

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

OCT 23 2009

[REDACTED])
Student,)
)
v.) CASE NO. 2009-0223
)
[REDACTED])
) Mary A. Onken
) Due Process Hearing Officer

HEARING DECISION AND ORDER

This matter comes before this Hearing Officer on the Impartial Due Process Hearing Request of [REDACTED] ("Parent") on behalf of her son ("Student") against [REDACTED] ("District"). The Parent is represented by [REDACTED]. The District is represented by [REDACTED] of the Due Process and Mediation Department. This Hearing Officer has jurisdiction to hear and decide this matter under 105 ILCS 5/14-8.02(a) et. seq., 23 Illinois Administrative Code 226.600 et. seq., The Individuals with Disabilities Improvement Act, as amended 20 USC 1400 (IDEA) and 34 CFR 300.507 et. seq. The parties were informed of their rights according to 105 ILCS 5/14-8.02(a), 23 Ill. Admin. Code 226, subpart G., 300 C.F.R. 300.512 and acknowledged receiving their rights on the record.

The Parent filed a due process complaint on December 15, 2008. The District received the parent's request on December 15, 2008 and forwarded it to the Illinois State Board of Education ("ISBE"). On December 30, 2008, the undersigned was appointed as Hearing Officer in this matter and has jurisdiction over this due process complaint. The undersigned sent the parties a Preliminary Scheduling Order on January 2, 2009. On January 4, 2009, the District filed its response to the parent's due process request.

The Student was enrolled at [REDACTED] in September 2007 and receives special education services from the District. Following his enrollment, an IEP meeting was held on October 3, 2008 and the IEP team made changes to his IEP to provide 15 minute per hour sensory breaks and a full-time one-on-one paraprofessional to assist and provide support with his general education curriculum. Parent contends these accommodations were never properly implemented by the district. An IEP team met on December 5, 2008 to discuss the student's recent reevaluation and eligibility for special education services. The IEP team determined that the Student qualified for special education and related services under the IDEA for disabilities of autism and moderate cognitive impairment and determined that he needed education in a District self-contained autism instructional program. On December 15, 2008, a letter was sent to the

parents from the [REDACTED] advising that the IEP called for a change in educational placement to a primary instructional autism program at [REDACTED] starting on December 16, 2008. Per the regulatory requirements the parents were allowed to attend and participate in the two meetings that resulted in the December 5, 2008 IEP. 34 CFR §300.321(a)(1).

A resolution session was held on February 19, 2009 but did not result in resolution of the issues in dispute.

On February 19, 2009 the parties made a joint request for a continuance of the prehearing conference scheduled for February 27, 2009 to enable the parties to reach a settlement. A status conference was scheduled on February 26, 2009 to discuss the party's availability for prehearing and hearing dates, but [REDACTED] attorney for the district could not be reached by phone. On March 5, 2009, the Hearing Officer entered an extension of timeline order for completion of the prehearing conference. The order continued the prehearing conference to March 16, 2009, and set a hearing date of March 31, 2009.

The prehearing conference was conducted as scheduled on March 16, 2009 via telephone conference. Both parties submitted prehearing conference disclosure statements. The parent's submitted an unsigned Stipulation of Facts, a Document List, a Witness List and a Motion to Shift the Burden with attached Exhibits. The school district was represented by [REDACTED] and the parent was represented by [REDACTED]

On April 13, 2009, parent's counsel filed a Motion to Compel [REDACTED] to allow classroom observation as part of the student's independent educational evaluation. The motion was denied by this Hearing Officer on May 4, 2009 on the basis that there was no statutory or regulatory basis for allow the parent's evaluator to observe the student in the classroom.

On August 19, 2009 a status conference was held via teleconference. The participants were this Hearing Officer; [REDACTED] attorney for Parent; and [REDACTED] attorney for District. The parties agreed that the issues remain unresolved and the remedies requested as outlined in the prehearing conference report of March 17, 2009 have not changed. The parties met to discuss stipulations, joint exhibits and witness order but did not finalize an agreement. The parent was permitted to observe the proposed placement for the student.

On August 26, 2009, the parent renewed their request that [REDACTED] be allowed to observe the student's classroom at his current and proposed placement. The District did not respond to the parent's request. On September 1, 2009, the parent filed an emergency motion to reconsider the denial of the motion to compel classroom observation by the evaluator in light of the recent change in the law allowing such observations. The motion for reconsideration of the denial

of the Parent's motion to compel [REDACTED] to allow classroom observation by [REDACTED] [REDACTED] was granted and [REDACTED] was permitted to observe the general education classroom at [REDACTED] for 40 minutes, the general resource classroom at [REDACTED] for 40 minutes, and the proposed classroom at [REDACTED] for 60 minutes.

The Due Process Hearing commenced on September 22, 2009 at [REDACTED] [REDACTED] and continued on September 22, September 23 and September 24, 2009 at the same location. At its conclusion, the parties requested submission of written briefs in lieu of oral arguments. No transcript was to be prepared prior to the decision. The closing briefs were submitted electronically by both parties on October 12, 2009. The Hearing Record was officially closed at that time. The joint documents and the parent's document were admitted into evidence without objection from the District except [REDACTED] report which was submitted after the 5 day disclosure rule. Per this Hearing Officer's order of September 17, 2009, the parent was allowed additional time beyond the disclosure date to file [REDACTED] observation report so District's objection was overruled and [REDACTED] report was admitted into evidence.

The Parent and the District jointly presented the following witnesses:

| | |
|------------|--|
| [REDACTED] | Aide |
| [REDACTED] | Case Manager |
| [REDACTED] | Special Education Teacher |
| [REDACTED] | Aide |
| [REDACTED] | Principal at [REDACTED] |
| [REDACTED] | Current Regular Education Teacher |
| [REDACTED] | Former Regular Education Teacher |
| [REDACTED] | Psychologist |
| [REDACTED] | Autism Coach |
| [REDACTED] | Speech-Language Pathologist |
| [REDACTED] | Private Occupation Therapist (telephone testimony) |

The Parent presented the following witnesses:

| | |
|------------|---------------------|
| [REDACTED] | Psychologist Expert |
| Parent | |

ISSUES PRESENTED AND REMEDIES SOUGHT

- A. Whether [REDACTED] provided a Free Appropriate Public Education ("FAPE") during the period from December 15, 2006 through the present time based on:
1. Failure to provide student with the special educational services listed in his IEP from December 15, 2006 to the present;
 2. Failure to provide student with a full-time, trained one-on-one paraprofessional from October 3, 2008 to the present;
 3. Failure to consistently provide student with a one-on-one paraprofessional from October 24, 2007 to March 11, 2008;
 4. Failure to provide student with appropriate visual accommodations and modifications from September, 2008 to the present;
 5. Failure to develop appropriate IEP goals to address student's behavioral problems from December 15, 2006 to the present;
 6. Failure to develop any behavior intervention plan for student from December 15, 2006 to the present;
 7. Failure to provide student with appropriate and intensive services to allow him to progress academically;
 8. Failure to include appropriate modifications and accommodations in student's IEP from December 15, 2006 to the present;
 9. Failure to provide for staff training in student's IEP;
 10. Violating the requirement for education in the least restrictive environment by attempting to change student's placement to a more restrictive school setting.
- B. Whether the Student shall remain at [REDACTED] or whether the District's proposed placement in a self-contained autism classroom in a different location is appropriate and meets the needs of the Student in the least restrictive environment as required by law?

REMEDY REQUESTED

As remedies for the above-alleged violations, the Parent requests that the Hearing Officer order the District to provide the following remedies and relief to the Student:

1. Hold an IEP meeting to write appropriate special educational goals, modifications and accommodations;
2. Not to change student's placement to a self-contained autism classroom;
3. Provide student with a trained one-on-one paraprofessional at [REDACTED];
4. Pay for student's teachers and paraprofessionals at [REDACTED] to attend training for the instruction of children with autism and include training for any new staff hired;
5. Provide autism itinerant to consult with student's teachers and paraprofessionals 30 minutes per week regarding student's inclusion at [REDACTED];
6. Hire a behavioral consultant with expertise with children with autism to observe student and assist with writing an appropriate behavioral intervention plan;
7. Write an appropriate behavioral intervention plan;
8. Pay for compensatory services beyond the regular school day for each of student's deficit areas, sixty minutes per week for each deficit area, for the time the Hearing Officer finds that [REDACTED] has denied student a FAPE;
9. Pay for any other compensatory education deemed appropriate by the Hearing Officer, including transportation to and from the compensatory education services; and
10. Any additional relief deemed appropriate by the Hearing Officer.

SCHOOL DISTRICT'S POSITION

The District asserts 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 Student's IEP from December 15, 2006 to the present provides the Student with a free appropriate public education, and the District's proposed placement to a self-contained autism classroom is the least restrictive environment. The District requests that this Hearing Officer enter an order finding the District has provided the student with FAPE and denying the relief sought by the Parent.

STIPULATIONS

The parties stipulated to the following chronology and facts which were admitted into evidence:

Educational Chronology

On July 24, 2004, Student was evaluated for Early Intervention and found eligible based on language development.

On December 1, 2005, Student was evaluated for special education eligibility in [REDACTED] and found eligible under the primary disability of Developmental Delay and secondary disability of Autism.

On January 18, 2006, [REDACTED] places Student at [REDACTED] in an Early Childhood Instructional Classroom.

On January 18, 2006, through March 11, 2008, Student attends [REDACTED]

On November 20, 2006, Student's annual IEP meeting is held at [REDACTED]

On October 24, 2007, Student's annual IEP meeting is held at [REDACTED]

On March 11, 2008, Student's Parent removes him from [REDACTED] to begin a home schooling program.

In September, 2008, Student enrolls as a first grade student at [REDACTED]. He attended the general education first grade class and received special education and related services in a separate class.

On October 3, 2008, Student's IEP revised to provide support of a full-time one-on-one paraprofessional and 15 minute sensory breaks per hour.

On December 5, 2008, Student's triennial reevaluation held and IEP changes placement to autism instructional classroom with 1290 minutes per week of special education and related services in a separate classroom.

On December 15, 2008, Student's parent requests a due process hearing.

Facts

1. The Student resides in the [REDACTED]
2. The Student currently attends the second grade at [REDACTED]
3. Prior to attending [REDACTED] the student attended [REDACTED] from January 2006 through March 2008.
4. The Student was in an Early Childhood Special Education classroom while at [REDACTED]
5. The Student's disabling condition is Autism.
6. The Student is eligible for special education and related services under IDEA because of the above disabling condition.

FINDINGS OF FACT

The Student began attending an inclusion program at [REDACTED] starting the beginning of his first grade year continuing to present. The student is a 7 year 10 month old student who was diagnosed with autism at his initial comprehensive evaluation by [REDACTED] in 2005. Parent believes that he would be better served by continued placement at [REDACTED] and not by the District's proposed placement in a self-contained autism program. When his placement was changed by [REDACTED] the Parent filed a request for due process hearing. The following is a summary of testimony and evidence presented at the due process hearing in this matter.

The Student's mother testified at the hearing. She believes the self-contained autism classroom is not an appropriate placement for her son. She firmly disagrees with the District's placement recommendation. According to the Parent, the Student needs to have access to typically developed peers to help his communication skills and appropriate peer behavior models to emulate. The Parent believes her son has progressed academically at [REDACTED]. She does not see the proposed placement as a positive environment for her son to progress and learn how to communicate with his peers. Parent agreed the Student is verbal but needs help with vocabulary and social communication with others. She said the Student can express his wants and needs and engage in spontaneous communication with her as well as others.

In support of her position, the Parent maintained that her son flourished in the program at [REDACTED] as reflected by his report cards showing he was meeting IEP benchmarks. She also noticed that he was reading more and her personal observations of his classroom at [REDACTED] (Parent was a classroom volunteer) demonstrated that he was able to sit down, participate in rug time and follow classroom instructions on a consistent basis. She also feels her son was not given sufficient time to progress after he received a one-to-one paraprofessional to support him in the classroom.

Second, the Parent asserted that the Student did very well in the calm, structured environment at [REDACTED] as opposed to a loud and disorganized environment. The Parent personally observed the Student in this type of environment when he was at [REDACTED]. Her son told her he did not want to be with babies and he was bored. She described the class as disorganized and loud with two of the student's screaming and she notice this made her son agitated and unable to focus. She also noticed that her son stopped trying to socialize with the other students because they did not respond to him. Accordingly, she did not believe this classroom was appropriate for the Student and removed him from [REDACTED] in March, 2008 when the District would not agree to provide more speech minutes and more time in the regular classroom.

Finally, the Parent was able to personally observe the self-contained autism classroom at the proposed placement and she does not believe it is an appropriate environment for her son to learn. All the students except for one were non-verbal. She testified that the classroom seemed like daycare or preschool and there was no one there to talk to or to learn from. She believes the most appropriate placement would be for him to see typical peers so he can model after their behavior and learn communication skills. She did not observe this type of environment at the proposed placement.

I found the parent to be a credible and helpful witness and found her recommendations to be persuasive due to her personal observations of the Student's current and proposed placement. Her testimony demonstrates that she has been very active in trying to advocate for services for her child and has made the District aware of her concerns on a consistent basis, yet the District failed to address these concerns.

[REDACTED] the Student's paraprofessional during the beginning of the current school year testified that he did not receive proper instruction or training from [REDACTED] staff regarding Student's IEP. The only experience he had in the instruction and inclusion of students with autism was as a student teacher. In addition, he was not provided with accommodations or modifications to assist him in his instruction i.e. he was never given a visual schedule, and lessons were not modified to enable Student to meet his goals. When he had questions, he could turn to [REDACTED] or [REDACTED] but he did not fee that he had sufficient support. Accordingly, without sufficient support he found his classroom time with Student was unproductive.

[REDACTED] was a very articulate witness who came across as a frustrated employee who lacked guidance and support from [REDACTED] staff to do his job properly and as a result he resigned from his position at [REDACTED] on September 18, 2009. In his opinion, the Student was not receiving appropriate support and services to make adequate progress.

██████████ the case manager and social worker at ██████████ testified that the Student is in need of an autism instructional program because it would provide the Student with a less distracting environment and higher student teacher ratio. She did not consider any other placement. As support for her opinion, ██████████ relies upon the information in the evaluation (i.e. cognitive deficits and academic deficits) and the discussions of the IEP team. She also relies on her conversations with the Student's teacher ██████████ who told her the Student needs more support. She admitted that she never observed the Student in a classroom setting and never observed the proposed placement to determine if it was appropriate for the Student.

██████████ testified as to behavior concerns at the beginning of the 2008 school year (i.e. running in hallways and tapping noises). A behavior intervention plan was not recommended to address these issues. On October 3, 2008, an IEP revision (Joint Documents, 0072) meeting took place at parent's request. She said the IEP team did not disagree with the paraprofessional revision. Although, some members of the team were concerned the sensory breaks would remove him too frequently from the classroom. Before the October meeting, ██████████ admitted that the Student received only 30 minutes of paraprofessional assistance and the paraprofessionals were volunteers who were not trained or experienced in working with autistic children. She wanted to hire a paraprofessional with autism experience and admitted ██████████ did not hire one on staff until late November.

I did not find ██████████ opinion's to be persuasive primarily due to her limited experience and training (She was in her first years of teaching in an elementary school setting and her work with autistic children was during her student teaching). She also did not have the opportunity to work with the Student in the classroom setting and did not personally observe the proposed placement recommended by the IEP team. It is clear from her testimony that volunteers were assisting the student without training or instruction and the paraprofessional hired by ██████████ did not receive training or instruction on strategies to use with the Student.

██████████ the Student's first grade special education teacher testified as to his progress towards student goals. He said that the Student received instruction in math, reading, and independent functioning in his resource classroom for 550 minutes per week. When these goals were written in December, 2008, members of the IEP team determined that he would need 1225 minutes per week to meet his benchmarks. (Joint Documents, 108). Due to the invocation of the stay put provisions, ██████████ testified that he was instructed to use the special education minutes from the October 3, 2009 IEP which provided for only 720 minutes per week of direct instruction in a separate class on his IEP goals. (Joint Documents, 77). Despite receiving less special education instruction as recommended by the IEP team to meet his goals, the Student was able to meet all his math,

science, social studies, reading and independent functioning benchmark goals as of the June 2009 IEP reporting period. (Parent Documents, 262).

He also testified to the appropriateness of the autism program. Although [REDACTED] has never seen the proposed placement, he believes it has a low student to teacher ratio, increased number of paraprofessionals, limited sensory stimuli, more frequent breaks and more time to focus on independent functioning. He believes the Student will benefit from being taught in this type of controlled environment as opposed to the regular general education classroom.

I found [REDACTED] to be articulate and a likeable witness but I did not find his testimony to be credible due to his lack of experience. Similar to the other teachers who testified, I found that he had limited experience with instructing children with autism. [REDACTED] was a first year teacher and had no prior experience teaching children with autism. When asked by parent's counsel to name any methodologies for the instruction of children with autism, he could not name one. This is disturbing especially in light of his testimony that he was providing instruction to the general education teachers and the paraprofessionals on working with the Student.

His testimony did demonstrate that he spent a lot of time with the student and he was very familiar with the Student's academic and nonacademic abilities. He found that the Student was a very visual learner and worked well with visual cues. The student needed frequent breaks and verbal cues to stay on task. He said the Student knew a number of sight words, but he was not able to read phonetically. He found the student's greatest strength was his ability to understand patterns, but said sometimes it took a really long time to teach him the pattern. (Parent Documents, 0339). His greatest challenges were his very short attention span, and difficulty with fine motor skills i.e. writing.

Overall, his testimony established that even though the Student did not receive the required amount of special education instruction dictated by his December IEP, he did make progress towards his IEP goals and benchmarks in the current placement.

[REDACTED] was the paraprofessional hired by [REDACTED] in November, 2008 to provide support for the Student. This was his first teaching position in a [REDACTED] elementary school. His previous teaching position was in [REDACTED] in a general education third grade classroom. He testified that his only previous experience with children with autism was with one or two children who lived in a group home he supervised. He was the only teacher who actually attended and participated in an autism seminar.

[REDACTED] found the most effective modifications for the Student were relaxation messages, table top sensory breaks and sensory breaks. He testified that the Student was making progress at [REDACTED]. He noticed gains in

language and verbal skills, staying on task for longer periods, improvements in math and reading skills and behavioral improvement during transitioning. Despite the above gains, [REDACTED] testified that the Student's need for sensory breaks increased during the school year caused by noise level in the classroom, difficulty with tasks and interaction with children. The Student would need 1 to 2 sensory breaks per hour lasting from 5 to 15 minutes. He also had difficulty with writing and attending to tasks.

[REDACTED] participated in the December, 2008 IEP meeting and recommended another placement because he believes the student would make better progress in an instructional autism program. Unlike the other teachers at [REDACTED] [REDACTED] has had the opportunity to observe 4 autism instructional rooms – pre-k through 3rd grade at the proposed placement. He believes this placement will provide the Student with the low student to teacher ratio and the sensory technology that the student requires to meet his needs.

Overall, I did not find [REDACTED] to be a credible witness because his opinion regarding placement was not supported by his testimony. He testified that the Student was making progress towards his IEP goal, and was not a behavioral problem in his current placement. He also testified to the student's dislike of noisy environments. If he is progressing in his current placement and not causing disruption in the general education setting, I am not inclined to believe that placement in an autism program will be a more appropriate placement.

[REDACTED], the Principal at [REDACTED] testified as to the training, services and support provided for the staff. She hired the Student's teachers, [REDACTED], [REDACTED], [REDACTED] and the case manager, [REDACTED]. The paraprofessionals were not required to have any specialized training in autism. The staff was provided with in-service coaching on autism strategies once a month for one hour sessions by the autism department coach, [REDACTED].

[REDACTED] testified to observing the Student in the general education and special education classroom setting for 30 minutes every week. During the observation time, she noticed the Student's curriculum had to be modified and there was a significant level of prompting for him to respond to the curriculum and complete the work. There was no spontaneous communication with Student and he would merely parrot what you would say to him. Once a full time paraprofessional was assigned to the Student, she noticed a tremendous improvement in his behavior .

Her testimony demonstrates that she hired a lot of new and inexperienced staff to work with Student without properly training them. The testimony is uncontroverted that [REDACTED] did not do enough to support the Student and make sure his needs and goals were being meet.

██████████ is the Student's current 2nd grade regular education teacher. She is a second year teacher at ██████████ who has no experience teaching student's with autism. Since the start of the school year she has had the opportunity to observe the Student and has made the following observations: student needs assistance to complete tests and tasks, struggles to communicate with peers, is unable to read at grade level, unable to cut and glue requiring assistance from aid, and his writing is illegible. Her classroom does not have a visual schedule although ██████████ claims the OT, ██████████ is working on putting one together for the Student. The strategies she has used to help him complete his work are as follows: giving him sensory breaks, assisting him with cutting, giving him yes or no questions to help him communicate, providing reading materials at his grade level, giving him a shorter pencil and making dots to allow him to trace his writing. Two OT specialists have also come into the classroom once a week for 40 to 45 minutes to assist the Student with his deficits. The Student's current reading level has not been assessed or tested.

Her testimony establishes the Student's current level of functioning in the classroom and his need for a full time paraprofessional to help him with communication, writing and give him sensory breaks so he can focus and complete his work.

██████████ was the Student's 1st grade regular education teacher who testified regarding his progress in school and the strategies she used for inclusion. She was a first year teacher while the Student was in her classroom and never taught children with autism before. She testified that she had not seen Student's IEP before he entered her classroom nor had she received instruction in the Student's IEP. In addition, she did not receive any support from the Student's occupational therapist regarding his sensory difficulties, no support from his speech language pathologist regarding his communication deficits and no support from the social worker regarding his behavior and socialization issues. When she couldn't get the support she needed from ██████████ she sought out additional assistance from a friend with autism experience.

She testified as to the appropriateness of the autism placement for the Student. She agreed with the District's proposed placement because she found he was over stimulated in her classroom and he would be able to stay on task in a smaller more structured autism environment.

██████████ was a likeable and pleasant witness but lacked the experience and training to properly assess the Student and give him the support he needs. There was no testimony presented to support her statement that the Student was over stimulated in her classroom. Accordingly, I did not find her testimony to be compelling or persuasive.

██████████ is a psychologist and the autism consultant offered by the Parent as an expert witness in autism, moderate cognitive impairment and least restrictive

environment. Based on her 30 years of experience in the accommodation and support of children with autism, her observations of the student on two separate occasions, and her observations of the proposed placement, I found her to be qualified to render opinions in this case. Although paid by the parent to prepare a report and testify, I did not find her to be bias towards either side as she testified that she has equally consulted on behalf of both school district's and parents.

██████████ testified that although the content of his IEP is ok, the current IEP does not address his challenges with communication, sensory processing and sensory self-regulation. These characteristics significantly impact his ability to learn and require accommodations. These are the three defining characteristics of a child with autism and they are not addressed in his current IEP. Goals and benchmarks for social interaction need to be addressed in an IEP for an autistic child. ██████████ found no such goals or benchmarks existed in the Student's current IEP.

Her observations of the Student's current placement were informative regarding the Student's needs and his ability to interact in the classroom. Specifically, she observed that the Student was able to communicate in complete sentences with verbal cues. She also saw the Student was able to respond appropriately to questions posed to him by his Aide and demonstrated an understanding of questions and responded to them appropriately. She did not observe any problems with his ability to transition to other classrooms and he was able to sit on blue cushion during circle time without any verbal prompts.

She found the main deficits affecting his ability to progress was his limited understanding of symbolic representation (he does not understand the written words association with pictures), his difficulty with self-regulation (he still resorts to drumming his fingers, lying across the floor, and constantly moving his legs), hypersensitivity to noise and his inability to write legible.

Overall, she found his current placement represented a calm and quiet atmosphere. She also said the teaching staff at ██████████ seemed very supportive of the Student and had an interest in meeting his needs. Although they appeared to have a general comfort with the Student, she was not clear as to their level of knowledge about autism. The other students seemed kind to him or simply did not pay much attention to him. It seemed as if they simply considered him part of the class. (Parent's Documents, 0341). ██████████ believes with proper support and accommodations for the Student, the Student can be integrated in the regular classroom.

██████████ had the opportunity to observe the proposed placement. Unlike ██████████ she found the autism classroom had a very high noise level and at times was shrill. There were 7 students in the classroom, 1 teacher and 2 class assistants. There were no sensory regulation supports or equipment evident in

the classroom. Much like [REDACTED] classroom, most instructions given were verbal and the only visual representations used were the daily schedules and visual supports for choices at lunch. So similarly to [REDACTED] did not believe the proposed placement had sufficient supports to accommodate a classroom with autistic children. (Parent Documents, 0342). In addition, the children did not have sufficient oral language to express all of their needs and she did not feel these students would be good role model for him. She also had concerns with the lack of structure during free time (i.e. kids were allowed to wander around the classroom), the lack of instruction or focus on academics, and the lack of communication system in place.

In summary, it is [REDACTED] opinion that [REDACTED] is the appropriate placement in the least restrictive environment. [REDACTED] provides a low student- to-teacher ratio, and a one-to-one aide to provide support. She believes it is a better program for him because it is a more structured, calmer and language based environment with student peers who can provide positive communication and social role models. In her opinion, the Student has more of an opportunity to learn at [REDACTED] than in an autism program. With implementation of her recommendations and proper sensory supports for the Student, she believes he can make academic progress at [REDACTED]

[REDACTED] the school psychologist who performed a psychological evaluation on the Student on October 22, 2008 testified. She performed the Kaufman Survey of Early Academic and Language Skills to assess his cognitive abilities. She testified that his cognitive scores were in the 50's (below 50 would be a significant impairment) and his pre-readiness skills were 2 to 3 years below the expected range. She testified that he has poor expressive and receptive language skills. His knowledge of math facts and concepts is limited. She also performed the Weschler Intelligence Scale for Preschool and he scored a verbal IQ of 53 and a performance IQ of 53 which classified his intellectual development as being below the normal range. These scores are consistent with a finding of a moderate cognitive impairment. They also show that his verbal and nonverbal reasoning abilities are deficient. She also conducted the Developmental Test of Visual Motor Integration (VMI) in which the Student scored in the 49th percentile. Joint Documents, 0120.

The results of the psychological evaluation demonstrated significant impairment in three major areas of functioning: communication skills, socialization skills, and restricted interests and behaviors. She found all these deficit areas to be consistent with a diagnosis of autism. (Joint Documents, 0120).

In her opinion, a self-contained autism program would be best suited for the Student's needs as it would provide a structured educational program, a low student teacher ratio, and sensory accommodations to help him develop his communication and socialization needs.

Although [REDACTED] has experience evaluating and observing students with autism, I did not find her testimony persuasive. Her assessment was done over a year ago and she only spent 2 or 3 hours evaluating him. In addition, she does not have any knowledge regarding the proposed placement and whether there is adequate support there to meet his needs. Several of the things she testified that he needed to progress (i.e. peer models to help develop communication skills, and sensory accommodations) are not being provided at the proposed placement. Finally, I gave very little weight to his tests scores as the testimony demonstrated that standardized testing for children with autism is not accurate because the tests are geared towards auditory processing instead of visual processing (visual processing is a strength of autistic children). Currently, there is no IQ test for autistic children. See testimony of OT, [REDACTED]. So I am inclined to find that the testing results for the Student are not reflective of his true abilities.

[REDACTED] employed by the District for 7 years was a pleasant and likeable witness who clearly out of all the District employee's had the most experience working with autistic children (She has worked with 100's of special needs children with autism). She provided monthly training programs for the [REDACTED] support staff. She instructed his teachers on strategies to use with him to implement the modifications identified in Joint Documents, 0035. She also provided them with a visual schedule. She encouraged teachers to use visual prompts and limit verbal prompts.

In line with the rest of the District employees, [REDACTED] believes the proposed placement in the autism program is the most appropriate placement because it has more supports, more structure and routine and the most knowledgeable teachers who can meet his curriculum needs. [REDACTED] has viewed the proposed placement for a 30 minute period of time and she knows the teacher in the classroom. The teacher has been a special education teacher for 3 years and has worked with autistic children. The teacher is a first year teacher at the school. The classroom there is more structured than [REDACTED] — there are well defined work stations and frequent sensory breaks are taken. Out of the 7 students in the classroom only 4 or 5 are verbal and 2 out of the 4 or 5 verbal students can only communicate using 2 to 3 word sentences. The Autism program incorporates visual prompts as a way of increasing his language development and his reading skills. [REDACTED] utilizes systematic visual prompts but not to the same extent or degree as the proposed placement school. The proposed school has visuals for every activity.

Based upon her extensive experience with autistic children and her familiarity with the proposed school and the type of program it has to offer the student, she was definitely the most credible witness presented by the district. Again, her testimony regarding the type of environment and support provided by the proposed school can equally be provided at [REDACTED] with the proper training of

staff and providing the student with the proper goals and modifications to ensure he makes more meaningful progress.

██████████ a private Occupational Therapist ██████████ has worked with Student since 2007. She was not available to testify in person as she was on maternity leave so she testified via teleconference. She saw the Student for sensory processing deficits that made it difficult for him to attend at school. She evaluated him on June 23, 2008 and her evaluation showed he was able to verbally communicate his wants and needs. He was able to produce 2 to 3 word utterances and imitate 4 to 5 word utterances. He was cooperative and attentive. He was able to follow adult-direction without difficulties. He exhibited limited use of social language in that he experienced difficulty answering questions and engaging in conversational speech. She recommended a 12 week Speech Therapy Autism Module with extensive home therapy programming and continued participation in a socialization group with autism children.

She was in agreement with ██████████ that an autism classroom would not be a good fit for the Student. The autism classroom could not provide the high level of functioning and the normal peer modeling he requires to progress academically. She believes the Student would be more functional in a less restrictive and less distracting environment. I found her testimony compelling as she is an independent witness with extensive experience evaluating children with autism and she has worked with the Student one-on-one basis for two years.

██████████ the school speech/language pathologist. She has 27 years of experience evaluating speech and language impairments. She provided 120 minutes per month of speech language services to the Student and with those services he was able to exceed his speech/language benchmark goals. Her evaluation showed his auditory comprehension was significantly below the average range, expressive communication was also significantly below the average range. His receptive vocabulary and expressive vocabulary were delayed. Voice and fluency were within normal limits.

Given his communication needs and deficits, it is her opinion that the autism program would be appropriate for the Student and allow him to make more meaningful progress. She agreed that non-verbal students would not be good models for social language.

Overall, the testimony has demonstrated that the Student is a nice friendly kid. He is compliant and follows direction. There was no testimony to indicate his behavior was a safety concern for the students or for the teachers. His sensory processing and sensory self-regulation deficits impact his ability to learn, communicate and write. It is clear from the testimony that his IEP did not address or provide support for these deficits. I agree with ██████████ that once the ██████████ staff is trained on how to deal with his sensory needs and once the Student is provided with the needed accommodations and supports, he will be

able to make educational and social progress at [REDACTED] which I find is the least restrictive environment.

CONCLUSIONS OF LAW

The crux of the dispute in this case is the determination of the appropriate placement for the Student and whether [REDACTED] failed to provide Student with a free and appropriate education from December 15, 2006 to the present. Under Schaffer v. Weast, 44 IDELR 150 (U.S. 2005), the party challenging an IEP bears the burden of persuasion in a due process hearing. Upon review of all the evidence and testimony, I find the parent has met her burden of proof as to the issues more fully discussed below.

A. Whether [REDACTED] failed to provide Student with a free and appropriate education from December 15, 2006 to the present?

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 to determine whether a school district has offered a student FAPE. The first inquiry to be made is whether the school district has complied with the statutory procedures required by IDEA (20 U.S.C. 1401 et seq.). Parents are entitled to relief for procedural violations only if the alleged violations resulted in substantial harm to the student. W.G v. Board of Trustees, 960 F.2d 479, 1484 (9th Cir. 1992). In this case, there was no allegation of any procedural violation or failure to evaluate by the District. Consequently, there was no loss of education opportunity because of a procedural violation in this case.

The second prong of the Rowley test is whether the District has developed an IEP reasonably calculated to enable the child to receive an educational benefit. Rowley at 206-07. To meet that obligation, Rowley requires a school district to provide a "basic floor of opportunity" in the form of specialized instruction and related services which are individually designed to provide an educational benefit to the handicapped child. *Id.* at 201.

The parent has presented a mountain of evidence and testimony demonstrating that his October 3 and December 5, 2008 IEP's did not provide the services or support to enable the student to receive an educational benefit. The IEP should include the following information: (1) a statement of the child's present levels of educational performance, including how the child's disability affects the child's involvement and progress in the general curriculum; (2) annual goals and short term objectives for improvements; (3) a description of the specifically designed

instruction and services that will enable the child to meet those objectives; (4) a statement of how the child's progress toward the annual goals will be measured.” Kevin T. v. Elmhurst Comm. Sch. Dist. No 205, 36 IDELR 153 (N.D. Ill. 2002).

In the present case, the Student has received little, if any benefit from services provided in his IEP'S. The record shows he did not receive the one-on-one support from a paraprofessional until November 17, 2008, he did not receive the required amount of special education instruction (he was suppose to receive 720 minutes but ██████████ testified he only gave him 550 minutes) and the use of a visual schedule was never implemented by the ██████████ staff even though the Student's OT, ██████████ and ██████████ testified that they had created a visual schedule to assist the Student. I find that the failure to provide the instruction and services listed in the Student's IEP constitutes a denial of FAPE.

The IDEA's implementing regulation mandate that “each teacher and provider... is informed of his or her specific responsibilities related to implementing the child's IEP, and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” 34 C.F.R. 300.323(d)(2). It is clear from the record that the teachers providing support to the Student had limited teaching experience in general education, a general lack of experience working with autistic children and were not provided with training or guidance in implementing the student's IEP. The only staff member who had experience working with autistic children was ██████████ who was only at ██████████ for a short training session once a month. One of the teachers ██████████ testified that he quit his position at ██████████ due to the lack of guidance and training by ██████████

The District has failed at IDEA's basic tenant to provide the Student with an appropriate education. The District failed on many levels from failing to provide the Student with the services that he needs (i.e. full-time paraprofessional, OT services, AT services and speech/language services), to failing to implement proper goals (i.e. student's IEP did not have goals to address his sensory needs or behavioral difficulties), to failing to vary its methodology to ensure the Student meets his benchmark goals for independent functioning, to failing to train staff and to failing to hire experienced staff. The District failed to present any credible evidence to support its position that the Student has been provided an appropriate educational program designed to meet his needs instead the District argues in its closing brief that despite their attempts to use a variety of instruction strategies, the student has made minimal progress at ██████████ using such strategies. (District's Closing Brief, p. 16) This lack of progress as admitted to by the District, cannot be what the Rowley court had in mind when they said the IEP should be reasonably calculated to confer an educational benefit.

Based upon the above analysis of the evidence and the law, I find the Parent has met its burden of proving the District denied FAPE while Student attended

██████████ I am in agreement with the District that the Parent failed to meet her burden to demonstrate a denial of FAPE while the Student attended ██████████ as there was no evidence presented by the Parent on this issue.

B. Whether the Student is entitled to an award of compensatory education for the District's denial of FAPE?

The parent's are requesting compensatory education due to the District's lack of providing a Free and Appropriate Public Education. "Compensatory education" is a "legal term used to describe future educational services" which courts award to a disabled student under the IDEA "for the school district's failure to provide a FAPE in the past." See Kevin T., *infra*. When an IEP fails to confer some educational benefit to a student, that student has been deprived of the appropriate education guaranteed by IDEA. Since the evidence in this case was limited to the district's failures while the Student attended ██████████ his right to compensatory education therefore accrues from the time he started ██████████ in September, 2008 to present. The District did not offer any case law or evidence to support a denial of the parent's request for compensatory education in their closing brief.

This hearing officer finds that the student is entitled to an award of compensatory educational services to put him in the same position that he would have occupied, had the school complied with IDEA.

C. Is the District's proposed placement in an autism instructional classroom the least restrictive environment for the Student?

The parent contends that the placement in an autism instructional classroom is not the least restrictive environment and was not appropriate for her son. She wants him to stay at ██████████ in the inclusion program where he can benefit from interacting with typically developed peers. The record has demonstrated that the Student was not given the opportunity to benefit from the regular education curriculum with an aide, sufficient modifications and services. Also, the record shows the District did not consider any other placement options.

In this case, we are presented with a child with significant sensory deficits who is not receiving substantial specialized instruction nor related services and accommodations and who is performing below average but still making academic progress in meeting his goals. ██████████ proposed recommendations that could be implemented at ██████████ with an appropriately trained staff without necessitating a change in placement.

IDEIA through its regulations 34 CFR Section 300.114 (2006) provides:

- (2) Each public agency must ensure that –

(i) To the maximum extent appropriate, children with disabilities including children in public or private institutions or other care facilities are educated with children who are nondisabled; and

(ii) Special classes, separate schooling, or other removal of children with disabilities from regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Courts have ruled that an appropriate placement overrides the requirements of the least restrictive environment.

In **Greer V. Rome City School District**, 950 F.2d 688 (11th Cir. 1991), the court determined that there are four factors in determining if the Congressional preference for mainstreaming a disabled student may be overridden.

The first factor is whether steps were taken by the school system to accommodate the child in regular education. In this matter, the record is clear the District did not provide the student with an aide, services, accommodation and modifications to maintain the student in the regular classroom.

The second factor is whether the local education agency used supplemental aids and services in an effort to assist the child in the regular education setting. The student in this case was not provided with a sufficiently trained aide, nor did he receive accommodations and services for his sensory and communication deficits in the regular educational classroom.

The third factor is whether the student was receiving educational benefit in his or her regular education program. The record shows the Student was receiving an educational benefit in the regular classroom as he was able to meet most of his goals identified in his IEP.

The fourth factor is the effect the student is having on the education of her fellow students. In this case, the Student was not disruptive and was well liked.

The Seventh Circuit has yet to apply a test in determining the LRE, **Beth B. v. Van Clay**, 282 F.3d 493 (7th Cir. 2002). However it has found appropriate placement overrides the least restrictive environment where the student will require so much modification in the curriculum that the regular program has to be altered beyond recognition, resulting in limited education value to the student. *Id.*

There was conflicting testimony at the hearing as to the appropriateness of the student's proposed placement. All of the District's employees uniformly testified that they believed the proposed placement in an autism program is the least restrictive environment for the Student and that they do not believe he would progress academically in a regular classroom. This testimony was countered by the testimony of the Parent [REDACTED] and [REDACTED] who said that the best

placement for the Student was at [REDACTED]. In dealing with this conflicting testimony, I gave the nondistrict witnesses testimony more weight because I thought their testimony was more credible considering their observations of the Student and their extensive experience working with autistic children. In addition, their opinions on placement were more consistent with what the testimony showed to be the Student's needs (i.e. verbal peers who he can model his speech and behavior, a structured calmer nondistracting environment, a one-on-one aide, academic instruction and sensory support). The testimony clearly demonstrated that the proposed placement could not meet the above needs to allow the Student to progress.

The District's employee's opinions that the autism program was the most appropriate placement was contradicted by their statements that the Student was hypersensitive to noise and could not function in a noisy environment. The witnesses who observed the proposed classroom consistently testified that it was a very high noise environment. There was no testimony from the District employees that his deficits adversely affected the classroom, caused disruption with other students or required a significant amount of teacher attention which further supports my finding that [REDACTED] is the least restrictive environment.

I also found the parent's testimony regarding his experience at [REDACTED] in the autism program compelling as well. The parent took him out of the program because he was not progressing and he complained that he did not want to be with babies. I am inclined to think that putting him in the District's proposed placement would have the same negative effect on his ability to learn and would be a similar situation that the parent previously took him out of because it was not working for him.

Applying the law to the facts of this case, I conclude that the Parent has proven by the preponderance of the evidence that the Student's educational program at [REDACTED] failed to comply with the substantive requirements of IDEA and the District's proposed IEP which includes placing the Student in an autism program violates the statutory LRE mandate.

PURSUANT TO THE ABOVE FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED THAT:

Student's current placement in an inclusion program at [REDACTED] has provided Student with a free appropriate education in the least restrictive environment.

1. The District failed to provide the Student an appropriate education from September, 2008 to present while attending [REDACTED]
2. The District shall convene an IEP meeting within 10 school days of the date on which it receives this order and develop an IEP that will consider the full nature and extent of student's disabilities, to provide a program of education and related services that will provide the Student with a free and appropriate education incorporating (a) through (e) as set forth below:
 - (a) Providing the Student with a one-on-one paraprofessional with specialized training and at a minimum of 5 years experience in working with autistic children;
 - (b) Placement for the student at [REDACTED]
 - (c) Providing the Student with appropriate educational goals, modifications, and accommodations that incorporate the findings and recommendations in [REDACTED] report; (Parents Documents, 0338-0347).
 - (d) Providing the Student with appropriate behavioral intervention plan to address his behavior difficulties; and
 - (e) Providing IEP goals and benchmarks for social interaction.
3. The IEP team shall reconvene five weeks after its initial meeting, (or sooner if it determines that it is necessary to evaluate the effectiveness of the student's IEP) , make any necessary changes, and to determine the frequency for other IEP meetings.
4. The District shall provide an autism itinerant to consult with and provide professional development training and classroom training for Student's teachers and paraprofessional (including any new staff hired) 60 minutes per week regarding student's inclusion at [REDACTED]. A minimum of 2 to 3 hours of training should focus on sensory self regulation, communication and social interaction.
5. The District shall provide compensatory services beyond the regular school day: 1:1 occupational therapy by a certified occupational therapist for 60 min per week for 1 year; 1:1 speech therapy by a certified speech

pathologist 60 min per week for 1 year; and District shall pay for transportation costs associated with providing such services.

6. Parent's request for District to hire a behavior consultant is denied.
7. The Student shall be evaluated by an audiologist within 30 school days of the date on which it receives this order to determine what assistive technology is appropriate for Student's communication needs and the District shall provide student with any devices identified and recommended in the evaluation within 15 school days of the date on which it receives the evaluation.
8. The Student shall be evaluated by a speech and language therapist within 30 school days of the date on which it receives this order to determine the Student's conceptual and symbolic understanding and the District shall provide Student with any modifications or accommodations identified in the evaluation within 15 school days of the date on which it receives the evaluation.
9. The Student shall be evaluated by an Occupational Therapist within 30 school days of the date on which it receive this order to assess sensory processing and self regulation and the District shall provide student with any modifications or accommodations identified in the evaluation within 15 school days of the date on which it receives the evaluation. The OT evaluation should include a functional behavior assessment to assess how his sensory processing deficits contribute to his behavior issues.
10. The District shall pay for the cost of the above evaluations.

The District shall provide proof of compliance report to the Illinois State Board of Education, Program Compliance Division, 100 N. First Street, Springfield, IL 62777-0001 within fifteen (15) days of its receipt of this Impartial Due Process 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 with 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 the Illinois State Board of Education. After the decision is issued, the Hearing Officer may not make substantive changes to the decision. The right to request such 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.

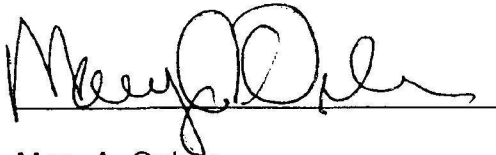
FINALITY OF DECISION

This decision is final and shall be binding upon all parties.

RIGHT TO FILE CIVIL ACTION

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

ISSUED: October 21, 2009

A handwritten signature in black ink, appearing to read 'Mary A. Onken', written over a horizontal line.

Mary A. Onken
Due Process Hearing Officer

RECEIVED

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

DEC 30 2008

SPECIAL EDUCATION
SERVICES

Student,

vs.

CASE NO. 2009- 0216

MICHAEL RISEN, PH.D.
Due Process Hearing Officer

RULING ON MOTION TO DISMISS

FACTUAL BACKGROUND

This due process hearing was filed on December 5, 2008 by [REDACTED], the mother of the Student (hereinafter referred to as the Parent) on behalf of the student. In a letter dated November 21, 2008, the Parent filed her request in an effort to compel the District to provide "counseling/mental health services from a provider outside of the school district." The Parent, in her letter of filing acknowledged that the District had offered: "the counseling services ...to me by one of the school district's psychologist at the IEP meeting held on November 19, 2008." The Parent implied that this offer from the school district to provide this related service of counseling was not acceptable to the Parent and the offer from the school district was refused by the Parent. The Parent, in her letter of filing, provided the following rationale for her refusal of district staff providing the offered counseling services: "given my long history of concerns about my son that were expressed to school staff several years ago, my perception of staff's opinions of me and my parenting skills and the known fact that I had been reported to DCFS (all unfounded) numerous times by school district staff. Knowing the potential consequences for these actions, I am unable to trust any recommendations offered to my son and my family beyond educational services." The Parent expressed an unwillingness to participate in the resolution or mediation process as required by the IDEA (Section 300.510).

On December 22, 2008, Attorney [REDACTED] filed a Motion to Dismiss on behalf of the School District (hereinafter referred to as the District). The District contends in this motion that IDEA "does not allow Parents to determine who will provide services to their child." Based upon this assertion, the District contends that: "the Parent's only claim is that she should be able to select the service provider who provides counseling services to her son. Under the IDEA, the Parent is not entitled to choose the individual services provider. Since the Parent seeks no other relief, her complaint should be dismissed in its entirety. For the reasons stated above, the District respectfully requests the Hearing Officer dismiss the Parent's complaint."

CONCLUSIONS OF LAW

When considering a dispute regarding a student with a disability and the student's school district, the Hearing Officer must first begin by considering the Supreme Court decision in Rowley (*Board of Education of the Hendrick Hudson School District, Westchester County et al. V. Rowley* by her Parents, Rowley et ux. 458 U.S. 167 (1982).) In Rowley, due process decisions are directed by the Supreme Court

which set forth a two pronged test for determination of a Free Appropriate Public Education (FAPE) in the least restrictive environment (LRE). The first prong directs the decision to determine whether or not the District has complied with the statutory procedures required by the Individuals With Disabilities Education Act (IDEA) 20U.S.C. 1401 et seq. Rowley indicates that any substantial denial of procedural safeguards that results in adverse impact on the Parents' participation or the Student's education in so much as the result is a loss of educational opportunity then there has been a denial of the law's requirement for FAPE. This first test of Rowley provides for relief only when the procedural violations result in substantial harm to the student (*W.G. v. Board of Trustees*, 960F.2d 1479, 1484 (9th Circuit 1992)). The Parent has not sought any relief related to the procedural safeguards in the IDEA. The second prong of the Rowley test is to determine whether or not the individualized program developed through such procedures is reasonably calculated to enable the Student to receive educational benefit. Again, the Parent has not presented any arguments to suggest that the student has been unable to receive educational benefit.

Further, the IDEA regulations (Sec. 300.503 (a) (1) and (2) describe the matters on which a Parent or public agency may file a due process complaint. These sections include the specific matters that are subject to the due process hearing procedures and they include when a public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or refuses to initiate or change the identification, evaluation, or educational placement or the provision of a (FAPE) to a child. Again, the Parent has not presented any argument to suggest any of these matters are at issue in this case. The sole issue identified by the Parent is the Parent's desire to select the Student's service provider for counseling services that the District and Parent have agreed the Student is eligible for and that the District has agreed to provide for the Student utilizing one of the District's employed school psychologists.

In the District's Motion to Dismiss, the District provides three cases where the arguments in the presented cases are informative with respect to the issue identified by the Parent in this case: (*See B.F. v. Fulton County Sch. Dist.*, 1:04-CV-3379-JOF, 51 IDELR 76 (N.D. Ga 2008); *Dept. of Educ. State of Hawaii*, 47 IDELR 175 (Dec. 21 2006); *Central Bucks Sch. Dist., Pennsylvania State Educ. Agency*, 23 IDELR 1231 (Jan3, 1996)). In particular, the District cites the *Fulton County* decision where the court explained "no provision in the IDEA which would allow Parents to direct the particular individuals who will provide services to their child."

ORDER

In this case, the Parent has not alleged that the District has either proposed or denied the initiation, change, identification, evaluation or placement of the child, nor has the Parent alleged the District has failed to provide a Free Appropriate Public Education in the Least Restrictive Environment. The Parent has made no allegations related to the two prongs of Rowley as described above. While the Parent's allegation in this due process case is indeed within the category of related services (counseling services) which are part of the IDEA, the Parent's charge does not allege any failure or unwillingness on the part of the District to provide this service, but rather, the Parent's desire to choose who provides the service. As indicated in the Conclusions of Law above, there are no references in the IDEA regulations or Case Law that might suggest that the IDEA legislation ever intended to grant Parent's this level of authority in the process. Indeed, the incident case of *Fulton County* cited by the District and referenced in this decision would suggest specifically that indeed no such authority exists for Parents under the IDEA or subsequent Case Law. For these reasons, the following is the order of this Hearing Officer:

Effective immediately on the date noted at the end of this decision, the Due Process request known as [REDACTED] Case # 2009-0216 is dismissed and the Motion to Dismiss by the District is hereby granted.

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 parties and to the Illinois State Board of Education. **The right to request such a clarification does not permit a party to request reconsideration of the decision itself, and the Hearing Officer is not authorized to entertain a request for reconsideration.**

RIGHT TO FILE A CIVIL ACTION

This decision shall be binding upon the parties unless a civil action is commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-8.01(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.

Date: December 29, 2008


MICHAEL RISEN
Due Process Hearing Officer

Entered: December 29, 2008

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Order to Grant the District's Motion to Dismiss was delivered via Certified USPS on December 29, 2008 and placed in the U.S. Mail [REDACTED] with certified postage return receipt requested and directed to:

[REDACTED]

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

before 3:00 p.m. on December 29, 2008.

D. Michael Risen
D. Michael Risen, Ph.D.

[REDACTED]