

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

[REDACTED]

Student)

vs.)

[REDACTED]

Local School District)

Case No. 2008-021

CAROLYN ANN SMARON, Hearing Officer

RECEIVED

MAY 27 2008

**SPECIAL EDUCATION
SERVICES**

DECISION AND ORDER

PROCEDURAL MATTERS

By letter dated July 23, 2007 counsel for the mother of the student filed a request for due process alleging a dispute regarding the transportation of the student. That letter was received by the local school district on July 23, 2007 and forwarded to the Illinois State Board of Education. By letter dated July 25, 2007, CAROLYN ANN SMARON was appointed to serve as the hearing officer. The hearing officer issued a Scheduling Order and a Notice of Prehearing Conference for September 5, 2007. The school district issued its response on August 3, 2007.

On August 14, 2007 counsel for the mother filed a Motion to Compel Discovery. By letter dated August 15, 2007 counsel for the school district asserted that the student's records had been sent to the mother of the students on August 13, 2007. By letter dated August 21, 2007 counsel for the mother asserted that he had not received all of the records for the student, asserting that test protocols, emails and intranet messages regarding the student, "IEP documents created during IEP meetings but not disclosed as part of IEP's", and the record access log of each District person accessing the student's record were missing. By Preliminary Order, the hearing officer set the Motion to Compel Discovery for hearing on August 28, 2007. On August 23, 2007 counsel for the mother filed a Motion for an Interim Educational Evaluation. By Preliminary Order issued August 28, 2007 the hearing on the Motion to Compel Discovery and the Motion for Interim Independent Educational Evaluation was set for September 24, 2007.

On September 1, 2007 counsel for the mother filed an Amended Complaint. By letter dated September 4, 2007 counsel for the school district objected to the Amended Complaint, asserting that that there had been no resolution session to discuss the allegations in the mother's original due process complaint. Counsel for the school district filed its Response to the Motion for Interim Independent Educational Evaluation on

September 4, 2007. Counsel for the mother filed her Reply on September 12, 2007. By Preliminary Order issued September 25, 2007, the hearing officer found the Motion to Compel Discovery moot as the school district had provided all of the documents in its possession, that the Motion for Interim Independent Evaluation would be withdrawn upon the school district representation that it would expedite the student's three-year evaluation and the Amended Complaint would be withdrawn without prejudice. The prehearing conference was rescheduled to November 8, 2007. On October 3, 2007, the parties met in a Resolution Session but were unable to resolve the transportation issue.

On October 5, 2007 counsel for the mother filed a Motion for an Interim Safety Order. Counsel for the school district filed a response to the Motion for Interim Safety Order. By Preliminary Order issued October 8, 2008 the Motion was denied as the transportation of the student is an issue for the hearing.

By letter dated November 1, 2007 counsel for the school district represented to the hearing officer that while the evaluations had been completed and an IEP meeting convened on October 29, 2007, the IEP meeting had been adjourned and would resume on December 14, 2007. Counsel for the parties requested that the prehearing conference be rescheduled. By Preliminary Order, the prehearing conference was rescheduled to December 18, 2007.

By letter dated December 11, 2007 counsel for the mother filed a Second Motion to Compel production of the evaluations prior to the IEP meeting on December 14, 2007. By email, the hearing officer suggested that the school district immediately disclose those evaluations which it had initially intended to disclose at the IEP meeting or, in the alternative, disclose the documents at the IEP meeting and then adjourn for an hour or two so that counsel for the mother could review the documents with his client. By email, counsel for the school district outlined the documents that the school district would disclose, attaching some of those documents to the email, and objected to other documents demanded by counsel for the mother.

On December 18, 2007, counsel for the mother filed an Amended Complaint reasserting the transportation issue and asserting new claims against the school district. By Preliminary Order issued December 20, 2007 the hearing officer addressed the Second Motion to Compel, allowed the Amended Complaint, and reset the prehearing conference to January 31, 2008. The parties elected to proceed to mediation on the new issues but were unable to resolve any of the issues. The school district filed a response to the Amended Complaint on December 21, 2007.

On January 9, 2008 the school district released its testing protocols and all staff notes regarding the student, and advised counsel for the mother that Dr. [REDACTED] would not release her protocols. On January 10, 2008 the school district released an approval letter for its special education policies. On January 16, 2008 counsel for the mother filed a Renewed Motion for Interim Independent Evaluation. By Preliminary

Order issued January 16, 2008, the hearing officer clarified the statute of limitation period for the initial request for due process and the Amended Complaint. By Preliminary Order issued the same day, the Renewed Motion for Interim Independent Evaluation was denied. By Preliminary Orders issued January 22, 2008 and January 31, 2008, the prehearing conference was postponed to allow for mediation and reset to February 12, 2008.

Sometime prior to February 12, 2008, counsel for the mother filed a request for an independent educational evaluation. The school district denied the request and requested a due process hearing. That request was inadvertently assigned a new case number and a new hearing officer. By letter dated February 7, 2008 the case was returned to this hearing officer by the Due Process Coordinator for the Illinois State Board of Education.

On February 11, 2008, counsel for the mother requested that the hearing be delayed so that he could complete an independent educational evaluation of the student. The prehearing conference took place on February 12, 2008. [REDACTED] represented the interests of the mother of the student and [REDACTED] represented the interests of the school district. Both parties provided the hearing officer with prehearing disclosures of witnesses and documents. Counsel for the school district submitted a statement of the issues pending before the hearing officer.

Opening statements and testimony from various witnesses occurred over four days: April 8-10, 2008 and April 16, 2008. All parties received transcripts of the testimony elicited during the hearing. Closing Statements were presented on May 19, 2008 and thereafter the record was closed.

ISSUES IDENTIFIED AND REMEDIES REQUESTED
AT THE PREHEARING CONFERENCE

PARENT ISSUES:

1. From July 23, 2005 to the present, the mother alleged that the school district failed and refused to provide appropriate transportation for the student.
2. The mother alleges that the school district engaged in a pattern of intimidation, threats and coercion with the result that the mother was effectively denied the ability to participate in the development of Individual Education Plans dated March 24, 2006, May 10, 2006 and May 10, 2007
3. The mother alleges that the Individual Education Plans developed on March 24, 2006, May 10, 2006 and May 10, 2007 were inappropriate in that the school district did not appropriately discuss the student's progress on his goals, did not set appropriate goals and benchmarks, did not set the appropriate amount of related service and in general

created a program which was incomplete and inadequate. The mother does not contest the placement of the student in a cross-categorical classroom.

4. The mother alleges that the school district did not complete a full and complete evaluation of the student in Fall 2007 and as a consequence, the Individual Education Plan developed on December 14, 2007 is inappropriate and inadequate. Specifically but without limiting the mother's allegation of inadequacy, the mother alleges that the school district failed to evaluate the student's needs in the area of assistive technology or handwriting.

REMEDY REQUESTED:

A. As a remedy for the failure to provide appropriate transportation from July 23, 2005 to the present, the mother requests door-to-door special transportation of the student in whatever type of vehicle that can safely maneuver around the immediate neighborhood and whatever additional services are required to ensure the student's safety on that door-to-door special transportation. In addition, the mother requests reimbursement for the costs incurred by the mother to transport the student from July 23, 2005 to the present.

B. As a remedy for the failure to allow the mother of the student to participate in the Individual Education Plans developed on March 24, 2006, May 10, 2006 and May 10, 2007, the mother requests an Order that

1. the school district employ a parent advocate of the mother's own choosing to advocate for the mother at IEP meetings
2. the school district provide a trainer of the mother's own choosing to train the mother regarding special education rules and procedures and to train the mother in the way to participate in IEP meetings in a manner that the mother can absorb and benefit from over the next three years.
3. that the school district provide the student with three years of compensatory educational services

C. As a remedy for the failure to prepare appropriate Individual Education Plans on March 24, 2006, May 10, 2006, May 10, 2007, October 29, 2007 and December 14, 2007 the mother requests that the current IEP be amended to reflect that the student will be placed in a cross-categorical classroom with a "mix of ABA and structured teaching" and three years of compensatory educational services.

D. As a remedy for the failure to appropriately evaluate the student in Fall 2007, the mother requests that the school district be ordered to evaluate the assistive technology needs and handwriting needs of the student.

SCHOOL DISTRICT RESPONSE: The local school district asserts that the special education needs of the child have been appropriately identified and that the special

education program and related services set forth in the child's Individualized Education Plans provide the student with a free appropriate public education in the least restrictive environment. Specifically the school district requests a finding that the transportation services provided by the district met the student's needs; that the mother was provided with an opportunity to participate in the IEP process; and a finding that the school district's evaluation was sufficient to determine the nature of the student's disability and educational needs.

FACTS

The recitation of the facts of this case were gleaned by a review of the documents and the hearing officer's notes as to the facts elicited or facts that could be inferred from the testimony of the school district witnesses, the testimony of the maternal grandmother of the student and the remaining witnesses called by counsel for the mother.

The student currently resides with his mother and his maternal grandmother. His father and paternal grandfather reside in another school district. The student is non-verbal, mentally impaired and has been diagnosed with autism. Both the mother and father of the student are mentally impaired. Parental decisions are clearly made by the maternal grandmother who herself was apparently an effective advocate for the special education needs of the student's mother while she attended school. In all instances in this decision, the maternal grandmother will be deemed the "parent".

Transportation

The student's Individual Education Plans contain no provision for any special type of transportation and thus the student is transported on a school bus to and from school. [REDACTED] testified that he is the Director of Transportation for the school district. In that capacity he is familiar with the equipment used to transport students. The large school bus is 39 feet long and can transport 71 students. The small school bus is 20 feet long and can transport 36 students. Mr. [REDACTED] testified that the small school bus is probably the equivalent of a FedEx delivery van in length. Mr. [REDACTED] testified that there are two routes where the large bus must backup to exit a location. Mr. [REDACTED] testified that there are no routes where the small bus must backup to exit a location but testified that the small school bus can turn around on cul-de-sac bus stops. In the opinion of Mr. [REDACTED] the small school bus cannot enter and exit the area around the student's residence unless the bus backs up but he did not know the turning radius for the small bus and has never attempted such a maneuver himself. [REDACTED] testified that she is the bus driver of the large school bus utilized on the student's bus route. She has experienced no problems with the student's behavior on the bus. Other than a quick hello, she has never attempted a conversation with the student. While she has driven one of the small school buses, she could not identify the student's residence and has never attempted an entry and exit from the student's subdivision.

The grandmother testified that during 1st grade the student was transported on a large school bus. The grandmother testified that the bus stop was about a "football field" distance of the student's residence and could not be viewed if standing at the doorway to the student's residence. The grandmother testified that in her opinion it is not safe for the student to walk unaccompanied from his residence to the bus stop; wait, unaccompanied, at the bus stop; and walk, unaccompanied, from the bus stop back to his residence. [REDACTED], the school district Director of Student Support, voiced the same opinion in her testimony. It is uncontroverted that the bus stop is on Latham Road which is a busy two-lane road.

The grandmother testified that she is the night nursing supervisor at an emergency room facility associated with [REDACTED] and does not return home until 9:00 a.m. - 9:30 a.m. During 1st grade, the grandmother testified that the student's attendance record and his "tardies" were abysmal because the student's mentally challenged mother was not making sure that the student was dressed, fed and at the bus stop on time in the morning. The grandmother testified that although her daughter can tell time and knew the time to take the student to the bus stop, her daughter "doesn't see the importance of some things". On some occasions, the student's father (who lives elsewhere) was able to get the student to school. If neither scenario worked, when the grandmother returned home from work in the morning, she would take the student to school herself. The grandmother testified that the school district offered to have someone enter the student's residence and assist the student's mother. The grandmother refused this assistance because the student is non-verbal and her daughter is mentally challenged.

The grandmother testified that she has observed a school bus with approximately 16 seats (8 on each side) in the town of [REDACTED] Illinois. She has observed students on this school bus. She believes that this is the "small" bus described by the school district director of transportation. In her opinion, there is sufficient room in the area surrounding the student's residence for the "small" school bus to enter and leave the area without backing up. In support of this opinion, the grandmother testified that she has observed UPS and Federal Express trucks turn around in that area without backing up.

The grandmother testified that door-to-door transportation for the student would have solved the student's transportation issues in 1st grade as the student could have simply exited and returned to his home. She has requested door-to-door transportation since the March 24, 2006 IEP meeting when the student was completing 1st grade. She testified that the bus could have waited for the student at his residence, a distance of about 20 feet. The grandmother testified that the mother of the student could have accompanied the student to the door of the residence in the morning and met a school district aide who would then have taken the student on to the bus. In the afternoon, a school district aide could have exited the bus with the student and accompanied the student to his residence where the mother or another family member of the student would have received the student.

Sometime in either 1st grade but clearly during 2nd grade, the grandmother testified that on the evenings when she worked and was not present in the residence, the student slept at the home of his father. This change was put into effect after the student left the residence on four occasions, wandering the neighborhood. In addition to the change in the sleeping arrangements, the grandmother arranged for the installation of a monitoring system, with the student wearing a monitoring bracelet. The grandmother testified that on those days when the student sleeps at his father's residence, the student's father has assumed the responsibility for the student at the morning bus stop. The grandmother testified that on those occasions when she is not working, she sleeps in a recliner chair in the living room. That, plus the monitoring bracelet, seems to deter the student. The grandmother testified that on average there are 3 nights in one school week and 2 nights in the next school week where she works nights and the father of the student assumes responsibility for the student arriving at school in the morning.

Inappropriate IEP's dated March 24, 2006, May 10, 2006 and May 10, 2007

On April 20, 2005 a meeting was convened to develop an IEP for the remainder of kindergarten and for the 2005-2006 academic year when the student would be in 1st grade. Both the mother and grandmother were in attendance when the IEP team concluded that the student's tardiness caused him to miss much of his kindergarten academics. The document includes a contact log indicating that on January 6, 2005 the student's teacher requested that he remain home until noon rather than being brought to the school at 10:30 a.m. The contact log indicated that the student's teacher contacted the parent regarding continued tardiness on February 23, 2005. The IEP team discussed the student's progress on the goals established for kindergarten and then developed annual goals for 1st grade. The IEP called for placement in a self-contained special education classroom with opportunities for integration with regular education students. The IEP called for the use of seat belts as a "special transportation service". EXHIBIT 82

On March 24, 2006 a meeting was convened to discuss the transportation needs of the student. The meeting was attended by the student's grandmother, father and paternal grandfather. The grandmother testified that she requested door-to-door transportation at this meeting. [REDACTED] testified that the IEP team considered and rejected this request. EXHIBIT 79

On May 10, 2006 a meeting was convened to complete the student's annual review. The document indicates that the student had made some progress in 1st grade – the student could follow simple 2-step directions about 50% of the time, was able to write some of the letters in his name after tracing first, had some spontaneous speech but most of his speech was guided, could count to 10 with minimal verbal cues, was very independent on the computer, and showed some improvement in self-help skills. The IEP team again noted that tardiness continued to be a problem. The IEP team discussed the student's progress on the goals established for 1st grade and then developed annual goals for 2nd grade. Certain of the goals were modified when the student showed little or no progress

e.g. listen and speak effectively. The IEP again called for placement in a self-contained special education classroom. No special transportation services were specified. The grandmother testified that she requested door-to-door transportation at this meeting. [REDACTED] testified that the IEP team considered and rejected this request.

EXHIBIT 78

On May 10, 2007 a meeting was convened to complete the student's annual review. The document indicates that the student made good progress in 2nd grade: the student was beginning to speak more spontaneously and participate more in group activities, could write his first name independently but not always legibly, knew the letters in his last name and could trace but not write independently his last name, sang the ABC's and could count inconsistently to 30 with visual prompts, could count to 12 independently but often left out numbers in the teens when counting higher, could say the letters in the alphabet when shown in order but not consistently, could match 26 capital letters of the alphabet, was able to match pictures to words independently from a field of 24, could verbally identify eight colors and four shapes, was interacting more and beginning to match student/teacher pictures with their names, and was able to verbally greet people when prompted with "good morning". The IEP team noted that the student's attendance had improved and appeared to be one of the contributing factors to his success. The IEP team discussed the student's progress on the goals established for 2nd grade and then developed annual goals for 3rd grade. The IEP again called for placement in a self-contained special education classroom. No special transportation services were specified. The grandmother testified that she requested door-to-door transportation at this meeting. [REDACTED] testified that the IEP team considered and rejected this request.

The testimony elicited at the hearing by [REDACTED], the student's 1st and 2nd grade teacher, is consistent with the IEP developed on March 24, 2006 and May 10, 2007. Ms. [REDACTED] testified that in September 2006 everything was new for the student – new classroom, new building, new group of students, new related service providers and, of course, a new teacher - [REDACTED]. Ms. [REDACTED] also acted as the student's special education case manager. Ms. [REDACTED] has been a special education teacher for 25 years and has had experience working with autistic students and disabled students who are nonverbal. She has worked with a variety of assistive technology devices.

Ms. [REDACTED] testified that the student was nonverbal in 1st grade, despite her attempts to elicit purposeful communication from the student. Sign language was not successful and in her opinion the student was not then ready for the PECS system. The student utilized the computer in the classroom as entertainment during free time. Ms. [REDACTED] testified that she utilized a variety of different strategies based on her experience working with children with special needs. She did not utilize any form of ABA or structured teaching and is not familiar with the term "structured teaching". Ms. [REDACTED] testified that she did not believe that the student was ready for assistive technology in 1st grade as he could not engage in purposeful pointing.

Ms. [REDACTED] testified that while the student made more progress in 2nd grade, he did progress during 1st grade. She recalled that she spent the first 9 weeks working on transitioning the student to his new environment. However, Ms. [REDACTED] testified that the student's progress in 1st grade was hindered by multiple late arrivals at school, many times at least two hours late. Instead of arriving at 8:30 a.m. when school started, the student would enter the classroom in the middle of classroom activities and would be upset, crying to return home with his grandmother. On those occasions, Ms. [REDACTED] testified that the student was not available to do academic work. Instead the student would bang his elbow on his desk, kick his legs or throw things off of his desk. In her opinion, the main reason for those behaviors was tardiness.

During the school year, Ms. [REDACTED] provided narrative progress reports to the student's mother and grandmother. Throughout the school year, Ms. [REDACTED] worked on purposeful pointing. Ms. [REDACTED] worked on colors, shapes, and body parts. The narrative reports provided to the student's mother and grandmother were based upon Ms. [REDACTED] chart of activities for the student and her tallies regarding completion of activities. Ms. [REDACTED] testified that the student was learning to write his name independently.

Ms. [REDACTED] reported that the student made progress during 2nd grade. Again she provided narrative progress reports to the student's mother and grandmother. Ms. [REDACTED] testified that the student started to make "really good gains" e.g. he was able to count numbers beyond 10 but not always consistently; starting to identify colors, naming them independently. Ms. [REDACTED] testified that the student's behavior changed in that he was no longer arriving two hours late for school. When the student was tardy, it was maybe 5-10 minutes late. By the end of the 3rd quarter, the student was naming six colors consistently, independently; pointing and naming shapes; but still repeating body parts.

The grandmother of the student testified at the hearing that the student had developed a good rapport with Ms. [REDACTED] and was making "really great progress" while in Ms. [REDACTED] classroom. At the hearing, Ms. [REDACTED] confirmed that she was aware that the student had run from his home on four separate occasions and wore a monitoring device to prevent reoccurrences of this behavior.

Reevaluation in Fall 2007

On October 3, 2007 a meeting was convened to determine the appropriate domains to be investigated for purposes of reevaluating the student's continued eligibility for special education. The grandmother and mother attended accompanied by their attorney and his legal assistant. School district personnel were joined by legal counsel. All eight domains were considered relevant and a 9th domain was added – autism. At that meeting the school district offered to settle the transportation complaint by revising the student's transportation in the following manner:

the student would be transported on a small bus, staffed with a bus driver and a bus aide. The bus aide will phone the [REDACTED] household five minutes prior to the bus' arrival at the home. When the bus is in front of the home, the bus aide will go to the doorway, ring the bell, and escort [REDACTED] to the bus. If no one answers the phone, the bus aide will stop at the house, ring the bell, and pick up [REDACTED]. If no response, the bus aide will document what time he/she was at the home, and proceed with the bus on the remainder of the route. After school, the bus aide will meet [REDACTED] on the bus. She will phone the [REDACTED] household 5 minutes prior to the bus arrival. When the bus arrives at the home, she will escort [REDACTED] back to the front door. When weather is inclement, Ms. [REDACTED] will be at the bus stop to meet [REDACTED]. The bus will arrive in the morning at 8:25 a.m. and will return after school at 4:15 p.m.

EXHIBIT 73

Apparently, on advice of counsel, the grandmother of the student would not accept this revision because it did not contain the words "door to door" and because the issue of reimbursement was not addressed. The proposed settlement is set forth here as it appears to address the issue of transportation on a going forward basis.

[REDACTED] is employed by the school district as a psychologist. She has seven years of experience evaluating autistic students. She was previously employed at [REDACTED] in [REDACTED] where she was a member of an autism assessment team. Prior to the IEP meeting on October 29, 2007, school district psychologist, [REDACTED] completed intelligence and achievement evaluations of the student. She obtained a Full Scale IQ of 47 when utilizing the Universal Nonverbal Intelligence Test – Norms based on age 8:10. The student had difficulty attending to the non-verbal instructions and demonstrations on all subtests and thus the assessment was administered in a non-standardized manner. For that reason, Ms. [REDACTED] stated within her report that the results should be interpreted with caution. The student's parent and classroom teacher completed the Behavior Assessment System for Children-2nd Edition (BASC-2). The results indicated that behaviorally the student was experiencing difficulties with functional communication and with academic, leadership and social skills. EXHIBIT 49 Ms. [REDACTED] testified that the student's cognitive ability is not as important as other pieces of information because of the student's autism and the behaviors that he displays because of his autism. In her opinion, the student's needs are centered on his autism and the behaviors associated with that disorder.

Ms. [REDACTED] administered the Woodcock-Johnson Tests of Achievement-III Form A – Norms based on age 8:10 (WJTA3). The test was administered following standardization procedures but the student responded correctly to demands on only two of the six subtests suggesting that the student's skills are below the level of the instrument and the format did not allow the student to truly demonstrate his academic skills. Within her report, Ms. [REDACTED] indicated that the results should be interpreted with caution. The Bracken School

Readiness Assessment was administered in a non-standardized manner because the student was too old to use the norms and the standardized format was not conducive to assessing the student's skills. Ms. [REDACTED] elected to administer the test in a non-standardized manner for qualitative information regarding identification of colors, letters, numbers, counting, shapes, sizes and comparisons. Ms. [REDACTED] concluded that the student's academic achievement was significantly delayed for his age, displaying difficulties with preschool level skills. She further stated that the student was often inconsistent when displaying skills. EXHIBIT 59

[REDACTED] is employed by the school district as a speech/language pathologist. Ms. [REDACTED] has a masters in speech pathology and has been a speech pathologist since 1983. She has worked with the student since 1st grade. Ms. [REDACTED] testified that the student did not respond well to the PECS in 1st grade. In 2nd grade, the student started responding to the PECS with tangible edible reinforcers. By 3rd grade, the student blossomed and is increasingly using the PECS.

Prior to the IEP meeting on October 29, 2007, Ms. [REDACTED] completed a communication status assessment report. She was unable to administer the Receptive One Word Picture Vocabulary Test and the Boehm Test of Basic Concepts. Ms. [REDACTED] used the Preschool Language Scale to assess the student's receptive and expressive language skills. The test results reflect solid growth in auditory comprehension and expressive communication since 2004. Ms. [REDACTED] reintroduced the PECS to establish a functional system of communication. Ms. [REDACTED] concluded that the student presented with severe delays in receptive and expressive language skills e.g. the student does not use words to communicate his wants and needs, relate experiences, answer questions or to interact with others; the student is currently unable to tell someone his name, phone number or other important information in case he is separated from adults; and is unable to indicate his medical needs when they arise. She recommended speech-language services to target increasing the student's use of a functional communication system (such as an augmentative device or PECS) and increasing his receptive language skills. EXHIBIT 60

[REDACTED] is employed by the school district as an occupational therapist. She has been an occupational therapist since 1996 and an employee of the school district since July 2007. Prior to the IEP meeting on October 29, 2007, Ms. [REDACTED] assessed the student in the area of his fine motor skills and sensorimotor skills. Ms. [REDACTED] had been providing this related service to the student during 3rd grade. Ms. [REDACTED] concluded that the student has some weaker fine motor skills and displays some immature grasping patterns. The student also displayed some problems with sensory processing. The student's receptive and expressive language delays also impact participation in school related tasks and require extra cues or sometimes hand over hand assistance to initiate a task. EXHIBIT 63

Ms. [REDACTED] testified that a handwriting evaluation is designed to test if a child knows how to form letters, if they have appropriate sizing of the letters, spacing in between

letters and works. She testified that she did not complete a handwriting evaluation of the student because of the standardized nature of the assessment – the student is not able to copy letters from dictation at this point and would be unable to follow directions for the standardized evaluation. In short, no relevant data would be obtained.

Ms. [REDACTED] is employed by the school district as a social worker. Prior to the IEP meeting on October 29, 2007, Mr. [REDACTED] met with the student's grandmother. Ms. [REDACTED] testified that she was seeking information as to whether the student's home environment was affecting his educational performance. In her conversation with the student's grandmother, she did not ask and the grandmother did not volunteer any information about the student's monitoring device or the reason for the device. Ms. [REDACTED] concluded that there were no home problems that negatively impacted the student's education. EXHIBIT 64

Dr. [REDACTED] is an autism consultant employed by the school district. Dr. [REDACTED] has a PhD in clinical psychology and is considered an expert in the area of autism. She is currently the center director for the developmental disorders clinic at the [REDACTED]

Prior to the IEP meeting on October 29, 2007, Dr. [REDACTED] observed the student for about thirty minutes during a group and video on fire safety and later during free play. She interviewed the student's grandmother using the Autism Diagnostic Interview-Revised (ADI-R). The ADI-R is designed to obtain information in the areas of reciprocal social interactions, communications and restricted and repetitive patterns of behavior and interests associated with the diagnosis of autism. The student's scores met the cutoffs for a diagnosis of autism in the area of reciprocal social interactions, communication and age of onset. The student's grandmother also completed the Vineland Adaptive Behavior Scales-II. The Vineland measures adaptive abilities in four separate domains: communication, daily living skills, socialization and motor skills. The student's domain standard scores fell within the mild deficit range of adaptive functioning. Dr. [REDACTED] concluded that educationally the student met the criteria for autism because he showed impairments in social interaction and verbal and nonverbal communication.

Dr. [REDACTED] testified that she was aware that the student had run away from his home and now wears an electronic bracelet inside his home. In her opinion, the school should avoid any situation where the student might run again stating "he is not a student that I would leave unattended".

As a consequence of Dr. [REDACTED] observation of the student in his classroom and conversations with the student's classroom teacher and related service providers and her conversations with the grandmother of the student, Dr. [REDACTED] recommended that the student's program should be based on what the student can do i.e. how quickly he is picking up on things. Dr. [REDACTED] testified that the best data for an autistic student is the data that is obtained within the program – what has the student mastered determines what

will happen next. Dr. ██████ recommended applied behavior analysis (ABA) and structured teaching for the student on a going-forward basis.

██████████ testified that she is the student's classroom teacher for the 2007-2008 academic year. While obtaining her undergraduate degree in special education, Ms. ██████ testified that she has had coursework in working with autistic students and course work in working with nonverbal students. Ms. ██████ testified that she is familiar with the PECS. In addition, she received training in discreet trial techniques from Dr. ██████

On October 29, 2007 an IEP meeting was scheduled for the purpose of considering the various evaluations and determining whether the student remained eligible for special education. All of the evaluators except for Dr. ██████ were present. The parent refused to proceed in her absence and the meeting was rescheduled to December 14, 2007. The team concluded that the student remained eligible for special education, reviewed the student's progress on his 3rd grade IEP goals, and developed goals and objectives for the remainder of 3rd grade and a portion of 4th grade. EXHIBIT 43.

Dr. ██████ testified that she is a licensed clinical psychologist who has completed evaluations of children with autism and other developmental disorders. She has been trained to administer and has administered the Autism Diagnostic Observation Scale (ADOS) and the Autism Diagnostic Interview-Revised (ADI-R). Dr. ██████ is not trained in ABA or TEACCH. The hearing officer accepted Dr. ██████ as the parent's expert in psychological assessments.

Dr. ██████ met the student in Spring 2008, approximately two weeks prior to this hearing. The student came to her office accompanied by his grandmother and grandfather. She met with the student's grandparents for about an hour, presumably to discuss the student. Dr. ██████ reviewed the General Intelligence Assessment Report completed by ██████ and concluded that the UNIT was an appropriate measure to test the student's intelligence. She testified that there was nothing in Ms. ██████ Report indicating whether or not she had been able to establish a rapport with the student. Dr. ██████ also reviewed the Academic Performance Assessment Report completed by ██████. Dr. ██████ testified that there are other instruments available which are specifically designed to assess the achievement level of children with autism.

██████████ testified that she is employed as a special education teacher by the school district. She has an undergraduate degree in early childhood education and a master's degree in special education. She has had numerous trainings in autism, visual systems, and PECS. She has worked in communication disorder classrooms containing only autistic children. She has been working with the student since January 2008 using the methodologies recommended by Dr. ██████

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 if appropriate, that it offered the student a free appropriate public education in the least restrictive environment, consistent with procedural safeguards.

In an administrative hearing, the party seeking the relief bears the burden of proof. *Schaffer v. Weast*, 126 S.Ct. 528 (2005). In the instant case, the school district bears the statutory burden that at all times relevant it properly identified the nature and severity of the student's suspected disabilities. The parents bear the burden of proof that the school district did not provide the student with Individual Education Plans which provided him with any educational benefit and that the Individual Education Plan developed for him did not represent an offer of a free appropriate public education in the least restrictive environment.

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.

APPLICATION OF LAW TO THE FACTS

1. Transportation

"Transportation" is considered a related service within the meaning of IDEA. Section 750(b)(3) requires that any child who is eligible for special education and related services shall be eligible for special transportation and the special transportation shall be scheduled in such a way that the child's health and ability to relate to the educational experience are not adversely affected. 23 Ill.Admin.Code Part 226.750(b)(3) Further, the Illinois State Board of Education has provided a guidance document to assist school districts in meeting the needs of its special education students. ISBE recommends that the student's pick up and drop off locations should be the student's location of residence. ISBE assumes that the student's parents, family or responsible person will make the student available for pick up or drop off on a timely basis. EXHIBIT 90

The parties are in agreement that the current bus stop cannot be seen from the student's residence on [REDACTED] Both the grandmother and the school district concur - this essentially non-verbal mentally impaired autistic student cannot be relied upon to safely

navigate a path to and from his residence to the currently designated bus stop on [REDACTED]. [REDACTED] The school district asserts that it is not safe for a school bus to back up and asserts that none of its current collection of school buses can enter and leave the student's subdivision unless the school bus backs up. However, no one from the school district has attempted such a maneuver with its smaller school bus and the grandmother of the student asserts that buses similar in size to the smaller school bus (FedEx, UPS) routinely enter and exit the subdivision, turning around in the parking area in front of her residence. It appears clear to this hearing officer that the school district has been focused on the safe maneuvering of its school buses rather than the safe transportation of this special education student. It is clear that the student's safety requires door-to-door transportation.

There is ample evidence in the record that the student has run from his residence, presently wearing a wrist bracelet tied to a monitoring system within his home. Based on the foregoing, the school district's autism expert, Dr. [REDACTED] testified that she would never leave this student unattended. The evidence supports a finding that the student requires an aide who will escort the student on and off the bus, escorting him to the front door of his residence.

The record reflects that the student's mother is unable to make the student available for pick up or drop off on a timely basis. It is clear that the student's family have developed an alternative wherein the student is properly supervised at all times in the home setting – when the grandmother is home, the student sleeps at home; when the grandmother is at work, the student sleeps at the home of his father. This arrangement meets the needs of the student and recognizes the teamwork involved for this student to arrive at school on-time on a consistent basis.

The record reflects that until the student's grandmother arranged for the new sleeping arrangements, the student's education was severely compromised by the inability of the student's mother to understand the importance of on-time consistent attendance at school. It is apparent that the student's progress or lack thereof was affected by the mother's lack of support for school attendance. Even if the student had had door-to-door transportation, it seems obvious that the student's mother would not have made the student available for transport. Any loss of educational benefit while the mother was "in charge" of getting the student up and ready for the bus in the morning can be directly attributable to the student's mother. For that reason, it would be singularly inappropriate for this hearing officer to order the school district to reimburse the student's family for the costs associated with transporting the student prior to the current alternative arrangement established by the student's grandmother.

2. Denial of Right to Participate

There has been absolutely no evidence presented which would cause this hearing officer to conclude that the mother or any family member has been threatened, coerced or denied

the right to participate in any IEP meetings. Rather the record reflects a disagreement regarding the transportation services to be afforded to the student and the appropriateness of all Individual Education Plans developed for this student.

3. Inappropriate Individual Education Plans – March 24, 2006, May 10, 2006 and May 10, 2007

The statute of limitations precludes any objection to the substance of the IEP which was developed on April 20, 2005. That IEP was implemented by [REDACTED] until the development of a new IEP on May 10, 2006. The parent apparently asserts that the May 10, 2006 IEP was inappropriate in that it did not contain an accurate statement of the student's progress on the April 20, 2005 IEP goals, that the goals and objectives developed at that meeting were not appropriate, and that the related services set forth in the IEP were not adequate.

The May 10, 2006 IEP contains statements which reference the student's progress on his goals and contain statements as to why the student did not make any progress on the more academic component of his 1st grade IEP goals– the student's tardiness. The document contains statements that certain of the goals were modified on a quarterly basis when the student showed little or no progress. The parent has introduced no legal authority for the assertion that a non-verbal autistic student must evidence progress in all areas. In fact, *Rowley* merely requires that the school district develop an educational program that is reasonably calculated to enable the child to receive educational benefits. *Rowley, supra* at 206-207. Similarly the May 10, 2007 IEP contains statements which reference the student's progress on his goals for 2nd grade.

Other than statements by the student's grandmother that the student was capable of more, there was no evidence introduced which contradicted the testimony of the classroom teachers that the student made educational progress in 1st, 2nd and 3rd grade. There was no evidence introduced that the amount of related services was inadequate. The evidence and testimony support the conclusion that the goals for 1st, 2nd and 3rd grade were calculated to meet and did in fact meet the student's need at his present level of functioning. Even the grandmother conceded that the student had made really great progress in 1st and 2nd grade.

4. Inappropriate Evaluation resulting in creation of inappropriate IEP on December 14, 2007

The parent seems to be focused on the inability to definitively determine the student's IQ, the inability to definitively determine his academic status and the inability to definitively determine the student's status by the speech pathologist, occupational therapist and social worker. The parent seems particularly focused on a formal assistive technology assessment and handwriting analysis.

The mother and grandmother, with legal counsel and his legal assistant, participated in the domain meeting on October 3, 2007. Each domain area was reviewed and all were found relevant. In fact, a 9th domain was added – autism. There was no insistence at that domain meeting that assistive technology or handwriting should be investigated. At the IEP meeting on December 14, 2007, no further evaluations were recommended – the participants clearly concluded that there was enough information upon which they could conclude that the student required services and thereafter develop goals and objectives for the student.

The testimony of the school district's psychologist, speech pathologist, occupational therapist, social worker and autism expert was quite persuasive – the foregoing individuals explained the results of their assessments, explained the necessity for utilizing non-standardized administration of assessments, and explained that the student must be assessed based upon his current functioning level supported by the data achieved in his classroom.

The testimony of the lone expert called by the parent – Dr. [REDACTED] – was singularly not helpful. She validated the testing completed by the psychologist (UNIT) and the testing completed by Dr. [REDACTED]. She has never observed the student, either at home or in the school setting, and had completed no evaluations of the student.

The parent asserts that the current IEP is deficient because it does not contain an explicit statement of teaching approach or methodology. In particular, they demand that the IEP developed on December 14, 2007 be amended to include a statement that the student be instructed with a “mix of structured teaching and ABA therapy”. The parent introduced no authority for the proposition that specific teaching methodologies must be set forth in a student's IEP.

DECISION

- 1) The student's safety requires that he receive door to door transportation. On or before June 1, 2008 the school district shall arrange for the student to be transported on a small bus, staffed with a bus driver and a bus aide. The bus aide will phone the student's residence five minutes prior to the bus' arrival at the student's residence. When the bus is in front of the residence, the bus aide will go to the doorway, ring the bell, and escort the student on to the bus. If no one answers the telephone, the bus will continue to the student's residence, ring the bell and pick up the student. If the student does not appear at the residence appropriately dressed for school, the bus aide will document what time he/she was at the home and proceed with the bus on the remainder of the bus route. After school, the bus aide will meet the student at the small bus. The bus aide will phone the student's residence five minutes prior to the bus arrival at the student's residence. When the bus arrives, the bus aide will escort the student to a waiting family member at the door of the student's residence. If there is no waiting

family member at the door of the student's residence, the student and the bus aide will reboard the bus and the student will return to the school. The bus will arrive in the morning at 8:25 a.m. and will return after school at 4:15 p.m. In the event that a small school bus cannot safely navigate the student's subdivision without backing up, the school district shall use any other vehicle now owned or hereafter acquired by the school district for the purpose of transporting students in general and this student in particular.

- 2) The local school district has presented sufficient evidence to establish that the special education needs of the student have been appropriately identified and that the special education program and related services set forth in the child's Individualized Education Plan dated March 24, 2006, May 10, 2006 and May 10, 2007 provided the student with a free appropriate public education in the least restrictive environment.
- 3) The local school district has presented sufficient evidence to establish that the special education needs of the child have been appropriately identified and that the special education program and related services set forth in the child's Individualized Education Plan dated December 14, 2007 provide the student with a free appropriate public education in the least restrictive environment.
- 4) Other than the request for door-to-door transportation on a going forward basis, the parent has not sustained her burden of proof regarding her allegation that the school district engaged in a pattern of threats, coercion and intimidation rising to the level of preventing the parent from participating in the creation of Individual Education Plans for the student. Further, the parent has not sustained her burden of proof regarding her allegation that the student's current Individual Education Plan be amended to provide that the student's instruction shall be a mix of structured teaching and ABA therapy. Finally, the parent has not sustained her burden of proof that she is entitled to any transportation reimbursement.

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, Illinois 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. **THE EFFECTIVE DATE OF THIS DECISION IS THE DATE OF RECEIPT OF ANY CLARIFICATION OF THIS DECISION.**

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 24th day of May 2008.



CAROLYN ANN SMARON
Impartial Due Process Hearing Officer

CERTIFICATE AND AFFIDAVIT OF DELIVERY

The undersigned hereby certifies that a copy of the Decision and Order was mailed to the following parties, via certified mail:

Mr. [REDACTED]
[REDACTED]
Attorney at Law

[REDACTED]
[REDACTED]

Ms. [REDACTED]
[REDACTED]
Attorney at Law

[REDACTED]
[REDACTED]

Mr. Andrew Eulass
Due Process Coordinator
Illinois State Board of Education
100 North First Street
Springfield, IL 62777-0001

on May 24, 2008.

Carman _____

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