parochial elementary school to gain admission to a complete private parochial school. [REDACTED] and [REDACTED] testified that the student continued to experience school difficulties in high school and in 9<sup>th</sup> grade the parochial school changed her school counselor from a priest to a counselor who worked with "at risk" students. [REDACTED] testified that she collaborated with the at risk counselor to monitor the student's behavior. [REDACTED] testified that the counselor made accommodations available such as checking to insure the student was completing and turning in homework assignments and extended time for tests. [REDACTED] and [REDACTED] testified that the student's academic performance continued to decline and that she started exhibiting suicidal behaviors by taking an overdose of Tylenol, choking and cutting herself, abusing drugs, utilizing the internet to act out sexually and becoming depressed, oppositional and defiant. In addition to private therapy with the [REDACTED], the parents have provided the student with treatment by [REDACTED] to monitor psychotropic medication, a partial day hospital program and a summer therapeutic wilderness camp [hereafter [REDACTED] during the summer between 10<sup>th</sup> and 11<sup>th</sup> grade. The student has been invited to return to her private parochial school for 12<sup>th</sup> grade. [REDACTED] desires to have the student attend a private therapeutic day school for 12<sup>th</sup> grade at district expense. The student has not received special education services or

had an IEP at the private parochial school. The student was found eligible for special education and related services under the criteria for student with Emotional Disorders at an IEP meeting held on April 17, 2009 [District Exhibit Page 71 (hereafter DE 71)]. That meeting was continued to June 8, 2009 at which time an IEP was completed and the student offered a special education placement in her neighborhood school [DE 78-101].

2. ██████ testified that the student is very bright but regressed emotionally. The student does not have the psychic energy to do homework but does well on tests because she is so bright. Her psychological evaluation indicates the student's intellectual functioning is in the average to superior range [PE 005] and the student's academic achievement scores are at or considerably above grade level [PE 002 & 007]. ██████ testified that the student has not discussed suicide attempts, cutting incidents or sexually acting out behavior in therapy and that she learned of these behaviors from the student's mother who is able to monitor the student's computer usage because the mother has the technical ability to "break into" the student's computer. ██████ reviewed the district's psychological evaluation and discounted the portion of the report that depended on the student's self reporting [DE36], "because the student wants to present herself well." ██████ testified that she participated in the development of the student's IEP and disagreed with the recommendation that the student be provided in a special education placement in her neighborhood public school. She was concerned that the public school had no means of dealing with suicide attempts, the student cutting herself and keeping the student from leaving campus. Under cross-examination, ██████ acknowledged that the school nurse stated at the IEP meeting that the district would employ the standard crisis intervention strategies employed for any student attempting suicide or cutting themselves but felt the interventions should be individualized for the student. She indicated that she believed the student requires more social work counseling than indicated on the IEP but expressed no other objections to the present levels of performance, goals or type and amount of service. Her primary objection was that the district was not providing the student with a special education placement at ██████ ██████ It is noted that no substantive evidence was presented by ██████ documenting that the student cuts herself at school nor was any proffered by the parent. Additionally, the parent presented no substantive documentation that the student has a history of leaving school. On the contrary, the parochial school report cards indicates non-school attendance or class truancy has not been an issue for the student [PE 102 -106] and a bevy of teacher reports indicates the student attends class but does not voluntarily participate in class activities and fails to complete required homework assignments. There was no mention of class truancy being a problem [PE 116 - 132]. The private psychologist testified that she assisted the mother in finding the ██████ program and the ██████
3. ██████ testified, as indicated above, that she became concerned about her daughter because her school performance and behavior became progressively worse. The family has attempted several interventions to assist the student including individual, group and family therapy with a ██████ medical treatment with ██████ collaboration with school personnel, close monitoring at home, a partial psychiatric

hospitalization, and [REDACTED], a therapeutic summer camp. At the conclusion of the [REDACTED] summer program, the clinical director of the program recommended the parents place the student in a therapeutic residential program for the following year. The parents rejected that recommendation in consultation with the student's private psychologist because of the abandonment issues the student experienced. Instead the parents developed a contract with the student that would enable her to return the private parochial school as long as she exhibited improved behavior and school performance. Should she exhibit poor school performance and behavior other alternatives would be considered. It is noted that a copy of that contract was not proffered into evidence for the due process hearing. [REDACTED] testified that in the fall of 2008, the student's behavior and school performance started to deteriorate and she was advised by [REDACTED] and [REDACTED] the clinical director of [REDACTED] to place the student in a therapeutic day school and that she was also advised to seek assistance with that placement from the local school district. [REDACTED] contacted the neighborhood school and requested a case study evaluation and enrolled the student as a non-attending student for the purpose of having the public school district finance the student's placement in a therapeutic day school. On November 17, 2008 [REDACTED] was invited to a November 24, 2008 meeting with district personnel to discuss her request for an evaluation [DE 28 & 28]. On November 24, 2008 [REDACTED] provide the district with written consent to conduct an evaluation [DE 31]. The evaluation was completed [DE 33 - 60] and an IEP meeting was held on February 23, 2009 at which time the district found that the student did not meet the eligibility criteria for special education and related services because she had a "C" average [DE 61-64]. [REDACTED] filed a due process complaint on March 6, 2009 [DE 146-147]. The district filed a response on March 30, 2009 [DE 148-149]. The parties enter into mediation [DE 150 - 152] and agreed to conduct another IEP meeting to reconsider the student's eligibility along with independent evaluations the parent would provide. The parties requested and were granted several continuances to hold another IEP meeting, discuss possible settlement, and for the parent to obtain and provide the district with independent evaluations and recommendations for consideration by the IEP team [DE 1 - 27, 30, 67 - 68, 75, and PE 002, 004, 005, 077, 088 and 090]. The parent's request for a special education placement in a private therapeutic day school was considered as were the parent's independent evaluations and recommendations [DE 94] however the IEP team believed the collaborative team teaching model was the appropriate LRE placement for the student [DE 94]. [REDACTED] testified that the proposed placement would not work because the modifications and accommodations recommended by the IEP team had been provided by the private parochial school but did not work. An examination of the modifications and accommodations listed on the student's proposed IEP [DE 88], the systematic behavioral intervention plan [DE 87], and extensive special education and related services [DE 93] does not support the mother's contention.

4. [REDACTED] testified that she has not observed the student in the act of cutting herself, choking herself or taking an overdose of Tylenol. However, she believes the cutting occurs at school because on a recent occasion the student went to school without marks on her hand but returned with ink covered dots that had been cut onto her hand.

It is noted that there is no written evidence documenting this incident and that there is no collaborating evidence from the private parochial school stating the student cuts herself at school. [REDACTED] testified that she found apparatus that the student could use for choking. No written evidence was proffered to support this testimony. [REDACTED] testified that one night she returned home from work and found the student acting lethargic and abnormal. She called the private psychologist to ascertain whether to take the student to the hospital emergency room. The private psychologist spoke to the student on the telephone and then advised [REDACTED] to obtain a drug screening kit from the pharmacy and administer it to the student prior to taking the student to the hospital emergency room. [REDACTED] followed that advice and the drug screening test indicated the student had not taken a controlled substance so [REDACTED] did not take the student to the hospital emergency room. Subsequently [REDACTED] spoke with one of the student's friends and concluded the student had taken an overdose of Tylenol in a suicide attempt. [REDACTED] acknowledged that no physical or mental health professional personally examined the student and concluded that she had overdosed on Tylenol in an attempt to commit suicide.

5. [REDACTED] testified that she is seeking a special education placement in a therapeutic day school based upon the recommendation of [REDACTED] and [REDACTED]. [REDACTED] stated that the three individuals told her the student required a safe structured setting in a small environment but none of them articulate what specific services or characteristics constituted a safe setting or a structured setting or a small environment. Similarly, the written recommendations simply offer the conclusion that the student requires a therapeutic day school placement without specifying the special education and related services the student requires that are not available in her neighborhood school [REDACTED]. It appears [REDACTED] trusted recommendations that were not fully explained to her, not fully articulated in their written reports and perhaps not fully thought out by the individuals making the recommendation.
6. [REDACTED] the [REDACTED] therapist, testified by telephone. She stated that the student was in the therapeutic wilderness camp for approximately eight weeks and took a long time to adjust to the camp but eventually adjusted, participated and completed all of the tasks required for graduation. She corroborated the mother's testimony that upon graduation from the program, she recommended that the parents send the student to a therapeutic residential school but believes a therapeutic day school with the student residing at home and working on problems within the family could be beneficial. It is noted that the [REDACTED] therapist has not worked in a public school setting, has not spoken to district personnel and does not know of the special education and related services available in the public school setting.
7. [REDACTED] the specialized services coordinator and certified special educator, testified that [REDACTED] requested a case study evaluation to obtain a private therapeutic day school placement from the onset. She testified that the district conducted a case study evaluation and initially determined that the student was not eligible for service because she had a "C" average. Subsequently, the student was determined eligible for special education and related services. [REDACTED] stated the IEP team composed of a school nurse, psychologist and social worker reviewed the independent evaluations

and the recommendations provided by [REDACTED] and considered the mother's request for a special education placement in a private therapeutic day school but found that a special education placement utilizing the collaborative teaching model and the social work services provided in the student's neighborhood school was the appropriate LRE for the student [DE 93]. [REDACTED] contradicted the parent contention that the district requires students to have first been in a special education placement operated by the district prior to the district placing the student in a private special education placement by testifying that when a student requires services that can only be delivered in a private therapeutic day school, the district provides that placement and has done so for students who had no prior services in special education.

8. [REDACTED] the crisis specialist and certified school psychologist, described the extensive crisis intervention and preventative direct student services, faculty in-service, and faculty and family consultative services available in the district as documented in the district crisis procedural manual [DE 156 - 222]. [REDACTED] explained that current research indicates that cutting behavior is not considered suicidal behavior. Rather it is a coping strategy, albeit maladaptive, to enable the individual to deal with their inner pain and preserve life while suicide is an attempt to end life. The role of a therapist working with a student exhibiting cutting behavior is to assist the student in identifying the antecedents that provoke the cutting behavior and then develop a behavioral intervention plan to avoid the antecedents and/or develop more appropriate coping responses. [REDACTED] believed the amount and type of school social work services provided on the student's IEP is appropriate to her special education needs [DE 93].

#### **DISCUSSION OF ISSUES AND CONCLUSION OF LAW:**

The parent is the moving party in this matter. As such, they had the burden of proof in this matter [*Shaffer v. Weast*, 44 IDELR 150 (U.S. 2005)]. However, this burden does not relieve the district of its responsibility to provide the student with a free appropriate public education (FAPE) in the least restricted environment (LRE) [23 Illinois Administrative Code 226.50; 34 CFR 300.101 - 300.103] and in so doing adhere to procedural safeguards afforded student's with disabilities. Indeed the courts have held the local district must do more than go through the motions of providing a student with a disability FAPE. The local district must provide an IEP to a student with a disability [*Forest Grove School District v. T.A.*, 52 IDELR 151 (U.S. 2009)], further the IEP must provide some educational benefit [*Burlington School Committee v. Massachusetts Department of Education*, 556 IDELR 389 (U.S. 1985); *Florence County School District Four v. Carter*, 20 IDELR 532 (U.S. 1993)]

In this case, unlike *Forest Grove*, the district has provided the student with an IEP and unlike *Carter* and *Burlington*, has not had an opportunity to implement the IEP. However as in *Rowley*, the district has not had an opportunity to implement the IEP. Therefore, the two pronged *Rowley Test* must be applied in determining the appropriateness of the student's proposed IEP [*Board of Education of the Hendrick*

*Hudson Central School District v. Rowley*, 553 IDELR 656 (1982)]. Specifically, 1) did the district comply with the procedures set forth in IDEA? And 2) is the IEP reasonably calculated to provide the student with educational benefit?

The parent's due process complaint raised eight issues pertaining to whether the district followed appropriate procedures to insure that the student received a free appropriate public education in the least restricted environment. Each of those issues is addressed below and in so doing the *Rowley* test will be applied to this case:

1.

**Whether the student required and the district failed to provide her with an appropriate case study evaluation within prescribed time lines.**

The parent provided the district with written consent to conduct an evaluation on November 24, 2008 [DE 31] and an IEP meeting was conducted on February 23, 2009 [DE 61-64]. Since neither the parent or the district submitted a 2008 -2009 school calendar for the student's neighborhood school, the IHO was required to access the school calendar via internet. A review of the 2008 - 2009 school calendar for the student's neighborhood school, indicates a total of 51 school days [34 CFR 300.11(c)] transpired between the time the parent granted the district written consent to conduct an evaluation to determine the student's eligibility for special education and related services and the day that the IEP meeting was held. The timeline for conducting a case study evaluation per 23 Illinois Administrative Code 226.110(d) states, "Upon completion of the assessments identified pursuant to subsection (c)(3) of this Section, but no later than 60 school days following the date of written consent from the parent to perform the needed assessments, the determination of eligibility shall be made and the IEP meeting shall be completed." Further the evaluation procedure included a variety of technically sound assessment instruments administered by qualified individuals consistent with the requirements of 34 CFR 300.104.

FINDING: The facts of this case indicate the district provided the student with an appropriate case study evaluation within prescribed time lines.

2.

**Whether the district's school psychologist lacked appropriate qualifications to review the parents' private neuropsychological evaluation and psychiatric evaluations.**

Federal regulations [34 CFR 300.502(c)(1)] and state regulations [23 Illinois Admin. Code 226.180(d)] require IEP teams to consider independent evaluation but do not specify the qualifications an IEP team member must possess to consider an evaluation. Federal regulations require individual states to establish and maintain standards to insure that personnel content knowledge and skills to serve students with disabilities [34 CFR 300.156]. The Illinois State Board of Education requires school psychologists to have a Type 73 School Service Personnel Certificate which insures that the holder of the certificate graduated from an approved program and successfully completed an approved supervised internship program designed to enable the school psychologist to, among other

things, conduct psychological evaluations and to contribute to the development of student IEPs by interpreting data pertaining to the psychological functioning of a student and translating that data into appropriate instructional activities for the student. Neither federal or state regulations limit the role of a school psychologist in the interpretation of independent evaluations and the translation of those evaluations into instructional activities for students. While 23 Illinois Administrative Code 226.840 specifies the Qualifications of Evaluators conducting a psychiatric evaluation as possessing, “Licensure/registration issued by the Department of Professional Regulation pursuant to the Medical Practice Act of 1987”, the regulation does not address the qualifications of an individual conducting a neuropsychological evaluation. However, this issue is moot in that the school psychologist did not conduct the psychiatric evaluation nor the neuropsychiatry evaluation but considered them for purpose of participating in the student’s IEP meeting. The Illinois School Code defines school psychology services at (105 ILCS 5/14-1.09.1)as follows,

Sec. 14-1.09.1. School psychological services. In the public schools, school psychological services provided by qualified specialists who hold Type 73 School Service Personnel Certificates endorsed for school psychology issued by the State Teacher Certification Board may include, but are not limited to: (i) administration and interpretation of psychological and educational evaluations; (ii) developing school-based prevention programs, including violence prevention programs; (iii) counseling with students, parents, and teachers on educational and mental health issues; (iv) acting as liaisons between public schools and community agencies; (v) evaluating program effectiveness; (vi) providing crisis intervention within the school setting; (vii) helping teachers, parents, and others involved in the educational process to provide optimum teaching and learning conditions for all students; (viii) supervising school psychologist interns enrolled in school psychology programs that meet the standards established by the State Board of Education; and (ix) screening of school enrollments to identify children who should be referred for individual study. Nothing in this Section prohibits other qualified professionals from providing those services listed for which they are appropriately trained.

Nothing in 105 ILCS 5/14-1.09.1 precludes a school psychologist from interpreting data pertaining to the psychological functioning, including neuropsychological evaluations and psychiatric evaluations, of a student and translating that data into appropriate instructional activities for the student.

FINDING: This issue is without merit because neither federal nor state regulation prohibit a school psychologist from considering a neuropsychological evaluation or a psychiatric evaluation as an IEP team member.

**Whether the district was required but failed to state which aspects of the parents' private evaluations it accepted and which it rejected.**

District members of IEP teams are required to consider the results of independent evaluations [34 CFR 300.502(c)(1)]. However, the federal regulations do not require that there be a substantive discussion of such evaluation [*G. D. v. Westmoreland School Dist.*, 930 F.2d (1<sup>st</sup> Cir. 1991)], nor does IDEA require district to implement the independent evaluator's recommendation [*James and Lee Anne d. ex rel. Sarah D. v. Board of Education of Aptakasic-Tripp Community Consol. Sch. Dist. No. 102*, 109 LRP 45050 (U.S. District Court, Northern District of Illinois, 2009)], and so it follows that IDEA does not require, nor have the courts ordered, IEP members to state which aspects of an independent evaluation they accept and which aspects they reject. In this instance, what was rejected by the IEP team, was the placement recommendation made by the parent and her independent evaluators. The independent evaluator's recommendation for a therapeutic day school placement was made prior to the IEP team meeting, and prior to the development of the student's IEP, and failed to state what special services the student required that could not be provided in her neighborhood school. An IEP team is precluded from simply accepting a placement recommendation without first developing an IEP [*Board of Educ. of Tp. High School Dist. No. 211 v. Michael R.*, 2005 WL 2008919 (N.D. Ill. Aug. 15, 2005)] and then determining the LRE in which that IEP could be implemented [*Beth B. v. Van Clay*, 282 F.3d (7<sup>th</sup> Cir. 2002)] and indeed "the LRE requirement shows Congress's strong preference in favor of mainstreaming" [*see Beth B.*, 282 F.3d at 497].

FINDING: There is no regulatory requirement that IEP teams discuss independent evaluations much less state which aspects of the evaluation they accept and which they reject. Frequently, IEP teams, as in this case, consider the evaluation, including placement recommendations, before developing an IEP and determining the LRE placement. This issue is without legal merit.

**4.**

**Whether the district initially determined that the student was not eligible for special education and related services and if so whether it erred in that determination.**

An IEP meeting was held on February 23, 2009 at which the student was found "not eligible for special education and related services" (SD 63). Subsequently, the parent filed a due process complaint and the parties participated in state sponsored mediation on March 27, 2009 (SD 150) As a result of that mediation, the parties agreed to conduct another IEP meeting (SD 151-152). The IEP meeting was held an April 17, 2009 at which time the student was declared eligible for special education and related services under the criteria for Emotional Disturbance (SD 71). Since the student was declared eligible for special education services on April 17, 2009, the question is whether the district erred on February 23, 2009 in determining that the student was not eligible for special education and related services at that time. First, the fact that a student is eligible for special education services at one time does not automatically dictate that a student had to be eligible for special education and related services at another time. Since the district was closed for summer recess at the time of this due process hearing and the school personnel

who participated in the February 23, 2009 IEP meeting were out of town and not available to testify, the hearing officer is left with the parent statement that the student was declared not eligible for special education and related services because she had a "C" average. An examination of the written record indicates that, while the parent statement is not precisely what is indicated in the record (SD 33-60) it is close enough. The record indicates that the team understood the student's grades to be 3 "C"s, 2 "D"s and an "F" at the time it conducted the case study (SD 58). It is noted that the student obtained grades consisting of 1 "A", 1 "C", 3 "D+"s and 1 "D-" by the end of the 2008-2009 school year. It is not unreasonable to surmise that the IEP team determined that the student was passing and therefore learning and progressing which meant that she was not in need of or eligible for special education and related services and certainly not in need of the therapeutic day school placement the parent was seeking. The courts have consistently resisted efforts to supplant their views on the appropriate education of students for that of the trained educational experts most familiar with the student [*Lachman v. Illinois State Bd. Of Ed.* 441 IDELR 156 (7<sup>th</sup> Cir.); *Beth B. v. Van Clay*, 282 F.3d (7<sup>th</sup> Cir. 2002)] unless the local educators committed an egregious violation that precluded to student's ability to obtain a free appropriate public education in the least restricted environment [*Robinson v. Oak Park and River Forest High School District*, 213 Ill. App.3d (April 1991)]. There was no evidence of such violations in this matter.

FINDING: This issue is without factual and legal merit.

## 5.

**Whether the district intentionally staled considering the parent's request for a case study evaluation, conducting a case study evaluation, holding an IEP meeting and moving forward on the parent's due process complaint.**

As indicated above, the district conducted the initial case study within the 60 school day time line. The parent filed a due process complaint. The IHO was prepared to proceed with a due process hearing within the allocated timelines for conducting a due process hearing but the parent requested a continuance to obtain an independent evaluation and joined the district to mutually request a continuance so that they could utilize state sponsored mediation on March 27, 2009 in an attempt to resolve their differences. As a result of the mediation, the parties agreed to conduct another IEP meeting on April 17, 2009. The parties did not complete the IEP meeting and it was continued to June 8, 2009. The parent contends that the delays prevented the student from receiving a therapeutic day school placement for second semester of the 2008 - 2009 school year and subsequently an extended therapeutic day school placement for the 2009 summer.

FINDING: The parent presented no substantive evidence to support the allegation that the district intentionally stalled any aspect of the evaluation, IEP or due process hearing. Further, the parent joined in the request for continuances of the due process hearing to obtain independent evaluations and participate in mediation. This issue is without merit base on the facts of the case.

## 6.

**Whether the student was entitled to special education and related services during the 2008-2009 school year and if so whether the district provided those services.**

At the onset of the 2008-2009 school year the student was a “parentally-placed private school” student as defined in 34 CFR 300.130 who had not been declared eligible for special education and related services. As such, even if she had been declared eligible for special education services, she did not have an individual right to the level of special education service as she would have had if she had been enrolled in a public school [34 CFR 300.137]. An IEP team met on February 23, 2009 and determined that the student was not eligible for special education and related services. As indicated above, the parent presented no substantive evidence that the district made an error in arriving at that determination. As part of a state sponsored mediation agreement the parent and district agreed to conduct another IEP meeting to review the student’s eligibility. As a result, the student was found eligible for special education and related services at an IEP meeting on April 17, 2009. That meeting was continued to June 8, 2009 and the student’s IEP provided her with a special education placement in her neighborhood school. The parent rejected that placement and continued with this due process hearing. It is clear that the parent’s purpose in requesting a case study evaluation by email on October 12, 2008 was to obtain a placement at a therapeutic day school for the treatment of the student’s emotional problems at district expense [DE 120]. There was no expressed desire then, or subsequently, to seek the expertise of district personnel in identifying, understanding and formulating steps to address the student’s educational problems. As indicated above the student managed to pass her classes at the private parochial school.

FINDING: This issue is without merit base on the facts of the case.

7.

**Whether the district’s proposed IEP for the 2009-2010 school year is reasonably calculated to provide the student with a free appropriate public education in the least restrictive environment.**

As indicated above, the student has passed all but one of her courses. However her grades have declined over the years and are not commensurate with her ability. Her independent evaluators attribute this decline to her emotional problems and the district has found her eligible for special education and related services under the criteria of Emotional Disabilities. Teacher reports indicate the student generally does not complete daily assignments, hand in homework assignments, is inattentive in class and performs poorly on quizzes [SD 135 - 145]. The proposed IEP [DE 88], the systematic behavioral intervention plan [DE 87], and extensive special education and related services [DE 93] is reasonably calculated to address those problems. [REDACTED] has expressed concern that the neighborhood school would not be able to address the student’s safety needs. She contends that the student can simply walk out of school to abuse drugs and/or cut herself in a school that does not provide her with close monitoring. There is no substantive evidence that supports the contention that the student truants from school or that she cuts herself at school. The parent would have the IHO believe the student made two suicide attempts by overdosing on Tylenol and by choking herself. No substantive evidence was presented to document that these incidents occurred much less occurred at school.

Curiously, the student was not taken to a hospital emergency room when the parent believed that she attempted suicide. The district demonstrated that it has resources to provide the student with appropriate school social work services to enable her to benefit from her special education and as described by [REDACTED] can implement a plan that will assist the student extinguish the cutting behavior.

FINDING: The district has demonstrated that the June 8, 2009 adequately addresses the student's special education and related service needs, both academic and behavioral, per 20 U.S.C. § 1414(d)(1)(A)(i)(II) and therefore this issue is without merit.

8.

**Whether the student requires a placement in a private special education day school in order to receive a free appropriate public education in the least restricted environment.**

The parent had the burden of proof to demonstrate that the student had specific special education and/or related service needs that required a special education placement in a private day school [*Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005)]. They only presented a recommendation from [REDACTED] and [REDACTED]. They did not present the specific specialized services that the student requires and that are not available at her neighborhood school. While the parent presented claims that the student had safety needs, and needed to protect her from truancy, utilizing the computer to act out sexually by accessing pornography, hurting herself by cutting and possibly burning, drug abuse, and attempting suicide, no substantive evidence was presented that definitively supports the allegation that the student truant for school, has attempted suicide or cuts herself, burns herself, attempts suicide, has a pattern of substance abuse or exhibit's a pattern of other self-injurious behaviors in school. As stated in *Beth B.*, "A student "may not be removed from the regular classroom unless their education there, with the use of supplementary aids and services, cannot be achieved satisfactorily." *Beth B. v. Van Clay*, 282 F.3d, 498 (7th Cir. 2002). Thus, if a student's education at a regular public school is satisfactory, "the school district would be in violation of the Act by removing her." *Id.* at 499.

FINDING: There is no indication that the student requires a special education placement in a private special education or therapeutic day school.

**CONCLUSION:**

An application of the Rowley test to the facts of this case indicates the district complied with the procedures set forth in IDEA and the June 8, 2009 IEP is reasonably calculated to provide the student with educational benefit. Therefore:

1. The parent's desire that the hearing officer order the district to provide the student with a special education placement at a private special education day school such as [REDACTED] for the 2009-2010 school year is denied.
2. The parent's desire that the hearing officer order the district to provide the student with compensatory education, for the 2008-2009 school year, in the form of an additional year at [REDACTED] is denied.

**ORDERS:**

1. The student's July 8, 2009 IEP is reasonably calculated to provide the student with educational benefit. The district need take no further action with respect to this matter.

**Right to request clarification:**

Section 14-8.02a (h) of the School Code, allows the hearing officer to retain jurisdiction after the issuance of the decision for the sole purpose of considering a request for clarification. A request for clarification must be submitted to me within five (5) days after receipt of the 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 request shall operate to stay the implementation of those portions of the decision for which clarification is sought. I shall issue a clarification of the specific portion of the decision or issue a partial or full denial of the request in writing within ten days of receipt of the request and mail copies to all parties to whom the decision was mailed.

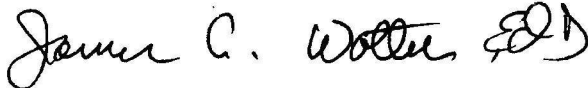
**FINALITY OF DECISION:** This decision shall be binding upon all parties.

**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.

**DATE OF DECISION AND ORDER:**

This Decision and Order rendered this 4<sup>th</sup> day of August 2009.



James a. Wolter, EdD.  
Impartial Due Process Hearing Officer

CERTIFICATE OF SERVICE

In the Matter [REDACTED] v. [REDACTED]  
ISBE Case Number: 2009-0368

I, the undersigned Impartial Due Process Hearing Officer, hereby certify that on August 4, 2009, I served the Decision and Order in the above matter by Certified Mail, at the [REDACTED] Illinois to the following:

7008 0500 0000 0527 2200

[REDACTED]

7008 0500 0000 0527 2217

[REDACTED]

7008 0500 0000 0527 2224

Andrew Eulass, Esq.,  
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100 North First Street  
Springfield, Il 62777-0001

*James A. Wolter EdD*  
James A. Wolter, EdD  
Impartial Due Process Hearing Officer  
Post Office Box 69  
Winnetka, Il 60093

8/4/09  
Date