

Case Number: 2009-0369

[REDACTED] vs. [REDACTED]
Hearing Officer: Harry A. Blackburn

Illinois State Board of Education
Special Education Services
100 North First Street
Springfield, Illinois 62777

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**Impartial Due Process Hearing Decision
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District Name

[REDACTED]

Phone:

7735531000

Superintendent
Address

[REDACTED]

Represented by

Parent Name

[REDACTED]

Address

Represented by

Date and Timelines

Date of Written Request:

03/17/2009

Date of Hearing: 06/02/2009 to

6/5/2009 12:00:00 AM

Date of Pre-hearing Conf: 04/20/2009

Date of Decision: 07/27/2009

Summary of Decision

The [REDACTED] Failed to provide the student a free appropriate public education (FAPE): insufficient amount of related services

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)
) ISBE CASE NO. 2009-0369
)
) Harry A. Blackburn
) Impartial Due Process
) Hearing Officer

HEARING DECISION, OPINION AND ORDER

This matter is before the undersigned-Hearing Officer for a due process hearing pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA 2004"). 20 U.S.C. 1400 et seq., 5/14-8.02a et seq., and 23 Il. Adm. Code 226.600 et seq.

The Parents, through their attorney(s), filed a due process complaint via letter to The [REDACTED] (hereafter "District") dated March 16, 2009. The District received the complaint on March 17, 2009, and forwarded it to the Illinois State Board of Education ("ISBE") where it was received on March 23, 2009. The undersigned was appointed as Hearing Officer by ISBE on March 25, via letter, which the Hearing Officer received on March 27, 2009. The Hearing Officer subsequently contacted the parties and arranged for the convening of a teleconference call on April 3, 2009 for discussing resolution or mediation efforts and establishing a prehearing conference date to be held on April 20, 2009 and hearing date(s) beginning on June 2, 2009 and concluding on June 5, 2009. The parties agreed to an extension of the 10 day timeline for issuance of a decision by the Hearing Officer due to other case hearing timelines that the Hearing Officer is involved with.

The four (4) day Hearing began on June 2, 2009 and concluded June 5, 2009. Both Parents of the student, primarily native Spanish speakers, testified at the hearing through the services of a Spanish speaking interpreter. The father of the student attended the 4 day hearing and received Spanish interpretation through a Spanish interpreter duly sworn under oath to interpret from English to Spanish and Spanish to English.

The "initial" Individualized Education Program ("IEP") team meeting was conducted on November 18, 2004, when the student attended a public school other than the current public school, finding the student eligible for special education and related services under the category of a Learning Disability, with speech and language deficits.

School District Psychological Evaluations were conducted on 12/17/2007 and January 16, 2008 by [REDACTED] M.S. (SD 67-72)

Independent evaluations, conducted on behalf of the child and paid for by the District were conducted in the areas of:

- A Psychiatric Evaluation, conducted in Spanish with the parents and in English and Spanish with the student, on April 10, 2009 by [REDACTED] (PD 468)
- Speech and Language—[REDACTED] M.A.—3/20/2009 (SD 25-39; PD 453-467)
- Occupational Therapy—[REDACTED] M.S.—5/7/2009 (SD 40-50; PD 442-452)
- Assistive Technology—[REDACTED] Ph. D., --3/30/09 (SD 51-59; PD 427-441)

The Parents also sought the services of [REDACTED] sy. D. through the University of Illinois, who conducted a Psychological Evaluation on April 21, 29 and May 14, 2009 by (PD 481)

Issues Presented and Remedies Sought

- A. The District did not provide the student a free appropriate public education (FAPE) from September, 2004 to date, based on:
- i. Failure to conduct adequate assessments of all areas of potential disabilities, with the result that the student's educational program for this period did not address, or addressed inadequately, his learning impediments, communication impairments and behavioral management needs;
 - ii. Failure to provide essential related services, with adequate levels of intensity, in areas of social work, speech language, occupational therapy, assistive technology and behavior management therapy;
 - iii. Failure to identify and utilize effective teaching methodologies at a sufficiently intensive level that would enable the student to make progress commensurate with his cognitive skills;
 - iv. Failure to offer adequately designed instruction with the result that the student did not make reasonable progress in reading, writing, math, communication and behavior management skills;
 - v. Failure to educate the student with native language support and English Language Learner (ELL) Services;
 - vi. Failure to provide assistive technology equipment, with training and support for both student and school staff, which was necessary to promote effective access to the educational curriculum and support development of reading, writing and math skills;
 - vii. Failure to develop an adequate and effective functional behavior analysis and behavior intervention plan for the student.
- B. The Parent contends that the student's IEPs for the past five years:
- i. Contain statements of present levels of performance that do not accurately and objectively state the student's skills and functional levels;
 - ii. Provides goal statements that are vague and not measurable, and where the goals set an increase in skill level, the goal is not commensurate with the student's potential for development.

- iii. Fail to address adequately communications and behavioral limitations of the student;
 - iv. Provides for an inadequate level of related services, specifically:
 - 1. Speech and language services were authorized at 30 minutes per week, but should have been at least 90-120 minutes per week for a child with significantly depressed expressive and receptive language skills; in additional, speech language services were improperly terminated in January, 2008;
 - 2. The IEPs fail to offer behavior therapy services using a recognized methodology established through peer reviewed research, despite evidence of poor social interaction by the student;
 - 3. Fail to offer direct social work services and/or psychological services, in both individual and groups settings, with sufficient duration and intensity;
 - 4. Failed to offer occupational therapy, despite substantial evidence of sensory processing difficulties, which impeded the student' ability to participate effectively in school activities;
 - 5. Fail to provide sufficient support for use of assistive technology resources, and lack provision of adequate levels of assistive technology equipment and software.
 - v. Fail to offer extended school year services, despite substantial evidence that student was not making adequate academic, functional and developmental progress;
- C. The District improperly limited the Parents' ability to participate in their son's educational planning from 2004 through the present by failing to provide timely and accurate translation into the Parents' native Spanish language:
- i. IEPs completed by the District;
 - ii. Most quarterly progress reports for the IEP;
 - iii. Some but not all report cards;
 - iv. Evaluation reports completed by the District.
 - v. Accurate and complete translation of discussions at meetings of the IEP team.
 - vi. Notice of procedural rights was not provided in Spanish at each IEP meeting or domain meeting.

Relief being sought by Parents/Student

- a) Private therapeutic day school placement at public expense;
- b) Direct the District to offer related services in sufficient intensity to allow student access to educational opportunity, including:
 - i. Speech/Language therapy for 60 minutes per week;
 - ii. Occupational therapy for 60 minutes per week;
 - iii. Direct instruction in use of assistive technology equipment and software for at least 60 minutes per week;
 - iv. Social work services, both individual and group, for 60-90 minutes per week;
 - v. Consultative nursing services for at least 15 minutes per week;
- c) Direct the District to provide compensatory education services for loss of FAPE during the past five years, including, but not limited to:

- i. Tutoring for two hours per week for at least two years, with the provided, a time and location selected by the Parents;
- ii. 60 minutes per week speech therapy after school hours for at least one year with the provider and location selected by the Parents;
- iii. Provision of a laptop computer with appropriate software, at district expense, and provision of direct support in use of AT resources for 60 minutes per week for one year;
- d) Direct the District to convene an IEP meeting that will consider results of evaluations and implement the foregoing relief;
- e) Order that the District provide all school records to the Parent, including all email and other correspondence that identifies the student; and
- f) Other relief that will be determined after the receipt of additional school records or other evidence introduced at hearing.

The District's Response to Parent's identified issues and relief:

The District maintains that it has provided the student with FAPE, utilizing the appropriate teaching methodologies and providing for the appropriate level of related services to the student to make marked progress. The District further maintains that over the past three years the student has, at the present school placement, made tremendous social and academic progress. The District maintains that the student is not in need of ELL services and the Parents were at all times provided with a translator at IEP meetings, and meetings with school personnel. The District objects to the Parent raising the appropriateness of the District's evaluations that had been raised also in a hearing that has just concluded dealing with the same issue and should the Parent disagree with the Hearing Officer's findings in that matter, the appropriate forum is to appeal that decision, not relitigate the issue before a new hearing officer.

The District concludes that it has provided the student with FAPE in the least restrictive environment, and requests that the Hearing Officer find no denial of FAPE and deny all relief being requested by the Parents.

Findings of Fact

1. [REDACTED] is an 8th grade, 15 year old graduating student, about to matriculate to the local public high school for the 2009-2010 school year. He lives with his Parents, 13 year old brother, (diagnosed with autism) and 11 year old sister. A 16 year old sister lives with an aunt. The student is recently diagnosed with learning disabilities (with deficits in reading, writing and math) and selective mutism. Academically, he is behind, failing and repeating 7th grade. He would not turn in homework,; he was uncooperative with peers in a group setting; he was nonverbal and would not write in class; he was not self motivated; he was noted to be overwhelmed by loud noises and having minimal peer interactions. His 8th grade experience has seen improvement with respect to peer interactions and communication. He still, however, lags far behind grade level in academic functioning. It has been noted that the student has had chronic depression dating back to age 7 when he was hit by a car.

2. The Parent's position is the student requires placement in a private therapeutic day placement, where a small, secure, nurturing class size setting that will help the

student benefit from an education that has been lacking for the past 5 years while enrolled in the public schools. The Parent is requesting that the student be placed at Acacia, a private day therapeutic school.

3. The school district believes it is unfair for the Hearing Officer to Order placement in accordance with the Parents' wishes primarily because they have not been able to hold an IEP meeting due to the fact that the Parents' filed bifurcated requests for hearings, on separate issues, thereby hampering school district efforts to otherwise conduct the appropriate IEP meetings where, amongst other considerations, private independent evaluations previously ordered by an Independent Hearing Officer in a due process complaint filed in November 2008 and decided on April 6, 2009, would be considered.

4. A prior decision was issued on April 6, 2009 by a previously appointed Independent Due Process Hearing Officer upon the filing of a due process hearing request by the Parents on November 21, 2008. Prior to the March 2009 Hearing, the District agreed to pay for i) a psychiatric evaluation; ii) speech and language evaluation and iii) an assistive technology evaluation. The issues to be presented at hearing were: a) Whether the psychological evaluation conducted by the District was appropriate, and b) whether the District should be required to conduct an occupational therapy evaluation in order to properly evaluate the student. A hearing was held between March 9 through March 12, 2009, and the appointed Independent Hearing held the following: a) The Psychological evaluation conducted by the District was appropriate; b) The District failed to appropriately evaluate the student by failing to conduct an occupational evaluation of the student.

5. Independent evaluations conducted on behalf of the student and paid for by the District are as follows:

PSYCHIATRIC EVALUATION (PD 468)

A Psychiatric Evaluation was conducted in Spanish with the Parents and in English and Spanish with the student, on April 10, 2009 by [REDACTED], a Consulting Child and Adolescent Psychiatrist. The student's school and medical records were reviewed, including the student's IEPs, testing, and progress reports. The family of the student was interviewed and school staff were consulted. [REDACTED] Diagnosis of the student is as follows:

Axis I: Pervasive Developmental Disorder Not Otherwise Specified- Rule out Aspergers Syndrome; major depression recurrent severe without psychotic features, partial remission; attention deficit hyperactivity disorder, learning disability (reading, math, writing); anxiety disorder not otherwise specified; selective mutism and expressive disorder by History.

Axis II: Traits of Avoidant Personality Disorder

Axis III: History of two surgeries for ruptured right tympanic membrane; history of car accident with head injury without loss of consciousness (age 7); born premature with respiratory difficulties.

Axis IV: Finances, chronic medical condition of biological father; chronic mental illness of brother (Autism); impairment in school functioning, conflict with Parent (mother), report of no friends by Parent except for cousin (7 yrs old).

Axis V: 45 (PD 477)

██████████ made the following recommendations:

1. The student should be provided assistance for transition to high school with transfer and communication of all documents to the new school with an IEP to be scheduled prior to the start at the new high school.
2. A self contained classroom with specialized services maximized, increased to previous level of services for autism and/or consideration for a therapeutic school placement that will not resort to the use of physical restraints or seclusion as this would further decompensate the student's mental status. Staff to be knowledgeable of the student's psychiatric diagnosis and limitations and not use a confrontational approach with him.
3. A Collaborative Problem-Solving Approach (██████████) should be implemented in working with the student. borderline intellectual functioning.
4. Neuropsychological testing is highly recommended to further clarify the student's diagnosis.
5. Multimodal presentation of new information, which allows for both visual and auditory tasks with an organized system of communication and documentation of his homework.
6. Speech therapy and specialized services should be geared toward autism, with a focus on social communication using visual strategies. Use of facilitated communication.
7. Follow up for the student's Parents through resources provided by the University of Illinois, SALTO, a Spanish language support group for children with autism; follow up for the student's Parents to apply and receive respite services.
8. A behavioral medication program with positive reinforcement included is highly recommended.
9. Family therapy with psycho-education and Parental training.
10. Follow up by the Parents to have the student tested for possible damage to the student's right middle ear.
11. Individual psychotherapy with a focus on social skills training, role playing working in various settings to teach the student how to communicate with diverse people using visual supports and a system of rewards that involve his restricted interests.
12. Group therapy with a focus on social skills training to further develop the student's social skills and interactions with others.
13. Continued psychiatric treatment and medication monitoring with annual physical exam. (PD 478-80).

**PSYCHOLOGICAL EVALUATION (BICULTURAL/BILINGUAL EXAMINERS)
(PD 481-495)**

A Psychological Evaluation was conducted by [REDACTED] Psy. D, and [REDACTED] Diagnostic Extern, on April 21, 29 and May 14, 2009 through the Institute on Development Disabilities and Human Development, Developmental Disabilities Family Clinics at the University of Illinois, [REDACTED]. A review of background information was reviewed through records and interviews with the student and Parents. The following recommendations were given for addressing the student's identified needs based upon the evaluation:

School

1. Development of an education plan that incorporates evidence based and scientifically proven methods of teaching children with autism spectrum disorders. Behavioral interventions are strongly recommended.
2. A minimum of 25 hours per week, 12 months of the year programming using evidence based approaches to teaching core deficit areas.
3. Speech services geared toward the needs of an individual with Autism.
4. High School transition preparation and planning. A small classroom environment with specialized services to maximize his learning. A therapeutic placement should be considered. The use of a multimodal approach to learning with individualized curriculum.
5. A minimum of 60 minutes per week of social work services.
6. Bilingual needs addressed through bilingual support provided by individual tutoring by a bilingual special education teacher.
7. Assistive technology support and equipment.
8. Occupational Therapy as recommended by an independent evaluation.
9. School accommodations as noted (PD 493-494).

Home/Personal; Medical/Follow up as noted (PD 494)

BILINGUAL SPEECH-LANGUAGE PATHOLOGY (English—Spanish) (SD 25-37; PD 453-467)

The evaluation was conducted by [REDACTED] MA on March 20, 2009—Ms. [REDACTED] reviewed student's school records as a part of her evaluation review including IEPs dated 9/24/09, 4/23/08, 4/16/2007, 4/17/, 2006 and 11/18/2004. [REDACTED] administered several tests as a part of her evaluation, including: the Clinical Evaluation of Language Fundamentals, 3rd Edition and the Clinical Evaluation of Language Fundamentals, 4th Edition—Spanish. [REDACTED] concluded that the student would benefit from speech-language therapy intervention.

OCCUPATIONAL THERAPY EVALUATION (SD 40-50; PD 442-452)

The evaluation was conducted by [REDACTED] M.S., on May 7, 2009. Part of her evaluation included observation of the student at school for @ 1.5 hours,

interviews with the father, and several school staff including the student's teacher, principal, and caseworker. [REDACTED] administered the Adolescent/Adult Sensory Profile as a part of her formal assessment of the student. [REDACTED] concluded and recommended that the student receive Occupational Therapy services to assist him in transitioning to a new school (elementary to high school); adjust to new teachers; the development of a transition plan to take him into high school "safely;" to assist the student to understand his "sensory" needs and to learn effective methods of self-advocacy, and other challenges the student will be facing.

ASSISTIVE TECHNOLOGY EVALUATION (SD 51—59; PD 427-441)

The evaluation was conducted by [REDACTED] Ph. D., on March 30, 2009. [REDACTED] reviewed several school documents, including IEPs, Psychological Evaluations and an Assistive Technology report of 2005. Ms. [REDACTED] administered The Test of Written Language 3 (TOWL-3) and The Test of Adolescent Language-3 (TOAL-3). Also used were several computer software programs. The evaluator concluded that the student could benefit greatly from the use of Assistive Technology in order to raise his academic progress. Ms. [REDACTED] recommended the student receive 60 minutes per week of Assistive Technology support.

6. The District's Psychological evaluation, (SD 67-72) deemed appropriate by a previous decision rendered by an Independent Hearing Officer in April 2009, and not an issue in the present case, provides a history of the student's academic history and progress. The student attended one public school for grades K to 2. He transferred to another public school for grades 3 to 6 and entered his present school for 7th grade, where he repeated the second grade for the 2007-2008 school year, passed to the 8th grade this current school year and graduated shortly after the hearing was concluded. The psychologist notes that an initial psychological evaluation was administered in October 2004 "due to lagging academic development (5th grade)." The "initial" psychological test finding, October 2004, as measured by the RIAS "revealed Average non-verbal ability, Deficient verbal ability, Borderline memory skills and a Composite Intelligence Index standard score of 67. Moreover, on the Draw-A-Person Intellectual Ability Test for Children, Adolescents, and Adults (DAP: IQ) he attained a standard score of 104 (Average). The VMI demonstrated Below Average visual-motor integration development. In addition, Spanish Woodcock-Munoz Language Survey (WMLS-S) yielded on test of Oral language Ability SS60, Picture Vocabulary SS 49, and Verbal Analogies SS77. On the English WMLS he attained in Oral Language Ability SS 45, Picture Vocabulary SS22 and Verbal Analogies SS 75. Academic achievement as measured by the Woodcock-Munoz Test – Spanish Version revealed in the areas of Letter-Word Identification SS 105/GE 5.8 and Passage Comprehension SS 81/GE 2.4. English academics as assessed with the K-TEA revealed: Mathematics Applications SS 70/GE 1.6, Reading Decoding SS 71/GE 1.8, Spelling SS 76/GE 1.4, Mathematics Composite SS 70/GE 2.4 and Battery Composite SS 67/GE 1.9. Behavior Assessments

on the Connor's Parent Rating Scale-Revised reported Oppositional Behavior Average range, Cognitive Problems/Inattention very much Above Average range, Hyperactivity Average range, and Conner's ADHD Index Much Above Average range. Additionally, the Gilliam Autism Rating Scale (GARS) yielded an Autism Quotient of Very Low probability. Consequently, test findings suggested significant delays in verbal development and inattention behaviors were interfering with learning processes. Spanish language dominance was also indicated. As a result, the student was found eligible for Learning Disabled services. Moreover, a Speech and Language assessment dated 9-24-04 found him eligible for speech therapy due to moderate-to-severe receptive and expressive language delays. A FA/BIP plan was also implemented targeting verbal skills and peer interaction. Also notable is an Assistive Technology Resource Center referral form dated 11-24-04 reports hearing needs monitoring. He enjoys using computer, is highly distractive, and appears to be selectively mute. No recommendations noted". (SD 67) An Autism evaluation was administered 4-5-05 indicating the student did not exhibit any stereotypical behaviors finding him not eligible for an educational label of Autism Spectrum Disorder. The District's psychologist, in her 3 year re-evaluation of the student, concluded that "the student would benefit from a continuation of special education services. Of most concern in this evaluation are his atypical behaviors. Based on the BASC-2 TRS-A, GARS and ASDA questionnaires, observations, and standardized tests results they contain items related to a number of DSM-IV-TR criteria for the diagnosis of Attention-Deficit/Hyperactivity Disorder, Autistic Disorder/Asperger's Disorder, and Oppositional Defiant Disorder". (SD 71)

7. The student has had a number of Individualized Education Program's (IEPs) developed since the 5th grade when he was first identified as in need of specialized educational services.

11/18/2004—Initial Eligibility IEP—5th Grade (PD 083)

The student received 950 minutes per week (mpw) of academic instruction in Language Arts and Math in a special education resource setting; 225 mpw of math in a "push in" regular class setting, 30 mpw of social emotional direct services in regular class, 30 mpw speech (English/Spanish) and 30 mpw of Social Work direct services.

5/05/2005—IEP 5th Grade (PD 061).

The student received 925 mpw of academic instruction in Language Arts and Math in a special education resource setting, 225 mpw in a push in regular class, 30 mpw of social emotional direct services in regular class, 30 mpw speech (English/Spanish) and 30 mpw of Social Work direct services.

4/17/2006—IEP 6th Grade (PD 108)

The student received 675 mpw of academic instruction in Language Arts and Math in a special education resource setting, 600 mpw in a push in regular class, 0 mpw speech and 15 mpw of Social Work direct services.

4/16/2007—3 Year Evaluation IEP 7th Grade (PD 042)

The student received 0 mpw of academic instruction in Language Arts and Math in a special education resource setting, 400 mpw in a push in regular class, 15 mpw speech (English/Spanish) and 30 mpw of Social Work direct services.

4/23/2008—IEP 7th Grade (repeated) (PD 010)

The student received 600 mpw of academic instruction in Language Arts and Math in a special education resource setting, 200 mpw in a push in science and social studies in a regular class, 0 mpw of social emotional direct services in regular class, 0 mpw speech (English/Spanish) and 15 mpw of Social Work direct services.

9/04/2008—IEP 8th Grade (PD 001)

The student received 400 mpw of academic instruction in Language Arts/English/Reading and Math in a special education resource setting, 200 mpw in a push in biological & physical sciences and social studies in a regular class, 0 mpw of social emotional direct services in regular class, 0 mpw speech (English/Spanish) and 15 mpw of Social Work direct services and 15 minutes per month (mpm) in autism itinerant consultative services.

8. Teachers and public school staff called to testify at the hearing and involved in the education of the student appeared genuinely sincere and committed to assisting with the student's academic gains. Despite these efforts, however, the student's academic performance deteriorated to the point that he was performing at a 3.8 grade equivalency in reading comprehension and a 3.2 grade equivalency in mathematics near the end of his repeating the 7th grade. (SD 014) The student's current 8th grade teacher testified that he seemed to "blossom" in terms of his communication and interaction with his peers.

9. Both the public school staff and independent evaluators expressed concern, through testimony at the hearing, that in considering future placement in transition for the student, a small class environment would best serve the student. Although the concern that attending the local public high school may be overwhelming, there was no expressed testimony against the student being able to succeed if a small class environment could be maintained, much as his last year in grade school (it is noted that approximately 37 students were in attendance for the school year due to the fact that the elementary school was closing).

10. [REDACTED] the Director of [REDACTED] a private day therapeutic school, testified at that hearing. [REDACTED] described [REDACTED] as having a small, nurturing environment with the ability to build the student's skills in accordance with his abilities to succeed. Bilingual assistance is available, if necessary, in addition to social work, occupational therapy and speech and language services. On cross examination by the District's attorney, [REDACTED] admitted that approximately 12 students, currently attending [REDACTED] have been diagnosed as Emotional Disturbed and the use of "physical restraints" may be utilized, but on a limited basis. [REDACTED] testified that 90% of the students placed at

return to the mainstream classes at their home schools. affirmed that could implement the recommendations of the independent evaluators as a part of the student's transition from elementary to high school.

11. Both Parents testified at the hearing. The mother testified that she did not understand several of the forms, Notification for IEP meetings, IEPs, consent forms, progress notes, report cards, etc. that were given to her by the District because they were provided only in English. The mother stated she often asked for forms to be provided in Spanish, but they were never received. She admits to some portions of the forms were explained to her in Spanish, but much of the conversation that took place at the meetings she attended were in English only and she did not understand what was being said. On cross examination by the District, the mother admitted being in the United States for 17 years. In response to questions regarding whether someone was available at the IEP meetings she attended to interpret what was happening or to ask/answer questions she may have in Spanish, she responded that the social worker would and was sometimes available but she "spoke softly and used poor Spanish." She further stated that the school secretary and crossing guard spoke Spanish, but she never asked them to attend the IEP meetings. The mother also admitted that she spoke at the meetings in Spanish, but "no one" would understand her.

The father testified that he does not speak, understand, read or write English. He is currently on unemployment compensation for an injury sustained at work. He admits to being able to write his signature. He believes his son needs special help from the school. He is concerned about his son's frequent bouts with depression and that he is not very social in the community. When shown various documents in English by his Attorney, the father acknowledged his signature, but stated he was unable to read and understand anything else. He seldom attended any meetings for his son because of work, but on one occasion, when his son was attending the school previous to the current school, he did and was presented with documents at the end of a meeting, asked to sign it, but never given a copy of the document. The father testified that he never knew that his son was being recommended to attend the local public high school because the letter received was in English only. On cross examination by the District, the father stated that he has been residing in the United States for 20 years. When asked about a conference recommendation form that he signed dated 5/5/05, he acknowledge that he signed it, but the form, was in English only. (PD 80) When asked about his signature appearing on a Parents Notification of Rights document that was translated into Spanish, he acknowledged that he signed the form, but stated that he did not understand anything else because the print on the form was too small. (PD 82).

Both Parents affirmed that their son speaks both English and Spanish, but speaks only Spanish at home.

12. The lack of Parent Written Notification in their native language "Spanish" is evidenced throughout the student's educational experience in the District's public schools from the present dating back to September 2004. The following examples are highlighted," **boldface**" language indicates native language compliance:

PD 001

9/4/08 IEP

no parent participation in amending IEP

		PD 002 – Waiver of meeting signed 4/23/08 Use of Waiver not in accordance with 34 C.F.R §300.324 (a)(4) – waiver in context of specific changes agreed to by parent and IEP team.
PD 010	4/26/08 IEP	PD 036 & 37– conference recommendation in English only PD 038 – notice of procedural safeguards English only
PD 042	4/07 IEP	PD 036 & 37 – conference recommendation in English only
PD 108	4/06/ IEP	PD 127/SD 22 - notice of procedural rights in Spanish PD 128 – conference notification English only PD 125 – conference notification English only
PD 061	5/05 IEP	PD 082 – notice of procedural rights Spanish PD 080 – conference recommendation English only
PD 083	11/04	initial IEP, but no notice of safeguards, no notice of conference recommendation in either document set
PD 157 PD 158	12/07	consent for evaluation in Spanish domain sheet in English only
PD 173 PD 174	2/05	consent for evaluation in English only domain sheet in English only
PD 264	9/04	consent for evaluation in English only domain sheet in English only

13. District staff testimony, considered as a whole, does not refute the fact that not all documents provided to the Parent with respect the education of their son were provided in Spanish. In fact, most District staff were unaware whether or not the Parents ever received any of the documents in Spanish. Testimony also does not refute the fact that IEP meetings the Parent(s) attended or parent/teacher conferences were not interpreted concurrent with the meeting being conducted. Rather, the District staff stated that if the Parent asked a question a Spanish speaking IEP Team member would respond in Spanish to the Parent. Likewise, District staff maintain that a Spanish speaking person attending the meeting would interpret various aspects of the documents discussed at the meeting, during the course of the meeting. This fact however was contradicted by the

Mother during her testimony. Minimal evidentiary documentation was produced by the District concerning the student's placement at his current school to refute the Parents claim of lack of Prior Written Notice in Native Language. (SD 139, Consent For State Reimbursement of Health Related Services; SD 226 Parental Procedural Safeguards Notification—4/17/06; SD 255—256, 2008-2009 School Year Progress Report; SD 261—263, Progress Report 2006-2007). However, in its Response to Parent's Memorandum Regarding Statute of Limitations, filed subsequent to the Pre-Hearing Conference, several documents were offered. (Group Exhibit 1-- Parental Procedural Safeguards Notification—9-9-04, 5-5-05, 4-17-06; Exhibit 2 -- Consent for Re-Evaluation—12-20-07; Exhibit 3 – Conference Notification—1/16/08 for 2/6/08 Conference)

14. The Parents requested an extension of the 2 year statute of limitations period to be allowed the opportunity to provide evidence from as far back as September 2004 to the present to show that the District failed to provide information/notice in writing to the Parents, Mexican immigrants, prior to their having to make important decisions concerning the education of their son and thereby supporting their claim that the District improperly limited the Parents' ability to participate in their son's educational planning from 2004 through the present by failing to provide timely and accurate translation into the Parents' native Spanish language. The issue could not be resolved at the Pre-Hearing Conference so the parties were granted leave to file pleadings that set forth their opinions supported by legal precedence. Memorandums of Law briefing the issue were submitted. The Hearing Officer deferred ruling prior to the Hearing, opting instead to receive testimony on the issue.

CONCLUSIONS OF LAW

Burden of Proof

The Parents have the burden of proof as they filed the due process complaint. Under Illinois law, the school district must provide evidence that the special education needs of the child have been appropriately identified and that the special educational program and related services proposed to meet the needs of the child are adequate, appropriate and available. 105 ILCS 14-8.02a(g). The Supreme Court has held that the ultimate burden of persuasion lies with the party filing the due process complaint. *Schaffer v. Weast*, 546 U.S. 49., 126 S.Ct. 528 (2005). In this case, the Parents filed the Due process complaint, and therefore, the ultimate burden is on the Parents. The Parents must prove its case by a preponderance of evidence.

Free Appropriate Public Education

Determining whether a student has received a FAPE begins with the two-prong analysis set out in *Bd. Of Educ. Of Hendrick Hudson Central Sch. Dist. V. Rowley*, 458 U.S. 176 (1982) ("*Rowley*"). First, the district must comply with IDEA's statutory procedures; second, it must develop an IEP reasonably calculated to enable the student to benefit from the special education and related services. Once the school district has met these two requirements, the courts cannot require more; the purpose of IDEA is to 'open the door of public education' to [disabled] children, not to educate a [disabled] child to

his/her highest potential. *Board of Ed. Of Murphysboro Community Unit School Dist. No. 186 v. Illinois State Board of Educ.* 41 F.3d 1162, 1166. (7th Cir. 1994).

Compliance with Procedural Requirements

One of the two prongs of Rowley requires that LEAs comply with statutory procedural requirements. These include, among other things, written notice and participation requirements. According to 23 Il. Adm. Code 226.520, "The written notice a school district is required to provide to a parent prior to a proposal or refusal to initiate or change the identification, evaluation, or educational placement of, or the provision of FAPE to, a child shall conform to the requirements of 34 CFR 300.503. That notice must be provided whenever the public agency (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child." (Authority: 20 U.S.C. 1415(b)(3) and (4), 1415(c)(1), 1414(b)(1))

According to 23 Il. Adm. Code 226.530, with respect to parents' participation in meetings, school districts shall conform to the requirements of 34 CFR 300.322 and 300.501. For purposes of 34 CFR 300.322(a)(1), "notifying parents of the meeting early enough to ensure that they will have an opportunity to attend" shall mean notification no later than ten days prior to the proposed date of the meeting. In addition, the district shall take whatever action is necessary to facilitate the parent's understanding of and participation in the proceedings at a meeting, including arranging for and covering the expense of an interpreter for parents who are deaf or whose native language is other than English. (Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

It is clear that adequate parental notice, involvement and participation in planning the student's IEP is necessary to fulfill procedural requirements. *Alexis v. Bd. of Educ. For Baltimore Cnty. Pub. Sch.*, 40 IDELR 7 (Md. 2003). It is undisputed that minor procedural flaws or technical violations do not automatically require a finding that a district has denied the student a FAPE. *Heather S. v. State of Wise*, 125 F.3d 1045, 46 (7th Cir. 1997).

However, there are times when violations will be determined to be more substantial and rise to the level of a denial of FAPE. In *Knable v. Bexley City School District* 238 F.3rd 755 (6th Cir. 2001), the parents sought reimbursement for placing their child in private school after they withdrew him from Bexley Public Schools.

Knable was first enrolled in a private school, began exhibiting behavioral problems in first grade and began receiving private therapy. He was moved into the public schools, and at age 10 he was diagnosed with ADHD, oppositional defiant disorder and dysthymia, and was admitted to an inpatient facility for his aggressive behaviors. He was found eligible for special education and an out of district placement was recommended. The student was hospitalized, received day treatment with no IEP, and then returned to public school with a BIP. He continued to exhibit behavioral problems, and failed three classes. The Knables found an out of state placement for him and sent him there. Months

later, a draft IEP was created, but no meeting convened. After their son was in the private placement for two years, they filed for due process seeking reimbursement.

In this case, the court found that the procedural violations the district engaged in, i.e., not convening an IEP meeting for nearly a year after the student was found eligible for special education services, resulting in the parents sending student out of state, caused substantive harm, seriously infringing on the parents' opportunity to participate in the IEP process and resulted in the loss of educational opportunity for the student. *Id.*

In the present case, the student's academic performance deteriorated for what can only be explained as the District not making the necessary adjustments needed in meeting the student's academic needs. In its defense, the District raises the issue that half of the current school year was devoted to participating in what has been labeled by the District as "bifurcated" due process hearings. The first due process complaint regarding this student was filed in November 21, 2008. The issues presented at the March 9 through March 12, 2009 hearing were limited in scope to "evaluations" necessary to be considered in planning for the student's transition to high school. The appointed Independent Hearing in that case held the following: a) The Psychological evaluation conducted by the District was appropriate; b) The District failed to appropriately evaluate the student by failing to conduct an occupational evaluation of the student. (IHO Decision—4/6/2009 @ P17) (The District, prior to the hearing, agreed to pay for other evaluations thereby eliminating the need for a decision on those other evaluations requested by the parents).

A second due process complaint was filed on March 16, almost immediately after the first hearing was concluded via letter to the District and received at ISBE on March 23, 2009 and prior to a Decision being rendered by the Hearing Officer on April 6, 2009. Once the Decision was rendered, it is unexplainable to this Hearing Officer, why it is the District did not take immediate action to set in motion the process for convening an IEP meeting with all necessary parties once the IEE's were completed and tendered to the District, including the Parents and the local high school staff, to begin planning for transition of the student. Instead the District took the position that the 2nd Due Process case put a hold on further proceedings. In light of the fact that the student was about to graduate from 8th grade, and that his next step was attendance at the local high school, the District's decision to do nothing was not in the best interest of the student. Given that the District agreed to pay for certain Independent Evaluations, the only real issue at the first due process hearing was whether their Psychological testing was sufficient and whether or not Occupational Therapy Evaluation should be conduct. The Hearing Officer found the District's Psychological Testing was adequate, but Ordered the District to further conduct OT testing. Once the IEE's were conducted and the District was presented with the testing results, albeit, even if the 2nd Due Process hearing process was initiated, the District could have been better prepared and poised to have convened an IEP Team meeting in view of impending end of the school year, perhaps even with the consent of the Parents and their attorneys, even while the present Due Process Hearing was moving forward from June 2 through June 5, 2009.

Statute of Limitations

The Parents requested an extension of the 2 year statute of limitations period to be allowed the opportunity to provide evidence from as far back as September 2004 to the present to show that the District failed to provide information/notice in writing to the Parents, Mexican immigrants, prior to their having to make important decisions concerning the education of their son and thereby supporting their claim that the District improperly limited the Parents' ability to participate in their son's educational planning from 2004 through the present by failing to provide timely and accurate translation into the Parents' native Spanish language. The issues were thoroughly briefed and presented to the Hearing Officer subsequent to the Pre-Hearing Conference and prior to the Hearing commencing. The Hearing Office takes notice of these pleadings and incorporates their respective averments, by reference into this Decision.

IDEA, 20 U.S.C. §1415(f)(3)(C) provides that:

"A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows."

IDEA allows a narrow set of exceptions to its time limitations. First, the statute of limitations shall not apply if a parent was prevented from requesting a due process hearing due to "specific misrepresentations by the local education agency that it had resolved the problem forming the basis of the complaint." 20 U.S.C. § 1415(f)(3)(D)(i); *see* 34 C.F.R. § 300.511(f)(1). In addition, the statute of limitations shall not apply where a parent failed to exercise their right to a due process hearing on account of "the local educational agency's withholding of information from the parent that was required under this subchapter to be provided to the parent." 20 U.S.C. § 1415(f)(3)(D)(ii); *see* 34 C.F.R. § 300.511(f)(2).

This second exception addresses the IDEA requirement that school districts provide parents with "a copy of procedural safeguards notice" 20 U.S.C. § 1415(d)(1)(A) and 34 C.F.R. §300.504, and also the requirement of prior written notice regarding identification, evaluation or educational placement of a child or the provision of FAPE to a child, or a refusal to initiate or change the identification, evaluation or educational placement of a child or the provision of FAPE to a child. 34 C.F.R. §300.503. §300.503(b) describes contents of notice, including a description of the action to be taken or refused, and an explanation of reasons for the action or refusal. In addition, prior written notice must include a description of each evaluation, record or report relied upon; and also include a statement that the parents have procedural safeguards and how they may access a complete list of safeguards.

§300.503(c)(1)(ii) requires that the notice be provided in the native language of the parent. §300.29 (a) provides that native language, when used with respect to an individual who is limited English proficient, means the language normally used by the parents to communicate. §300.322 sets out requirements for public agencies to ensure adequate and effective parent participation in IEP meetings. §300.322(e) states: "The public agency must take whatever action is necessary to ensure that the parent understands the

proceedings of the IEP Team meeting, including arranging for an interpreter for parents whose native language is other than English.”

IDEA also requires school districts to develop an individualized education plan (IEP) for each child with a disability (See §§ 1412(a)(4), 1414(d), with parents playing "a significant role" in this process. *Shaffer v. Weast*, 546 U.S. 49, 53, 126 S. Ct. 528, 163 L. Ed. 2d 387 (2005). In *Shaffer*, while discussing whether a child or school district bore the ultimate burden of proof in IDEA proceedings, the Supreme Court held that “the burden of persuasion as to certain elements of a plaintiff’s claim may be shifted to defendants, when such elements can fairly be characterized as affirmative defenses or exemptions.” *Shaffer*, 546 U.S. at 57. In *J.L. v. Ambridge Area School District*, 50 IDELR 219 (W.D. Penna. 2008) the Court construed the IDEA statute of limitations as “triggered when the parent knew or should have known about the action that forms the basis of the complaint.” Where the school district asserted the statute of limitations as a defense at the administrative level, that was construed as an affirmative defense, and the Court determined that the school district bore the burden of proof at the administrative level. Therefore, in the instant case, the District should have the burden at hearing to provide evidence that the Parents knew, or should have known of the actions that form the basis of their claims of denial of FAPE during the period of September, 2004 through March 16, 2007.

El Paso Indep. Sch. Dist. v. Richard R., 567 F. Supp. 2d 918 (W.D. Tex. 2008) recently discussed at length whether the failure to provide notice of procedural safeguards activates the second exception to the IDEA statute of limitations. Court stated that

When a local educational agency delivers a copy of IDEA procedural safeguards to parents, the statutes of limitations for IDEA violations commence without disturbance. Regardless of whether parents later examine the text of these safeguards to acquire actual knowledge, that simple act suffices to impute upon them constructive knowledge of their various rights under the IDEA. Conversely, in the absence of some other source of IDEA information, a local educational agency's withholding of procedural safeguards would act to prevent parents from requesting a due process hearing to administratively contest IDEA violations until such time as an intervening source apprised them of their rights. *El Paso*, at 945

The Court in *El Paso* concluded that failure to provide notice of procedural safeguards triggered the exception to the IDEA statute of limitations based on “withholding of information from the parent that was required under this subchapter to be provided to the parent.” The Court went on to consider whether provision of the notice of procedural safeguards at some point in the past may create a form of “constructive knowledge”, and firmly rejected that position:

The IDEA states, without equivocation, that local education agencies *shall* provide procedural safeguards following a request for special education and *must* provide written notice of a refusal to perform a special education evaluation. See 20 U.S.C. § 1415(b)(3), (d)(1)(A). Had Congress not intended to reduce the complexities of the IDEA into a form that parents could easily access and take advantage of, there would be no reason for the IDEA to require the states to offer parents an exhaustive explanation of procedural safeguards, written in the native language of the parents, and "written in an easily understandable manner." *Id.* §1415(d)(2).

Implicit within these detailed requirements is a recognition that reasonable individuals might not comprehend either their administrative or judicial rights in the event that a local educational agency violated its obligation to provide notice of IDEA procedural safeguards. More importantly, these notice requirements convey legislative acknowledgment that even with proper transmission of safeguards, parents still might not possess direct, actual knowledge of their rights to a due process hearing. Correspondingly, the IDEA's safeguard requirements serve another purpose beyond protecting parents by ensuring that they receive notice of their rights upon each request for evaluation. Indeed, the requirement also protects local educational agencies, as the act of transmitting those safeguards, which must be done upon each request, suffices to place parents on constructive notice of their rights to a due process hearing. The congressional intent behind such categorical imperatives is clear. More importantly, the legislative motivation underpinning these mandates demonstrates congressional recognition of the many amendments which the IDEA has undergone. *El Paso*, at 948-9

The Court in *El Paso* focused on a requirement that notice of procedural safeguards be provided was triggered by a denial of a request for an evaluation, because that was a principle issue in the case. The broad requirement that prior written notice be provided in the parent's native language when the parents are not capable of communicating effectively in English is quite broad, and encompasses all of the areas raised in the Parent due process complaint. Prior written notice under §300.503(a) include the following events:

- District decision to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child;
- District refuses to initiate or change the identification, evaluation, or educational placement of the child or provision of FAPE to the child.

For the foregoing reasons, Parents request a determination that the District has the burden to affirmatively show that the Parents knew or should have known of the violations complained of during the period September, 2004 through March 16, 2007.

The District, in its *Response to the Parents' Memorandum*, states that the Parents first requested of the District, independent educational evaluations be paid for by the District, this caused the District to file for due process to defend its evaluations. The Parents did not cross-file a request for due process until March 17, 2009 after the first hearing had concluded but prior to the Hearing Officer rendering his Decision. This, the District concludes, precludes the Parents from raising any claims which arose prior to March 17, 2007, the date of filing their request for Due Process Hearing. Additionally, the District avers that if the Parents were concerned about the status of limitations tolling, they should have filed for due process at the time when they requested IEE's of the District and requested same in their due process hearing request. The District maintains that the Parents have "always been provided with a copy of their procedural safeguards in Spanish, and there has been a translator at every IEP meeting held at the school" [name omitted for confidentiality reasons], to wit, the District attached several Exhibits noted above, in support of its position.

The District cites several cases as legal authority in support of strict adherence to the two-year statute of limitations. In *P.P. v. West Chester Area Sch. Dist.*, 557 F.Supp.2d 648 (E.D. pa. 2008), the reviewing court applied the two-year statute of

limitations in accordance with Pennsylvania law, and found that neither statutory exception to the two-year timeframe applied – even where the parents alleged that the district routinely and continually misrepresented information by providing misleading Child Find notice, discouraged referrals for evaluation, and failed to timely evaluate the student. The District Court stated in relevant part,

Even liberally construed, Plaintiffs' claims do not allege that the District specifically misrepresented that it had resolved their problem with P.P.'s education, as required by the first exception. The court interprets these allegations as their attempt to invoke the second exception regarding withholding information. However, this court agrees with the Hearing Officer and the Appeals Panel's conclusion that note of the Plaintiffs' evidence triggers application of either statutory exception. *Id* at 661.

In the instant case, the District claims, the Parents are unable to establish that they were any specific misrepresentations that their problems had been resolved, nor can the Parents establish that the District was withholding information as evidenced by the Exhibits attached to its Response..

The District also cites to *John Doe Sr. v. Westerville Sch. Dist.*, 50 IDELR 132 (S.D. Ohio 2008), as support for their claim that that Parents should have known of their claim prior to the date that they filed for due process. The District also cites, *Evan H. v. Unionville-Chadds Ford Sch. Dist.*, 2008 WL 4791634 (E.D. Pa.), for the premise that the exceptions to the two-year statute of limitations did not apply where there were no misrepresentations or withholding of information which **prevented the Parent from requesting the due process hearing.** (emphasis added)

In *Reply* to the District's Response, the Parents point out that the District's response includes three notice of procedural safeguards, in Spanish, that were signed by a Parent in 2004, 2005 and 2006, respectively. The Reply also includes a consent for evaluation form in Spanish that was signed as part of the student's three year evaluation in December, 2007. The consent form consists of two pages. Exhibit 2, attached to the District's Response is the Spanish language consent form and page two is the "domain sheet" which lists various evaluations to be conducted. That second page is in "English" which puts the "prior written notice requirement" at issue.

The District's *Response* includes a single notice of conference (e.g. notice of an IEP meeting) in Spanish, dated 1/16/08. There do not appear to be notice of conferences issued in Spanish, for any of the other IEP meetings held from 2004 through 2007. In addition, after each IEP meeting, a written IEP is prepared, together with a "conference recommendation." That form is to be issued in accordance with 34 C.F.R. §300.503 to formally advise the Parent of determinations made by the IEP teach regarding eligibility, services, placement, and so on. No conference recommendation in the Spanish language were produced by the District, nor were any IEPs in Spanish produced by the District. The Parent references the holding of *J.L. v. Ambridge Area School District*, 50 IDELR 219 (W.D. Penna. 2008) to promote its point that "the IDEA statute of limitations is 'triggered when the parent knew or should have known about the action that forms the basis of the complaint.' Lack of prior written notice of such essential milestones as the initial evaluation and the initial and subsequent IEP determinations provide sufficient basis to conclude that the

Parents lacked adequate information about the basis for complaining of District actions or inactions.” (Parent Reply Memo—P.2)

It is certain from the evidence produced or lack thereof by the District that a reasonable basis exists to question the District’s “letter of the law” compliance with IDEA. There is no question that throughout this student’s educational history, a consistent, proper, line of meaningful communication with this student’s Parents, is riddled with shortcomings. Could the District improve its communication? The answer is, yes. Could the Parents have been more diligent in taking a more active role to seek out answers to questions they may have had with respect to their questions concerning their son’s educational experience? The answer is, yes. This is particularly important given the amount of time each Parent testified to as being in the United States. The mother, when questioned by the District about her time residing in the United States, answered “17 years.” The father, when posed with the same question answered, “20 years.” Does the evidence show that the District’s lack of meaningful communication to the Parent shows that it was “intentional” or that they were out to “misrepresent” information to the Parents? The answer is, no. The information the Parent received as far back as 2004, 2005 and 2006, albeit sparse and certainly questionable as far as timely, most certainly should have raised a red flag to them then, that something important was happening with their child thereby causing them to challenge the District with providing them with sufficient information that would enable them to reach better, informed decisions concerning the education of their son. With this in mind, therefore, and given these specific facts and circumstances, this Hearing Officer is hard pressed to find that the two year statute of limitations period should be waived. The District is hereby put on notice, however, that serious flaws are apparent in their current communication efforts as it relates, at least, to native Spanish speaking families. The District would be well advised to take notice of the points raised by the attorneys for the Parents in their Complaint for Due Process and their two Memorandum’s and should be reviewed by the District in “fine tuning” their current practices so as to avoid a contrary ruling on similar, but more egregious, facts relating to native Spanish speakers. Specifically, with respect to “accurate and complete” translation of:

- IEPs
- Quarterly reports
- Report Cards
- Evaluation Reports
- Notice of Procedural Rights

Also, the District should consider establishing a regular protocol relative assuring that parents are provided meaningful interpreter services at all school meetings regarding their child’s education and the decisions needed to be made.

Other arguments were presented relative which party should therefore have the burden of documenting compliance with §300.503 and 300.504, in the instant case. The issue is moot consist with the ruling herein.

ORDER

A. The District shall convene an IEP meeting for its intended purpose and in compliance with Federal and State Laws and correlating Rules and Regulations. The IEP

meeting shall be convened, as soon as reasonably practicable, preferably within the first week when District staff are required to report to school, but no later than the first week of the beginning of the 2009-2010 school year for student attendance purposes and no later than Friday, September 11, 2009.

1. In addition to the District's evaluations and assessments of the student, the IEP team shall consider the independent evaluations conducted on behalf of the student, including:

- a) Psychiatric Evaluation, conducted in Spanish with the Parents and in English and Spanish with the student, on April 10, 2009 by [REDACTED]
- b) Speech and Language conducted by [REDACTED], M.A. on 3/20/2009.
- c) Occupational Therapy conducted by [REDACTED] M.S. on 5/17/2009.
- d) Assistive Technology conducted by [REDACTED]
- e) Psychological Evaluation conducted by [REDACTED] Psy. D. through the University of Illinois, on April 21, 29 and May 14, 2009.

B. Careful consideration on the part of District shall be given to the student's total needs as outlined in the IEE assessments and recommendations, especially the student's needs identified in the area of English Language Learner Services, Occupational Therapy, Social Work, and Assistive Technology and the amount of time recommended for each service to be provided on a daily/weekly/monthly basis to formulate an "appropriate" educational placement for the student transitioning from elementary to high school. The respective time allotments for the related services recommended by the IEE's appear reasonable and necessary.

C. Careful consideration shall be given by the IEP Team to the student's educational placement so as to assure this his specific identified needs are met in the LRE but also focus on the student's success in a small class, nurturing environment and that will also zero in on the student's overall disabilities identified in the District's own educational/social-emotional progress reports and assessments as well as those identified in the IEE assessments. The District shall consider placement in a private day therapeutic school setting, which may include [REDACTED].

D. To help in compensating the student for the academic deterioration suffered as evidenced by not only the District's own assessments but also the assessments provided by the IEE's, additional services shall be considered by the IEP Team and specifically addressed by the team with specific reasons written within the IEP as to why the services may not be needed if determined not to be:

- a) Tutoring for two hours per week for at least the first year of his high school experience;
- b) Additional speech therapy after school hours for at least one year and,
- c) providing the student with a laptop computer with appropriate software, at district expense, and provision of direct support in the use of AT resources for 60 mpw for one year.

E. The District shall make every reasonable effort to provide the Parents with prior written notice in compliance with Federal and State laws and Rules and Regulations in their native language, Spanish.

F. Within forty-five (45) days of receipt of this Order [REDACTED] shall submit proof of compliance to:

ILLINOIS STATE BOARD OF EDUCATION
PROGRAM COMPLIANCE DIVISION
100 NORTH FIRST STREET
SPRINGFIELD, ILLINOIS 62777-0001

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(s) and the Illinois State Board of Education. After a 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.

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.

The undersigned Hearing Officer certifies that he served copies of the aforesaid Decision and Order upon Parents and District, through counsel, and the Illinois State Board of Education at their stated addresses by depositing same with the United States Postal Service at Joliet, IL via certified mail, with postage prepaid before 5:00 p.m. on July 27, 2009.

Dated this 27 day of July, 2009.


HARRY A. BLACKBURN
HEARING OFFICER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Decision and Order was sent via e-mail and placed in the U.S. Mail via certified mail at Joliet, Illinois, and directed to:

[REDACTED]

[REDACTED]

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

before 5:00 p.m. on July 27, 2009.



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