

ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING

FEB 03 2010  
Special Education Services

[REDACTED] )  
 )  
 Student )  
 vs. ) Case No. 2009-0392  
 [REDACTED] )  
 )  
 Local School District)

ALFRED A. SPITZZERI, Hearing Officer

**PROCEDURAL HISTORY**

This Hearing Officer has jurisdiction to hear this case pursuant to a letter of appointment by the Illinois State Board of Education ("ISBE") dated **April 7, 2009**. [REDACTED] filed the request for due process on **March 27, 2009**, and was received by ISBE on **April 7, 2009**. Status hearings were periodically held on April 13<sup>th</sup>, April 16<sup>th</sup>, May 28<sup>th</sup>, June 11<sup>th</sup>, July 8<sup>th</sup>, September 8<sup>th</sup>, September 23<sup>rd</sup>, October 1<sup>st</sup>, October 8<sup>th</sup>, October 15<sup>th</sup>, November 3<sup>rd</sup>, November 4<sup>th</sup>, and December 21<sup>st</sup>, 2009. These continuances were mutually agreed upon to see if the parties could resolve their dispute.

The School District had originally responded to the request for due process by moving to dismiss it, in part, since [REDACTED] was eighteen (18) and there was no indication of any assignment by her to her father to proceed with this claim. However, when [REDACTED] pointed out that he was representing [REDACTED] in his capacity as an Attorney, this part of the motion to dismiss was subsequently withdrawn. The District also moved to dismiss certain requested remedies, based upon the two (2) year statute of limitations.

The Pre-Hearing Conference was originally convened via a conference call on **July 19, 2009**, and after several status conference calls was continued to **November 5, 2009**, by agreement to attempt to resolve the issue. The PHC report is marked as Hearing Officer (H.O.) Ex. #1. The Parent's prehearing disclosure packet is H.O. Ex. #2. The [REDACTED] prehearing disclosure is H.O. Ex. #3,

At the Pre-Hearing Conference, the parties spent a lot of time discussing the two (2) year statute of limitations. Participating in the pre-hearing conference were [REDACTED] who is not only [REDACTED] father, but her Attorney as well, and [REDACTED], the Attorney for the [REDACTED] [REDACTED]. Prior to

the pre-hearing conference, the parties exchanged witness and exhibit lists. The School District argued that since the request for due process was filed on March 27, 2009, that the parents are barred from seeking any relief prior to March 27, 2007. In response, [REDACTED] asserts that [REDACTED] should be estopped from raising the two (2) year statute of limitations because of the significant delays in conducting the evaluation of [REDACTED] and the holding of an IEP meeting. [REDACTED] attended [REDACTED] School for thirty-one (31) months and she was not evaluated within sixty (60) days like she should have been. Over [REDACTED] objection, the Hearing Officer ruled that [REDACTED] may attempt to introduce evidence by way of exceptions to the two (2) year statute of limitations. [REDACTED] has graduated from high school and is applying for college. [REDACTED] questioned whether she was ready for the transition.

The hearing, which took a full day, was held at Lane [REDACTED] School, [REDACTED] on January 19, 2010. [REDACTED] appeared on behalf of his daughter, [REDACTED]. [REDACTED] appeared for [REDACTED] in [REDACTED] was the official court reporter, 312-263-0052.

The student's (bound) exhibit book was identified as [REDACTED] Ex. #1, consisting of 182pp. and admitted into evidence. The Hearing Officer overruled [REDACTED] repeated objections to records made over 2 years before the filing of the due process request. A social worker's handwritten note (P's Ex. #1, p. 183A) and Notice of Procedural Safeguards (P's Ex. #1 pp 184-202) which were not part of the exhibit book were submitted into evidence at the hearing.

[REDACTED] bound exhibit book was marked as SD Group Ex. #1 consisting of pp.1-251. The complete March 13, 2009 IEP (SD Ex. #1, pp. 252-278) was admitted over [REDACTED] objection that it was not produced 5 days beforehand. [REDACTED] argued that part of the IEP was in its original packet, but not the complete IEP, "due to a clerical error". The Hearing officer overruled [REDACTED] objection on the grounds that he could not claim surprise or prejudice, since he attended the IEP meeting, and also, because this IEP formed the basis of his request for due process in the first place.

### BACKGROUND INFORMATION

[REDACTED] was born on November 8, 1989. Thus, at the time of the request for due process, [REDACTED] was nineteen (19) years of age. The request for due process centered on the March 13, 2009 IEP proposed by [REDACTED]. [REDACTED] objections to that IEP revolved around the fact that it was offered twenty-two (22) months after the start of an evaluation process begun on July 16, 2007, but not completed until November 5, 2009, and, in his words, "... were so wildly inappropriate to [REDACTED] current circumstances as to cast serious doubt upon the good faith of the IEP participants...". He requested that [REDACTED] pay for two (2) online courses in Microsoft Word and Excel (request withdrawn at the PHC); that [REDACTED] pay for six (6) behind the wheel driving lessons from a commercial driving school (request withdrawn at the PHC); and that [REDACTED] reimburse him for tuition,

room and board expenses incurred by [REDACTED] placement at the [REDACTED] School in Poland, Maine, from July 27, 2006 to April 6, 2009.

### ISSUES PRESENTED

The issues presented at the Hearing were as follows:

- 1) Was the IEP drafted on March 13, 2009 reasonably calculated to provide [REDACTED] with FAPE in the LRE; and, if not,
- 2) Did the [REDACTED] School provide [REDACTED] with FAPE in the LRE? And if so,
- 3) Does the two (2) year statute of limitations under IDEA (2004) bar the petitioner from any relief more than two (2) years before the filing of the request for Due Process?

### WITNESSES

[REDACTED] by speaker telephone

[REDACTED] SSW ([REDACTED] Tech school social worker)

[REDACTED] SW ([REDACTED] School)-by speaker telephone

[REDACTED], [REDACTED] Tech Special Education teacher

[REDACTED] father and attorney

[REDACTED], Case manager (since 9/08), former special education teacher at [REDACTED] Tech

[REDACTED] was on the [REDACTED] witness list but never testified.

### FINDINGS of FACT

[REDACTED] twenty (20) years of age, was first found eligible for special education services on April 1, 2005, when she was 15 years old. [REDACTED] Ex. #1, p. 104.

[REDACTED] testified that he did not get notice of this annual review on December 8, 2005.

However, [REDACTED] mother, did attend. There is no requirement that both parents attend the meeting.

At the time, [REDACTED] was attending [REDACTED] High School on the north side of [REDACTED] IL. Her classification was *primarily* emotionally disabled (ED) and, *secondarily*, learning disabled (LD). [REDACTED] Ex. #1, 104, 106. A number of modifications and accommodations were made for her. [REDACTED] Ex. #1, p. 108. A functional analysis and behavior intervention plan (FA/BIP) was also implemented. [REDACTED] Ex. #1, p.133-134 Due largely to frequent absences (68 absences), among other things, [REDACTED] failed most of her classes her freshman year and earned only three (3) academic credits. [REDACTED] Ex. #1, p.172.

[REDACTED] sophomore year was even worse, failing all her classes and receiving no academic credits (115 absences). She was absent almost 200 days during these two (2) school years. [REDACTED] Ex. #1, p. 172. This included a period of time when she was placed on homebound tutoring. Eventually she was removed from homebound tutoring, since she was not home when the tutor would arrive at her home, so [REDACTED] changed her status to "runaway".

[REDACTED] tested IQ falls in the average to high average range, yet her class rank at [REDACTED] was 919 out of 926. (largely due to attendance issues). [REDACTED] Ex. #1, pp 172 and 82).

[REDACTED] is an adopted child. [REDACTED] divorced when [REDACTED] was quite young. Initially the divorce was amicable, but eventually it became acrimonious. [REDACTED] suffered as a result. [REDACTED] Ex. 1, p. 146. In [REDACTED] own words [REDACTED] is a seriously disturbed young woman with a history of in-patient psychiatric hospitalization. [REDACTED] Ex. #1, 42, 44, 71, 74, 96. When [REDACTED] learned that [REDACTED] was "missing" in late 2006, he hired a private investigator to find her. He also printed a "missing persons" poster". [REDACTED], Ex. #1, p. 173. She had been engaging in a number of high risk activities, such as riding the [REDACTED] trains at night by herself, smoking crack cocaine and prostitution. Once [REDACTED] located [REDACTED] he placed her into an inpatient psychiatric hospital. The hospital staff advised him that [REDACTED] needed a long-term residential care placement, so he placed her in the [REDACTED] Program in Utah. [REDACTED] was mainly concerned for her safety and security.

In the summer of 2006, [REDACTED] contacted the [REDACTED] District for the purposes of doing some long-term planning for [REDACTED] once she got out of the [REDACTED] Program in Utah. He was told that he would have to wait until the fall of 2006 to hold an IEP meeting, since the teachers were off school for the summer. On July 14, 2006 [REDACTED] sent his ten (10) day notice to [REDACTED] the then Superintendent of Schools for [REDACTED] advising him of his intent to place [REDACTED] at the [REDACTED] in Portland, Maine. ([REDACTED] exhibit #1, page #169).

On July 25, 2006, [REDACTED] the then Director for Due Process and Mediation for [REDACTED] wrote to [REDACTED] advising him that [REDACTED] would not fund his "unilateral placement" of [REDACTED] at the [REDACTED] school. ([REDACTED] exhibit #1, pages # 170 – 171).

On July 28, 2006, [REDACTED] escorted [REDACTED] from the [REDACTED] Program in Utah to the [REDACTED] school in Maine, where she stayed for the next two and one-half (2 ½) years. He placed [REDACTED] there to "keep her safe and secure".

[REDACTED] of Providence, Utah, conducted a psycho-educational evaluation of [REDACTED] in June of 2006. At the time, she was sixteen (16) years old. (Ex. #1, page 74 – 95). His multiple diagnoses included Dysthymic Disorder, Oppositional Defiant Disorder, Post Traumatic Stress Disorder, cannabis dependence, and learning disorders, including a non-verbal learning disability and ADHD features. She also exhibited features of a borderline personality disorder, although she did not meet the full criteria for it, under the DSM-IV, because she was only a teenager. The report refers to a number of traumatic events in [REDACTED] young life, including her mother's illness, an alleged gang rape and a recent abortion.

[REDACTED] professional opinion was that [REDACTED] transition to a residential treatment center following the completion of her program at Aspen. He recommended that she be placed in a highly structured, supportive program, with a predictable environment. He also recommended both individual and family therapy for [REDACTED]. [REDACTED] stated further that [REDACTED] participate in a substance abuse treatment program and remain under the care of a psychiatrist who could help manage her problematic symptoms with appropriate medications.

The psycho-education evaluation also identified [REDACTED] difficulties with attention and working memory. Consequently, she had a difficult time mentally ordering, organizing and re-producing information that she hears, which is a significant liability in an academic setting, where much of the information traditionally taught is presented verbally. [REDACTED] also felt that [REDACTED] problems were influenced by Attentional Deficits and non-verbal learning issues, requiring classroom accommodations, such as small classes (no more than twelve (12) students) and a classroom environment which had minimal distractions and greater classroom structure. She also demonstrated difficulty with basic mathematic concepts. (30<sup>th</sup> to 39<sup>th</sup> percentile rank). (Ex. #1, page #85).

In the May of 2007, at the parent's request, [REDACTED] retained [REDACTED], PhD, a psychologist in Maine to evaluate [REDACTED] while she was at [REDACTED] Ex. #1, p. 139. For reasons which were not made clear, [REDACTED] began his evaluation in June of 2007, but did not complete it until February 22, 2008. (Ex. #1, pp. 96-102. Even though [REDACTED] name was given to [REDACTED] by [REDACTED], and [REDACTED] was not an employee of [REDACTED], [REDACTED] blamed [REDACTED] for the delay in completing [REDACTED] evaluation. Even then, the report he produced was basically a summary, the original report being ... "corrupted by computer failure November 2007". (Ex. #1, p.97. Her overall intellectual ability fell in the "average range". (Ex. #1, 99. On standardized academic tests her overall basic skills fell in the "high average range", with scores ranging from "average" to "superior". (Ex. #1, p.100. There was no evidence or discussion of her having a learning disability. In [REDACTED] words, ... "[REDACTED] quite capable of functioning well in terms of educational pursuits, when she is emotionally available for learning". (Ex. #1, pp. 100-102. [REDACTED] opined

that [REDACTED] was depressed, and had many of the traits of a Borderline Personality, "...meeting the criteria for a student with an emotional disability..." He offered no opinions as to an appropriate educational placement. He did not testify at the hearing.

[REDACTED] earned a B+ average at [REDACTED] in the 2008-09 school year. [REDACTED] Ex. #1, p. 14. She hoped to attend college and was accepted at Western Illinois University, Northern Illinois University, and Lewis University. The [REDACTED] payments from 8/10/06-9/16/08 totaled \$135,617.12. P's Ex. 1, p. 182.

[REDACTED] was expected to graduate in 2009. [REDACTED] Ex. #1, p. 103. However, she could not return to [REDACTED] at that time if she wanted to graduate in 2009 because she was short a foreign language credit. If she returned to [REDACTED], she would have to pick up the credit the following school year and graduate in 2010.

The first witness at the hearing was [REDACTED] aunt. In May, 2006 [REDACTED] went missing for several weeks. Reportedly, she was gang raped. [REDACTED] Ex. #1, pp 148-157. She testified that she assisted [REDACTED] with an abortion in early 2006.

[REDACTED] later visited [REDACTED] at [REDACTED] to see how she was doing there. [REDACTED] was positive about [REDACTED]. She was over 18 and could have left anytime if she chose to do so. To assist her [REDACTED] took out an educational loan for [REDACTED] and [REDACTED] agreed to repay it. The loan came to approximately \$39,000.00. [REDACTED] is still making payments on the loan.

[REDACTED] Social Worker (SW) was the next witness. He attended [REDACTED] March, 2009 IEP meeting. He testified it was over 6 hours long. He has been a SW at [REDACTED] for over 20 years. He prepared the social assessment, relying on others reports [REDACTED] s report from 2006 )and a phone interview with [REDACTED]. [REDACTED] Ex. #1, pp.4-7, 74. SD Ex. #1, p. 252. He had no chance to evaluate [REDACTED] before the IEP meeting because she was at [REDACTED]. He had not attended the December, 2005 annual review, and does not know why he wasn't invited. At that time [REDACTED] was on homebound tutoring. [REDACTED] Ex. #1, p. 104. The homebound tutoring was unsuccessful because she was not at home when the tutor arrived there. [REDACTED] felt [REDACTED] needs could be met at [REDACTED] with related services for 20% of the school day. He also recommended 275 minutes per month (mpm) for social work. i.e. 30 minutes per week (mpw). SD Ex. #1, p. 268. He testified that that was more minutes than most students he saw. In sum, he felt the march 2009 IEP was appropriate.

[REDACTED] had difficult remembering many facts relating to [REDACTED] and the IEP process. His answers were often evasive. In this respect, he did not make a compelling witness. For example, he could not state whether homebound tutoring was a restrictive placement or not.

██████████, a social worker at ██████████ testified by way of speaker phone. She has worked there for 24 years. She described ██████████ as a therapeutic boarding school. She knew ██████████ well, since she had attended ██████████ for 2 1/2 years. She made progress at ██████████, averaging a B+. ██████████ Ex. #1, pp. 14, 20, 28, 31. ██████████ had no knowledge of the programs offered at ██████████, and never spoke to the staff there. In her opinion, ██████████ was an appropriate setting for ██████████. She felt 120 mpm of SW was insufficient. She also stated that ██████████ needed a more structured program to succeed academically. She did not complete the program there because the family ran out of money to pay for it.

The next witness was ██████████. She is currently a special education teacher at ██████████. She was the case manager from 9/06-9/08 which encompasses much of the time in question. She first met ██████████ in September, 2006. In the Spring of 2006 ██████████ was offered homebound tutoring, but was placed on "runaway status" due to truancy.

██████████ like ██████████ also seemed to suffer from selective memory, "answering "I don't know" or "I don't remember" to many questions that one in her position would be expected to know. Questions often had to be repeated or rephrased.

██████████ signed the consent for the evaluation on May 17, 2007. This triggers the 60 day time frame within which the evaluation must be completed. ██████████ was not evaluated within that time frame. She said it was unintentional, and she was not even sure ██████████ had a duty to evaluate ██████████ since she was not enrolled in a ██████████ school at the time.

██████████ testified that ██████████ offered special education classes across the spectrum, including high incidence populations and self contained instructional classes for the more severe cases. At the March, 2009 IEP meeting she concurred with the placement decision. She felt ██████████ had made progress at ██████████ and overcome some of the issues she had before. ██████████ drafted some of the goals ██████████ Ex. #1, pp264-266.

██████████ was the next witness, testifying in the form of a lengthy narrative. He related that ██████████ was adopted at an early age. He and his wife divorced when ██████████ was young. While amicable at first, the divorce then became acrimonious. The parents shared joint custody. He blamed his ex-wife for ██████████ attendance issues. He related ██████████ history of depression and in-patient psychiatric hospitalizations. ██████████ Ex. #1, pp146-147. As she got older he saw her less and less and often did not know she was missing and had runaway from home. He had remarried and he and his new wife had 2 other kids, twins. He sought a placement for her where she would be safe and sober. He did his "due diligence" and decided to place her at ██████████ since it was on the approved ISBE list, and was the least expensive compared with other residential therapeutic schools. He and she developed a "game plan" to prepare for college. ██████████ Ex. #1, pp174-175.

Soon after leaving [REDACTED] and returning home [REDACTED] returned to her old ways, living on the street. She refused to enroll in a substance abuse program and even refused to meet with her father. In the last 4 months he has heard from her only once. Reportedly she is out of work, living on the street and pregnant.

[REDACTED] also testified that he never received a copy of his procedural safeguards prior to March, 2009, and the notice he received ([REDACTED] Ex. #1, p.184) is deficient in that it said nothing about the 2 year statute of limitations. As an aside, this alleged procedural issue was not part of the request for due process filed on March 27, 2009 (H.O. Ex. #4), and was not identified at the [REDACTED] as being at issue. It was admitted without objection. It appeared to come up "late in the game" in an effort to find an exception to the 2 year statute of limitations. On cross examination, it was pointed out that the July 25, 2006 response to [REDACTED]'s 10 day notice contained a copy of the "Explanation of Procedural Safeguards" ([REDACTED] Ex. #1, pp 170-171). [REDACTED] denied receiving the notice. In any event, [REDACTED] is an attorney and knew or should have known that any claim for relief would have a time limit.

[REDACTED] was the final witness. He is the current case manager for [REDACTED]. Previously he was a special education teacher at [REDACTED] since 2002. He was familiar with [REDACTED]'s special education programs. He was not familiar with [REDACTED]. He was involved in scheduling her reevaluation as a non-attending student using outside evaluators. He agreed with the IEP team's consensus for [REDACTED] placement at [REDACTED] with modifications, accommodations and related services.

### CONCLUSIONS of LAW

#### Issue #1: Was The IEP Drafted On March 13, 2009 Reasonably Calculated To Provide [REDACTED] With FAPE In The LRE?

Under the Individuals with Disabilities Education Act (**IDEA**), States receiving Federal Funds are required to provide "all children with disabilities" a "Free Appropriate Public Education" (FAPE). 20 USCA Section 1412 (a)(1)(A); Bd. Of Educ. vs. Rowley, 458 US176 (1982).

To meet these requirements, a school district's program must provide "Special Education and related services tailored to meet the unique needs of a particular child and be reasonably calculated to enable the child to receive educational benefits". Rowley above. Such services must be administered according to the Individualized Education Program (IEP), which school districts must implement annually. 20 USC Section 1414 (d).

Pursuant to statute, the district has the burden of presenting evidence that the special education needs of the child have been appropriately identified and

that the special education program and related services proposed to meet the needs of the Student are adequate, appropriate, and available. Ill. School Code, 105 ILCS 5/14-8.02a(g).

Here, █████ failed to meet its burden. This was a seriously emotional disturbed young woman who had failed miserably in her first 2 years at █████. The main reason she earned only 3 credits in those 2 academic years was her attendance. Did █████ really expect that upon transitioning back to █████ that all of a sudden those problems would be ameliorated, and that she would begin attending classes on a regular basis like any other student?

The IEP in question provided for only 274 mpw of social work services, and a regular classroom for her academic instruction. The overwhelming weight of the testimony at the hearing was that █████ needed a small teacher-pupil ratio in a highly structured setting. The █████ IEP failed to do so. The Hearing Officer finds that the March 13, 2009 IEP failed to provide █████ with FAPE.

**Issue #2: Did The █████ School Provide █████ With FAPE in the LRE?**

In determining whether a parent of a disabled child is entitled to reimbursement for the cost of a private school placement under IDEA, the Hearing Officer must determine:

- 1) Whether the Individualized Education Program (IEP) proposed by the School District was inappropriate, and
- 2) If not, would the private placement provide the student with FAPE in the LRE? Burlington vs. Dept. of Educ., 471 US 359 (1985).

A parent seeking tuition reimbursement bears the burden of demonstrating that their private placement was appropriate, even if the IEP was inappropriate. IDEA, Section 615 (i)(2), 20 USCA Section 1415 (i)(2). Parents who unilaterally place their child in a private facility do so at their own risk that they will not be reimbursed for their costs. Fort Zumwalt Sch. Dist. v. Clynes, 119 F.3d at 611-12.

An "appropriate" private placement is one that is likely to produce progress, not regression. Section 615 (i)(2), 20 USCA Section 1415 (i)(2). Clearly █████ made progress at Elan, but the inquiry does not stop there.

The party who commences an impartial hearing, in this case, the father, bears the burden of persuasion on both Burlington factors. See Schaffer vs. Weast 546 US 49, 57-58 (2005); Kerry M. v. Manhattan SD #114, 46 IDELR 194 (N. D. Ill. 2006).

Parents who seek reimbursement bear the burden of demonstrating that their private placement was appropriate, even if the IEP was inappropriate. See M.S. vs. Bd. of Educ., 231F. 3d 96, 104 (2d Cir. 2000). Essentially the same considerations that apply in deciding whether a district's placement is appropriate are considered in

deciding the appropriateness of a parent's unilateral (subject to certain limited exceptions). Frank G. vs. Bd of Educ., 459 F. 3d 356 364 (2d Cir 2006). (Referring to Rowley, 458 US at 207).

In determining whether a parent's unilateral placement is reasonably calculated to enable the child to receive educational benefits, the Court must look at the totality of the circumstances, including, but not limited to, grades, test scores and regular advancement. Gagliardo vs. Arlington Central Sch. Dist., 489 F. 3d 105 (2d Cir. 2007). Clearly, in the case at issue, ██████ did well at the ██████ residential School. She was enrolled there for 2 ½ years and overall had a B+ average.

However, what the IDEA guarantees is an *appropriate* education, not one that provides everything that might be sought desirable by loving parents. Walczak vs. Fla. Sch. Dist., 142 F. 3d, 119, 132 (2<sup>nd</sup> Cir. 1998). ██████ progress does not in and of itself demonstrate that the private placement was appropriate. See Gagliardo above. Even where there is evidence of success, a Court will not disturb a State's denial of IDEA reimbursement where, as here, the chief benefits of the private school would be preferred by the parent's of any child, disabled or not. See Gagliardo above.

It appears to the Hearing Officer that ██████ emotional problems manifested themselves in high risk behaviors outside of school, in the community, and were not necessarily the school's concern. The evidence indicated that much of ██████ problems (absences) stemmed from parent-child management issues. It is not necessarily the school's duty to provide a residential placement for a child who does not listen to her parents and is a chronic runaway, for psychological reasons unrelated to school.

The chief problem with the Petitioner's case is the failure to comport with an equally significant portion of the IDEA, namely, that placement be in the least restrictive environment (LRE). IDEA mandates that a student be educated in the LRE, and alongside his non-disabled classmates to the maximum extent possible. 20 USCS Sec. 1412(5); 34 CFR 300.116. Both federal and state law have a strong preference for having children with disabilities educated with children who are not disabled.

*"Each public agency shall ensure –*

*1. That to the maximum extent appropriate, children with disabilities, including children in public or private institutions... are educated with children who are non-disabled; and*

*2. That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."* 34 CFR, Sec. 550(b):

Placement at [REDACTED], an out-of-state residential treatment facility affords no opportunity for any interaction with non-disabled students, contrary to a placement in a self-contained instructional program, or even a private day school.

Though parent's failure to place [REDACTED] in the "least restrictive environment" possible is not necessarily a bar to tuition reimbursement, it is a factor which the Hearing Officer may consider. M.S. vs. Bd. of Educ. 231 f, 3d 96, 102 (2000). The unilateral placement selected by the Petitioner in this case was actually the most restrictive placement that was possible. Generally speaking, there is a wide ranging continuum of services available to students with special needs, ranging from placement in a regular classroom with related services (which is what [REDACTED] offered here) to a self-contained, instructional program (which was never considered here) to a private day school (which was never considered here) to a private residential therapeutic school (which is what the Petitioner did here).

Furthermore, the placement must be for educational reasons. Time and time again, the Petitioner repeatedly stated at the Hearing that he was concerned about the Student's "safety and security". While naturally these are concerns any father would have for his daughter, they are not necessarily the school district's concerns, where, as in this case, the student's primary disability was *emotionally based*, rather than *learning based* (although she did have a secondary classification of a non-verbal learning disorder, her standardized test scores and grades at [REDACTED] School showed that [REDACTED] was quite capable of learning in a highly structured environment)

In this Hearing Officer's opinion, FAPE and the LRE would have meant placing [REDACTED] in a self-contained, instructional classroom at [REDACTED] to benefit from a lower teacher to pupil ratio, with more structure and specially certified staff, and/or a private day school, if the self-contained instructional program did not work out for her.

This Hearing Officer does not pass judgment on the wisdom or sincerity of [REDACTED] in doing what he thought was best for his daughter. However, based upon an independent review of the evidence in this case, and giving due weight to the opinions of the [REDACTED] staff that they could have provided FAPE for [REDACTED] this Hearing Officer concludes that [REDACTED] School was not an appropriate placement within the means of IDEA and therefore respectfully declines the Petitioner's request for relief and finds that he is not entitled to tuition reimbursement for his unilateral placement of [REDACTED] at [REDACTED] school.

**Issue #3: Does the two (2) year statute of limitations under IDEA (2004) bar the petitioner from any relief more than two (2) years before the filing of the request for Due Process?**

Because the Petitioner has failed to meet his burden of proof relating to the second part of the Burlington test, we need not address the issue of the applicability of the statute of limitations defense, or exceptions thereto. 34 CFR 300.511 (e)-(f). Thus, whether the district failed to advise the father of the 2 year statute of limitations is irrelevant and moot.

**ORDER**

██████ request for relief in the form of reimbursement for ██████ tuition, room and board at ██████ School is respectfully denied.

**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 party and to the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, Illinois 62777. 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. **THE EFFECTIVE DATE OF THIS DECISION IS THE DATE OF RECEIPT OF ANY CLARIFICATION OF THIS DECISION.**

**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 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 was mailed to a party.



By Alfred A. Spitzer  
Due Process Hearing Officer

Dated this January 29, 2010