



October 26 2021

Hansen & Cleary
555 Skokie Boulevard, Suite 250
Northbrook, IL 60062

VIA EMAIL –

Re: FOIA request dated 10/18/2021

Subject: Copies of any and all due process requests and amended due process requests filed by a parent/guardian or on behalf of a parent/guardian against Oswego Community Unit School District #308 pursuant to the Individuals with Disabilities Education Improvement Act, 20 U.S.C. Section 1400 et seq., for the time period of January 1, 2019 to present. (Parent(s)/Guardian(s) and student(s) names may be redacted).

Dear Ms. Henry:

This letter will serve as Oswego Community Unit School District 308's response to your FOIA request received on October 18, 2021 under the Freedom of Information Act (5 ILCS 140/1 et seq.), in which you asked for the above referenced information. Attached is the information you requested. Redactions have been made in accordance with:

Section 7.5(r) of the Illinois Freedom of Information Act, 5 ILCS 140/7.5(r): Information prohibited from being disclosed by the Illinois School Student Records Act.

To promote district transparency and assist others who may have a similar question, this responsive document will be posted online on the district's website. To access it, go to www.sd308.org and select *Our District > Freedom of Information Act Request > FOIA Request Responses > FOIA Requests Responses -2021 > then select FOIA ID #21-72*.

Please be advised that to comply with your FOIA request, the district incurred an expense that comprised of the cost of labor and resources used to search for records responsive to your request. Let me know if you have additional questions. Thank you.

John Petzke

John Petzke, CFO
Freedom of Information Officer

ILLINOIS STATE BOARD OF EDUCATION

Special Education Services Division

100 North First Street, N-243

Springfield, Illinois 62777-0001

PARENT REQUEST FOR AN IMPARTIAL DUE PROCESS HEARING OFFICER

INSTRUCTIONS: This form has been developed to assist parents in requesting an impartial due process hearing. The completed form must be given to the superintendent of the student's resident district. Within 5 days of receipt of the request for a hearing, the local school district will forward a copy of the completed form to the Illinois State Board of Education to be shared with the appointed hearing officer. A local school district may not deny a request for a due process hearing. All parties involved in the dispute are advised to review the due process regulations found at 23 Illinois Administrative Code 226.605 and Section 14-8.02 of the School Code. The information reported on this form will be subject to the confidentiality requirements of the individuals with Disabilities Education Act and the Illinois School Student Records Act.

| | |
|--------------|------|
| IS REQUESTED | STUD |
|--------------|------|

PARENT'S/GUARDIAN'S LANGUAGE/MODE OF COMMUNICATION

English

A BILINGUAL OR SIGN LANGUAGE INTERPRETER IS REQUESTED

☐ YES ☒ NO IF YES, Specify language/mode of communication

| | |
|---|-------------------------|
| ADDRESS (Street, City, State, Zip Code) | FAX (Include Area Code) |
|---|-------------------------|

ADDRESS (Street, City, State, Zip Code)

FAX (Include Area Code)

n/a

NAME OF ATTORNEY FOR THE PARENT/GUARDIAN (If this section is completed all information and correspondence regarding the due process will be forwarded directly to the attorney or representative.)

n/a

ADDRESS (Street, City, State, Zip Code)

FAX (Include Area Code)

E-MAIL

DISTRICT NAME AND NUMBER

Oswego School District #308

TELEPHONE (Include Area Code)

630 636 3688

ADDRESS (Street, City, State, Zip Code)

4175 Rt. 71 Oswego, IL 60543

FAX (Include Area Code)

630 636 3080

E-MAIL

n/a

NAME OF THE SCHOOL STUDENT ATTENDS

Oswego High School

TELEPHONE (Include Area Code)

ADDRESS (Street, City, State, Zip Code)

4250 St. Rt. 71 Oswego, IL 60543

FAX (Include Area Code)

n/a

E-MAIL

na

A DESCRIPTION OF THE DISPUTE (Attach additional pages if necessary.)

Due to pandemic diagnosis affects [redacted] ability to learn have caused student to fail due to lack of services. Instruction modifications were denied / placement also denied

A DESCRIPTION OF THE RESOLUTION OR ACTION YOU ARE SEEKING (Attach additional pages if necessary.)

Modification of education goals / Extension of courses
Since School did not provide testing at all To incomplete grades 11r
Modification of education curriculum
requested on 10/20/20 as part of compensatory services
*see attached 5/21/21

Date Submitted to District

EXHIBIT A

PARENT REQUEST FOR AN IMPARTIAL DUE PROCESS HEARING OFFICER

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NAME OF

PARENT

[REDACTED]

[REDACTED]

LANGUAGE/MODE OF COMMUNICATION

English

A BILINGUAL OR SIGN LANGUAGE INTERPRETER IS REQUESTED

☐ YES

☒ NO

IF YES, Specify language/mode of communication

NAME

[REDACTED]

[REDACTED]

ADDRESS

[REDACTED]

[REDACTED]

NAME

will be forwarded directly to the attorney or representative.)

ADDRESS (Street, City, State, Zip Code)

FAX (Include Area Code)

E-MAIL

DISTRICT NAME AND NUMBER

Oswego School District #308

TELEPHONE (Include Area Code)

630 636 3030

ADDRESS (Street, City, State, Zip Code)

4175 IL 71
Oswego, IL 60543

FAX (Include Area Code)

E-MAIL

NAME OF THE SCHOOL STUDENT ATTENDS

Oswego High School

TELEPHONE (Include Area Code)

630 636 2

ADDRESS (Street, City, State, Zip Code)

4350 Route 71
Oswego, IL 60543

FAX (Include Area Code)

E-MAIL

A DESCRIPTION OF THE DISPUTE (Attach additional pages if necessary.)

IEP services not offered in October 2019 / OHS to conduct / evaluate / implement services / OHS placement does not meet needs / 504 was denied / IEP based on current needs of students

A DESCRIPTION OF THE RESOLUTION OR ACTION YOU ARE SEEKING (Attach additional pages if necessary.)

IEPA mandates that I am active member of the team / OHS Le environment does not offer a FAPE. Retroactive re-evaluation / appropriate services / hours in question I am challenging the IEP / appropriate placement for students need

Date Submitted to District

ILLINOIS STATE BOARD OF EDUCATION

Special Education Services Division

100 North First Street, N-243

Springfield, Illinois 62777-0001

PARENT REQUEST FOR AN IMPARTIAL DUE PROCESS HEARING OFFICER

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NAME OF STUDENT ON WHOSE BEHALF THE HEARING IS REQUESTED

STUDENT'S BIRTHDATE (Month/Day/Year)

PARENT'S/GUARDIAN'S LANGUAGE/MODE OF COMMUNICATION

ENGLISH

A BILINGUAL OR SIGN LANGUAGE INTERPRETER IS REQUESTED

☐ YES ☒ NO IF YES, Specify language/mode of communication

TELEPHONE (Include Area Code)

FAX (Include Area Code)

NAME OF ATTORNEY FOR THE PARENT/GUARDIAN (If this section is completed all information and correspondence regarding the due process will be forwarded directly to the attorney or representative.)

TELEPHONE (Include Area Code)

ADDRESS (Street, City, State, Zip Code)

FAX (Include Area Code)

E-MAIL

DISTRICT NAME AND NUMBER

OSWEGO COMMUNITY UNIT SCHOOL DISTRICT 308

TELEPHONE (Include Area Code)

(630) 636-3080

ADDRESS (Street, City, State, Zip Code)

4175 ROUTE 71 OSWEGO ILLINOIS 60543

FAX (Include Area Code)

E-MAIL

NAME OF THE SCHOOL STUDENT ATTENDS

GRAND PARK ELEMENTRY

TELEPHONE (Include Area Code)

(630) 551-9700

ADDRESS (Street, City, State, Zip Code)

26933 GRANDE PARK BLVD PLAINFIELD ILLINOIS 60585

FAX (Include Area Code)

E-MAIL

A DESCRIPTION OF THE DISPUTE (Attach additional pages if necessary.)

Based on the current (IEP) dated 12/01/2020, As legal guardians of [REDACTED] we are in disagreement with the procedural practices, accuracy and proficiency in which the information and facts obtained to gather an accurate and true imbalanced educational IEP, As legal guardians we are also not in agreement with the proposed placement of [REDACTED]. The proposed Placement Violates both state and federal guidelines, which states that a student is entitled to a free public education in a school closest to their home in a classroom without disabled students. District 308 has also stated that the placement may be modified at a later date without the parents consent.

A DESCRIPTION OF THE RESOLUTION OR ACTION YOU ARE SEEKING (Attach additional pages if necessary.)

As legal guardians we are asking that [REDACTED] be placed in a school that is closest to his home, and that [REDACTED] is placed in a classroom with students who do not have disabilities. We also request that if a placement is accepted by [REDACTED] guardians, District 308 can not move [REDACTED] to another facility without the parents consent. As legal Guardians we are also requesting that an (IEE) Independent Evaluation be completed immediately at the public expense.

Date Submitted to District

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

██████████ a minor, by and through ██████████
Parents, ██████████ and ██████████

Petitioners,

v.

Oswego Community Unit School District 308;

██████████ ██████████;
Illinois State Board of Education; and
██████████

Respondents.

EXPEDITED DUE PROCESS HEARING REQUEST

Our law firm has been retained by ██████████ and ██████████ (the Parents), ██████████, to assist them in securing a free appropriate public education (FAPE) for their ██████████, ██████████ ██████████ an ██████████ student who resides within the geographical boundaries of Oswego Community Unit School District 308 (the District) and who is currently placed at ██████████ ██████████ (██████████) a residential treatment program. On behalf of the Parents, we hereby submit this Expedited Due Process Hearing Request for reasons that include, but are not limited to, the following:

BACKGROUND INFORMATION

██████████ is eligible for special education under the IDEA categories of Emotional Disability (ED) and Other Health Impairment (OHI). He was placed at ██████████ on ██████████ as the result of a ██████████ against him in which he was placed under the custody of the ██████████. ██████████ is an ISBE-approved private residential treatment program with a specialization in treating children who demonstrate ██████████ behaviors. They operate a school within their facility called ██████████. On ██████████, the District created an IEP for ██████████ that indicated placement at ██████████ and ██████████. ██████████. Upon information and belief, the District has assumed financial responsibility for the tuition costs of ██████████ placement at ██████████ and ██████████ has paid for the room and board costs.

According to ██████████ dictates that ██████████ will have served his statutory sentence and therefore be released from the agency's custody on September 21, 2021. As a result, ██████████ has informed the Parents that ██████████ will be discharged from

their program on the same day. The Parents have worked diligently, in collaboration with the District to attempt to find an appropriate placement for [REDACTED] to transition to from [REDACTED] but they have been unsuccessful in finding a program that will accept him by [REDACTED]. The Parents have requested that [REDACTED] maintain [REDACTED] placement in the program for an additional period of time to allow them to find a new placement for him, but [REDACTED] has refused.

Upon information and belief, the District is willing to continue to pay for [REDACTED] placement at [REDACTED] but [REDACTED] is refusing to maintain the placement. [REDACTED] initially described the ability to provide a 30-day extension for [REDACTED] to remain at [REDACTED] but has since walked back that possibility, indicating that it is bound by the [REDACTED] to release [REDACTED] from its custody on September 21. ISBE is named as a Respondent in this matter due to its ultimate responsibility to ensure that a child with a disability receives a FAPE under the IDEA, including children placed in private facilities. 34 C.F.R. § 300.146. Regardless of which named Respondent or Respondents are ultimately financially responsible, [REDACTED] placement at [REDACTED] must be maintained because of this filing, pursuant to the stay-put provision of the IDEA. [REDACTED] is at serious and immediate risk of having no program or placement to meet his needs, which would result in an absence of educational programming, likely regression of academic and emotional functioning, and a denial of FAPE.

ALLEGATIONS

I. DISCHARGING [REDACTED] FROM [REDACTED] WOULD RESULT IN A DENIAL OF FAPE AND VIOLATE THE STAY-PUT PROVISION OF THE IDEA.

As this complaint is being filed prior to the proposed change of placement taking effect, the stay-put provision of the IDEA requires that [REDACTED] placement at [REDACTED] be maintained during the pendency of this dispute. Stay-put requires that during the pendency of any administrative or judicial proceeding regarding the provision of FAPE to a child with a disability, “unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child.” 20 U.S.C. § 1415(j). This stay-put provision operates as an **automatic statutory injunction**. *Casey K. v. St. Anne Comm. High Sch. Dist. No. 302*, 400 F.3d 508, 511 (7th Cir. 2005) (citing *Honig v. Doe*, 484 U.S. 305, 326-27). As such, it is not necessary for Petitioner to satisfy the usual prerequisites for a preliminary injunction for a statutory injunction to issue.

An analysis of stay-put simply requires a determination of the last mutually agreed upon educational placement. *Susquenita Sch. Dist. v. Raelee S.*, 96 F.3d 78 (3d Cir. 1996). There can be no dispute that [REDACTED] is the last mutually agreed upon placement that [REDACTED] has attended. The District recorded this placement in [REDACTED] and he has been attending [REDACTED] since that time, up through and including the date of this filing.

Further, the only current alternative to maintaining [REDACTED] placement at [REDACTED] is that he will be sent home without any plan for the supervision and support required by his IEP. Although the Parents and District have worked collaboratively to attempt to find a new residential placement for [REDACTED] there is no such placement available as of this filing.

Therefore, the only way to provide [REDACTED] with a FAPE at this time is to maintain his placement at [REDACTED]. If [REDACTED] were discharged, the Parents would do their best to provide supervision, but it would be impossible for them to replicate the intensive 24-hour supports and supervision provided by a residential program like [REDACTED]. Without appropriate supervision in the past, [REDACTED] has ended up in situations that have put his health and safety, and the health and safety of others at risk.

The key in determining if a new placement satisfies stay-put is whether such placement would genuinely alter the student's educational program by eliminating or fundamentally changing one of its basic elements. *D.K. v. District of Columbia*, 61 IDELR 292 (D.D.C. 2013). Removal from [REDACTED] would be a material and substantial change of placement for [REDACTED]. [REDACTED] is a unique program that specializes in providing individualized treatment for children who have exhibited [REDACTED] behaviors. [REDACTED]. [REDACTED] has made significant progress since he began attending this program. If he were to be removed at this time, it would result in a significantly less stable situation and likely regression. Discharging [REDACTED] from [REDACTED] would remove him from the environment where he has come to feel safe and made significant progress over the past year and result in him not having any educational placement at all, thus fundamentally changing his educational program by effectively eliminating it. This would result in a violation of both the stay-put and FAPE requirements of the IDEA.

The stay-put provision of the IDEA was "designed to preserve the status quo pending resolution of administrative and judicial proceedings under the Act." *Doe v. Brookline Sch. Comm.*, 722 F.2d 910, 915 (1st Cir. 1983) (citing *Honig v. Doe*, 484 U.S. 305, 312 (1988)). See also *Bd. of Educ. of Community High Sch. Dist. No. 218 v. Ill. St. Bd. of Educ.*, 103 F.3d 545, 548 (7th Cir. 1996); *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1133 (9th Cir. 2003). Forcing [REDACTED] to leave [REDACTED] would be an extreme change and run counter to the purpose of the stay-put provision. The IDEA requires that [REDACTED] placement at [REDACTED] be maintained during the pendency of this dispute to preserve the status quo and avoid a denial of FAPE under the IDEA.

II. [REDACTED] IS SUBJECT TO STAY-PUT UNDER THE IDEA AND ILLINOIS LAW.

[REDACTED] is an ISBE-approved placement (Exhibit C – ISBE Approval Status) and has accepted [REDACTED] an Illinois student, into its program. Upon information and belief, it has accepted public funds from the District for the educational costs of [REDACTED] placement. When a private school is approved by ISBE to provide special education services, it must agree to follow both federal and Illinois laws regarding the education of students with disabilities. 23 Ill. Admin. Code § 401.10(a)(5)(A)(iv). [REDACTED] subjected itself to federal and Illinois law when it applied and became approved by ISBE to provide special education services to Illinois students.

Case law has also established that both federal and state law require [REDACTED] to comply with the stay-put requirement of the IDEA and to maintain [REDACTED] placement in their program during the pendency of this dispute. See e.g., *P.N. v. Greco*, 282 F. Supp. 2d 221, 237

(D.N.J. 2003) (“a private school accepting placements of students protected by the IDEA . . . is subject to IDEA regulations, and it can therefore be held liable under the IDEA for its failure to comply with IDEA rules in connection with the termination of [a student’s] placement.”). The IDEA stay-put requirement also supersedes state regulations regarding private schools’ ability to issue a notice of termination. *See Agawam Public Schools*, 65 IDELR 247 (SEA MA 2015) (Residential placement was the child’s stay-put placement and the private program could not proceed with a “planned termination” while due process proceedings continued). Therefore, as an ISBE-approved private placement, [REDACTED] is bound by the IDEA and Illinois law to abide by the stay-put requirement of the IDEA and to maintain [REDACTED] placement during the pendency of this dispute.

REQUESTED RELIEF

For the foregoing reasons, the Parents request that the following relief be granted:

1. Order that [REDACTED] be maintained in his placement at [REDACTED] during the pendency of this dispute in accordance with the stay-put provision of the IDEA;
2. Alternatively, if the Parents or District are able to identify a placement that can meet Connor’s needs, order the District and/or ISBE to place [REDACTED] in such program immediately, regardless of ISBE-approval status, and assume full financial responsibility for all expenses associated with such placement;
3. Convene an expedited hearing to address the issues raised herein;
4. Such other relief as the Impartial Hearing Officer deems appropriate.

The Parents reserve the right to amend this due process hearing request as additional information concerning [REDACTED] is provided or becomes available. We look forward to the expedited appointment of an ISBE Impartial Hearing Officer.

Dated: September 20, 2021

Respectfully submitted,

/s/ Matt Cohen

Matt Cohen

/s/ Brad Dembs

Brad Dembs

/s/ Nina Hennessy

Nina Hennessy

Attorneys for Petitioners
Matt Cohen & Associates, LLC


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Chicago, IL 60601
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matt@ mattcohenandassociates.com
brad@mattcohenandassociates.com
nina@mattcohenandassociates.com

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2021, I served the foregoing via email upon:

Illinois State Board of Education
Andrew Eulass, Due Process Coordinator
aeulass@isbe.net

Jeremy Duffy, Legal Officer
jduffy@isbe.net


Arwa Sons, Clinical Director
asons@nexusindianoaks.org

Oswego Community Unit School District 308
Dr. John Sparlin, Superintendent
superintendent@sd308.org


NeAngela Dixon, Chief Legal Counsel
neangela.dixon@illinois.gov

/s/ Brad Dembs

Brad Dembs
Matt Cohen & Associates, LLC
155 N. Michigan Ave., Suite 715
Chicago, IL 60601
(866) 787-9270
brad@mattcohenandassociates.com