

Case Number: 2011-0094

[REDACTED] vs [REDACTED]

Hearing Officer: [REDACTED]

Illinois State Board of Education  
Special Education Services  
Springfield, Illinois 62777

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## Impartial Due Process hearing Decision Cover Page

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District Name [REDACTED] Phone: 618-222-8241

Superintendent [REDACTED]

Address [REDACTED]

Represented by [REDACTED]

Parent Name [REDACTED] Phone: [REDACTED]

Address [REDACTED]

Assisted by: Bessie Peabody, Case Worker, IDHS

### Date and Timelines

Date of Written Request: 08/22/2011

Date of hearing: 11/14/2011 to 11/14/2011

Date of Pre-hearing Conf: 10/11/2011

Date of Decision: 11/22/11

### Summary of Decision

**Grandparent/guardian failed to sustain Burden of Proving that District's proposed placement in a more structured District placement located in the [REDACTED]. Phase II Behavior Development Program was not the least restrictive placement.**

**ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING**

[REDACTED] <b>Student,</b>	)	
	)	
v.	)	<b>CASE NO. 2011-0094</b>
	)	
[REDACTED] <b>Local School District.</b>	)	<b>HARRY A. BLACKBURN</b> <b>Impartial Hearing Officer</b>

**DECISION AND ORDER**

**Jurisdiction and Procedural Matters**

This matter is before the undersigned hearing officer for a due process hearing pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA 2004"). 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).

**BACKGROUND**

The Grandparent, legal guardian, re-filed a due process complaint notice ("DPCN") on August 22, 2011 and the hearing officer was re-appointed as the hearing officer since the previous due process complaint filed within one year previously by the Grandmother was withdrawn pursuant to an agreement reached with the School District ("District") through Mediation. The parties and hearing officer participated in a telephone Pre-hearing Conference held on October 11, 2011. The hearing was convened and concluded on November 14, 2011 at the District's Special Education Services Cooperative Offices (BASSC). The Grandparent represented herself and an Illinois Department of Human Services ("IDHS") case worker assisted the Grandparent. The School District was represented by the Director of the Special Services. The hearing was officially closed on November 14, 2011.

At the start of the hearing it was noted that an official record transcriber, i.e. court reporter, was not present to record the proceedings. The hearing officer brought this fact to the attention of the Grandparent and her assistant and offered to either continue the matter until one could be found or to record electronically the proceedings on his own recorder. The Grandparent and her advocate agreed to proceed with the hearing officer's recording of the hearing with copies to be provided to all parties at the conclusion of the hearing and after the hearing officer issued the decision. Also prior to the start of the hearing, the Grandparent informed the hearing officer that she was expecting her lawyer to be present. The Grandparent, at the request of the hearing officer, gave the name and telephone of the attorney and the hearing officer placed a telephone call to the attorney to confirm. In a brief discussion, it was determined that the attorney had yet to confirm representation with his client and requested time to do so. The Grandparent was given an opportunity to talk with her attorney and at the conclusion of the conversation the hearing officer proceeded to admonish the Grandparent on her right to have an attorney present and to further explain what the repercussions would be on going forward without an

attorney present for the hearing. After a brief consultation with her assistant, the Grandparent chose to waive her right to have her attorney present and to go forward with the hearing as scheduled. This discussion, with all parties present, was recorded. The hearing proceeded by utilizing the evidence booklet compiled and presented by the District and witnesses identified to be called also by the District. It is noted that this information was shared with the Grandparent in compliance with the 5 day pre-disclosure notice period prior to the start of the hearing. The hearing began with the hearing officer identifying himself and parties introducing themselves. All witnesses that the District intended to call were present in the hearing room and the hearing officer asked the Grandparent and her assistant as to whether or not she wished the witnesses to be excluded from the room and she stated that she did not mind if they stayed. The hearing officer gave a brief description on the protocol to be followed and since the Grandparent had no documents to offer into evidence nor a list or witnesses to call, the hearing officer proposed that even though it was the Grandparent's burden to go forward first to establish her Burden of Proof on the initial Due Process claim, he offered to have the District proceed with calling witnesses with the Grandparent and her assistant given the opportunity to ask questions of the witnesses called and to utilize the documents being introduced. The Grandparent and her assistant and the District representative agreed to follow this procedure.

### **Issues Presented and Remedies Sought**

#### **Matters In Dispute**

##### **Parent Issue(s)**

The Grandparent did not file a pre-hearing disclosure statement with the hearing officer. However, pursuant to the discussion with the Grandparent, her [REDACTED] assistant and the School District Representative at the pre-hearing conference via telephone call, the Grandparent is requesting resolution to the following issue(s) as summarized below:

1. The District recommended placement at [REDACTED] High School behavior development program. The Grandparent wishes the Student to stay in his current placement, (Stay Put), transition program located at [REDACTED] High School, with all necessary special education resources provided.

##### **Relief Sought By the Parents**

The Grandparent wants the Student to remain at [REDACTED] H.S. with appropriate support and program provided.

##### **The District's Response to Parents' identified issues and relief:**

The School District believes that the Student's behaviors have escalated to the point where the Student requires more intense services in a smaller setting such as what is proposed in the Phase II behavior development program provided at [REDACTED] High School.

## Findings of Fact

1. The Student is 17 years old and is a Junior at [REDACTED] High School currently attending a cross categorical behavior transition program designed for low risk students capable of independently managing their own daily schedules. This is the Student's "stay put" placement pursuant to an Interim Order issued by the hearing officer on September 2, 2011.
2. A psychological report was completed by [REDACTED] School Psychologist on March 11 & 13, 2011 when the Student was a sophomore. He was referred for a psycho-educational reevaluation for special education services due to concerns in his academic performance, social-emotional status and school behavior. He has qualified for special services since 1<sup>st</sup> grade and at the time of the testing was eligible due to a learning disability. He also had a Functional Behavioral Assessment and Behavioral Intervention Plan ("FBA/BIP"), and he receives behavioral support through the transition program, as well as school social work services. The student failed six classes his first semester, sophomore year, and has a lengthy school discipline record. His Individualized Education Program (IEP) team questions whether his current educational placement provides him with enough academic and behavioral support in order to be successful. The school psychologist noted the Student's overall level of cognitive ability is classified in the low average range. The Student did not exhibit any specific relative strengths on the cognitive assessment. Academically, his word reading skills, reading comprehension skills, sentence composition skills, essay composition skills and math calculations skills are all classified in the average range and commensurate with his cognitive ability level. On a self-report behavior rating scale, the Student's school problems composite is elevated and classified in the at-risk-range. Four of the Student's special education teachers completed behavior rating scales. Across classroom settings, concerns of a clinically significant magnitude were documented in the Student's externalizing problems composite and behavioral symptoms index. All four teachers identified elevated to very elevated concerns in the Student's school problems composite and adaptive skills composite. Specifically, concerns of a clinically significant magnitude were identified in the Student's levels of hyperactivity, aggression, conduct problems, attention problems, learning problems, adaptability and study skills. The Grandparent was sent a rating scale but was never returned and therefore could not be interpreted.

Overall, the school psychologist noted that the Student appears to have a tendency to become easily upset, he has difficulty controlling his mood and behavior, is argumentative and defiant and he can be frequently disruptive across classroom settings. **The school psychologist, based on the Student's reevaluation, believed the Student no longer qualifies for services due to a learning disability in that his academic achievement in all measured areas is classified in the average range. Instead, the school psychologist recommended that the IEP team consider an eligibility of an "emotional disability, as it appears that the Student's educational performance is adversely impacted by his social-emotional status and behavior. [Emphasis Added]** It was further noted that the Student appears unmotivated for school success and chooses not to complete assignments. Furthermore, he is frequently disruptive during class, argumentative and disrespectful to authority figures and noncompliant to school rules. The school psychologist recommended that the Student would most likely benefit from a

“structured educational environment with clearly delineated behavioral consequences, as well as regular contact with the school social worker.

The school psychologist concluded her report by encouraging the Student “to take responsibility for his academic and behavioral success, demonstrate respect for authority figures, improve his anger management skills, and comply with school and classroom rules; to demonstrate good organizational skills, study skills and self-advocacy skills.” She noted that it would be beneficial for him to record assignments in a daily planner, regularly complete those assignments, study for tests, ask for clarification when presented with new information, and access assistance and tutoring when needed. Summer school was recommended to make up credits towards graduation.

3. The Grandparent requested that the Student be seen by a private psychiatrist and the District complied with the Grandparent’s request. The Student was seen by [REDACTED] on October 5, 2011. It was noted in his report that the Student is one of 4 siblings, all living with the Grandmother since the Student was in the 4<sup>th</sup> grade. [REDACTED] notes that the student was first evaluated in first grade scored a 79 verbal cluster, 72 non-verbal cluster and general ability of 73. In 5<sup>th</sup> grade, eligibility was changed to learning disability and he received a verbal comprehension of 81, conceptual reasoning of 90, working memory of 91, processing speed of 73 and full scale of 79. In high school the Student continued his special education placement but earned C’s and B’s. He was disruptive and tardy. At the beginning of 10<sup>th</sup> grade, he was involved in an assault when a fellow student yelled a racial epithet at him. He threatened to bring a gun to school and [REDACTED] became involved. He was suspended for 10 days. Dr. Berland noted the Student was doing well in algebra and reading but at times he refuses to do his work, puts his head down on his desk and may talk with peers during class. He notes that the reason for the referral to see him was predicated on the District’s recommendation to change the Student’s placement to attend a behavioral development class at another school for the 2011-12 academic year. He also noted that the Grandmother’s understanding was that if the Student did well in summer school, summer of 2011, he would be able to return to Belleville East where his current stay put placement is.

[REDACTED] notes in his report that the Student recognizes that he becomes irritable and angry when people aggravate him. This problem arises regarding what people do to aggravate him. He experiences aggravation if a teacher stands over him and encourages him to do the work. [REDACTED] clinical “impression” is that the Student is “irritable and reactive.” When he feels aggravated, he acts up and gets into trouble. Whether this problem reaches the level of a psychiatric disorder is unclear. The possibility of ADD is also present but does not appear to be a primary problem. [REDACTED] recommendation from his report indicates that if the Student is learning then his current placement is appropriate. However, if he is not learning, he still must be engaged and support what other intervention is recommended (**change in schools, medication trial, counseling**) (Emphasis Added). If teachers observe increased distractions, attention problems, disorganization or other problems consistent with ADD, they should notify the Grandmother and a trial of stimulant medication may be warranted. Otherwise, continued collaboration between school and family as well as student and teacher should be in the focus of further intervention.

4. The Student's current special education teacher, [REDACTED] testified. She admitted to establishing the "transition" program that the Student currently is in. She has been the Student's teacher all throughout high school. She testified to his current academic standing. He currently has nine credits. His class of 2013 requires 20.5 credits to graduate. He is currently enrolled in 3.5 credits for the current semester and 3.5 credits for the next semester. He needs two semesters of English, pass U.S. History and Civics, and 1 ½ more years of Math, not including this semester and 1 ½ more years of Physical Education. His teacher spoke to his guidance counselor in preparation for the hearing and the counselor told her that the Student can still graduate with his class as long as he passes everything from this point on, including this semester. His current grades as of this past Thursday, November 10, 2011, U.S. History 54%, Pre-Vocational 37%, Algebra 83%, PE 54%; Learning Strategies (a ½ credit class) 6%, Reading 49% and Civics 40%. (SD Tab 1). His teacher testified that he is academically capable of passing his courses, but is missing a lot of assignments and when she has spoken to him about the missing assignments, he tells her that he just doesn't want to do some assignments. His teacher noted that the Student is much disorganized and they have attempted to do many things to help him over the years, but misplaces assignments despite giving him multiple copies of assignments, which has been discussed with him during learning strategies class. Ms. [REDACTED] described the transition program that the Student is currently in. It is designed for students who can manage their own behavior and who can access the supports afforded at the [REDACTED] Campus independently on their own initiative. She described that students having issues with school work, other students, etc. can report to the Transition program where Ms. [REDACTED] will work through the problems they are having to help them get back on task with their educational classes. Teachers can also refer students to the transition program and often times the Assistant Principal will assist to avoid having to render stricter disciplinary measures such as out of school suspensions. She works closely with the Student's teachers in providing new strategies and interventions to help them work with the Student. She testified to performing a Functional Behavioral Assessment on the Student in April 2011 (SD Tab 17) and from that gave several of his teacher's suggestions on strategies that could be used to assist the Student. Ms. [REDACTED] used the BOSS (Behavioral Observation of Students in Schools) to measure the Student's percentage of engaged time. The results indicated that the Student is actively engaged in class 33% of the time. In two classes where he was actively engaged to a larger degree, the teachers provided a significant amount of one-on-one behavioral support in the form of verbal redirections and proximity control. The BOSS data also showed that when the Student is off task its he most often passively off task (sleeping) or verbally off task (talking out). (SD Tab 16 page 1). Ms. [REDACTED] testified to recommending 11 specific strategies that his teachers could use with [REDACTED] along with any other strategies they themselves could use. (SD Tab 16 page 6). One specific recommendation was not to send the Student out of the class when he was sleeping in class.

Ms. [REDACTED] testified to there being indirect contact with the Student's Grandmother with respect to the Student's behavior, through his case manager, Ms. [REDACTED] or the Assistant Principal, [REDACTED] but not directly by Ms. [REDACTED] herself, except for a letter dated 9/14/11 informing of her attempts to contact the Grandmother via telephone regarding "Daily Assignment Sheets" being used as a communication and self-management tool with the Student. She testified that the Student

does not have them filled out or returned with Grandmother's signature. Ms. [REDACTED] testified to other intervention strategies utilized with the Student (SD Tab 16).

Ms. [REDACTED] testified to seeing an improvement in the Student's behavior and attitude for this current school year in comparison to his being disrespectful to teachers and flat refusing to do assignments and being rude about it. She administered an updated BOSS recently and although was hoping to see the Student being more engaged in his other classes, the results did not show that even though he has improved when he is in her class, his engaged time had fallen to 30% in his other classes.

The Grandparent and her assistant both expressed astonishment that Ms. [REDACTED] had only been physically present at one of several recent IEPs conducted on behalf of the Student especially to be available to explain the types of interventions and strategies being testified by her at the hearing and have never met nor heard of her before attending the last IEP meeting of 8/18/11. The Grandparent and her assistant both expressed they were not aware of any of the things testified to by Ms. [REDACTED]. In response to being asked why she was not in attendance at most IEPs Ms. [REDACTED] testified that only the Student's case manager attends IEP meetings and through regular contact with Ms. [REDACTED] the interventions would be shared at the IEP meetings through her as the case manager. The Grandparent also made the point that had she had known of the missing assignments or refusal to do work she could be in a better position to have done something to help the Student be better organized. Ms. [REDACTED] also testified to several assignment sheets that the Student refuses to comply with (SD Tab 15) and that were created specifically for the Student, but the Grandmother expressed that she has never seen them. The Grandmother's assistant posed the scenario of the type of behavior the Student exhibits is often associated with a Student that has ADHD (Attention Deficit Hyperactivity Disorder) and often times will not ask for help on his own initiative and by moving him to another placement, the risk of having him "totally shut down" is a real consequence.

Ms. [REDACTED] also testified to several interventions created specifically for the Student in a Behavior Intervention Plan (BIP) (SD Tab 17 page 7) that the teachers could utilize with the Student to address his tardiness, dress code violations, inappropriate behaviors toward staff and daily expectations. The teachers were also asked to complete a self-monitoring sheet to document the behaviors as a follow up to the BIP. This was performed for approximately a 2 ½ week period of time. The Grandparent took issue with the practice that she believed should have been done more consistently over a longer period of time, not just once. Ms. [REDACTED]'s response to that was the transition program does not allow for that, and to do it over a more sustained period of time would be the role of a more restrictive program such as the one being recommended at Belleville West H.S. Phase II program.

The Grandparent believes that since her Grandson is improving with his behaviors and attitude that his academic achievement should improve with time with a 1:1 tutor or modified work that even academically it is recognized "he can do the work." Ms. [REDACTED] is of the opinion that work should not be modified because the problem stems from the Student's refusal to do the work.

The hearing officer questioned Ms. [REDACTED] as to whether or not teacher-parent conferences were held to which she stated they were. But in response to whether or not

she ever met with the Student's Grandmother at the conferences she stated that the Grandmother does not attend parent-teacher conferences.

5. Grandmother testified that had she knew about Ms. [REDACTED] she would have called her to talk about the Student's progress. Up until the day of the hearing, however, she was unaware that Ms. [REDACTED] was teaching her Grandson. She admitted, when questioned by the District's representative, that the Due Process circumstances primarily are a result of an incident involving her two Grandson's and another Student the occurred off school grounds and after they had departed the school bus.

Grandmother believes that the matter was never thoroughly investigated by the District officials, especially as a result of what she identified as involving "racial slurs" being cast at her other Grandson and the action taken by the Student in defending his brother. The Grandmother and her assistant both expressed sincere concern for the Student should he be required to attend [REDACTED] High School especially since the Student's older brother is also attending [REDACTED] High School in the Phase 1 Behavior Program. She believes her Grandson doesn't believe that his behaviors at [REDACTED] warrant being sent to [REDACTED] H.S. especially since his brother's actions involved behaviors involving drugs and a weapon (gun). Grandparent does not agree with sending her Grandson to [REDACTED] and believes he will be best served with more support, counseling, social work and psychological/psychiatric services provided on a 1:1 basis at [REDACTED] H.S. especially because of his being "abused" as a younger child when living with his parents. Moving him, she believes, will further cause him to withdraw and likely drop out of school when he turns 18 years of age in September, 2012 or even sooner. Grandmother, when questioned by the hearing officer, admitted never visiting [REDACTED] H.S.'s Behavior Development Program because she did not and does not agree that her Grandson should be attending the program.

6. Grandparent's assistant, [REDACTED] testified that she also believes that the events related to the fight that occurred off school premises is the impetus for the District wanting the Student to attend [REDACTED]. She also believes the student could benefit from more intense social work and counseling services especially utilizing Response To Intervention (RTI) techniques. She also believes Art Therapy would be of great benefit to the Student.

7. Ms. [REDACTED] Department Chairperson at [REDACTED] H.S. testified to the services tried with the Student through a series of IEP meetings convened at the District's own initiation of the District. The first IEP meeting conducted on 1/14/11 recommended a placement change from [REDACTED] Transition Program to Belleville West's Behavior Development Program (SD Tab 5, Additional Notes Page "V"). [REDACTED] testified to the Grandparent attending via telephone conference call, not in person as noted on the IEP sign in sheet. (SD Tab 5, Page D). During Ms. [REDACTED] testimony, the Grandparent stated emphatically that she was not present either in person or by telephone for the conference call and she did not receive Notification of the meeting. Her assistant made note that the District's Notification Procedures appeared incomplete since they appeared to rely upon regular U.S. mail instead of certified mail, notes sent home with the Student and/or telephone calls placed to the Grandmother which may or may not have been received or messages may not have been able to be left on voice mail due to the voice mail box being full. Page V of the IEP indicates that the Grandparent requested that the Student be seen by a School Psychologist. The IEP reflects no action being taken on the recommendation to move the Student at that time rather to address it at another

time so the Child Review Team (CRT) can hold a meeting. A second IEP meeting was convened on 3/17/11 (SD Tab 6). The Grandmother and assistant both were present at the meeting as evidenced by their signatures appearing on the IEP sign in sheet. (SD Tab 6, Page D). The V page of this IEP indicates that the Student is eligible to receive services due to an emotional disability (a change from his previous Learning Disability eligibility). The CRT recommended the [REDACTED] Behavior Development Program with the Grandparent being offered the opportunity to visit the program and meet with staff. The meeting ended with the recommendation of setting up a meeting with the Grandmother, the Student and [REDACTED] staff to discuss possible interventions and strategies to use while placed at [REDACTED]. The Grandmother expressed her belief that her Grandson needs more counseling. A third IEP meeting was convened on 5/23/11. (SD Tab 7). Neither the Grandparent nor her assistant attended but the Student did attend as reflected on the IEP sign in sheet. (SD Tab 7, Page "D"). A Parent Notification of Conference form (SD Tab 7, Page "C") reflects that Notice was sent to the Grandparent on 5/4/11. Review of other IEP's in the District's Evidence packet reflect similar Grandparent Notification Forms with dates that coincide with the respective IEP meetings held, but none of the forms are signed by the person identified as the initiator of the form, i.e..a special services secretary or the District's Representative himself. The additional notes Page "V" of this IEP summarized what occurred at previous IEP meetings and added for this IEP the notation that the Grandmother did not attend the Student's IEP Meeting. Attempts were made to reach her by phone but she did not answer and a message could not be left for her as the voicemail box was full. The conclusion of the IEP team meeting states: "The IEP team recommends the [REDACTED] Behavior Development Program, Phase II, for the 2011-12 School Year." Also attached to Page V is a Behavior Intervention Plan (BIP) Data Collection Summary listing the student's behaviors...i.e. tardiness, dress compliance, talk outs 3 or more times during class, and the number of occurrences stemming from 5/2/11 through 5/20/11 presumably as supporting documentation for the IEP teams recommendation. A final IEP meeting was held on 8/18/11 with the Student, Grandmother and her assistant present (SD Tab 24). Also noted in attendance from the IEP sign in sheet, was Ms. [REDACTED], the Student's Behavior Transition Program teacher. Ms. [REDACTED], as noted previously above, never attended other IEP meetings stating it to be the primary responsibility of the case manager to attend IEP meetings. This IEP is characterized by the District as an "amendment" to the previous IEP of 5/23/11. The Page V recommendation of this IEP confirms the previous IEP team recommendations as placement of the Student in the [REDACTED] Behavior Development Phase II program. It further states, "the District agrees to place the Student in the Phase II or I portion of the Behavior Development or to provide him with interim services of 1 hr. per day while a psychiatric consult is being arranged with [REDACTED]."

Questioning by the Grandparent and her assistant of the witness drew attention to what they characterized as a lack of proper notification received by the Grandparent to attend at least two of the IEP meetings and questioned a third IEP meeting that the District alleges Grandparent attended via telephone but the Grandparent denied. Also, Grandparent drew attention to a misunderstanding between the District and herself relating to what she believes she was told by the District Representative concerning her Grandson's continuation at [REDACTED] High School predicated on his successful completion of summer school a fact the District disagrees was the promise or understanding left with the Grandparent.

8. Mr. [REDACTED] a special education teacher at [REDACTED] West and the Student's 2011 summer school teacher in the "Re-direct" summer program testified as to his involvement with the Student. Mr. [REDACTED] described the Re-direct program as one where students with emotional concerns and who are severely behind in credits attend as an intervention when they cannot meet the demands of the regular extended school year (ESY) program or when a teacher feels the student could better benefit from the intervention and recommends the student attend the Re-direct program. He described the 1:1 interaction he has had with the Student as being positive and seemingly effective as the Student appeared to trust him. He believed the Student would benefit greatly from the [REDACTED] Behavior Development Phase II program because it has more structure and smaller class size with a greater opportunity for 1:1 attention to the Student's emotional needs.

The Grandparent and her assistant questioned whether Mr. [REDACTED] "really knew" the Student, and his previous exposure to being abused as a child, although they admitted the Student did like the time he spent with Mr. [REDACTED] during ESY. Despite the apparent "trust relationship" built between the two, the Grandparent and her assistant remained skeptical about the Student attending [REDACTED] High School.<sup>1</sup>

9. Ms. [REDACTED] the school social work, testified to the 1:1 services she provides 30 minutes per week for the Student. It was Ms. [REDACTED]'s opinion that the Student's behavior improved from 1:1 attention rather than group services. She noted a concern with the Student's self-esteem and his having a speech impediment, but no speech and language services were being provided currently by the District. The Grandparent also identified the need for the Student to receive Speech/Language services referencing that if the Student were in the room for the hearing, the hearing officer likely would not be able to understand the Student. It was noted that the Psychiatrist, Dr. [REDACTED] also referenced the Student's speech in his report. (SD Tab 8). The District Representative offered the 3/17/11 IEP as finding that the Student's Speech/Language assessment was found to be in the "normal range" hence the reason for not providing the service.<sup>2</sup>

10. Mr. [REDACTED] the Department Chairperson of Special Education at [REDACTED] provided a description of the Behavior Development Program. He emphasized that greater attention on the student is the focus providing a more structured small group setting with 1:1 contact to focus on reinforcing positive behaviors. He stated that there are 56 students total in all 3 phases of the Behavior Development Program, with 1 social worker. This, compared to approximately 120 students seen [REDACTED] at [REDACTED] would be an improvement with better opportunity for the Student to receive more direct services for a longer period of time.<sup>3</sup>

<sup>1</sup> The hearing officer notes that the interaction that occurred between the Grandparent, her assistant and Mr. Karlas in what would be characterized as "non-traditional" cross examination, was a positive dialogue with each sharing their perspectives about the Student and what each believes the Student can best benefit from. A mutual respect for each other's opinions was evident.

<sup>2</sup> The hearing officer notes that a positive interaction also occurred between the Grandparent, her assistant and Ms. Logston. The Grandparent indicated that her Grandson also liked his time with Ms. Logston and appeared to trust her.

<sup>3</sup> The Student's proposed IEP (5/23/11) provides for 30 mpw of social work services at Belleville West H.S.

## **Burden of Proof**

The Parents have the burden of proof as they filed the due process complaint. *Schaffer v. Weast*, 126 S.Ct. 528 (2005). Under Illinois law, the school district must provide evidence that the special education needs of the child have been appropriately identified and that the special educational program and related services proposed to meet the needs of the child are adequate, appropriate and available. 105 ILCS 14-8.02a(g). The Illinois School Code clearly requires the district to present evidence at hearing that it has properly identified and evaluated the nature and severity of the student's suspected or identified disabilities including eligibility for special education and related services. 105 ILCS 5/14-8.02a(g-55). *Kerry M. v. Manhattan*, 106 LRP 58547 (N.D. Ill. 2006). At the one day hearing the testimony elicited from all witnesses, consisting of District employees, and the documentary evidence provided, demonstrates that the Grandparent has not satisfied their burden of proof regards the allegations contained with the Due Process Complaint Notice.

## **Discussion and Conclusions of Law**

The IDEA requires that a school district provide children with disabilities with a free appropriate public education ("FAPE"). When a hearing officer reviews a school district's placement decision, he or she must engage in two inquiries: whether the school district complied with the procedures set forth in the IDEA, and whether the Student's IEP is "reasonably calculated to enable the child to receive educational benefits." *Board of Educ. v. Rowley*, 458 U.S. 176 (1982). Also, the IDEA requires the IEP not only confer some educational benefit, but to do so in the least restrictive environment ("LRE"). 20 U.S.C. §1412(a)(5). Accordingly, a Student with a disability may be removed from the regular classroom when "the nature or severity of the disability... is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 20 U.S.C. §1412(a)(5).

The least restrictive environment (LRE) is one that allows the disabled child to be educated with nondisabled peers (mainstreamed) to the greatest extent appropriate. *Beth B. v. Van Clay*, 282 F.3d 493, 497 (7th Cir. 2002). This does not mean, however, that every child has a right to be educated in a regular classroom. To the contrary, as the court put it in *Wilson v. Marana Unified Sch. Dist. Of Pima County*, 735 F.2d 1178, 1182 (9th Cir. 1984):

Although the policy of mainstreaming is to be applied "to the maximum extent appropriate," where, as here, "the nature or severity of the [disability] is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily ...," a [child with a disability] may be removed from "the regular educational environment." (Citations omitted.)

Deciding what constitutes LRE is the responsibility of the IEP team. *See* 23 Ill. Admin. Code §226.240(a) and (b)) (placement decision must be made by the IEP team and must be consistent with the Student's IEP). Moreover, courts have recognized that in this type of situation deference should be given to the decisions of trained educators. *Heather S. v. State of Wisconsin*, 125 F.3d 1045, 1057 (7th Cir. 1997).

In this case, from the School District's perspective, the IEP team has determined, through its proposed IEPs dated 1/14/11, 3/17/11 5/23/11 and 8/4/11, that the special education program at Belleville West High School's Behavior Development Phase II constitutes the least restrictive environment for the Student. The Grandparent disagrees, and because she is the moving party, she shoulder's the burden of persuasion. *Schaffer v. Weast*, 126 S. Ct. 528 (2005). For the reasons that are discussed herein, the Grandparent has been unable to meet their burden.

The IEP team's recommendation for the Student's placement and services, for the reasons stated above, would provide the Student with FAPE in the least restrictive environment because: 1) the District has followed appropriate procedures under the IDEA; 2) the IEP is designed to enable him to receive educational benefits; and 3) the Student cannot be educated satisfactorily in the [REDACTED] High School cross-categorical transitional program.

In *Beth B.*, the Court stated the following:

Each Student's educational situation is unique. We find it unnecessary at this point in time to adopt a formal test for district courts uniformly to apply when deciding LRE cases. The Act itself provides enough of a framework for our discussion; if Beth's education at Lake Bluff Middle School was satisfactory, the school district would be in violation of the act by removing her. If not, if its recommended placement will mainstream her to the maximum appropriate extent, no violation occurs. In this case we can say with confidence that the Lake Bluff school district's decision to remove Beth from the regular school did not violate the IDEA's mandate to mainstream disabled children to the maximum extent appropriate. Bath was in class for about 50% of her day. Her academic progress was virtually nonexistent and her developmental progress was limited. Although the school district provided her with aides, communication devices, computerized books, and an individual curriculum, she was receiving very little benefit from her time there.... The school officials 'decision about how to best educate Beth is based on expertise that we cannot match. They relied on years of evidence that Beth was not receiving a satisfactory education in the regular classroom. The placement shows for concern of both ordered development and for keeping her mainstreamed, to an appropriate extent.... Although we respect the input that Beth's parents have given regarding her placement and their continued participation in IEP decision-making, educators have the power to provide handicapped children with the medication they consider more appropriate than that proposed by the parents. (*Beth B.* 282 F. 3d 493, 497 (7th Cir. 2002))

The testimony presented at the hearing shows that: 1). The Student has behavioral and emotional issues that cannot be segregated from the learning process; and 2). the Student has consistently demonstrated these issues over time. While The Student's needs haven't changed, he requires a more structured classroom environment and additional support and at a level of intensity than what is available through the [REDACTED] H.S. transitional program in order to receive educational benefit. The District made several attempts and

tried to accommodate Grandparents' several suggestions of having the Student re-evaluated by the School Psychologist and consultation with a Psychiatrist in an attempt to better understand how to educate the Student in this program but with limited success. The private psychiatric, Dr. [REDACTED] recommended that **if the Student is not learning, he still must be engaged and receive support with hat other intervention is recommended (change in schools, medication trial, counseling).** (Id. Page 5). In the District's perspective the Student's current stay put placement will not help the Student gain the necessary 1:1 attention needed in order for him to succeed academically and hopefully graduate with his class, the class of 2013. Although the Student's behavioral problems have appeared to diminish for this school year, his academic performance is lacking, due primarily to the Student's failure to complete assigned work. He has demonstrated, via testing, to possess the capability of doing the work, but refuses to do so. The record makes clear that the Student has a symptoms of ADHD and would from testimony of his special education teacher, social worker, and teacher that worked with the Student during the summer ESY program, he would benefit from a more restricted setting where he can receive 1:1 attention with more intense social work support. The District must and has a legal duty to assure that it is providing a free and appropriate public education. The Student has made little to no effort to apply himself to be academically successful at [REDACTED] although notably capable to do so. If stricter interventions are not put in place immediately, the Student will likely fail and find that he will not graduate with his class. It is significant that the Student's needs have remained constant and remains consistent. The IEP team's recommendations for placement and services for the reasons stated would provide the Student with FAPE in the LRE because it appears that the District has followed all appropriate procedures under the IDEA and the IEP is designed to enable him to receive educational benefit and that he cannot be educated satisfactorily in the current educational placement setting. Since the evidence does not support the Parent's claim that continuation in his current placement is the LRE for the Student, the Parents failed to meet their burden. The District has provided ample testimonial and documentary proof that its proposed placement at [REDACTED] West High School's Phase II Behavior Development is the appropriate placement for the Student.

Grandparent and her assistant highlighted what they perceived as a flaw in the District's Notification Procedures when getting and assuring Grandparent participation in the IEP process. The Grandparent and her assistant admit to being actively involved in only 1 of 4 IEPs (8/18/11 IEP SD Tab 24) convened by the District involving its recommendation to change the eligibility classification and placement of the Student. The Grandparent believes that the District should have made a greater effort to assure her involvement by not merely relying on Notifications being mailed via regular mail or by placing telephone calls and not following up when receiving filled voice mail box messages. Grandparent and her assistant both expressed that the District could and should have sent these important Notifications via Certified Mail and made several attempts, on different days, to contact the Grandmother via her cellular telephone which she admits to having turned on all the time, every day of the week. They also add that IEP meetings should have been continued to ensure Grandparents involvement. It is noted, that although the Grandparent was an active participant in one IEP meeting as evidenced by her and her assistant's signature on the IEP sign in page, no final action was taken by the District as a result of discussion and decisions made at any of the IEP meetings that Grandparent questions. In fact, at all three IEP meetings leading up to the final IEP in August 2011, further ideas were suggested by the IEP team requiring the IEP to be continued for further testing of

the Student. These continuances were a direct result of frequent discussions between the Grandparent and the Director of Special Services who also served as the District's representative at the hearing. It is evident that the District has made several good faith attempts to accommodate Grandparent's requests and ideas, but for the ultimate determination to move the Student to the Phase II Behavior Development program at ██████████ H.S. The nature of the program being proposed and the continued failing grades of the Student warrant trying a more restrictive placement in order to perhaps turn things around so that the Student can graduate with his class, the class of 2013. Grandmother and her assistant also described her Grandson's displeasure of going to ██████████ H.S. This is due, primarily, because the Student's brother is also placed in the Phase I Behavior Development Program at ██████████ as a result of issues involving drugs and a gun.<sup>4</sup> The Student does not believe that his behaviors rise to the same level as his brother's and therefore do not warrant being sent to a different school. The behaviors that gave rise to changing the Student's eligibility requirement from Learning Disability to Emotional Disturbance stemmed from frequent tardiness, disrespectful talk outs to adult authority (teachers and school staff) and saggy pants which occurred throughout the last school year. For the current 2011-12 school year, testimony confirmed that the Student's behaviors have improved, but his academics have not, thus the basis for recommending a more restrictive setting that will provide a higher level of structure to allow the student to focus better on what he needs to do to improve his grades.

The hearing officer is unable to form a conclusive conclusion on the issue of Grandparent's notification issue, particularly when the IEP's reflect cooperation on the part of the District to accommodate Grandparent's requests to provide further testing on the Student. On the 1/14/11 IEP sign in page (SD Tab 5), it is noted that the Grandparent participated by telephone. On, the 3/17/11 IEP sign in page (SD Tab 6), the Grandparent and her assistant signed in as present. On the 5/24/11 IEP sign in page (SD Tab 7), the Student himself is present but the Grandparent nor her represent are signed in. On the 8/18/11 IEP sign in page (SD Tab 24), the Student and Grandparent's assistant are shown present but not the Grandparent. This information, in and of itself does not lead the hearing officer to the conclusion that the District is somehow remiss in its Notification of IEP conference meetings.

The hearing officer is sympathetic to the concern expressed by the Grandparent and her assistant with respect to the Student's attending the same school where his brother is attending, especially if the relationship between the two is "strained" which the Grandparent testified to. This dynamic poses a direct challenge to the District. On the one hand, there could be a direct correlation to the Student failing miserably if the move to ██████████ H.S. occurs and because of the sibling rivalry the Student shuts down totally causing him to not succeed. On the other, with the proper individualized supports such as individual social work and counselor contact, the Student's assimilation into the new setting could work positively thus improving his grades and chances of graduating with his class. It is the hearing officer's belief that for the District's proposed program placement to work, it must, initially pay careful attention to the special circumstances involved regarding the Student's older brother in the Phase I Behavior Development Program and provide direct individualized assistance to the Student to help in the

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<sup>4</sup> Specifics about the brother's circumstances were not discussed.

transition. Without this, the risk of failure, in the hearing officer's estimation, is greater than if he remains at his current educational placement.

The Grandparent and her assistant, although presenting themselves as credible and truly committed to doing what they believe is in the Student's best interest, did not produce any written documentation or corroborating testimony to prove that the Student should not be placed in the [REDACTED] Phase II Behavior Development Program. This conclusion is even with viewing the District's evidence, as was used solely in this case, in Grandparent's best light. There also was no evidence that the Grandparent's allegation that the District's representative promised that the Student could continue at [REDACTED] High School upon his successful completion of the Summer 2011 ESY program. On the other hand, the School District has presented credible testimonial and documentary evidence to support their premise that the recommended placement and the procedures it follows are appropriate in the eyes of the current status of Federal and State laws. The Student's own behavior, as documented by the credible testimony of school personnel demonstrates the need for the placement and services recommended by the School District in the more restrictive setting at [REDACTED] H.S.'s Phase II Behavior Development Program. Finally, with respect to the testimony of the Grandparent regarding the Student needing Speech Services and the supporting testimony of the District's Social Worker, the District may be consider re-evaluating the Student in the area of Speech and Language.

#### ORDER

- A. The hearing officer finds that the Grandparent has not met her Burden of Proving the allegations against the District and therefore finds against the Grandparent and for the District.
- B. The hearing officer also finds that:
  - a) The District has, to this point in time, provided an appropriate education for the Student; and,
  - b) Given the Student's demonstrated behavioral and emotional issues causing him to fail in his current educational setting at [REDACTED] H.S. transitional behavior program the District's proposed placement at [REDACTED] H.S. Behavior Development Program, as per the August 18, 2011 IEP, is the appropriate Least Restrictive Environment Placement at this time.
- C. Placement at [REDACTED] H.S. is to occur immediately consistent with the terms and provisions of the August 18, 2011 IEP.
- D. An IEP meeting shall be convened as soon as practicable after the Student begins attending the Phase II program to review the Student's need for a Speech and Language assessment and services; increased social work and counseling services to assist the student in transition from [REDACTED] to [REDACTED].
- E. Within forty-five (45) days of receipt of this **Order**, the [REDACTED] District 201 shall submit proof of compliance to:

ILLINOIS STATE BOARD OF EDUCATION  
PROGRAM COMPLIANCE DIVISION  
100 NORTH FIRST STREET  
SPRINGFIELD, ILLINOIS 62777-0001

**Right to Request Clarification:**

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party(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**

This decision is binding on the parties unless a civil action is timely commenced. 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 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 is mailed to the parties.

Dated this 22<sup>nd</sup> day of November, 2011.

  
**Harry A. Blackburn**  
**Hearing Officer**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the Hearing Officer's Decision was sent to [REDACTED] via Certified U.S. Mail and to [REDACTED] [www.\[REDACTED\].illinois.gov](http://www.[REDACTED].illinois.gov) and [REDACTED] via e-mail and ISBE with first class postage prepaid via U.S. Mail at [REDACTED] Illinois and directed to:


The undersigned further certifies that a true and correct electronic copy of the Hearing was included in the Certified Mailing of the Decision addressed to [REDACTED] and also made a part of the official administrative record to be mailed to ISBE.

Ms. [REDACTED]  
[REDACTED]

[REDACTED]  
Director of Special Services  
[REDACTED]

Mr. Andy Eulass  
Special Education Due Process Coordinator<sup>9</sup>  
Illinois State Board of Education  
100 North First Street  
Springfield, Illinois 62777

before 5:00 p.m. on November 22, 2011.

  
HARRY A. BLACKBURN  
P.O. BOX 34  
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(815-254-3658 (Facsimile))