

Case Number: 2011-0451

[REDACTED] vs. [REDACTED]

Hearing Officer: Stacey Stutzman

AUG 04 2011

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

Impartial Due Process Hearing Decision Cover Page

Instructions: Complete this form and return it along with the decision. The information collected on this form will be used for the purpose of indexing the decision by subject matter as required by 23 Illinois Administrative Code 226-695

District Name [REDACTED] Phone: [REDACTED]
Superintendent [REDACTED]
Address [REDACTED]
Represented by [REDACTED]

Parent Name [REDACTED] Phone: [REDACTED]
Address [REDACTED]
Represented by pro se Parent, unrepresented

Date and Timelines

Date of Written Request: 06/10/2011

Date of Hearing: 07/27/2011

Date of Pre-hearing Conf: 07/11/2011

Date of Decision: 08/02/2011

Summary of Decision

Parent of 9 year old third grade boy requested hearing on issues of deprivation of FAPE due to lack of qualifications of Student's teachers and failure to provide appropriate instruction and services from February 7 to June 17, 2011, and failure to provide accurate and timely progress reports during that period. She requested entry of orders that Student be placed in a different public school and for compensatory reading and math tutoring.

HELD: for District

ORDERED: Parent's request for relief is denied

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)
) ISBE CASE NO. 2011-0451
)
) Stacey Stutzman
) Impartial Due Process
) Hearing Officer

DECISION AND ORDER

This matter is before the undersigned impartial hearing officer for a due process hearing concerning Parent's request for orders that Student's placement be changed from his public elementary school of attendance to another unspecified public elementary school and for provision of compensatory math and reading tutoring due to an alleged deprivation of FAPE from February 7 to June 17, 2011. The hearing officer has jurisdiction to hear and decide this matter under 105 ILCS 5/14-8.02a(g)(2008). The parties have been advised of their hearing rights under 23 ILAC 226.625(2007) and 34 CFR 300.512(2006). The undersigned Hearing Officer has also advised the parties that there are and have been no conflicts which have prevented her from conducting a fair and impartial hearing and rendering a fair and impartial decision in this cause.

Procedural History

Parent submitted her Request for Due Process Hearing, dated June 8, 2011 and received by District on June 10, 2011. Therein she alleged that Student was moved from one special education classroom to another within the same school on February 7, 2011, where his instruction was provided by a substitute teacher, and that she had not received a progress report or report card for the third quarter of the school year. District counsel submitted District's written Response to Parent's request on June 17, 2011, denying Parent's allegations. District attempted to schedule a resolution session for June 20, 2011. However, it was not convened until June 27, 2011, beyond the 15 day statutory timeline, due to difficulty contacting Parent and Parent's inability to attend until that time.

The Pre-Hearing Conference was held on July 11, 2011, and a copy of the Pre-Hearing Conference Report, dated July 11, 2011, is incorporated into the record as *Hearing Officer Exhibit A*. At that time, Counsel for District requested scheduling of the Hearing in this matter for July 27, 2011, rather than the ISBE SEDS date of July 25, 2011, to accommodate his schedule, and Parent did not object.

The Due Process hearing in this matter was held on July 27, 2011 at District offices. This Decision is being issued within 45 days of the initiation of the 45 day timeline and within 10 days of the conclusion of the hearing.

Present for the hearing were Parent and [REDACTED] attorney for the District. The Hearing was reported by [REDACTED] (312 368-1228).

Eight witnesses testified at hearing. The following witnesses were called to testify by both Parent and District: **Parent**; and District special education teachers [REDACTED], and [REDACTED]. Parent also called District 4th grade teacher [REDACTED]. District also called District Case Manager [REDACTED] and Principal [REDACTED].

Both parties submitted document lists and copies of documents to be used at hearing on before the disclosure deadline in this case. Documents put in evidence at hearing were: Student's December 14, 2010 IEP (P1-25; D2-25); ESY Consent Letter (P46); Promotion Notification (P47, D48); Summer School Promotion Determination (D44); Quarterly Grade record (D45);

Notifications of staff changes from District to Parent dated 2/4, 2/14, and 2/28/11(D49-51); Report Cards (P28, P30); and District Promotion Policy. (D38-43)

Neither party submitted or cited legal precedent in support of their respective positions.

Issue

Whether District deprived Student of a free appropriate public education (*FAPE*) from February 7, 2011 to June 17, 2011 as follows:

- A. failure to provide the instruction called for in the Student's IEP by qualified instructors;
- B. failure to provide the instruction and services called for in the Student's IEP; and/or
- C. failure to report Student's progress or lack thereof in an accurate and timely manner?

Findings of Fact

The material facts relevant to the above issue based upon the evidence presented at hearing in this matter are as follows: Student is a 9 year old third grader eligible for special education and related services due to developmental delay and speech/language impairment, which eligibility is not challenged by Parent in this matter.(D2) His IEP of December 14, 2010 (D2-25), the development or content of which is not challenged by Parent in this matter, calls for 1300 minutes per week of direct special education instruction and 30 minutes per week of direct speech/language services in a separate classroom and removal from the general education environment 77% of his school day.(D21) The IEP includes goals for Student's specialized instruction in the areas of Language Arts, Math, Social Sciences, Science, and Speech/Language, and quarterly benchmarks for each goal. According to the IEP, the quarterly benchmarks accompanying each of Student's academic goals are to be evaluated monthly by oral/written test, and the schedule for determining Student's progress is to be quarterly in February, April, and June, 2011. (D11-20) The Student is to be graded in accordance with a modified grading scale set forth within the IEP, and he is to be promoted in accordance with standard District promotion criteria. (D23) He is to participate in state assessments with allowable accommodations and modifications in all subject areas. (D10)

Prior to February 7, 2011, Student had been placed in [REDACTED], which included special education Students in Kindergarten through Grade 3. [REDACTED] The administration added a Middle Instructional classroom for special education students in Grades 3 and 4 to begin on February 7, 2011, the beginning of the third quarter of the 2010-2011 school year, which the Principal felt would be more age appropriate for Student socially and academically, and Parent was advised of the change of classroom in writing on February 4, 2011.

[REDACTED] The special education teacher initially assigned to teach the new Middle Instructional class was [REDACTED], a certified special education teacher who had been serving as a resource teacher. [REDACTED] Parent knew [REDACTED] who had previously worked with Student, and was agreeable to the change in classroom for Student. (Parent) [REDACTED] moved into the new classroom and, although she did not see Student's current IEP, she was engaging the students in mock testing in preparation for the *ISAT* during the first week in the new position. She left the position after one week because she sought and received an administrative transfer to another school. [REDACTED] A substitute teacher, [REDACTED] also a certified special education teacher, was put into the classroom to train with [REDACTED] before [REDACTED] left, and she then spent 2 days on her own with the students the week of about February 14, 2011, using her own materials to instruct the students but not having their IEPs. [REDACTED] Parent was notified in writing of the change in personnel on February 14, 2011. [REDACTED] However, [REDACTED] then obtained a permanent position at another school in the District and was subsequently replaced by [REDACTED], also a certified special education teacher, who remained in that position for the remainder of the school year. Notification of this change was sent to Parent on February 28, 2011. [REDACTED] I.C. worked with Student on his IEP goals and issued grades for him. [REDACTED]

Parent did not contact the Principal, Student's Case Manager, or his teacher during the Spring semester after February 7, 2011. She did not go to the school personally to pick up

Student's report card at the report card pick up at the end of the third quarter in April, nor did she schedule a conference with the teacher, case manager, or principal to voice any dissatisfaction or to obtain any further information regarding Student's educational progress or for any other reason, even though she had concerns regarding Student's lack of homework and statements he made to her in March 2011 regarding [REDACTED] departure and the presence of a substitute teacher in his classroom. She did not advise the Student's teacher or case manager or the principal that she had not received Student's April report card. (Parent, [REDACTED]) The Principal and the Case Manager have experienced difficulty in their attempts to contact Parent by telephone at the number she has provided the school, and the Principal has made personal visits to her home in an attempt to reach out to her. ([REDACTED].)

Rather than communicating directly with school personnel, Parent contacted the Board of Education of the District in March 2011 and asked Board personnel to check on the status and qualifications of Student's substitute teacher. She was advised by the Board representative in May that Student did have a certified teacher in his classroom. (Parent) As soon as the Principal was notified of Parent's concerns by the Board of Education representative in May, 2011-- which included a complaint that she had not received Student's report card and a request to return Student to [REDACTED]'s primary instructional classroom-- the Principal transferred Student back into [REDACTED]'s classroom on May 12, 2011. ([REDACTED]) [REDACTED] implemented Student's IEP from that time until the end of the school year on or about June 17, 2011. ([REDACTED]) Parent was also given a copy of Student's 3rd quarter report card in May. ([REDACTED] Parent)

Conclusions of Law

At a due process hearing convened pursuant to the provisions of the Illinois School Code, it is incumbent upon the District to present evidence that it has provided or has offered to provide the student in question with a free appropriate public education, commonly referred to as *FAPE*, in accordance with and at the times relevant to the stated issues in the case. *ILCS 5/14-8.02a(g-55)(2008)* An appropriate education is one that is reasonably calculated to provide the student with meaningful educational benefit, as based upon an individual education plan, or IEP, developed by an IEP team, including the student's parents. *Hendrick Hudson Dist. Bd. Of Ed. v. Rowley*, 458 U.S. 176 (1982)

The school district is required to follow procedures that are designed to allow the parents to participate in the development of the IEP. The applicable procedures are set forth in *34 CFR 300.300-328(2006)* and *23 ILAC 226.110-350(2007)*. Procedural violations of the special education laws alone cannot be deemed a denial of *FAPE* unless the evidence proves that the violations impeded the student's right to *FAPE*, the parents' right to participate in the decision making process, or caused student to be deprived of an educational benefit. Otherwise, a hearing officer's determination of whether *FAPE* was received must be based on substantive grounds. *20 U.S.C. 1415(f)(3)(E)(2007)*; *34 CFR 300.513(a)(2006)*

The burden of persuasion in a special education due process hearing falls upon the party seeking relief, in this case Parent. *Schaffer v. Weast*, 546 U.S. 49(2005)

HELD: District did not deprive Student of a free appropriate public education between February 7 and June 17, 2011.

The preponderance of the evidence in this case does not support Parent's position that Student was deprived of *FAPE* by the District during the period of time alleged, and specifically:

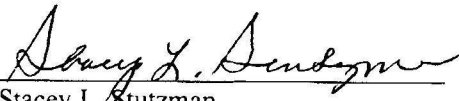
- A. State and federal regulations governing special education require each school district to employ sufficient qualified personnel to deliver the full continuum of special education and related services needed by eligible students residing within the district, including certificated special education instructors. *23 ILAC 226.800(2007)*; *34 CFR 300.156(2006)* Although it is unfortunate that Student's classroom staffing was in transition for 2 weeks in February 2011, due to [REDACTED]'s sudden departure, the testimony of the Principal, Case Manager, and teachers themselves as to their qualification to

- instruct Student during the period from February 7 to May 12, 2011 was unrefuted by Parent. And, as soon as Parent's request for Student to be transferred back into [redacted]'s classroom was relayed to the Principal, he accommodated Parent's request, and Student was instructed by [redacted] a qualified instructor, until the end of the school year.
- B.** Each school district is to provide special education and related services to eligible children in accordance with their respective IEPs. 23 ILAC 226.200(2007) [redacted] testified that for the week she was instructing Student at the beginning of February, she was administering mock ISAT tests to prepare the students for ISAT testing, which Student's IEP requires him to take with allowable accommodations and modifications. For the brief time that she was instructing students in the classroom independently, two days, [redacted] used her own materials and did not have Student's IEP to follow. Both [redacted] and [redacted] testified that they did implement Student's IEP and work on his IEP goals from February through June 2011. Again, although consistency in instructional personnel would most definitely have been preferable for Student, the evidence does not support a conclusion under these facts that Student was deprived of FAPE due to a failure of the District to provide instruction and services pursuant to his IEP.
- C.** Each IEP developed for an eligible student must include a description of how the child's progress toward meeting his annual goals will be measured and when periodic reports on the progress the child is making toward meeting his annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. 23 ILAC 226.230 (2007); 34 CFR 300.320(a)(3)(i)and(ii)(2006) Student's IEP called for quarterly determination of progress in accordance with the benchmarks accompanying the IEP goals. The Parent here complains that she did not receive a progress report or report card for the third quarter in April 2011. The Principal testified that report cards were to be picked up by parents that quarter and that teacher conferences could be scheduled at that time to discuss a child's progress. Parent did not go to the school to pick up the Student's report card. She did not schedule a conference. She did not call the teacher or the Principal to advise them that she did not receive the Student's progress report. When she did complain, she did so to the Board of Education, and as soon as he received the complaint via the Board rep, the Principal sent a copy of the report card home with Student. Ideally, the law contemplates appropriate communication between parents and teachers and a report from the instructor and service providers, whether in person or in written form, as to how a student is progressing on each of his quarterly benchmarks. In this case, grades were assigned based on the modified grading scale in Student's IEP and put onto a report card, which Parent testified she did not receive in April for the third quarter but did receive in May after complaining to the Board representative. Even if this is considered procedurally insufficient under the stated law and per the IEP in question, it is not a procedural violation that deprived Student of FAPE under the conditions of 34 CFR 300.513(a)(2006), as cited above at page 4 of this Decision.

IT IS THEREFORE ORDERED:

That Parent's request for relief, specifically that Student be transferred to another school within the District and that he be provided with 6 months of reading and math tutoring at District expense, is denied.

DATED: August 2, 2011


Stacey L. Stutzman
I.H.O.

RIGHT TO REQUEST CLARIFICATION

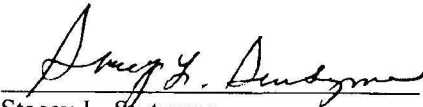
Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party and to the Illinois State Board of Education. The right to request such a clarification does not permit a party to request reconsideration of the decision itself, and the hearing officer is not authorized to entertain a request for reconsideration.

RIGHT TO FILE A CIVIL ACTION

This decision shall be binding upon the parties unless a civil action is commenced. Any party to this hearing aggrieved by this 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 the decision of the impartial due process hearing officer is mailed to the parties.

CERTIFICATE OF SERVICE

The undersigned due process hearing officer certifies that she uploaded this Decision and Order onto the ISBE SEDS on August 2, 2011, and served copies of the aforesaid Decision and Order upon Parent, District counsel, and the Illinois State Board of Education at their respective addresses by depositing same with the United States Postal Service at Libertyville, IL, certified mail postage prepaid, on August 2, 2011 before 5:00 p.m.



Stacey L. Stutzman
Impartial Hearing Officer