

Case Number: 2010-0129

Hearing Officer: Harry A. Blackburn

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

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### Impartial Due Process Hearing Decision Cover Page

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District Name [REDACTED] Phone: [REDACTED]  
Superintendent [REDACTED]  
Address [REDACTED]  
Represented by Ms. [REDACTED], Director  
Due Process and Mediation  
[REDACTED]

Parent Name [REDACTED] Phone: [REDACTED]  
Address [REDACTED]  
Represented by Mr. [REDACTED]  
Attorney at Law  
[REDACTED]

Date and Timelines

Date of Written Request: 12/08/2009  
Date of Pre-hearing Conf: NONE

Date of Summary Judgment: 8/12/10

The parties, mutually agreed to resolve the matter via Cross Motions For Summary Judgment. Upon review of the Cross Motions and relevant attached documents and affidavits in support of the respective Cross Motions, the Impartial Hearing Officer GRANTED the School Districts Motion for Summary Judgment against the Parent and DENIED the Parent's Motion for Summary Judgment against the School District.

ILLINOIS STATE BOARD OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)  
) ISBE CASE NO. 2010-0129  
)  
) Harry A. Blackburn  
) Impartial Due Process  
) Hearing Officer

ILLINOIS STATE BOARD OF EFEDUCATION  
IMPARTIAL DUE PROCESS HEARING

[REDACTED]

Student,

v.

[REDACTED]

Local School District.

)  
)  
) CASE NO. 2010-0129  
)  
)  
) HARRY A. BLACKBURN  
) Impartial Hearing Officer

**DECISION & ORDER**

Before us are cross Motions for Summary Judgment filed by the Parent on behalf of the student against the School District and by the School District against the Parent. Both parties have filed their respective Motions, Responses and Reply's to each other's pleadings on the issues raised in their Summary Judgment Motion's. The parties, by agreement, have affirmed that the issues raised in the Parent's Second Amended Complaint are amendable to the rendering of a decision by the Impartial Hearing Officer based upon the applicable law as a Summary Judgment.

As background, the Parent's attorney filed a Second Amended Complaint on December 8, 2009 and the District filed a Motion To Dismiss based on Insufficiency. The Hearing Officer Denied the District's Motion ruling the Parent's Second Amended Complaint "sufficient" as prescribed by IDEA and its implementing regulations 34 CFR § 300.507 (a)(1). (See Attached Hearing Officer Decision & Order—2/5/10). As noted in the Decision, however, the District's Motion focused on the issue of Residency of the Parent. Once the Hearing Officer ruled that the Second Amended Complaint was sufficient for purposes of IDEA, the District was obligated to enroll the student commensurate with its District policy on Residency and in accordance with State law. The Hearing Officer is now presented with determining Cross Motions For Summary Judgment from the respective parties. The Hearing Officer believes it significant to pick up where the "dispute" left off and what the District did after the Hearing Officer's Decision was rendered. The Parent has maintained that the District is obligated to enroll the student in the "area attendance school" nearest where the parent lives, [REDACTED] School ([REDACTED]). The District has taken the position that assuming that the Parent is a "bona fide" resident of the District (a fact that the District states that it has tentatively accepted but reserved its right to conduct an investigation), the Student must attend a separate therapeutic day school placement which currently is the [REDACTED] ([REDACTED]) and prior to this placement Near [REDACTED] School a District run separate therapeutic day school placement

## PARENT'S ISSUES FOR SUMMARY JUDGMENT

**Issue I: Whether the District violated the parent's procedural safeguards, denied FAPE in the least restrictive environment & predetermined placement each time the parent sought to enroll the student in his area attendance school, [REDACTED].?**

**Issue II: Whether the District violated parent' procedural safeguards: a.) by failing to provide prior written notice of the denials of the requested placements at [REDACTED] or of the District's proposals to place the student at Near [REDACTED] for severe & profoundly disabled students? and/or, b.) by failing to conduct IEP meetings within 10 days each time after the parent sought to enroll the student in his area attendance school, [REDACTED].?**

**Issue III: Whether the District violated the Rehabilitation Act and the Americans With Disabilities Act ("ADA") when it discriminated against the student solely by reason of his disability when the District segregated him by its proposed placement at Near [REDACTED] after he sought to enroll in his area attendance school, [REDACTED].?**

**Issue IV: Whether the District violated the Rehabilitation Act and the ADA when it retaliated against the parent for seeking to enroll the student in his area attendance school, [REDACTED].?**

### Parent's Facts For Summary Judgment Motion

1. The student is a [REDACTED] year old [REDACTED] boy of average intelligence who in his infancy was subjected to long term isolation in a state orphanage resulting in significant emotional deficits, including resistance to trusting others; subsequently, he was [REDACTED] by the Parent.
2. The most recent evaluations have indicated that the student may have something close to Reactive Attachment Disorder ("RAD") and suffers greatly from anxiety and depression, and these characteristics can be exacerbated by an adverse environmental setting.
3. The Parent enrolled the student in the District at [REDACTED] where he attended from September 2001 to September 2003 during which time he was eligible for special Education services.
4. After a brief time of non-enrollment in the District's schools, the Parent re-enrolled the Student in the District at [REDACTED] where he attended from February 2004 to June 2004.
5. The District wrote the initial IEP dated 5/25/2004 defining the Student's deficit as "Emotional Disturbance" with very little data to support this categorization or to articulate his educational needs.
6. The 5/25/04 IEP indicated that the Student had a deficit that required a private day school, but it did not provide English as a Second Language for the Student who had not fully learned

English. As a result, he was confused with [REDACTED] being his first language at [REDACTED].

7. After an interim period of non-enrollment, the Parent re-enrolled the Student in the District at [REDACTED] from October 2007 to January 14, 2008.

8. Most recently, [REDACTED] has proven to be an appropriate environment for the Student where he showed behavioral and academic progress and advanced in courses of Reading Enrichment and Computer Applications. (Exhibit 2, Affidavit of the Parent).

9. The Student went to [REDACTED] - overweight, bad study habits and eating habits, defiant, etc., yet the Student passed that [REDACTED] Grade program with increased self confidence. He came out with a clear vocational objective: a desire to start his own company to design computer software for children and after school -fun programs for boys.

10. The Student now has slumped back into anxiety due to the discrimination and rejection of being demoted by the District through its proposed enrollment and predetermined placement at [REDACTED] for severe and profoundly disabled students.

11. During 2009, the Parent has attempted to re-enroll her son in person on three separate occasions at [REDACTED] his area attendance school.

12. At all times pertinent, the Mother has owned a house at [REDACTED] and has been a [REDACTED] employed by the District.

13. The District Policy on Enrollment and Transfer of Students in the [REDACTED] Section: 702.1(I)(A)(4) requires the Student to be enrolled in his area attendance school. (Exhibit 1, the District Policy on Enrollment and Transfer in the [REDACTED]).

14. This District Policy 702.1 was required by and adopted pursuant to the Second Amended Consent Decree in *Corey H.*, which that the District Policy mentions by name, incorporated here by reference as if set out in full, and was implemented to prevent the illegal segregation of students with disabilities. The legal references at the end of that Policy are as follows: Second Amended Consent Decree entered by the U.S. District Court for the Northern District of Illinois on in the case *U.S. vs. Chicago Board of Education*, No. 80 C 5124; Individuals with Disabilities Education Act, P.L. 108-446, as amended; *Corey H. v. Board of Education of the City of Chicago*, 92 C 3409; *Salazar v. Board of Education* 92 CH 5703; McKinney-Vento Homeless Assistance Act P.L. 100-77, as amended; and Sections 5/2-3.13a(a)-(b), 10-20.12, 10-20.12a, 10-22.6(g), 14-1 et seq., 14C-1 et seq., 26-1 et seq., 34-18, 34-18.2, 34-18(7) 34-18.24 and 45-1 et seq. of the Illinois School Code; 325 ILCS 50/5 and 325 ILCS 55/5 Board of Education of the City of Chicago Rules 6-1, 6-2, 6-3, and 6- 8.

15. During 2009, the District has refused to enroll the student each time the Parent has sought enrollment at his area attendance school.

16. However, during the first attempt during 2009, the District staff told the Parent, after examining the usually required documents, that she and the student are [REDACTED] residents.

17. During these attempts in 2009, the District staff at [REDACTED] never challenged the Parent's current residency in [REDACTED]. Unfortunately, each time the District has instead proposed placement at its [REDACTED] school in contravention of its own Policy 702.1 which requires the District staff to enroll children with disabilities *immediately* in their area attendance school, which [REDACTED] is not.

18. On several occasions in the summer and fall of 2009, the Parent called the District for reenrollment information for the Student. the Parent made many attempts to phone the area attendance school for instructions as to what the requirements for enrollment were and which documents were needed.

19. On or about September 18, 2009, the Mother called and then visited her area attendance school, [REDACTED], and talked to Ms. [REDACTED] about enrolling the student. Ms. [REDACTED] asked the Parent if she was a resident of [REDACTED]. The Parent told her she was a resident and gave her the address where she and the student resided. Ms. [REDACTED] checked on the computer and confirmed that the Parent was listed as a property owner in [REDACTED]. Then Ms. [REDACTED] told the Parent to bring in at least 3 documents to confirm her [REDACTED] residency and to bring her son, the student, with her to enroll in [REDACTED].

20. On or about September 21, 2009, Mrs. [REDACTED], in a conversation with the Parent, implied that the student was going to be accepted at [REDACTED] by telling the Parent that she needed to return with the student and his transcript from his last school, [REDACTED].

21. On or about September 22, 2009, the Parent returned with her son to enroll him at his area attendance school, [REDACTED], as instructed, but, the District refused to enroll the student at [REDACTED]. The Parent gave the forms to the clerk. The Parent gave Ms. [REDACTED] 4 documents confirming her [REDACTED] residency: an electric bill from Commonwealth Edison, a gas bill from Peoples Gas, a payroll check stub from the District where she works, and a copy of her Illinois Driver's License. The clerk gave the forms back from where Ms. [REDACTED] had copied them and told this new clerk to tell the Parent and the student to report to its [REDACTED] for enrollment.

22. [REDACTED] is at [REDACTED] and is a special education school for severe and profoundly mentally impaired students, which the Student is not, and such placement would be harmful to the Student.

23. [REDACTED] is not the Least Restrictive Environment (LRE) for the Student.

24. [REDACTED] is not the student's area attendance school under the District Policy, but is a special attendance school.

25. The Parent believes the District has a custom and practice to deny students with disabilities access to [REDACTED], and to segregate them in special education programs like the one at [REDACTED].

26. This proposed placement by the District violates the legal commitments made by the District and the Illinois State Board of Education ("ISBE") and required by the Court. These obligations are listed in the Second Amended Consent Decree in the *Corey H.* that is cited in the District Policy on Enrollment and Transfer No. 702.1 that the District adopted to prevent further segregation of students with disabilities and is itself enforceable here.

27. At the time the Parent had *sought to enroll her* child with a disability, in the area attendance school, [REDACTED], the Parent asked to see the Principal. The clerk stated that the Principal was out of town for a week and that she may see the Assistant Principal if she had a seat. (The Assistant Principal showed up as the Case Manager, Ms. Wagner.)

28. Ms. [REDACTED] appeared upset that the Parent and the student were sitting down and waiting for her, so Ms. [REDACTED] called the Security Guard who was stationed outside the office door to escort the parent out of the building. Ms. [REDACTED] appeared to know the Parent and the student; however, they did not know why she was embarrassing them before the entire staff as well as the students passing in the hallway. The environment became hostile after the security guard asked the Parent to step into the hallway. The Parent discussed her concern with the security guard and he agreed with the Parent. He informed the Parent that [REDACTED] had been closed down and that it was being used for a Police Training Center.

29. The security guard escorted the Parent and the student part way to the metal detector, then they left the school with the understanding that they would not be allowed to return.

30. At no time did the Case Manager discuss the matter with the Parent, or make any offer to meet with the Parent or to conduct an IEP about the matter.

31. At no time did the District personnel give the Parent any procedural safeguard notice or any procedural information about appealing the actions or omissions of the District.

32. At no time during or after this incident was the Parent provided with a copy of prior written notice explaining the reasons for the refusals and proposals regarding enrollment or placement by the District.

33. At no time did the District ask any questions about what had transpired with the student's education or what IEPs he had since he last attended a the District school.

34. At no time did the District disclose the District policy cited here that had been adopted since the student last attended the District schools.

35. At a prior scheduled Status Call, the Impartial Hearing Officer ("IHO") indicated that the Parent should attempt to re-enroll the student. The District Counsel [REDACTED] agreed that the appropriate school to reenroll the student would be [REDACTED].

36. Soon thereafter, the Parent called [REDACTED] for instructions regarding needed documents for re-enrollment. Ms. [REDACTED] told the Parent what documents to bring.

37. On November 23, 2009, the Parent again attempted to enroll the student at [REDACTED]. The District refused again. On entering the premises at approximately 8:05 a.m. there appeared to be more police officers in the front office as well as a different Security Officer monitoring the metal detector for entrance into [REDACTED].

38. Ms. [REDACTED] in the Main Office began to request the three forms of I.D. after the Parent told her why she had returned. Mrs. [REDACTED] who was there on September 22, 2009, gave Ms. [REDACTED] advice that the student needed to report to another school. (She mentioned again [REDACTED]). the Parent asked her to call Ms. [REDACTED] and the Parent heard her state that [REDACTED] was not aware of the student's enrollment being at [REDACTED] after she had spent several minutes talking to someone on the phone.

39. The Parent asked for Mrs. [REDACTED] and Ms. [REDACTED] stated that she was out of the building. The Parent asked for Ms. [REDACTED] but was told "she no longer worked at the school." The Parent mentioned that she had returned with the necessary documents to enroll the student. The Parent showed her the report from [REDACTED] that showed outstanding progress behaviorally and academically.

40. After showing her the three pieces of information, the list got longer and more complicated. Mrs. [REDACTED] gave Ms. [REDACTED] a yellow form with additional information after the Parent had given her the three necessary copies that proved that the Parent was not only a resident but also a homeowner: her Tax bill, Gas Bill and Electric Bill.

41. The Parent showed Ms. [REDACTED] the information regarding the student's immediate prior placement, [REDACTED]. Ms. [REDACTED] called someone and she told the Parent that the Parent needed to have [REDACTED] give the Parent a copy of the MAPS Test as well as attendance and discipline records. Ms. [REDACTED] appeared to be new but Ms. [REDACTED] was not. Ms. [REDACTED] also informed the Parent that she needed an original Birth Certificate of the student and they would make a copy of it. (After Ms. [REDACTED] wrote in Attendance and discipline, the Parent was now certain that the District administrators did not want the student enrolled in [REDACTED]).

42. The Parent asked Ms. [REDACTED] to explain about why they needed an original copy of the student's birth Certificate because the original copy is in [REDACTED]. The Parent stated the copy already provided to the District is translated into English. She appeared to understand and stated that they would make a copy of that English translation copy. (An English translation copy was given to the District years before when the student attended [REDACTED] in 2001 after the Parent first brought him into this country).

43. Prior to leaving the office, Ms. [REDACTED] told the Parent to get all the documents together that are on the list and call before bringing them back. (She also informed the Parent that the Medical could wait until after he is enrolled).

44. The Mother objected; this was not the correct placement since the District had not conducted a new IEP, but had to find an equivalent placement to that of the last IEP or conduct an IEP Meeting, but Ms. [REDACTED] has insisted that to complete re-enrollment, the Student must be placed at [REDACTED].

45. Due to these actions and omission of the District, the Mother was denied enrollment of the Student at [REDACTED] and was not provided a free public education until the parties mutually agreed to a diagnostic placement at [REDACTED] ([REDACTED]) where the student began attending in mid February of 2010.

### **SCHOOL DISTRICT'S ISSUES FOR SUMMARY JUDGMENT**

**Issue I: There has been no denial of FAPE because there is no right to attend school of choice in contradiction of a student's IEP and because there were not procedural violations.**

**Issue II: The parent has not established any basis to proceed under section 504 of the rehabilitation act or the Americans With Disabilities Act.**

### **School District's Facts For Summary Judgment Motion**

1. In March of 2007, in response to a hearing request filed by the Parent against the School District # 158, Impartial Hearing Officer Sheana Hermann ("IHO") affirmed [REDACTED] choice of [REDACTED] as the appropriate separate day school placement for the student.
2. In a subsequent hearing request filed against School [REDACTED], IHO [REDACTED] indicated that separate day school continued to be the student's least restrict environment placement.
3. That decision was rendered on September 24, 2007.
4. On September 28, 2007, the Parent claimed residency in [REDACTED] and enrolled [REDACTED] in [REDACTED] by attempting to enroll in the neighborhood school, without sharing prior school enrollment.
5. [REDACTED] began attending on October 1, 2007.
6. [REDACTED] did not receive a copy of [REDACTED]'s IEP from the Parent, but rather, from [REDACTED] and after receiving his records from [REDACTED] the District attempted to comply with the sending school's IEP recommendation of a separate day school.
7. The Parent filed a hearing request against [REDACTED] on November 26, 2007.

8. On January 14, 2008, IHO Kristine Anderson confirmed that during the pendency of the Parent's November 26, 2007 hearing request, [REDACTED] was the student's "stay-put" placement.
9. The Parent withdrew her November 26, 2007 hearing request on April 15, 2008.
10. On April 26, 2008, IHO Anderson acknowledged receipt of the withdrawal and clarified that separate day school continued to be the student's LRE placement.
11. On May 21, 2008, the District developed an IEP for the student which indicated his LRE placement remained in a separate day school setting. The IEP was developed by and would be implemented at [REDACTED]
12. On June 3, 2008, the Parent filed a hearing request again against the District, again seeking placement at the neighborhood elementary school, [REDACTED], rather than separate day school.
13. Three days of hearing were scheduled, August 25, 26, and 29. The hearing took place on August 25 and 26, but on August 28, the Parent requested a continuance, which was granted.
14. The third hearing date was set for September 4, 2008; however, on September 3, 2008, the Parent withdrew the hearing request.
15. [REDACTED] is a separate day school operated by [REDACTED], and is one of several schools that can serve students whose IEPs call for separate day school as their LRE.
16. The majority of students attending [REDACTED] have a primary disability of Emotionally Disturbed, but near North may also accept students with Learning Disabilities, Mild Cognitive Impairment, and Speech/Language Impairment.
17. [REDACTED] is not a school designed to serve students with Moderate Cognitive Impairment, Severe Cognitive Impairment, nor Profound Cognitive Impairment; nor does it have such students in attendance.
18. During the 2007/08 school year, when Ms [REDACTED] attempted to enroll the student within the general population at [REDACTED] School, his IEP from [REDACTED] called for separate day school.
19. On November 5, 2007, the student was referred for enrollment at [REDACTED]
20. When a District student is transferred to a District separate day school, their enrollment is changed from the neighborhood or other the District school of enrollment to the District separate day school. This was done for the student during the 2007/08 school year.
21. During the 2007/08 school year, when a hearing request was pending, the student continued to be enrolled at [REDACTED]

22. Again in Spring 2008 and through September 2008, while another hearing request was pending, the student continued to be enrolled at [REDACTED]

23. In September 2008, the Parent withdrew her hearing request, and at that time, the student continued to be enrolled at [REDACTED].

24. During September 2009, when the Parent attempted to enroll the student at [REDACTED] School, the case manager, [REDACTED], attempted to get clarity of the student's proper enrollment.

25. Ms. [REDACTED] was informed by Ms. [REDACTED] that the student's last IEP called for separate day school placement and this his last school of enrollment was [REDACTED]

26. As his last IEP called for separate day school and his last school of enrollment was [REDACTED], the Parent was instructed that she should present the student to [REDACTED] for his schooling.

27. During 2007/08 and 2008/09, and 2009/10, [REDACTED] has been operating as a public separate day school.

28. During 2007/08 and 2008/09, and 2009/10, [REDACTED] has not been and is not "closed down" and has not been and is not being used as a "Police Training Center."

29. During the 2007/08 school year, the student was a [REDACTED] grade student.

30. In the middle of September 2009, the Parent attempted to enroll her son at [REDACTED] School.

31. When Ms. [REDACTED] looked the student up in the District computerized system, it showed two student identification numbers, one of which showed the student to be a sixth grade student, one of which showed the Student to be a seventh grade student.

32. Staff at [REDACTED] asked the parent for a copy of the student's 8<sup>th</sup> grade diploma or other documentation proving that the student had met eighth grade graduation requirements but the Parent never provided any such documentation.

33. The Parent gave conflicting stories about the student's previous school attendance to the [REDACTED] case manager and the [REDACTED] Counselor.

34. During the time that the Parent had shown up to try to enroll the student at [REDACTED] she was asked for the same documentation to demonstrate residency and appropriate high school matriculation as is requested of all parents/guardians attempting to enroll their children/wards into [REDACTED].

35. High schools within the District do not enroll students unless there is proof of an eighth grade diploma or otherwise having met eight grade graduation requirements.

36. During September 2009, the Parent provided some documentation from a five-week summer school course in Wisconsin. However, this was not an official transcript, and was not from an accredited school and did not offer verification of the student's status or any suggestion of having met Illinois eight grade graduation requirements.

37. Around September 18, 2009, Ms. [REDACTED] was informed that – at most - the student would only be an [REDACTED] grade student during the 2009/2010 school year.

38. As there was no documentation of an [REDACTED] grade diploma or otherwise having met Illinois [REDACTED] grade graduation requirements, the student was not to be enrolled in a District high school.

39. The policy requiring documentation proof of having met [REDACTED] grade graduation requirements is a standard policy that was applied to the student the same as any other student seeking enrollment in [REDACTED]

40. During the 2008/09 school year, after the Parent re-enrolled the student in [REDACTED] at [REDACTED] he was a [REDACTED] grade student.

41. On March 11, 2010, [REDACTED] presented a Student Transfer Form indicating eighth grade placement for the student.

42. [REDACTED] convened an IEP/504 meeting on August 26, 2009, at which time the IEP team determined that the student's LRE continued to be a separate day school.

43. The notes from the August 26, 2009 [REDACTED] IEP/504 plan indicates that the Parent desired a hearing to contest the decision concerning separate day school.

44. On September 2, 2009, the Parent withdrew her hearing request against School District #158 that was pending before IHO Fred Spitzzeri.

#### **STANDARD FOR MOTIONS FOR SUMMARY JUDGMENT**

Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admission on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Prowell v. Loretto Hospital*, 339 Ill App. 3d 817, 822, 791 N.E.2d 1261, 1265 (2003) *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A genuine issue for trial exists only when the non-moving party presents sufficient factual allegations to enable a rational trier of fact to find in its favor; anything less than this type of showing calls for grant of a summary judgment. *Beard v. Whitley County REMC*, 840 F.2e 405, 410 (7<sup>th</sup> Cir. 1988).

### **Standard For Cross Motions For Summary Judgment**

Generally, the fact that there are cross motions means that the parties are in agreement that there are no issues of material fact that are in dispute. However, the fact that there are cross motions does not mean that summary judgment has to be granted in favor of one of the parties. *Fogel v. Enterprise Leasing Company of Chicago*, 353 Ill.App.3d 165, 170, 817 n.e.2D 1135, 1139 (1<sup>ST</sup> Dist. 2004).

### **DISCUSSION AND CONCLUSIONS OF LAW**

#### **ISSUE I: WHETHER the District VIOLATED PARENT' PROCEDURAL SAFEGUARDS, DENIED FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT & PREDETERMINED PLACEMENT EACH TIME THE PARENT SOUGHT TO ENROLL THE STUDENT IN HIS AREA ATTENDANCE SCHOOL, LINCOLN PARK H.S.?**

The Parent summarizes the nature of the dispute arising as a result of the District's denial of enrollment when the Parent sought enrollment in the student's attendance area school, [REDACTED] in the fall of 2009 after the parent had withdrawn her child from a private school, [REDACTED], where he had allegedly been successful in the [REDACTED] Grade Summer Program. The parent alleges the District failed to follow its own enrollment procedures over a period of several months questioning residency of the parent, denying enrollment into the area attendance school and ultimately, allegedly, arising to a denial of FAPE. Parent begins her argument with restating the "purposes" of IDEA which include the making of public education and procedural rights available to children with disabilities.

**Purposes.** The purposes of this part are--(a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; (b) To ensure that the rights of children with disabilities and their parents are protected...(34 C.F.R. §300.1).

Parent also cites the *Rowley* decision in support of its premise that "access to public education" must be meaningful. (*Board of Education v. Rowley*, 458 U.S. 176 (1982)). In summary, the Parent characterizes the issues in the "instant case" as follows:

The issues in the instant case raise the question of what is the penalty for a school district that refuses to open the door of public education for a child with a disability. (Parent Motion, P. 10, Par. 2)

Parent further states that, 1) the District must serve all disabled students within its jurisdiction; 2) A child with a disability is entitled to a Free Appropriate Public Education ("FAPE"); 3) The law requires "immediate" enrollment at the "area attendance when the Parent seeks enrollment; 4) The student's area attendance school is [REDACTED] School ([REDACTED]). 5) The student's mother attempted to enroll the student at [REDACTED] but the District refused to enroll him and by doing so violated procedural safeguards; 6) Refusal to enroll the student at [REDACTED] is a

denial of FAPE in the Least Restrictive Environment (“LRE”) and 7) the District proposed placement at [REDACTED] before properly enrolling the student at [REDACTED] is a District “predetermined placement” and in itself a violation of IDEA.

The District begins, also, with defining FAPE, citing the *Rowley* decision. It states, “The seminal case defining FAPE is *Board of Educ. Of Hendrick Hudson Central School Dist. V. Rowley*, 458 U.S. 176 (1982).” (District Motion P. 3 Par. 4) The District cites the relevant portion of *Rowley*:

A court’s inquiry in suits brought under Section 1415(e)(2) is two-fold. First, has the state complied with the procedures set forth in the Act? And second, is the individualized education program developed through the Act’s procedures reasonably calculated to enable the child to receive educational benefits? *Rowley*, 458 U.S. at 206-207.

The District states, correctly, that the above referenced language is “often referred to as the two-pronged test; the first being procedural, the second being substantive.” (District Motion P. 3 last Par. ). From this the District points out that the Parent’s Second Amended Complaint does not allege any “substantive” violations, only procedural violations. (District Motion P. 3-4). The District states that federal courts have long held that while significant procedural violations may rise to the level of denial of a FAPE to a student, “procedural flaws do not automatically render an IEP legally defective “ *Roland M. v. Concord School Committee*, 910 F.2d 983, 988-89 (1<sup>st</sup> Cir. 1990). The IDEA Amendments of 2004 have codified this standard:

[A] decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies: 1) 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 benefits. 20 U.S.C. §1415(f)(3)(E).

The District concludes that the Parent has failed to allege any procedural violations, and even if there were, they do not amount to a denial of FAPE. In support of its conclusions, the District argues the following: 1) The student’s LRE is a separate day school 2) The student’s last school of enrollment is [REDACTED] and 3) The student has not yet met [REDACTED] grade graduation requirements

Documents provided by the parties in support of their respective positions support the fact that the Parent had made other arrangements to have an education provided her son sometime after he was determined eligible by the District to be served in a District separate day school at [REDACTED] and where he did attend. The District provides lengthy, but helpful, historical background. In March of 2007, in response to a hearing request filed by the Parent against [REDACTED] ([REDACTED] Illinois). Impartial Hearing Officer Sheana

Hermann affirmed [REDACTED]'s choice of [REDACTED] as the Appropriate separate day school placement for the student. (District Motion ¶ 4-5 and District Facts 1). In a subsequent hearing request filed against [REDACTED] IHO James Wolter indicated that the separate day school continued to be the student's least restrictive environment. (District Motion ¶ 5 and District Facts 2). IHO Wolter's decision was rendered on September 24, 2007. On September 28, 2007, the Parent claimed residency in [REDACTED] and enrolled the student in the [REDACTED] Schools by attempting to enroll in the neighborhood school, without sharing prior school enrollment. The Parent did not share the prior school district's IEPs, nor did she share the prior hearing officer decisions; rather, the parent appeared to have attempted to enroll the student in a the District school to specifically avoid the placement decisions made by the IEP team and affirmed by two hearing officers. (District Motion ¶ 5 and District Facts 3&4). The Student began attending on October 1, 2007 (SD Facts ¶ 3. The District did not receive a copy of the student's IEP from the Parent, but rather, from the previously attended school [REDACTED]. Upon receipt of the student's records from [REDACTED] the District attempted to comply with the IEP recommendation of placing the student in a separate day school. (SD Facts ¶ 6). A hearing request was filed by the Parent against the District on November 26, 2007 (SD Facts #7). On January 14, 2008, IHO Kristine Anderson confirmed that during the pendency of the Parent's November 28, 2007 hearing request, [REDACTED] was the student's "stay put" placement. (SD Facts #8). The Parent withdrew her November 26, 2007 hearing request on April 15, 2008. (SD Facts #9). On April 26, 2008, IHO Anderson acknowledged receipt of the withdrawal and clarified that separate day school continued to be the student's LRE placement. (SD Facts #10). On May 21, 2008, while no hearing request was pending, the District developed an IEP for the student which indicated that the student's appropriate LRE remained a separate day school setting. (SD Facts #11). This IEP was to be implemented at [REDACTED] [REDACTED] with the District. (SD Facts #11). On June 3, 2008, the Parent filed another hearing request against the District, again seeking placement at the neighborhood elementary school, [REDACTED], rather than the separate day school. (SD Facts #12). Three days of hearing were schedule, August 25, 26, and 29. 2008. The hearing took place on August 25 and 26, 2008, but on August 28, 2008, the Parent requested a continuance, which was granted. (SD Facts #13. The third hearing date was set for September 4, 2008; however, on September 3, 2008, the Parent withdrew the hearing request. (SD Facts #14). The District concludes that as a result of IHO Anderson's clarification that during the pendency of the hearing requests filed by the parent against the District, Near North continued to be the student's stay put placement, upon the Parent's withdrawal of the hearing request, the student's placement "unquestionably" reverted to the separate day school placement, as this was the placement as per the student's IEP. Hence, the District avers, [REDACTED] was correct to turn the Parent away as [REDACTED] is a public school, not a separate day school, and the student's most recent IEP calls for separate day school placement.

The Parent alleges that the District is required, by law, to immediately enroll the student at the area attendance area school whenever a parent seeks enrollment in accordance with its own policies and Corey H. (P Motion P. 11 ¶ 2).

**4. Enrollment of Students With Disabilities: Where a student with disabilities seeks to enroll in his or her attendance area school, the attendance area school must immediately enroll that child. If the**

attendance area school believes that it is unable to implement the student's Individualized Education Program (IEP) or 504 Plan, the school must then contact the Office of Specialized Services for appropriate review and placement determination and provide interim services until proper placement is effected by the Office of Specialized Services. the District Policy on Enrollment and Transfer, 702.1, Para. 4., adopted Aug. 27, 2008. (bold added).

The Parent, on information and belief, asserts that this policy was adopted by the District to comply with *Corey H.* case and to demonstrate its good faith efforts to increase the percentage of students with disabilities in area attendance schools, like Lincoln Park H.S. The above the District Policy continues to say:

Every school, including magnet schools, magnet cluster schools, GEAP schools, military academies and selective enrollment schools, shall strive to meet the minimum enrollment targets of students with disabilities established by the *Corey H.* court monitor. If a school is below the minimum enrollment target, the school and the Office of Specialized Services shall determine whether the placement of a program for students with low incidence disabilities is appropriate to assist the school in meeting the minimum enrollment target. Id.

Parent avers that at no time did the District staff inform the Parent of its recently adopted policy, or provide any explanation of why it was not being applied to the student's proposed placement by the District when it is apparently being used in federal court as evidence that the District is effectively and actively enforcing the policy it contains. A District can adopt greater standards than those required by state and federal law for students with disabilities under IDEA. Federal law is a floor, not a ceiling, under IDEA. It has been held that a state can adopt greater protections for children with special education needs, but not lesser. See *David D. v. Dartmouth School Committee*, 775 F.2d 411 (1st Cir. 1985), cert. denied, 475 U.S. 1140 (1986); *Town of Burlington v. Department of Education*, 736 F.2d 773, 792 (1<sup>st</sup> Cir. 1984) (states are "free to exceed, both substantively and procedurally, the protection and services to be provided to its disabled children"). A subdivision of the State, like the District, can also provide greater protections than afforded by State and Federal law. Here, the District granted an entitlement to greater protections than those that may be granted by IDEA and state law, then denied that entitlement, thereby violating IDEA itself. Illinois courts have specifically ruled on this regarding public school districts. The school board, by promulgating the rules, has created an entitlement and a right to certain procedures, on which a student may expect to rely. It may not refuse to apply the rules it has created. *Camlin v. Beecher Community Unit School District*, 339 Ill.App.3d 1013, 1017, 791 N.E.2d 127, 274 Ill. Dec. 331 (3rd Dist. 2003). Once the District adopted the District Policy on Enrollment and Transfer, 702.1 on Aug. 27, 2008, it had to abide by it and it is enforceable like any other special education rule of the District under IDEA. The Parent alleges that she was led to believe that her son would be enrolled in LPHS when presented with the appropriate forms and asked to present proper documentation of residency within the District. By not enrolling the student, the Parent avers the District violated procedural safeguards by its "failure to reasonably cooperate with the Parent's diligent execution of her

rights.” *Patricia P. v. Board of Education of Oak Park River Forest H.S. Dist. No. 200 and ISBE*, 203 F.3d 462, 31 IDELR 211, 31 LRP 5779, p.5. The Parent concludes that by proposing placement at Near North before properly enrolling the student at LPHS the District predetermined placement, which amounts to a violation of IDEA.

The District, in support of its argument, states that [REDACTED] is a separate day school operated by the District and is one of several schools that can serve students whose IEPs call for separate day school as their LRE. (SD Facts, ¶ 15). The majority of students attending [REDACTED] have a primary disability of Emotionally Disturbed and Speech/Language impairment. (SD Facts, ¶ 16). [REDACTED] it continues, is not a school designed to serve students with Moderate Cognitive Impairment, Severe Cognitive Impairment, nor Profound Cognitive Impairment; nor does it have such students in attendance. (SD Facts, ¶ 17). The District maintains that during the 2007/08 school year, when the Parent attempted to enroll the student with the general population at [REDACTED] School, his IEP from [REDACTED] called for a separate day school. (SD Facts, ¶ 18). On November 5, 2007, the Student was referred for enrollment at [REDACTED]. (SD Facts, ¶ 19). When a District student is transferred to a District separate day school, their enrollment is changed from the neighborhood or other District school of enrollment to the District separate day school. This occurred for the student during the 2007/08 school year. (SD Facts, ¶ 20). During the 2007/08 school year, while the Parent’s hearing request was pending, the student continued to be enrolled at [REDACTED]. (SD Facts, ¶ 21). In the Spring of 2008 and through September 2008, while a hearing request was pending, the student continued to be enrolled at [REDACTED] (SD Facts, ¶ 22). In September 2008, the Parent withdrew her hearing request, and at that time, the student continued to be enrolled at [REDACTED]. (SD Facts, ¶ 23). During September 2009, when the Parent attempted to enroll the student at [REDACTED] the case manager at [REDACTED], attempted to ascertain the student’s proper enrollment. (SD Facts, ¶ 24). Ms. [REDACTED] was informed by Ms. [REDACTED], placement coordinator with the Office of Specialized Schools and Services, that the student’s last IEP called for separate day school placement and that his last school of enrollment was [REDACTED] (SD Facts, ¶ 25). The District, in response to parent allegations of the status of [REDACTED] at the time of her attempting to enroll her child in the local attendance area school states that [REDACTED] has been operating as a public separate day school during the 2007/08 and 2009/10 school years. (SD Facts, ¶ 27). It also affirms that during the 2007/08 and 2008/09 and 2009/10 school years, [REDACTED] has not been and is not “closed down” and has not been and is not being used as a “Police Training Center”. (SD Facts, ¶ 28). Ms. [REDACTED] upon ascertaining the student’s most recent placement eligibility, instructed the Parent that she should present her child to [REDACTED] for his schooling, as his last IEP called for separate day school and his last school of enrollment was [REDACTED]. (SD Facts, ¶ 26, Ex. P.). Hence, the District avers, it was appropriate for the staff at [REDACTED] to refer the Parent to enroll her child at his most recent school of enrollment, [REDACTED].

The District alleges that during the 2007/08 school year, the student was in the sixth grade. (SD Facts, ¶ 29, Ex. J.). Therefore, it continues, assuming the student was in attendance at school and not truant, during the 2008/09 school year the student would be in 7<sup>th</sup> grade and during the 2009/10 school year, he would be an 8<sup>th</sup> grade student. In September of 2009, the Parent attempted to enroll the student at [REDACTED] School when her child, at most, would be an 8<sup>th</sup> grade student. (SD Facts, ¶ 30, 37). The District maintains that when staff at

██████████ looked up the student in the District's computerized system, it showed two student identification numbers, one of which showed the student to be a 6<sup>th</sup> grade student, one of which showed the student to be a 7<sup>th</sup> grade student. (SD Facts, ¶ 31). Discovering this, staff at ██████████ asked the Parent for a copy of the student's 8<sup>th</sup> grade diploma or other documentation proving he had met 8<sup>th</sup> grade graduation requirements but the Parent never provided any such documentation. (SD Facts, ¶ 32). The District alleges that the Parent gave conflicting stories about the student's previous school attendance to the ██████████ case manager and the ██████████ Freshman Counselor. (SD Facts, ¶ 33). The District acknowledges that during September 2009 the Parent provided some documentation from a five-week summer school course from ██████████ ██████████ in Wisconsin, however notes that it was not an "official" transcript, was not from an accredited school and did not offer verification of the student's status on any suggestion of having met Illinois eight grade graduation requirements. (SD Facts, ¶ 36). The District offers its viewpoint that the fact that the student's report indicates he was treated as a 9<sup>th</sup> grade student "could simply reflect nothing more than the private five-week camp having accepted the Parent's telling them that her child was a 9<sup>th</sup> grade student". The District describes that high schools within the District do not enroll students unless there is proof of an 8<sup>th</sup> grade diploma or otherwise having met 8<sup>th</sup> grade graduation requirements. (SD Facts, ¶ 35). The Parent never presented an 8<sup>th</sup> grade diploma or verification of having met 8<sup>th</sup> grade graduation requirements. The District points out that nowhere in the Parent's Motion For Summary Judgment is it demonstrated that the student has satisfied Illinois 8<sup>th</sup> grade graduation requirements. During the Fall of 2009, at the time when the Parent was attempting to enroll her son in ██████████ all evidence suggests that the student was not an 8<sup>th</sup> grade eligible student. Therefore, it concludes, the staff were correct in luring him away from attendance at ██████████. Subsequent to the Parent's attempts to enroll her son, evidence has become available supporting the fact that the student "has not" met 8<sup>th</sup> grade graduation requirements. Specifically, during the 2008/09 school year, after the Parent re-enrolled her son in ██████████, ██████████ ██████████ treated him as a 7<sup>th</sup> grade student as per his 7<sup>th</sup> grade ISAT scores (SD Facts, ¶ 40 Ex. Q.). Additionally, on March 11, 2010, ██████████ presented a Student Transfer Form indicating 8<sup>th</sup> grade placement for the student. (SD Facts, ¶ 41, Ex. R.). The District concludes that ██████████ staff were correct to have directed the Parent to ██████████ for the student's enrollment and proper placement.

**ISSUE II: WHETHER DISTRICT VIOLATED PARENT'S PROCEDURAL SAFEGUARDS: A.) BY FAILING TO PROVIDE PRIOR WRITTEN NOTICE OF THE DENIALS OF THE REQUESTED PLACEMENTS AT ██████████ OR OF THE DISTRICT PROPOSALS TO PLACE THE STUDENT AT ██████████ FOR SEVERE & PROFOUNDLY DISABLED STUDENTS? AND/OR, B.) BY FAILING TO CONDUCT IEP MEETINGS WITHIN 10 DAYS EACH TIME AFTER THE PARENT SOUGHT TO ENROLL THE STUDENT IN HIS AREA ATTENDANCE SCHOOL, ██████████?**

The IDEA and its regulations require that, prior to changing the placement of a child or a provision of FAPE, proper notice of the action be given to the parents. 20 U.S.C. § 1415(b)(3); 34 C.F.R. § 503(a)(1)(i). The prescribed "prior notice" must contain seven distinct provisions, including a description of the action, the rationale for the action, other options considered, and a

description of the reasons underlying the decision. 20 U.S.C. §.21 1415(c); 34 C.F.R. § 300.503(b). *Community Consolidated School District # 93 v. John F.*, 33 IDELR 210 (D.Ill. 2000). p. 10

The Parent avers that she attempted to use the only procedural means she knew to be available to dispute the proposed placement of her son. "*Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

The District counters by arguing that the Parent has not set forth a sufficient evidentiary and factual basis for her recitation of Facts, nor has the Parent established any procedural requirement that the District has failed to follow that would result in a denial of FAPE. The District avers that summary judgment is proper against the Parent where "she is a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." At hearing, the District continues, "the parent bears the burden of proving that the District violated a procedural requirement of the IDEA or accompanying state or federal regulations. It concludes that Parent's Motion tries to make much of the Parent's attempts to provide documentation of residency, however, enrollment policies are not related to IDEA or Article 14. The District cites the Illinois School Code as standing for the premise that "only resident pupils of the school district may attend school within the district on a tuition-free-basis". 105 ILCS 5.10-20.12b(b). The District cites, in footnote, that the District was correct to question the Parent's residency when she admitted to District staff that she resided outside the District. "Residing in a school district solely for the purpose of attending public school in the district will not be considered residency in the district for school purposes and thus, does not entitle a student to attend the district's school tuition-free." *Mina ex. Rel. Anghel v. Board of Educ. For Homewood-Flossmoor*, 809 N.E. 2d 168 (1 App. Dist. 2004). The District notes that the Parent suggests that the School Code requires the District to serve the student, as he is a student with a disability residing within the District's boundaries. Parent Motion, Page 10 Section IV (ISSUE 1)(B)). The District continues by stating, "**assuming for argument's sake that the student is a bona fide resident of the District, the Parent's recitation of this section provides no basis for relief. The section of the law cited by Parent requires the District to provide education to students residing in its boundaries.**" (emphasis added). The District avers that it has complied with the law by offering [REDACTED], a public separate day school, in September 2009, and by offering placement at [REDACTED] a private separate day school, starting February 25, 2010, both of which are consistent with the student's most IEP and previous hearing officer determinations. The District concludes, "the Parent cannot meet her burden as to this point."

The District points further to the Parent's "suggestion" that "law Requires Immediate Enrollment at Area Attendance When Parent Seeks Enrollment." (Parent Motion, Page 11-12, Section IV (ISSUE 1) (D)). The District points out that the Parent offered no statutory law or case law supporting the "bald" allegation that an enrollment and transfer policy could be elevated to "law" such that a procedural violation would be implicated that could arise to a denial of FAPE. The District's response is that the Parent's reference is "simply a restatement of *Rowley* and does not link any violation of facts". The District characterizes Parent's arguments as an "example of stretching beyond credulity – bootstrapping upon bootstrapping." The District continues by stating that although the *state* can adopt stricter standards that would

bind a school district, there is no legal support to say that internal policies of a local school district would amount to "law." There is no citation to suggest that the District is a "subdivision of the State." The District contends that Parent's citation to the *Camlin* case is completely irrelevant, does not involve any special education matters, and is misleading. The District concludes that the enrollment policy that the Parent so heavily relies upon does not apply in this matter. The policy provides guidance to schools on enrollment of students. However, when the Parent attempted to enroll her child at [REDACTED] in September 2009, the District emphasizes, "he was already enrolled as a student within the District, and in particular, was enrolled at [REDACTED]."

The District places emphasis on the Parent's "history" of "transferring" her son "back and forth" between The District's schools and School [REDACTED]. It surmises that it is Parent's attempt to "avoid" her son being provided education at a separate day school. Given that history, the District admits, even if the policy were applied and the student were to be considered a "first time enrollment," section 1(F)(1) of the policy applies, requiring placement consistent with the student's IEP. The last IEP available to the District in September 2009 called for separate day school placement. The District alleges that "at no point during her attempts to enroll her son during Fall 2009 did the Parent provide an IEP from [REDACTED], indeed, the Parent was evasive about where her son had been attending school." It concludes that nowhere in the Parent's Motion does the Parent provide an IEP from [REDACTED] suggesting placement other than separate day school. The District points also to its policy that requires schools to deny enrollment for students transferring in from another Illinois school district "if there is not a completed Student Transfer Form establishing that the student is in good standing." (*Policy*, Section 1(F)(2)). In that the District did not receive this form from School [REDACTED] until March 11, 2010, the District avers that it had a valid basis for [REDACTED] to deny enrollment in September 2009. (SD Facts, ¶ 41). At the time of enrollment within [REDACTED] the Parent provided an IEP/504 plan from [REDACTED] written on August 26, 2009, which indicated that [REDACTED] continued to feel that the student required separate day school placement. (SD Facts, ¶ 42). It is noted by the District that although the notes from the August 26, 2009 IEP/504 plan indicate that the Parent desired a hearing to contest the decision, on September 2, 2009, the Parent withdrew her request for a due process hearing against [REDACTED] (SD Facts, ¶¶ 43-44). The District concludes, that it is required to honor the IEP from the receiving school district during while a hearing is pending. *Casey K. v. St. Anne Comm. High School Dist. No. 302*, 400 F.3d 508 (7<sup>th</sup> Cir. 2005). Hence, the District maintains it was correct in implementing an IEP calling for separate day school placement, and the District was appropriate in its referral of the student to [REDACTED].

**ISSUE III: WHETHER the District VIOLATED THE REHABILITATION ACT AND THE ADA WHEN IT DISCRIMINATED AGAINST THE STUDENT SOLELY BY REASON OF HIS DISABILITY WHEN the District SEGREGATED HIM BY ITS PROPOSED PLACEMENT AT [REDACTED] AFTER HE SOUGHT TO ENROLL IN HIS AREA ATTENDANCE SCHOOL, [REDACTED]**

AND

**ISSUE IV: WHETHER the District VIOLATED THE REHABILITATION ACT AND THE ADA WHEN IT RETALIATED AGAINST THE PARENT FOR SEEKING TO ENROLL THE STUDENT IN HIS AREA ATTENDANCE SCHOOL, [REDACTED]**

The District seeks to have these claims dismissed on the basis that the Hearing officer does not have the authority and therefore lacks jurisdiction to adjudicate claims brought under IDEA. Instead the District avers that Jurisdiction is properly held in federal district courts and thus Parent's claims relating to Section 504 or ADA are best suited for the federal courts. 42 U.S.C. §12133. Further, the District claims that the Parent has failed to properly allege facts supporting such claims. *Byrne v. Board of Educ., School of West-Allis-West Milwaukee*, 979 F.2d 560, 563 (7<sup>th</sup> Cir. 1992); *B.H. v. Joliet School Dist. No. 86*, 2010 WL 1177447 (N.D. Ill.).

The Hearing Officer agrees with the position proffered by the District and believes he lacks the proper authority and jurisdiction to hear claims alleging 504 or ADA violations. Thus the Parent's recourse for adjudication of these claims rests with the Federal Court.

At least four Impartial Hearing Officer's have had the opportunity to weigh pertinent facts relating to the education of this student over a period of 4 years. Admittedly the Hearing Officers have interacted to varying degrees based upon the parent's often withdrawing the due process request prior to final adjudication of the facts presented. The most recent Hearing Officer Decision, prior to the current Hearing Officer being appointed, stated the following:

"For the record, the district [REDACTED] had previously filed a motion to dismiss, which had been briefed, and I was prepared to grant, but for the parent's withdrawal of the case. The issue of [the student's] placement has been litigated, relitigated, over and over. When this request for due process was refilled on January 20, 2009, the student had been held out of school for the 2008-09 school year by the parent who was allegedly home schooling him. Prior to the filing of this due process request, the consensus of the IEP team was that [REDACTED] would provide the student with FAPE. [REDACTED] subsequently accepted the student into their program. ... This hearing officer then ordered that the student be placed at [REDACTED] pending the hearing, under IDEA's stay put provision. A three year reevaluation was in order, and since [REDACTED] did not have a psychologist on staff, the Parent was allowed to select one of her choosing at the district's expense. ... The parent's handpicked private psychologist stated that 'Examinee [the student, name omitted] ...is not yet ready for main-stream {sic} education, even with a full time aid...examinee needs a small classroom environment with a very low student to instructor/aid ration {sic}...The public school system may not fully meet all the examinees needs.' " (See psychological evaluation by Dr. Sexton dated April 9, 2009) IHO Alfred A. Spitzer Order, September 3, 2009.

[REDACTED] convened a Section 504 of the Rehabilitation Act of 1973 Conference on August 26, 2009. The Parent and Independent Evaluator attended the Conference. The

Conference Summary page listed the grade of the student as "Grade 8<sup>th</sup>." The Parent refused to sign the 504 Accommodation Plan as recommended by [REDACTED] staff and left the conference without signing the plan, stating ("she no longer wishes to have a 504 plan"). (August 26, 2009 Section 504 Accommodation Plan – District Ex. "S"). Records attached to the 504 Plan being considered by the IEP team were a summer "OPS Certificate of Achievement for Reading Enrichment and Best in Class" and a summer "OPS Certificate of Completion" awarded to the student from St. John's Northwestern Military Academy's Summer OPS program dated July 31, 2009 (District Ex. "S").

The last IEP /504 Plan conducted by the District dated 5/21/08 indicates the student in "Grade 6." (District Ex. "J".)

Impartial Hearing Officer, Kristine Anderson, in her letter dated April 26, 2008 addressed to the Parent stated, in pertinent part, the following:

"Dear Ms. [REDACTED] have received your letter dated April 15, 2008 informing me of your decision to withdraw your request for due process hearing for your son....I noted in your letter of withdrawal that you demand that [the student] be allowed to return to [REDACTED]. Please remember that pursuant to the rulings of the Hearing Officers in two recent due process hearings, your son's appropriate placement is a therapeutic day school, not a regular education elementary school. The District has identified the student's placement as [REDACTED] School. That placement does not change with the withdrawal of your request." (District Ex. "I").

During the time that Hearing Officer Anderson had jurisdiction, the student's records indicated that he was in the 6<sup>th</sup> Grade. During the time the Hearing was pending before Hearing Officer Anderson, it became necessary to enter an Interim Order affirming the stay-put provisions of IDEA and affirming that "the Student's stay-put placement for the pendency of the this proceeding is [REDACTED]. (District Ex. "G"—1/14/08 Letter of IHO Anderson).

In November 2007, the Parent filed Due Process Complaint against the District with a request for Due Process Hearing. The pertinent issue at Hearing for Hearing Officer Wolter to decide was, "Whether the student continues to require a special education placement in a private special education day school per the impartial due process hearing Decision and Order of March 5, 2007." Impartial Hearing Officer James A. Wolter issued his Decision and Order on September 24, 2007. The Order stated:

"The district shall provide the student with a private special education day school placement with an incrementally progressive behavior intervention system that is capable of implementing physical restraint if necessary. A placement at [REDACTED] the school identified in the July 19, 2007 IEP, satisfactorily meets this criterion." (District Ex. "B").

In November, 2006, ██████████ filed a request for Due Process Hearing against the Parent, requesting resolution of the following issue: "Whether the District's proposed placement of ██████████ meets the requirement of IDEA 2004 and is an appropriate placement in the least restrictive environment for the Student." (District Ex. "A"). Impartial Hearing Officer, Sheana Hermann rendered her Hearing Decision and Order on March 5, 2006. Hearing Officer Hermann Ordered as follows:

"1. The District [#158] has met its burden under the Individuals With Disabilities Education Act of 2004 in seeking a placement for the Student in a therapeutic day school; 2. ██████████ is an appropriate placement for the Student pursuant to the Individuals With Disabilities Education Act of 2004; 3. The Student shall be enrolled in ██████████ by March 12, 2007; 4. Any other placement made by the parent without the express written agreement of the District shall be deemed a unilateral placement to be funded by the Parent and shall relieve the District of its obligations pursuant to IDEA '04; The District has met its burden of providing the Student with a continuum of services according to the "Stay-Put" placement, and the Parent has been uncooperative with the District's attempts to provide services." (District Ex. "A").

Based upon the foregoing and the documents and affidavits presented by the parties in support of their respective positions, it is the conclusion of this Hearing Officer that the Parent's have failed to meet their burden in presentment of their basis for the Hearing Officer granting a Motion For Summary Judgment in favor of the Parent; The Hearing Officer further concludes that the School District has met its burden in presentment of its basis for the Hearing Officer granting a Motion For Summary Judgment in favor of the School District. There have been no procedural violations in this matter that arise to the level of denial of a FAPE. While there may have been an initial struggle between the Parent and District relating to the whether the Parent was a resident of the District, the District set aside its concerns, albeit by their own admission not without conducting a full investigation as to whether the Parent in fact resides in the District as a "bona fide" resident, and allowed the student to become enrolled. The rest of the matter focuses on the District's right to place the student in accordance with the information it had on file based upon the student's previous enrollment in the District and any current information the Parent was able to provide at the time of seeking re-enrollment in the District. It is not clear how long it took the District to sort this information out, it appears from the record before this Hearing Officer that the District was fairly certain that the student was not eligible to be enrolled at ██████████ as a freshmen student. In fact the District's information pointed to the student's last placement within the District has being a private day placement within the District's own system. The District was well within its right to make the initial placement determination based upon the best information it had available at the time the Parent re-presented herself and her son back into the District's educational system. As the record in this case clearly establishes, the Parent has, on previous occasions, availed herself of challenging her son's recommended placement in a private day school not only in ██████████ but also in ██████████. On at least two occasions, she has withdrawn her request for Due Process prior to a Hearing Officer ruling. Based upon the facts presented, both District ██████████ the current District of residence, and ██████████ the previous school district of residence, recommended

placement in a "separate day school setting." There has been no impediment to the student receiving a FAPE. The student's IEPs and previous Hearing Officer decisions require separate day school placement and in the instant case has been offered to him by the District. The Parent has not been impeded in participating in the decision making process regarding the provision of FAPE to her son. The Parent has been invited to attend an IEP meeting held by the District and has availed herself of the opportunity to challenge the IEP through a hearing. The Parent also has had the opportunity to be involved in a recent re-evaluation, eligibility determination meeting and IEP meeting held at [REDACTED] where the student currently attends. The Parent has not sufficiently alleged any procedural requirements that the District violated nor that the Parent has not been afforded all rights accorded to her. The District is not guilty of making a "pre-determined placement" in violation of IDEA. Its actions in referring the student to attend [REDACTED] for severe and profoundly disabled students is consistent with the student's previously developed IEPs within the last four years and the several hearing officer decisions rendered concerning this student. His IEPs all recommend "separate day school" and [REDACTED] was his last school of enrollment. Procedural safeguards are designed to afford parents reasonable protections when it comes to the educational programming and special education needs of their children. The Illinois Administrative Code is cited by both the Parent and District. It provides in pertinent part, as follows:

**Section 226.50 Requirements for a Free Appropriate Public Education (FAPE)** A "free appropriate public education ("FAPE")" as defined at 34 CFR 300.17, must be made available by school districts to children with disabilities in accordance with 34 CFR 300.101 through 300.103, unless otherwise specified in this Section.

a) Transfer Students

Provision of FAPE to students who transfer into a local school district shall be made in accordance with the requirements of 20 USC 1414(d)(2)(C). The additional requirements of this subsection (a) shall also apply.

- 1) In the case of an eligible student transferring into a district from another district within Illinois, when the new district obtains a copy of the student's IEP before or at the time the child is presented for enrollment:
  - A) The district may adopt the IEP of the former local school district without an IEP meeting if:
    - i) the parents indicate, either orally or in writing, satisfaction with the current IEP; and
    - ii) the new district determines that the current IEP is appropriate and can be implemented as written.
  - B) If the district does not adopt the former IEP and seeks to develop a new IEP for the child, within ten days after the date of the child's enrollment the district must provide written notice to the parent including the proposed date of the IEP meeting, in conformance with Section 226.530 of this Part. While the new IEP is under development, the district shall implement services comparable to those described in the IEP from the former district.

- C) If the new school district does not receive a copy of the child's current IEP or a verbal or written confirmation of the requirements of that IEP from the previous school district when the child is presented for enrollment, the child shall be enrolled and served in the setting that the receiving district believes will meet the child's needs until a copy of the current IEP is obtained or a new IEP is developed by the school district. (emphasis added) (23 Ill.Admin.Code §226.50(a)(1)(2).**

In the instant case, from the undisputed facts as presented by the parties, the District acted properly by directing the parent to the enrollment of her son at his last known District placement, [REDACTED] and not [REDACTED]. It is suggested by the District that the Parent is attempting to avoid what IEP teams in two school districts and hearing officers have determined that the student requires a separate day school placement as his Least Restrictive Environment educational setting. This conclusion may bear some truth, however the Hearing Officer declines to opine further within the context of ruling on cross motions for summary judgment.

Finally, it is noted that the Student has reached the age of 14.8 years of age as affirmed by the student's mother. It is presumed that the District is mindful of its legal responsibilities under Federal and State law and particularly the *Illinois School Code* provision, in pertinent part, as follows:

*Sec. 14-8.03. Transition goals, supports, and services.* (a) A school district shall consider, and develop when needed, the transition goals and supports for eligible students with disabilities not later than the school year in which the student reaches age 14½ at the individualized education plan meeting and provide services as identified on the student's individualized education plan. Transition goals shall be based on appropriate evaluation procedures and information, take into consideration the preferences of the student and his or her parents or guardian, be outcome-oriented, and include employment, post-secondary education, and community living alternatives. Consideration of these goals shall result in the clarification of a school district's responsibility to deliver specific educational services such as vocational training and community living skills instruction.

(b) To appropriately assess and plan for the student's transition needs, additional individualized education plan team members may be necessary and may be asked by the school district to assist in the planning process. Additional individualized education plan team members may include a representative from the Department of Human Services, a case coordinator, or persons representing other community agencies or services. The individualized education plan shall specify each person responsible for coordinating and delivering transition services. The public school's responsibility for delivering educational services does not extend beyond the time the student leaves school or when the student reaches age 21.

(c) A school district shall submit annually a summary of each eligible student's transition goals and needed supports resulting from the individualized education plan team meeting to the appropriate local Transition Planning Committee. If students with disabilities who are ineligible for special education services request transition services, local public school districts shall assist those students by identifying post-secondary school goals, delivering appropriate education services, and coordinating with other agencies and services for assistance. *(Illinois School Code, 105 ILCS 5/14-8.03)*

### **ORDER**

Having been advised of the premises, **IT IS ORDERED AS FOLLOWS:**

- A. The Parent's Motion For Summary Judgment is **DENIED**.
- B. The School District's Motion For Summary Judgment is **GRANTED**.
- C. The Student's current District placement recommendation of a separate day school setting remains the appropriate placement.
- D. The District is to continue to offer to provide educational services consistent with this **Decision and Order** and its legal responsibilities consistent with the student's chronological age.

#### **Right to Request Clarification:**

- E. 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(s) and the Illinois State Board of Education. After a decision is issued, the hearing officer may not make substantive changes to the decision. The right to request such clarification does not permit a party to request reconsideration of the decision itself, and the hearing officer is not authorized to entertain a request for reconsideration.

**Right To File Civil Action**

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



Harry A. Blackburn  
Impartial Due Process Hearing Officer

Date: August 12, 2010

HARRY A. BLACKBURN  
P.O. BOX 34  
JOLIET, Illinois 60434  
(312) 401-2236  
(815-254-3658 (FACSIMILE))

**CERTIFICATE OF SERVICE**


The undersigned hereby certifies that a true and correct copy of the **INTERIM ORDER** was sent via e-mail to Cynthia M Hansen, [cmhansen@District.k12.il.us](mailto:cmhansen@District.k12.il.us); Joseph D. Thomas, [j.thomaslaw.thomas42@gmail.com](mailto:j.thomaslaw.thomas42@gmail.com); and placed in the U.S. Mail at Joliet, Illinois, via Regular U.S. Mail with proper postage prepaid and directed to:

Mr. [REDACTED]  
Attorney at Law

Ms. [REDACTED]

Mr. Andrew Eulass  
Due Process Coordinator  
Illinois State Board of Education  
100 North First Street  
Springfield, Illinois 62777-0001

before 5:00 p.m. on August 12, 2010.

  
HARRY A. BLACKBURN  
P.O. BOX 34  
JOLIET, Illinois 60434  
(312) 401-2236  
(815-254-3658 (FACSIMILE))