

ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING

**RECEIVED**

MAY 22 2009

**SPECIAL EDUCATION  
SERVICES**

ISBE Case No. 2008-0547

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In the Matter of a Special Education )  
Due Process Appeal Between: )  
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 )  
By His Parents [REDACTED] ("Parents") )  
 )  
And )  
 )  
[REDACTED] District )  
Local Education Agency )  
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**DECISION AND ORDER**

**ALAN J. COOK, Hearing Officer:**

This matter is before the undersigned for a Due Process Hearing Decision concerning the parents' request that [REDACTED]'s placement in a special education program be found inappropriate, his placement be changed to a therapeutic day setting, and he be granted an appropriate program and related services. The Hearing Officer has jurisdiction to hear and decide this matter under 105 ILCS 5/14-8.02a *et seq.*, 34 C.F.R. 300.507 *et seq.*, 23 Ill. Admin. Code 226.600 *et seq.*, and the Individuals with Disabilities Education Improvement Act, as amended, 20 U.S.C. 1400 ("IDEA"). The parties were informed of their rights under 105 ILCS 5/14-8.02a.(g.), 34 C.F.R. 509, and 23 Ill. Adm. Code 226 Subpart G.

**PROCEDURAL HISTORY**

[REDACTED] parents requested a Due Process Hearing in a communication which the District received on June 9, 2008. This Hearing Officer received notice of his appointment on June 18, 2008. The District filed a Notification of Insufficiency of the Due Process Complaint which the

Hearing Officer denied on June 30, 2008. After the Hearing Officer contacted the representatives of both parties, it was decided the parties would try to resolve this dispute by participating in a mediation session on July 30, 2008. After this effort was unsuccessful, it was agreed by both sides that a Pre-Hearing Conference would be held on August 21, 2008. The Pre-Hearing Conference was held on that date and continued to October 15, November 4, and December 2, 2008 and January 8, 2009. The Hearing Officer sent the parties a Pre-Hearing Conference Report. The parties submitted lists of documents and witnesses for the hearing, written opening statements, proposed stipulations and pre-hearing motions. Upon agreement of the parties, the evidentiary hearing was conducted on January 23, February 13 and 25, and March 24, 2009 in Chicago, Illinois. At the hearing, the parents were represented by [REDACTED] Esq. and [REDACTED] Esq., and the District was represented by [REDACTED] Esq. and [REDACTED] Esq. The Hearing Officer received post-hearing briefs on May 9, 2009, and he received a copy of the transcript on May 13, 2009. The record was closed at that time. This decision is being issued on May 20, 2009.

#### **BACKGROUND FACTS**

[REDACTED] was born on January 27, 2005. He resides in [REDACTED] Illinois with his mother and father and younger brother. Up to his first birthday, his parents had few concerns about his development. However, as he approached two years of age several concerns about his development began to emerge, and his pediatrician referred him to the Illinois Department of Human Services ("IDHS") for an evaluation. In January 2007, IDHS found him eligible for an Early Intervention Services Plan. This finding was based in part on the results of the Rossetti Infant and Toddler Language Scale ("Rossetti") finding of 6-12 months of ability. It was found

█ showed significant delay in early communication, play, sensory and social-emotional skills. It was determined █ should receive services in the areas of speech, occupational therapy (“OT”), developmental therapy and psychological counseling. █ was placed in an Early Intervention Program.

A few months later a representative of the Early Intervention Child and Family Connections program suggested to the parents that █ undergo an evaluation at the University of Illinois at Chicago Family Clinic (“UIC”). The evaluation was conducted under the direction of █ in May, 2007. It was determined █ displayed atypical development that is consistent with a diagnosis of Autism Spectrum Disorder (Pervasive Development Disorder – Not Otherwise Specified). His diagnosis was confirmed by several tests, including Autism Diagnostic Observation Schedule (“ADOS”) and Childhood Autism Rating Scale (“CARS”). His difficulties were mainly in the areas of communication (essentially nonverbal), behavior (head banging and tantrums), and activities of daily living (dressing skills, toileting etc.).

The UIC report contained several recommendations for █’s education. In pertinent part, the UIC team suggested:

1. It is strongly recommended that █ continue to receive early intervention services which include developmental, speech/language and occupational therapy. Techniques that have been shown to be effective...Applied Behavioral Analysis (ABA), TEACCH, PECS should be utilized.
2. ...The goals listed above, as well as speech and occupational therapy should continue as part of █’s special education program. An autism consultant (itinerant) should be involved with █’s educational program.
3. Children with autism need intensive therapeutic and educational services in order to make appropriate progress. Research indicated that a minimum of 25 hours a week, 12 months a year of such therapy is needed in the early years of a child’s life. Because of this a full day, year round program is recommended for █

As [REDACTED] approached three years old, his parents began the process of enrolling [REDACTED] in a [REDACTED] Early Childhood program. In November and December of 2007, [REDACTED] underwent a psychological evaluation, a Speech/language assessment, OT evaluation, social assessment and a nursing assessment. In these evaluations, it was noted he exhibited outbursts that involved head banging, tantrums and aggressive behavior. It was also determined he exhibited a right hand preference, delayed activities of daily living, and was unable to follow one-step verbal directions.

On December 11, 2007 the parents met with school officials to develop an Individual Education Program ("IEP") for [REDACTED]. The District found [REDACTED] eligible for special education and related services as a disabled child with autism. The parents presented the IEP team with several requests for [REDACTED]'s educational program that included [REDACTED] recommendations. The IEP listed his specialized instruction areas and/or related services with minutes of services as follows:

Language Arts	240 minutes per week
Math	100 minutes per week
Social/Emotional	150 minutes per week
Ind. Funct. (Sp. Ed. Teacher)	150 minutes per week
Ind. Funct. (OT)	45 minutes per week
Speech/Language	180 minutes per week

The IEP noted his areas of participation with non-disabled peers could include gym, art, computer, library and lunch. It listed and rejected a general education classroom and shorter parts of the school day in special education. The IEP listed eight goals with benchmarks and evaluation procedures. Two of the goals were for language arts and math, two were for Speech/language, three were for independent functioning and one goal was for social/emotional issues. The IEP did not include a Functional Behavior Analysis (FBA) or Behavior Intervention Plan ("BIP").

The IEP team determined [REDACTED]'s placement would be in a ½ day self-contained classroom for autistic children at [REDACTED]. His instruction would be in a ½ day program for 2.5 hours each day. His weekly amount of instruction would be 12.5 hours, and his program would continue to the end of the school year. There was no indication at that time whether [REDACTED] would attend summer school. In May, [REDACTED] was found eligible for an extended school year program during the summer of 2008 for four weeks.

In June 2008 the parents filed a request for a Due Process Hearing in which they alleged that [REDACTED] was not receiving a Free and Appropriate Public Education ("FAPE") in his educational program at [REDACTED]. The parents complain the District did not follow [REDACTED] recommendation of a minimum of 25 hours per week of intensive therapeutic and educational services in a year round program. The parents claim his goals are vague, do not contain present levels of performance and do not include all areas of need. They complain he was not given a one-on-one aide in his general program or one-to-one instruction in his related services. They asked that he be provided with a year round program with a minimum of 25 hours per week of intensive instruction, increased time for one-on-one related services, and a revised IEP.

After engaging in unsuccessful mediation with CPS on July 30, 2008, the parents had [REDACTED] evaluated by [REDACTED] in September 2008. [REDACTED] is a psychologist with extensive experience in working with autistic children. [REDACTED] observed [REDACTED] in his Early Childhood Autism classroom at [REDACTED]. He determined that [REDACTED]'s educational program did not address the student's core deficit areas. [REDACTED] was also evaluated by [REDACTED] a speech-language consultant, who confirmed low achievement on the Rossetti scale and the findings and recommendations reached by [REDACTED].

The parties conducted an IEP meeting on November 21, 2008 during which they discussed [REDACTED] report. They held a December 12, 2008 IEP meeting during which they received a report of [REDACTED] findings. At their meeting on January 7, 2009 an IEP was developed for the following year. In this IEP, [REDACTED]'s placement was continued at [REDACTED] but his educational program was expanded to a full day of five hours of instruction with additional time allotted for all services. The parents presently complain [REDACTED] receives a longer version of the same inadequate and inappropriate educational program. The parents contend [REDACTED]'s identified needs are not being adequately addressed and his continued placement at [REDACTED] is inappropriate.

The parents asked that the Due Process Hearing be scheduled for a date after October 1, 2008 to enable [REDACTED] to complete his report. [REDACTED] report was not available until October 27, 2008. Later, [REDACTED]'s evaluation was conducted. The consultants' reports were considered at the November 21 and December 12, 2008 IEP meetings. The second IEP was finalized at the January 8, 2009 IEP meeting, and the Due Process Hearing began on January 23, 2009.

### ISSUES PRESENTED

The issues raised by the parents as stated in the parent's Disclosure Report can be stated as follows:

- 1) Whether the District denied [REDACTED] a FAPE in failing to provide him with an educational placement that meets the minimum requirements for intervention for young children with autism, i.e. a minimum of 25 hours per week of year-round intensive therapeutic and educational services based on scientifically valid peer reviewed research.
- 2) Whether the District failed to provide an IEP that contains appropriate individual related services, present levels of performance and educational goals.

The requested remedy can be summarized as follows:

- 1) A determination that the District failed to provide [REDACTED] with FAPE
- 2) A determination that [REDACTED] is entitled to compensatory services.
- 3) A decision that [REDACTED] be provided the program described in No. 1 above, and a placement in a private facility if appropriate.
- 4) A decision that [REDACTED] be provided with individual, one-on-one Speech/language, O.T. and direct social work services at appropriate minutes per week.
- 5) That new goals reflect [REDACTED]'s present levels of performance.

#### POSITIONS OF THE PARTIES

**District:**

[REDACTED] believes it has provided [REDACTED] an appropriate placement with effective related services at [REDACTED]. It argues the parents have the burden of proving otherwise. Schaffer v. Weast, 546 U.S. 49, 57-58 (2005). The District claims the parents bear the burden of proving school officials were unreasonable in their creation and implementation of the student's IEP. [REDACTED] contends courts have held that deference is to be provided to the recommendations of trained educators concerning the educational program developed for special education students. Heather S. v. State of Wisconsin, 125 F.3d 1045, 1057 (7<sup>th</sup> Cir. 1997); Beth B. v. Van Clay and Lake Bluff School District No. 65, 282 F.3d 493 (7<sup>th</sup> Cir. 2002).

The District finds support for its position in the decision of School Dist. Of Wisconsin Dells v. Littlegeorge, 295 F.3d 671, 676-77 (7<sup>th</sup> Cir 2002), wherein the court stated reviewing bodies "must defer to the judgment of education experts who craft and review a child's IEP so

long as the child receives some educational benefit and is educated alongside his non-disabled classmates to the maximum extent possible.” The District maintains the Littlegeorge court created a “reasonableness standard” for hearing officers to follow when reviewing determinations concerning appropriate placement and services for a disabled child. It further asserts greater weight should be given to the testimony provided by school officials as opposed to the testimony supplied by parents’ experts.

██████ contends it has complied with the procedures set forth in the IDEA, and it points out the IDEA Amendments of 2004 state that procedural violations can amount to a denial of FAPE only if they impede a child’s right to FAPE, significantly impede the parents’ opportunity to participate in the FAPE decision-making process, or cause a deprivation of educational benefits. 20 U.S.C. Section 1415 (f)(3)(E)(ii). The District claims the parents’ main claim of a procedural violation in their hearing request and their Pre-Hearing Conference statement is whether the December 2007 IEP included appropriate present levels of performance and educational goals. ██████ argues even if these elements are determined to be vague or inadequate, they do not result in a denial of FAPE if ██████ did not suffer substantive harm as a result of their inadequacies.

██████ notes the parents have claimed a procedural violation in the IEP team’s decision not to conduct a Functional Behavior Assessment (“FBA”) and develop a Behavioral Intervention Plan (“BIP”), and it claims this issue was not properly raised before the start of the hearing. It also maintains his “behavioral concerns were minimal, had little impact upon his education and were appropriately addressed by the school and the IEP team.” (District Brief, p. 16). The District concludes these procedural concerns did not amount to a denial of FAPE because the parents had the opportunity to fully participate in the development ██████’s IEP.

██████ further argues ██████ has benefited from the substantive program that was detailed in

his IEP. It notes case law has provided that the District does not have to provide the best educational opportunity or the education preferred by the parents. Heather S. v. Niles Township, 1999 U.S. Dist. LEXIS 19628, at 18-19. The District argues its legal obligation is to develop an IEP that is reasonably calculated to allow [REDACTED] to achieve some educational benefit. It maintains the 2007 IEP offered [REDACTED] FAPE in the least restrictive environment ("LRE") in that it provided an educational program in an early childhood autism instructional program with small class size, and an experienced staff in a building with general education classes.

[REDACTED] also argues [REDACTED]'s January 2009 IEP was appropriate. It maintains various students respond in different ways to different intervention strategies and methodologies. [REDACTED] program was based on an eclectic approach that incorporated elements of TEACCH, PECS and ABA. The District points out the program at [REDACTED] is delivered in a venue that is the least restrictive environment where he can have exposure to non-disabled students. It maintains his functioning has not regressed while at [REDACTED], and it believes testimony from his Speech/language pathologist shows progress in his PECS instruction. It also argues testimony from his special education teacher, [REDACTED] shows [REDACTED] made progress in her classroom. It further maintains the District was not required to show that [REDACTED] was able to generalize skills outside the school setting.

The District contends issues of educational methodology are best left to the schools and its teachers. It points to a standard of deference to educators' decisions on methodologies and to reluctance by courts to weigh the merits of different instructional programs. In summary, [REDACTED] believes that its actions in this case were reasonable at the times IEPs were developed, that it was best to employ a variety of autism instruction techniques and that [REDACTED] has demonstrated some progress in the District's programs.

**Parents:**

The parents acknowledge they have the burden of proof in this proceeding, and they point out the legal analysis of this case begins with the two-prong test articulated in the Rowley case. They understand procedural violations must adversely impact their rights to participate in the IEP process and must result in substantial harm to the student. They argue the concept of “educational benefit” for autistic students must include more than progress in academic subjects. It must include meaningful benefit in areas critical to ██████’s education and produce some element of progression, not regression. The parents argue ██████’s increasingly aggressive behavior is the result of this inability to communicate and is caused by an inappropriate school program.

The parents take an expansive view of procedural violations. They believe the District failed to accurately list R.M’s present levels of performance in the 2007 IEP, and they assert they never received copies of District evaluations at the conclusion of the IEP meeting. The Parents argue that, without a clear identification of present levels of performance, annual goals cannot be developed to meet ██████’s many needs. The parents contend his needs for better communication skills, adaptive daily living skills and improved behavior were not adequately addressed in his IEP. They contend present performance levels were not appropriately listed for academic, independent functioning, occupational therapy and speech goals.

The parents claim the goals in the 2007 IEP did not address all of his educational and functional skill deficits. They contend his placement in a half-day autism program was predetermined and did not respond to recommendations of outside evaluators. They maintain District representatives at the IEP meetings did not know about the District’s programs for

autistic children and did not consider a continuum of placement options for [REDACTED]. They point out the District IEP team did not contact the Early Intervention providers or the UIC team to discuss [REDACTED]'s needs and levels of performance. The parents contend the minutes allotted to his related services were not predicated on his needs but were related to the time constraints in a half day program. The parents also claim they were not given appropriate prior written notice of the reasons the IEP team rejected their various recommendations.

The parents further claim the 2009 IEP had procedural deficiencies. While this IEP resulted in a recommendation for a full day program for [REDACTED] the Parents complain the process for developing this IEP had procedural irregularities. District staff were told to not respond to parent questions about educational programming and the training of staff members because they were told giving this information could affect the scheduled due process hearing.

In addition, the parents deny [REDACTED] has received an educational benefit from the placement and services contained in his IEPs. They complain school staff did not respond to Dr. Daniels' recommendations and his observations. They claim school staff did not compile data on [REDACTED] performance. The Parents complain about the absence of appropriate goals for expressive language and language comprehension and about inconsistent application of the PECS system. They also point out the District has failed to develop a Functional Behavior Analysis and Behavior Intervention Plan during a time when [REDACTED] behavior has become increasingly aggressive. His incidents of biting and exhibiting tantrums has increased since October 2008, but a plan has not been developed to analyze and address these behavior problems.

## DISCUSSION, CONCLUSIONS OF LAW AND DECISION

Resolution of this dispute begins with consideration of the two-part inquiry for determining FAPE that is set forth in Board of Education v. Rowley, 458 U.S. 176, 206-07 (1982): “First, has the State complied with the procedures set forth in the Act? And second, is the individualized education program developed through the Act’s procedures reasonably calculated to enable the child to receive educational benefits?” The District must identify [REDACTED]’s needs in light of his disabilities and utilize instruction and related services in an appropriate environment to meet those needs. School Committee of the Town of Burlington, Mass. v. Department of Education Mass., 471 U.S. 359,369, 105 Sup. Ct. 1996, 2002 (1985). The IDEA requires that an IEP not only confer some educational benefit, but it is to provide a FAPE in the least restrictive environment. Accordingly, a student with a disability may be removed from the regular classroom when “the nature or severity of the disability...is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 20 U.S.C. Sec. 1412 (a)(5).

In [REDACTED]’s case, the record shows that while he was receiving Early Intervention Services, he underwent an evaluation at UIC under the supervision of [REDACTED]. After the parents approached [REDACTED] to enroll their son in the Early Childhood program, the District conducted evaluations and convened an IEP meeting on December 11, 2007. The IEP team accepted the outside diagnosis of autism, but it did not accept [REDACTED]’s recommendation for a full day, year round program with intensive therapeutic and educational services. Instead, [REDACTED] was placed in a ½ day Early Childhood Autism Program at [REDACTED]. It is apparent the IEP team considered the [REDACTED] evaluations and [REDACTED] report and decided [REDACTED]’s placement should be

in a District ½ day autism program. While it appears a full day program was available for autistic students under five years of age, Ms. Stetson, the District autism consultant, explained the IEP team chose the ½ day program because [REDACTED] was very young and had never been in school before.

At this point in time, [REDACTED] was just turning three years old. His communication ability was limited to the sign for “more” and the vocalization of the word “hey.” While his behavior was a concern, it had not deteriorated to the point that he was considered unmanageable. His placement was in an established autism program that was lead by a teacher experienced in teaching autistic children. She had two experienced paraprofessionals to assist her and had a class size that fluctuated between five to seven students. In addition, this placement was in a least restrictive environment because [REDACTED] had a general education program in addition to four classrooms for the autism program. It was expected that [REDACTED] could have contact with non-disabled peers in programs for gym, art, computer, library and lunch (2007 IEP).

The District claims [REDACTED]’s placement should be reviewed on a “reasonableness standard,” and considering the above factors it was not unreasonable for the IEP team to chose the ½ day program at [REDACTED]. Goals and service minute were developed for Language Arts, Math, Social/Emotional factors, Independent Functioning (including OT) and Speech/language. The parents complain the goals were for very basic levels of achievement, but they have not shown that [REDACTED]’s skills were at a higher ability level. While they argue other areas of need were not addressed, it appears the IEP team tried to address [REDACTED]’s most pressing needs.

A review of the IEP shows that it called for charting the progress [REDACTED] made in meeting the benchmarks for each goal. It appears progress charts were kept by the OT and Speech/language service providers. However, the classroom teacher testified she did not start to

chart ██████'s progress until October, and it appears her progress records after that time were sketchy. This is significant since she was to chart progress on four of the eight goals. In addition, a review of the record shows the parents were involved in all aspects of developing an appropriate IEP for ██████. The parents were diligent and active throughout the whole process. They advocated many preferred choices for ██████ IEP, and they were disappointed ██████ did not get a full day, year round program with a one-on-one aide and intensive services.

The evidence shows the main areas of concern for ██████'s education centered on his communication ability, his behavior and his development skills. As previously mentioned, ██████ was almost nonverbal, he displayed aggressive and non-compliant behavior, and his development skills were at levels that were significantly lower than his chronological age. His program in these areas during the spring of 2008 was not especially noteworthy, and the District agreed with the parents that he needed to attend school during the summer. He was given four weeks of summer school in an autism classroom taught by his regular teacher, ██████. However, the parents wanted ██████ to attend school throughout the summer break, not just for four weeks.

After he turned to school for the 2008-2009 school year, ██████ testified she determined ██████'s ability levels had deteriorated since the end of the previous school year. His communication consisted of babbling and saying a few words without meaning, and he continued to have significant problems with his development skills. However, his major area of difficulty was his behavior which had regressed and become more aggressive. His challenging classroom behavior consisted of screaming, crying, wailing, banging his head, and being more aggressive in his contact with others.

█'s parents had him evaluated by █ in September and October, 2008. █ issued his report and recommended a full day, year round program of intensive services. His report was discussed by the IEP team at its November 21, 2008 meeting. The student's parents also had █ evaluated by █ in November. She found he had poor fundamentals for building effective communication, and she recommended an intense highly structure language program for daily implementation. Her report was related to the IEP team at its December 11, 2008 meeting. During October, █ was also re-examined by █ from UIC. She found his increasing aggressive behavior was making it harder for him to learn to communicate. She stressed he needed intensive communication instruction before the age of five if he was going to be able to become a child with verbal skills.

The record shows the IEP team met and discussed records and reports about █ at its January 7, 2009. By this time, it was noted █ was hitting other children and had bitten the gym and OT instructors. The team decided to keep his placement at █ but to have him attend a full day program of morning and afternoon sessions for a total of five hours per day. Goals and service minutes were determined. Goals were developed for the same areas as the previous year, but the service minutes were expanded to cover a full day program. Significantly, the IEP team did not include a decision to compose a Functional Behavior Analysis or Behavior Intervention Plan. Despite the instruction on the IEP form that "FA/BIP is required for all students with emotional disturbance and for any student for whom behavior is a concern," the team responded "NO" to the inquiry "Does the student's behavior impede his/her learning or that of others."

This decision of the IEP team is not supported by the evidence in the record. At the Due Process Hearing, the classroom teacher testified a significant amount of █ instruction time

has been spent engaging in tantrums where he cries and screams for long periods of time. He is still hitting people and his biting has escalated. He has bitten teachers, aides and students. His misbehavior is random and unprovoked. The teacher's most effective response is to isolate him, and then during isolation he misses instructional time. [REDACTED] has tried many types of interventions for his tantrums, but they are not effective. She cannot redirect him to work on classroom activities.

Considering how [REDACTED]'s behavior problems have increased and become more uncontrollable, it becomes apparent the IEP team should have determined that a FBA/BIP was not only advisable but necessary for [REDACTED] to access his educational program. The record shows his behavior must be effectively dealt with for him to be able to speak and learn.. As it is now, he still babbles, only says one word with consistency and only makes one sign.

The parents and their consultants believe [REDACTED] is frustrated by his inability to communicate. This frustration leads him to find a way of communicating by babbling, crying, hitting, scratching, and biting. A well-developed FBA/BIP plan would help his instructors understand how to respond to this type of behavior and lack of communication. Therefore, it must be concluded [REDACTED]'s IEP was deficient for not developing a detailed FBA/BIP plan. This defect was so significant it impeded [REDACTED]'s ability to receive educational benefits and an appropriate education. When a child's behavior impedes his learning or that of others, the District is to consider appropriate strategies, supports and interventions to address that behavior. 20 U.S.C. 1414(d)(3)(B)(i).

The parents have raised several other concerns about the IEPs that [REDACTED] received. However, they bear the burden of proving these matters by a preponderance of the evidence. The evidence shows the experts' reports were considered by the IEP team, and some

recommendations were adopted. The team did not have to accept all of the experts' suggestions. The parents dispute the present levels of performance that were recited for each goal; however, due to [REDACTED]'s low ability level, the performance levels did not have to be stated in quantified terms. The parents wanted other specific goals; however [REDACTED]'s goals addressed demonstrated needs that resulted from his disability. The parents want the autism teacher to use evidence-based methodology in teaching [REDACTED]. However, the record discloses the teacher uses strategies from several evidence-based methodologies. The parents' object that the District's rejection of their requests for an individual aide and one-on-one related services, as well as the full day, year round program was not explained in a prior written notice. 20 U.S.C. Section 1415 (c)(1)(A-F); 34 C.R.F. Section 300.503 (b)(1-7). However, the record shows these matters were considered by the IEP team, and the parents have not shown how the lack of a written explanation for their rejection impeded their ability to participate in the IEP process. 20 U.S.C. 1415 (f)(3)(E)(ii).

The District's arguments in support of its position in this case are not persuasive. [REDACTED] argues [REDACTED]'s needs have been addressed in the least restrictive environment. However, the evidence shows this environment has not allowed [REDACTED] to achieve educational benefits. The District maintains deference is to be provided to educational professionals and to IEPs developed by school districts. While court decisions have recognized the deference principle, they have not required deference when it has been shown the IEPs are defective. In addition, if we were to have blind deference to IEPs, there would be no need for due process hearings to determine whether IEPs provide an appropriate education for disabled children. [REDACTED] maintains the decision not to conduct a BFA/BIP had little impact on [REDACTED] education. However, this argument is rejected for the reasons stated above.

The District claims [REDACTED] has made progress and achieved educational benefits from his IEPs. It points to the small class size in [REDACTED]'s classroom and the presence of three trained adults in the classroom to support its position. However, the evidence shows [REDACTED] has made little, if any, progress in this classroom. In addition, [REDACTED] contends questions of educational methodology are best left to the schools to determine. However, this case does not focus on the adequacy of a methodology. This case is concerned with evaluating the appropriateness of IEPs and deciding whether they enable [REDACTED] to obtain educational benefits.

### ORDERS

- 1) The position of the Parents is upheld. [REDACTED] did not have IEPs that provided him with education benefits and FAPE.
- 2) [REDACTED] is to be placed in an ISBE-approved private day therapeutic school serving young children with autism in a full day, year round educational program with intensive educational and therapeutic services that address his core deficits in the areas of behavior, communication, functional independence and childhood development.
- 3) The parties are directed to develop an IEP within thirty days of the date of this Decision that implements Order No. 2, develops a Functional Behavior Analysis/Behavior Implementation Plan, and requires charting of progress in meeting goals and benchmarks
- 4) [REDACTED] is to receive one year of compensatory education in the placement and program determined in Order No. 2 to compensate him for the District's failure to provide FAPE under his two previous IEPs.
- 5) The District shall submit proof of compliance with these orders to the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, Illinois, 62777 within 35 days from the receipt of this Decision.

### Right to Request Clarification

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned Hearing Officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which


clarification is sought, and a copy of the request shall be mailed to the other party(ies) and to the Illinois State Board of Education. The right to request such a clarification does not permit a party to request reconsideration of the decision itself, and the Hearing Officer is not authorized to entertain a request for reconsideration.

**Right to File a Civil Action**

This decision shall be binding upon the parties unless a civil action is commenced. Any party to this hearing who is aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 ILCS 5/14-8.02a(i), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision is mailed to the parties.

**Certificate of Service**

The undersigned Hearing Officer certifies that he served copies of the aforesaid Decision and Order upon parent/student and District/Director of Special Education, through their counsel or representative, and the Illinois State Board of Education at their submitted addresses by certified mail by depositing same with the United States Postal Service at Chicago, IL with postage prepaid before 12:00 p.m. on May 20, 2009.

  
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ALAN J. COOK  
Impartial Due Process Hearing Officer

Dated: May 20, 2009