



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

### Impartial Due Process Hearing Decision

 )  
vs. ) ISBE Case No. 2010-0281  
 ) James A. Wolter  
 ) Due Process Hearing Officer  
 )

#### PROCEDURAL BACKGROUND:

The father of the student named in this Due Process Hearing filed a written due process complaint dated February 10, 2010 [Hearing Officer Exhibit 1 [hereafter (HE 1)]]. The complaint was received by the Illinois State Board of Education on February 16, 2010. The district filed a response to the complaint on February 22, 2010 [HE 2]. The Illinois State Board of Education [hereafter (ISBE)] assigned the case to this impartial due process hearing officer [hereafter (IHO)], by letter dated February 16, 2010 [HE 3]. The IHO sent the parties notice of the Pre-Hearing Conference on February 18, 2010 [HE 4]. The district requested and, without parent objection, was granted a continuance resulting in the hearing date being moved from April 15, 2010 to April 19, 2010 [HE 6]. The parties participated in a resolution session on March 4, 2010 [District Exhibit Page 255 (hereafter [DE 255])] but failed to reach a resolution of the issues. A Pre-Hearing Conference was held by teleconference on March 15, 2010 and a report of that conference, with the date of the Due Process Hearing, was sent to the parties on that date [HE 7]. Notice of the due process hearing was sent to the parties by the IHO on March 24, 2010 [HE 8] and the Due Process Hearing was held on April 19, 2010.

The student had reached the age of majority at the time his father submitted the Due Process Complaint. The student provided the father written authorization to represent him in this Due Process Hearing [HE 9]. Legal counsel represented the district at the Pre-Hearing Conference and the Due Process Hearing. Legal counsel did not represent the father.

The father elected to have the Due Process Hearing open and elected to have the student present at the due process hearing.

The district submitted an evidence packet of 59 documents for a total of 278 pages [hereafter DE 1-278] that was accepted into evidence. The parent submitted an evidence packet of 2 documents constituting 12 and 19 pages respectively [hereafter PE 1.01-2.19] that was accepted into evidence.

Witnesses were sequestered during the hearing and instructed by the hearing officer not to discuss their testimony with anyone until the Due Process Hearing was completed.

The following witnesses were called by both parties to provide testimony on April 19, 2010:\*

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Special Education Administrator  
Transition Teacher  
Case Manager-Transition Teacher  
SEDOL Vocational Facilitator

The following witnesses were called by the father to provide testimony on April 19, 2010:\*

[REDACTED]  
[REDACTED]

Assistant Superintendent\*\*  
Parent-Friend of Family

\* Hereafter, witnesses are listed by job title rather than by name to protect the confidentiality of the student. The student's name, his father's name and the specific name of the district are not used in the remainder of this decision for the same reason.

\*\* It is noted that the testimony of the Assistant Superintendent was disallowed because she was called to testify about an IEP other than the one pertaining to this student.

The hearing officer has jurisdiction to hear this matter under Authority: 20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)-(D), 34 CFR 300.511(c), Section 14-8.02(b) of the Illinois School Code [105 ILCS 5/14-8.02c(b)], and 23 Illinois Administrative Code 226.630(a).

**Issue:** The issue of this hearing is:

1. Whether the district failed to provide the student with an appropriate post-high school transition plan that adequately took into account and addressed his vocational interest in the area of food service.

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

1. The parent desires the hearing officer order the district to provide the student with compensatory education, for the failure to adequately address his vocational transition service needs since February 16, 2008.
2. The parent desires the hearing officer order the district to provide the student with a transition plan that prepares him for post-high school employment in the area of food service.
3. The parent desires the hearing officer order the district to provide the student with a special education placement at an ISBE approved transition program in [REDACTED] such as [REDACTED].

**Findings of Fact:**

1. The student is a 20-year 8 month-old male from an English speaking home eligible for special education and related services under the criteria for Mental Retardation.
2. The Special Education Administrator testified that the student completed the academic/prevocational portion of his high school program [DE 20], met district high school graduation requirements and will receive his high school diploma when he ages out of his post high school transition program in August of 2011. Her testimony is consistent with the written record, which indicates the student is currently in a post-high school transition program [DE 1 - 78]. She testified and the written record indicates the father and student participated in the IEP meeting that developed the student's transition plan [DE 59] and that the plan was developed in accord with the student's case study evaluation and vocational assessment [DE 21-36].
3. The father contends that the transition program is designed for students lower functioning than his son. He contends that field trips to the police station, fire station and post office are a waste of time because the student has gone to those places in primary school. He claims the district has not taken into account the student's interest in food service when designing his vocational experiences. He also stated, as supported by the record, that the [REDACTED] Vocational Facilitator did not attend the September 23, 2008 IEP meeting [DE 42]. However, it is noted that the father provided written consent to her being excused from that meeting [DE 42]. Further, he was unable to demonstrate, nor could the IHO discern, how that substantively precluded the father's meaningful participation in that IEP meeting, prevented his participation in the student's educational program or how that precluded the student from receiving a free appropriate public education (FAPE) in the least restrictive environment (LRE). He also stated that the Circles Curriculum [PE 1.01 - 2.19] was a waste of time that could be put to better use preparing the student for a job in food service.
4. The Parent-Friend of Family testified that she accompanied the father to many (at least two, IEP meetings); the most recent of which was on February 28, 2010. She stated that the father expressed concerns and frustration that the district was not addressing the student's needs. She stated that the district personnel merely let him talk at the IEP meeting but did not change the student's IEP or program to reflect the father's concerns. Upon cross-examination, she acknowledged that she only attended one of the student's IEP meetings on January 28, 2010 [DE 76]. She continued to maintain that the district failed to take into account the concerns expressed by the father at that meeting but was unable to specify any IEP goal, nor did the written record indicate any IEP goal, that the district refused to change upon the father's or the student's request.
5. The Transition Teacher and the Case Manager-Transition Teacher corroborated each other's testimony. They both testified that the student is 1 of 14 students in their transition class. The overarching goal of the transition program is to assist each student to become as socially and vocationally independent as possible in the community upon reaching 22 years of age. As indicated by the written record [DE 176-203], that is accomplished by teaching each student skills that are transferable to the community and work place. The transition program provides students with

opportunities to practice learned skills in the community setting [De 131-133, 136, 139, 146-152] under the guidance of teachers. The ages of the students range from 18 to 22 years old. The class is composed of two groups based upon the high school program from which they matriculated. The student named in this Due Process Hearing is in the cognitively higher function group. While all of the students in both groups and the two groups themselves may participate in the same activity, such as going to the supermarket, the instruction for each student is individualized based upon each student's IEP. The Transition Teachers testified that the student has demonstrated progress in the transition program. Their un-refuted testimony is that the student's hygiene has improved, he is able to stay on task longer and follow directions. He has reduced incidents of engaging in conversation when he should be working, bringing up topics not germane to the topic being discussed and not blurting out responses when uncalled for. They testified that these are all important skills to developing social and vocational independence. They testified that the Circles Curriculum provides the student with instruction on appropriate behavior in adult relationships and has been beneficial to the student with respect to relationships at home and in the community. They stated that the ability to develop and maintain appropriate adult relationships is an essential social/vocational skill for independent functioning in the community and on the job.

6. The [REDACTED] Vocational Facilitator corroborated much of the Transition Teacher's and case Manager-Transition Teacher's testimony. She testified that the student's vocational interests were taken into account in developing his transition plan. She testified that the student expresses interest in many vocational areas in addition to food service as indicated in the results of his vocational interest assessments [DE 80-90]. She testified that the student has had several job placements including a placement in food service and that he declined continued placement in food service in favor of a grounds crew placement. She testified that she understood the father's concerns and desires for specific vocational placements and answered those concerns at the student's IEP meeting [DE 77]. She testified that the student has demonstrated slow and steady progress at his multiple job sites. This conclusion is corroborated by the written record, which indicates an increase in the complexity of tasks required by the job sites the student has been placed at along with the student's increased ability to function with less staff support over time [ DE 134-139, 127-130, 140-145, and 153-156].
7. The testimony of the Special Education Administrator, Transition Teacher, Case Manager-Transition Teacher and [REDACTED] Vocational Facilitator, as supported by the written evidence, indicates the student's transition plan appropriately addresses the student's transition needs and that the student has made adequate progress in achieving his vocational goals.

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

The central issue of this due Process Hearing is the appropriateness of the student's transition plan and placement. From a legal standpoint, the transition plan or ITP will be treated as synonymous with an IEP because the process in developing each, their intent and implementation are analogous.

The father was the moving party in this matter. As such, he had the burden of persuasion in this matter [*Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005)]. However, this burden does not relieve the district of its responsibility to provide the student with a free appropriate public education (FAPE) in the least restricted environment (LRE) [23 Illinois Administrative Code 226.50; 34 CFR 300.101 - 300.103] and in so doing adhere to procedural safeguards afforded student's with disabilities. Indeed the courts have held the local district must do more than go through the motions of providing a student with a disability FAPE. The IEP must provide some educational benefit [*Burlington School Committee v. Massachusetts Department of Education*, 556 IDELR 389 (U.S. 1985)].

The *Rowley* court established a two prong test to determine appropriateness of an IEP [*Board of Education of the Hendrick Hudson Central School District v. Rowley*, 553 IDELR 656 (1982)]. Specifically, 1) did the district comply with the procedures set forth in IDEA? And 2) is the IEP reasonably calculated to provide the student with educational benefit.

**The central issue of this Due Process Hearing is:**

**Whether the district failed to provide the student with an appropriate post-high school transition plan that adequately took into account and addressed his vocational interest in the area of food service.**

As indicated in Findings of Facts 6, the student has expressed interest in numerous vocational areas including, but not limited to, food service. Additionally, the district has provided the student with numerous job site opportunities including a job site in food service. As indicated in Findings of Facts 5, the transition plan and the student's transition placement has provided him with skills that are requisite to successful community based employment. Findings of Facts 5 & 6 indicate the student has benefited from his transition plan and placement.

Findings of Facts 2 indicate the parent and student participated in the development of the student's transition plan. Findings of Facts 2-6 indicate the district implemented the transition plan and the student derived more than minimal educational benefit from the plan. The district demonstrated the plan contains "appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and independent living skills" consistent with 34 CFR 300.320(b)(1) and provides "transition services (including courses of study) needed to assist the child in reaching those goals" consistent with 34 CFR 300.320(b)(2).

Findings of Facts 3 indicates the [REDACTED] Vocational Facilitator did not attend the September 23, 2008 IEP meeting but the father agreed to the SEDOL Vocational Facilitator being excused from that meeting [DE 42]. The father was unable to demonstrate, nor could the IHO discern, how [REDACTED] Vocational Facilitator's absence at the IEP meeting substantively precluded the father from meaningfully participating in the student's IEP meeting, prevented his participation in the student's education or how the

██████████ Vocational Facilitator's absence at the IEP meeting precluded the student from receiving a free appropriate public education (FAPE) in the least restrictive environment (LRE).

The district demonstrated that it fully complied with the procedural safeguards set forth in IDEA and that the student obtained meaningful educational benefit from his transition plan and transition placement. Therefore, the district met the two-pronged *Rowley* test and the *Burlington* standard and the father failed to demonstrate that the student's transition plan and placement were not appropriate to the student's transition needs.

This parent's contention that the district failed to provide the student with an appropriate post-high school transition plan that adequately took into account and addressed his vocational interest in the area of food service is not supported by the facts of the case and without legal merit.

**The parent sought to obtain the following remedies from this Due Process Hearing: The parent desires the hearing officer order the district to provide the student with compensatory education, for the failure to adequately address his vocational transition service needs since February 16, 2008.**

A student may be entitled to compensatory education when a district fails to provide that student with FAPE. In this instance the district demonstrated by the *Rowley Test* and the *Burlington Standard* that the transition plan and placement provided the student FAPE. Therefore, there is no foundation to support the parent's request for compensatory education and the request must be denied.

**The parent desires the hearing officer order the district to provide the student with a transition plan that prepares him for post-high school employment in the area of food service.**

The student's current transition plan focuses on providing him with social and vocational skills essential to functioning independently in the community and that are transferable to and applicable to the successful functioning at multiple job sites including food service. The parent failed to demonstrate that the student's transition plan was deficient in any way. There is no factual or legal justification to order the district to change the student's transition plan to one that narrowly focuses on post high school employment in food service. Therefore, the parent's request that the IHO order the district to change the student's transition plan must be denied.

**The parent desires the hearing officer order the district to provide the student with a special education placement at an ISBE approved transition program in ██████████ such as ██████████**

An IHO is justified in ordering a district to change a student's special education placement when that placement has been demonstrated to be inappropriate. The *Rowley Test* and *Burlington Standard* support the appropriateness of the student's current placement. Simply, the student is deriving educational meaningful benefit from his current placement. Therefore, the parent's request that the IHO order the district to

provide the student with a placement at another ISBE approved placement in [REDACTED] such as [REDACTED] cannot be granted and must be denied.

**ORDER:**

1. The student shall remain in his current placement.
2. The district need take no further action with respect to this matter.

**Right to request clarification:**

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

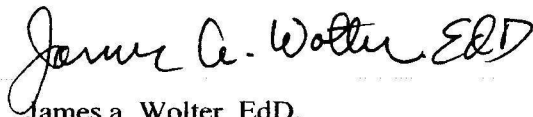
**FINALITY OF DECISION:** This decision shall be binding upon all parties unless and until it is reversed by a court of competent jurisdiction.

**RIGHT TO FILE CIVIL ACTION:**

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

**DATE OF DECISION AND ORDER:**

This Decision and Order rendered this 22nd day of April 2010.



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

**CERTIFICATE OF SERVICE**

In the matter of:

[REDACTED]

vs.

[REDACTED]

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ISBE Case No. 2010-0281  
James A. Wolter  
Due Process Hearing Officer

I, the undersigned Impartial Due Process hearing Officer, hereby certify that on April 22, 2010, I served the Due Process Decision and Order in the above matter by Certified Mail to the following:

[REDACTED]

7009 3410 0001 6020 9293

[REDACTED]

7009 3410 0001 6020 9309

[REDACTED]  
ISBE Due Process Coordinator  
100 North First Street  
Springfield, Il 62777-0001

*James A. Wolter EdD*  
James A. Wolter, EdD  
Impartial Due Process Hearing Officer

*4/22/2010*  
Date