ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

K. E. Student	)	
VS.	)	Case No. 2553
OAKWOOD COMMUNITY UNIT SCHOOL DISTRICT NO. 76 Local School District	)	CAROLYN ANN SMARON, Hearing Officer

DECISION AND ORDER
PROCEDURAL BACKGROUND

By letter dated December 4, 2001, counsel for the parents requested an impartial due process hearing. Upon receipt by the local school district, the request was transmitted to the Illinois State Board of Education (ISBE). ISBE received that request on December 10, 2001 and, by letter dated December 12, 2001, CAROLYN ANN SMARON was appointed the hearing officer. The hearing officer contacted the parties to set a date, time and location for a prehearing conference. The prehearing conference was originally scheduled for January 14, 2002 but at the request of the parents postponed to March 4, 2002. HOWARD SMALL, counsel for the local school district and BROOKE K. WHITTED, counsel for the parents of the student, represented the parties.

ISSUES PRESENTED AND REMEDIES REQUESTED

PARENT ISSUES: The parents allege that the student should have been evaluated and found eligible for special education and related services in Fall, 1999. On February 15, 2001, the parents unilaterally placed the student in an out-of-state placement. The parents allege that although they sought a case study evaluation in August, 2001, the IEP team erroneously determined the student was not eligible for special education and related services.

REQUESTED REMEDY: A finding that the local school district did not identify the student as a student eligible for special education and related services on a timely basis and as a consequence, the student was denied a free appropriate public education in the least restrictive environment from 1999 to the present date. The parents request that the hearing officer find that this student is eligible for special education as a severely emotional disturbed young woman in accordance with the testimony adduced at the hearing, specification of certain specific goals and objectives which must be implemented for the remainder of the FY2003 school year, and finally specification that the least restrictive environment for implementation of those goals and objectives is a residential facility, specifically Chaddock, in Quincy, Illinois, all in accordance with the testimony to be adduced at the hearing by the parents' medical and educational expert testimony; reimbursement for the unilateral placement in Idaho; and compensatory educational services for the denial of a free appropriate public education.

SCHOOL DISTRICT POSITION: The District asserts that the student was identified and evaluated in a timely manner and that the decision of the IEP team that the student is not eligible for special education is correct.

FACTS

The student at the center of this controversy is presently sixteen years old. She currently resides in a residential treatment facility in Quincy, Illinois, having been transferred from a residential treatment facility in Boise, Idaho.

It seems that the student's elementary career was uneventful. She was a shy, wellbehaved student, who received mostly A's and B's in academic subjects. Everything about this student changed after she completed sixth grade and transferred to the seventh and eighth grade middle school. During the summer before seventh grade, the student engaged in a rapid weight loss, and upon entrance into the middle school, abandoned her elementary friends to acquire a revolving-door circle of new friends. The student became non-compliant and non-truthful *in* the home setting.

During her eighth grade year (1999/2000 academic year) the student's behavior escalated. On October 7, 1999, she rode the bus to school but instead of entering the middle school, she set off with the expressed desire to jump off a local bridge. When that desire was communicated to the school principal by the student's friends, the principal immediately contacted the father of the student who searched for his daughter, finally locating her wandering the town of Oakwood. The mother of the student returned the student to school and advised the principal that, in fact, the student had confirmed her desire to commit suicide. The Principal testified that she took no notes of this event and could not recall the date of the event.

On December 6, 1999, the student threatened to kill herself and her mother after an argument over telephone usage. *Upon* learning of these threats, the father of the student admitted the student to the Adolescent Psychiatric Unit at Carle Pavillion. The student was placed on high suicide precaution. On December 10, 1999, the student was removed to the partial hospital program where she remained until her discharge on December 15, 1999. The student's discharge diagnosis was major depression. During this hospitalization, the father testified that the school was informed as to the nature of the hospitalization and the school provided the parents with the student's class work. On December 8, 1999, the mother of the student delivered to the Principal a ***consent to*** release school records to the Pavillion. The Principal testified that she must have received the document, and must have placed the document in the student's temporary file, but had no recall of the document until her preparation for this hearing. Subsequent to her discharge, the student attempted to hang herself after drinking household bleach on December 31, 1999.

On January 17, 2000, the student was stopped in the hallway at the middle school for inappropriate attire and sent to the office of the principal. At the student's request, the principal called the student's father to report that she felt suicidal. The father readmitted the student to the Carle Pavillion and she was again placed on high-risk suicide precautions. The student was discharged on February 4, 2000 with a discharge diagnosis of major depression. Upon her discharge, the father reported that the daughter slept quite a bit and seemed even more depressed.

Upon the student's return from a school sponsored dance on April 7, 2000, the parents discovered the student in their bedroom, urinating on the floor after ingesting 47 Benadryl tablets. The student was readmitted to the Carle Clinic where she remained until April 14, 2000. During this hospital stay, the father testified that the mother telephoned the middle school principal to advise her of the hospitalization, the reasons therefor, and to arrange for her class work pickup.

On April 10, 2000, the father met with Cathy Hofmann, the Director of Special Education for the Vermillion Association for Special Education (VASE) in a search for help for his daughter. At this point, the student's treating physicians were actively recommending residential treatment. The father testified that Ms. Hofmann advised him that "she would do some checking" but offered no specific assistance to the father.

During the student's multiple attempts at suicide and during her multiple hospitalizations, the student's academic performance took a downward turn. The parents received progress reports from the Newtown Middle School during these months. On September 21, 1999, the student had a C in Science, an A- in Math, an A in English, a C+ in Reading and a Bin Social Studies. By May 3, 2000, the student had an Fin Science, a C in Math, a D+ in English and an Fin Social Studies. Unfortunately for this student, the student's final grades represented an average of the four marking periods so the decline was not obvious when the student transferred to the high school.

During the student's multiple attempts at suicide and during her multiple hospitalizations, the middle school principal was of the opinion that she was not aware of any emotional or behavior problems of the student, could not recall being advised that the student had been hospitalized at the Carle Pavillion, and had no knowledge that the student's grades were in decline. In her opinion, the student's multiple attempts at suicide did not require that she investigate further. Rather, the principal was of the opinion that she need not investigate further if she was in continuing contact with the parents.

During the student's multiple attempts at suicide and during her multiple hospitalizations, the student had sporadic contact with the district social worker, Laura Neumann, who testified that she met with the student, met with the student's friends, and "maintained contact with the parents". Ms. Neumann had no idea that there had been any change in the student's academic performance as the student did not self-report and none of the student's teachers, individuals known to her, reported the student's failing academics to her. Ms. Neumann testified that she did not seek out the student's teachers but took the self-reports of a suicidal teenager and the non-reports of the student's teachers at face value.

On May 9, 2000, the student's treating psychiatrist, John Beck, recommended a residential treatment program for the student and offered his assistance in that regard. The parents investigated facilities and applied twice for an ICG to defray the cost. Both applications were rejected. The ICG applications required current psychological evaluations which were obtained from Dr. Elghammer. By letter of August 15, 2001, Dr. Elghammer opined that the student had severe psychological problems e.g. borderline personality disorder, severe clinical depression and an eating disorder.

The father testified that he and his wife elected to home school the student in August, 2000 rather than enroll her in the school district high school. He testified that the "open campus" setting was an unsafe environment for his daughter. He recalled that the middle school was a "closed campus" where he could drive and pick up his daughter, thus assuring himself of her whereabouts. Consequently, on August 22, 2000, the parents removed the student from the local school.

On November 16, 2000, the father and his brother, James Ellis, the former Superintendent of the local school district, met with the high school principal, the Guidance Counselor to whom the student would have been assigned, and the VASE Director. He testified that he gave them a status report on his daughter and requested their help. None was offered.

During December, 2000 and January, 2001, the student slept over twenty hours a day, urinated in her bed, and spread feces in the shower. The parents unilaterally placed the student at Clearview Horizons in February, 2001 where she also enrolled in the Glacier Mountain Academy, a highly structured academic environment. The student attended an English class at a local high school and had a part-time job at a fast-food restaurant, all within the highly structured confines of Clearview and Glacier Mountain. In this structure, the student achieved A's and B's and appeared to be working on her emotional problems.

On August 6, 2001, the parents requested a case study evaluation of their daughter and consented, in advance, to the evaluation. On August 22, 2001, the local school district convened a meeting to discuss the request. The parents attended the meeting and provided the school district with the documents in support of the diagnoses of their daughter. At a meeting on September 14, 2001, the parties discussed the domains to be investigated anti the information to be acquired. On September 14, 2001, the school district secured the parent's consent to collect additional evaluation data.

Laura Neumann, the school district social worker, completed a social history and behavioral assessment of the student. She interviewed the parents and the student. She interviewed the student's teacher at Glacier Mountain by telephone. She administered the Behavior Assessment System for Children to the parents on October 10, 2001, to the student on November 26, 2001 and to the student's Glacier Mountain teacher on November 26, 2001. Ms. Neumann reviewed the student's transcript from Glacier Mountain and reviewed the student's ending grades (but not the progress reports) from the middle school. The student's teacher reported that the student was doing well academically at Glacier Mountain and doing well emotionally at Clearview. Finally, Ms. Neumann testified that she believed that she could express an opinion regarding this student's eligibility for special education without observing the student in her then academic setting. She did however recall on August 5, 2001 that in her work with the student in eighth grade, she believed that the student was a risk to herself. Ms. Neumann testified that she was aware of the medications taken by the student at the time of her social worker, the psychologist was unaware of the discrepancy between the student's monthly reports at the middle school and the final grades reported on her transcript. In his opinion, the psychologist believed that D's and F's would have been "significant". The psychologist affirmed that his psychological report was not available in final form on November 28 2001 at the MDC. Rather, the report was completed on December 5, 2001 and placed in the student's file on December 12, 2001. Finally, the psychologist was of the opinion that the student needed to be in attendance at the high school in order to assess the presence of an emotional disability and to document the adverse educational impact.

The principal of the high school testified that, at present, there is an actively suicidal student attending the high school. She testified that the high school had assigned the student to the learning disabilities teacher and made certain accommodations for the student. She testified that none of the accommodations are in writing - no Individualized Education Plan (IEP), no 504 Plan, no attempts to conduct a case study evaluation. She testified that at the end of the MDC meeting on November 28, 2001, no accommodations were offered to this student.

At the conclusion of the MDC, the school district concluded that the student was not eligible for special education. The MDC team concluded that although the student demonstrated inappropriate types of behavior or feelings under normal circumstances and demonstrated a general pervasive mood of unhappiness and/or depression, both over an extended period of time to a marked degree (intensity, severity), they could find no adverse effect on the student's educational performance.

On December 27, 2001, the parents transferred the student to Chaddock, a residential facility in Quincy, Illinois, where she remains today. The cost incurred by the parents of the student for the student's placement in Idaho was $55,201.57.

APPLICABLE LAW

The law applicable to the facts in this case is set forth in the Individuals with Disabilities Education Act (IDEA), 20 USC § 1401 et seq., the federal regulations to IDEA, 34 CFR Part 300, the School Code of Illinois, 105 ILCS §5/14-8.02 et seq., and the applicable state regulations, 23 Ill. Admin. Code Part 226. The local school district bears the burden of proof that at all times relevant it properly identified the nature and severity of the student's suspected disabilities and that it offered the student a free appropriate public education in the least restrictive environment, consistent with procedural safeguards.

"Child Find"

Each school district shall be responsible for actively seeking out and identifying all children from birth through age 21 within the district, including children not enrolled in the public schools, who may be eligible for special education and related services. Procedures developed to fulfill this responsibility shall include ongoing review of each child's performance and progress by teachers and other professional personnel, in order to refer those children who exhibit problems which interfere with their educational progress and/or their adjustment to the educational setting, suggesting that they may be eligible for special education and related services. When the responsible school district staff member(s) conclude that an individual evaluation of a particular child is warranted based on factors such as a child's educational progress, interaction with others, or other functioning in the school environment, the requirements for referral and evaluation set forth in this Subpart B shall apply. 23 Ill. Admin. Code §226.100(a)(2), 23 Ill. Admin. Code §226.100(b).

"Referral" A referral may be made by any concerned person including but not limited to school district personnel, the parents) of a child, an employee of a community service agency, another professional having knowledge of a child's problems, a child, or an employee of the State Board of Education. 23 Ill. Admin. Code §226.110(b).

Emotional Disturbance: A condition exhibiting one or more of the following characteristics over an extended period of time and to a marked degree that adversely affects a child educational performance:

- An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- Inappropriate types of behavior or feelings under normal circumstances;
- A general pervasive mood of anxiety or unhappiness or depression; or
- A tendency to develop physical symptoms or fears associates with personal or school problems. 23 Ill. Admin. Code §226.75.

Educational performance: A student's academic achievement and ability to establish and maintain social relationships and to experience a sound emotional development in the school environment. 23 Ill. Admin. Code §226.75.

Pursuant to Section 14-8.02 of the School Code, the evaluation and lEP meeting shall be completed within 60 school days after the date of referral or the date of the parent's application for admittance of the child to the public school. 23 Ill. Admin. Code §226.110(d)(1).

In Board of Education, Hendrick Hudson Central School District**.** v. Rowley.. 458 US 176 (1982) ("Rowley"), the Supreme Court set forth a two pronged test for evaluating whether or not the school district has complied with applicable special education laws - there must be compliance with statutory procedures and then the individualized education program (IEP) developed through such procedures must be reasonably calculated to enable the student to receive educational benefit.

In School Comm. of Burlington v. Department of Ed. of Mass., 471 U.S. 359 (1985) ("Burlington") the Supreme Court recognized the right of parents who disagree with a proposed IEP to unilaterally withdraw their child form public school and place the child in private school and held that IDEA's grant of equitable authority empowers a court to order school authorities retroactively to reimburse the parents for their expenditures on private special education for a child if the court ultimately determines that such placement, rather than a proposed IEP, was proper under the Act.

In Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 (1993) ("Carter") the Supreme Court held that a court may order reimbursement for parents who unilaterally withdraw their child from a public school that provides an inappropriate education under IDEA and place the child in a private school that provides an education that is otherwise proper under IDEA but does not meet all of the requirements of IDEA

APPLICATION OF LAW TO THE FACTS

All applicable laws and regulations require that a local school district demonstrate that it properly identified the nature and severity of a student's suspected disability and thereafter offered the student a free appropriate public education in the least restrictive environment, consistent with procedural safeguards. In that regard, a local school district has an affirmative duty to actively seek out and identify such children. Now let us examine what the Oakwood School District did with regard to this student while she was in eighth grade. Put another way -what did they know, when did they know it and what, if anything, did they do about it?

The father of the student testified at length about the student's eighth grade year the suicide attempts, the psychiatric hospitalizations, the academic decline, the telephone conversations with the middle school principal and school district social worker. What was the school district response - an offer of Glasswork while the student was hospitalized, a sympathetic ear during telephone calls and a fond farewell at the eighth grade graduation. The principal could barely recall one conversation with the parents at the hearing and could only recall reviewing one request from the Pavillion facility for information - a request that she re-discovered while preparing for her testimony in this case. The social worker apparently believed that she had no affirmative duty to inquire beyond a suicidal teenager's representations that she was doing well in school. None of the student's teachers brought the student's declining academics to the attention of either the principal or the social worker - if they did do so, neither individual could recall those conversations at the hearing. In short, they placed their hands over their

collective eyes and collectively failed to investigate beyond expressions of sympathy. The school district failed in their *affirmative duties* to identify and, if necessary, offer a free appropriate public education to this student. When the student's father consulted with VASE in April, 2000, he was offered the same sympathetic ear but nothing else.

The testimony of the middle school principal, school district social worker and VASE Director of Special Education always seemed to end in the same place i.e. the parents never requested a case study evaluation. This begs the question and is an attempt to avoid the school district's affirmative duty to actively seek out and identify students who may be eligible for special education. As the school district must know, the special education area is filled with rules, regulations and required forms - all of which are or should be the routine topic of in-services to educational professionals. To expect the parents to have this sophisticated knowledge is not credible. The school district had the affirmative duty and the knowledge and, in light of the facts of this case, should have moved to investigate.

What did the school know? The father testified that it knew of the hospitalizations, the suicide attempts, the diagnoses, and the recommended placement in a residential treatment facility.

When did they know it? The father testified as to telephone calls to the middle school principal and school district social worker. The principal and social worker acknowledged that they were "in contact with the parents".

What did they do about it? NOTHING! Had the local school district properly investigated the student's academic performance, it is clear to this hearing officer that an investigation would have led to the conclusion that the student met the requirements of the definition of severely emotionally disturbed within the Illinois Administrative Code.

Faced with the school district's sympathetic ear and medical recommendations that their child be placed in a residential treatment facility, the parents attempted to keep their daughter safe until they could locate such a facility. In the Fall of 2000, the parents brought the high school personnel up-to-date e.g. the suicide attempts, the hospitalizations, the academic decline, the recommended placement. The father received a similar reaction i.e. a sympathetic ear, suggestions as to appropriate facilities and a "good luck" as he left the high school. What he did not receive was any indication from the high school that it had any duty to investigate further. Like the middle school, the high school apparently believed it had no affirmative duty to investigate. Instead, they relied on the parent's failure to request an evaluation and in the absence of such a request by the parents, washed their hand of this student.

Rowley requires compliance with statutory procedures - the school district failed to comply with the most elementary requirements of "child find" as outlined in the Illinois Administrative Code. In the absence of an investigation, one must evaluate what the school district offered this student upon entering high school - an "open campus" arid no services. In light of the medical advice from the student's treating doctors, no one could reasonably conclude that this was the "least restrictive environment" for this student. No one could conclude that this student would receive any educational benefit at the high school. Under **Burlington and Carter.** the parents were completely justified in withdrawing the student from public school, placing her in a private school, and looking to the school district for reimbursement.

Now let us fast forward to August 2001. Presumably the parents finally received competent advice regarding IDEA as they sent a **written** request for an evaluation on August 6, 2001 accompanied by **written** consent for a case study evaluation. Forgetting for the moment the delays by the school district engendered by its apparent belief that c n en is not **consent** unless it is on a school district form, let us examine the evaluation conducted by the school district. The social worker administered the BASC to the student but seemed unconcerned that the results might be "skewed" by the student's medications. The social worker administered the BASC to the student's teacher at the private treatment facility but seemed unconcerned that the educational setting in Idaho was quite different than the high school. For example, the social worker accepted at face value statements that the student was doing well. It seems that 1:1 teaching, 3-6 students in a classroom and the close monitoring of the treatment facility were equated with the high school setting in evaluating the words "she's doing well". That conclusion is not credible.

The psychologist administered diagnostic tests but never observed the student in a classroom. The psychologist seemed to suggest that he would have preferred that the parents enroll this severely emotionally disturbed student in a regular education high school so he could observe her. That belief is not credible. Further the psychologist was able to review all of the medical reports provided by the parents in August 2001 and apparently believed that the student was seriously emotionally disturbed. However, he too relied upon and took at face value the reports from the Idaho facility. Even more incredible, the psychologist was willing to accept the student's elementary and middle school transcripts without investigating further.

Other than the social worker and psychologist, none of the educational professionals present at the multidisciplinary conference on November 28, 2001 had ever met the student. As a consequence, it is completely plausible that the other participants relief upon the advice and recommendations of those two professionals -recommendations that this hearing officer did not find credible.

Now let us return to the procedural irregularities. No can seriously believe that this evaluation was completed within sixty school days of the parent's consent on August 6, 2001 or even sixty days after the meeting on August 22, 2001. The school district chose to believe that the parent's consent on September 14, 2001 started the procedural clock. This is patently absurd and the delay colors this hearing officer's view of the whole evaluation process. Coupled with my skepticism that the evaluation by the social worker and psychologist accurately assessed this student, the procedural violations are fatal.

What is apparent to this hearing officer is that this school district made no meaningful attempts to serve this child and that as a consequence thereof, the child was denied a free appropriate public education. The parents were entitled then and remain entitled to reimbursement for their private placement of this student.

FINDINGS

a. The school district did not attempt to identify the student as a student eligible for special education and related services on a timely basis and as a consequence, the student was denied a free appropriate public education in the least restrictive environment from 1999 to the present date.

b. This student meets the criteria of severely emotionally disabled and as a conesequence, should have been found eligible for special education and related services at the multidisciplinary conference on November 28, 2001.

c. That the least restrictive environment for this student is her current placement at Chaddock, Quincy, Illinois.

DECISION

1. The parents shall secure an independent educational evaluation of their daughter in her current placement within thirty days of date of this Order. The domains to be evaluated shall be in the areas of health, vision, social and emotional status, general intelligence, academic performance, and any other areas of concern that may arise during the evaluations.

2. That the school district shall bear the total cost of the aforesaid independent educational evaluation.

3. That the independent educational evaluators shall then meet with school district personnel and the parents to develop an Individualized Education Plan for this student including but not limited to goals and objectives in all academic areas should the evaluators determine that there has been academic regression since June, 2000.

4. That the student's placement in a residential treatment facility shall be deemed to be the least restrictive environment pending the conclusions of the aforesaid independent education evaluations and the creation of an Individualized Education Plan.

5. That the local school district shall reimburse the parents of the student for the cost of Glacier Mountain/Clear View Academy in the amount of $55,201.57.

6. That the local school district shall reimburse the parents of the student for the continuing cost of Chaddock in Quincy, Illinois.

RIGHT TO REQUEST CLARIFICATION

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought and a copy of the request shall be mailed to the party and to the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, lllinois 62777. The right to request such a clarification does not permit a party to request reconsideration of the decision itself and the hearing officer is not authorized to entertain a request for reconsideration.

RIGHT TO FILE A CIVIL ACTION

This decision shall be binding upon the parties unless a civil action is commenced. Any party to this hearing aggrieved by this decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-8.01(i), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision was mailed to a party.

ISSUED this 28th day of May, 2002.

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CAROLYN ANN SMARON
Due Process Hearing Officer