

Case Number: 2010-0040

[Redacted]

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

Impartial Due Process Hearing Decision Cover Page

Instructions: Complete this form and return it along with the decision. The information collected on this form will be used for the purpose of indexing the decision by subject matter as required by 23 Illinois Administrative Code 226-695

District Name [Redacted]

Phone: [Redacted]

Superintendent [Redacted]
Address [Redacted]
Represented by [Redacted]

Parent Name [Redacted]

Phone: [Redacted]

Address [Redacted]
Represented by [Redacted]

Date and Timelines

Date of Written Request: 08/21/2009
Date of Pre-hearing Conf: 10/16/2009

Date of Hearing: 01/04/2010 to 1/6/2010 12:00:00 AM
Date of Decision:

Summary of Decision

The Parents filed a due process complaint alleging that the District that it failed to provide their son, a student with [Redacted] with appropriate educational services, including an appropriate placement, a current behavior intervention plan, and an appropriate IEP. The Parents also alleged that the District failed to utilize appropriate research-based teaching methodologies and failed to appropriately train staff to address the student's needs. The Hearing found for the Parents on each of these issues, but also ruled that the Student's current educational program, using discrete trial training, is appropriate. The Hearing Officer also found in favor of the District on issues relating to ESY and assistive technology, and denied the Parents' request for a trauma evaluation for their son at District expense.

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ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

-)
-) ISBE CASE NO. 2010-0040
-)
-) Kristine Anderson
-) Impartial Due Process
-) Hearing Officer

DECISION AND ORDER

This matter comes before me pursuant to the due process hearing request of the parents, Mr. and Mrs. [REDACTED] on behalf of their son, [REDACTED]. The family is represented by [REDACTED] of [REDACTED]. The District is represented by [REDACTED] of [REDACTED]. I have jurisdiction to decide this matter pursuant to 105 ILCS 5/14-8.02(a) et. seq., and 23 Illinois Administrative Code §§226.600 et. seq.

PROCEDURAL HISTORY

The Parents filed a due process complaint against the District on behalf of their son, [REDACTED] on August 21, 2009. The parties participated in mediation on September 14, 2009. The mediation was unsuccessful. A pre-hearing conference in this matter was held on October 16, 2009. The hearing took place on November 3-6, 2009. The parties were unable to complete the hearing during that time as planned, and agreed to resume the hearing on January 4-6, 2010. These were the first dates that everyone was available. The hearing concluded on January 6. I issued my decision on January 25, 2010.

Issues Presented:

The family alleges that the District violated the Student's right to a free appropriate public education in the following ways.

1. Failure to conduct a functional behavior analysis and develop an appropriate behavior intervention plan.
2. Failure to use scientifically based methodology.
3. Failure to provide [REDACTED] with an appropriate placement.
4. Failure to have an IEP in place for the beginning of the 2009-2010 school year.
5. Failure to provide sufficient ESY services.
6. Failure to address [REDACTED]'s assistive technology needs.

7. Failure to provide [REDACTED] an appropriate IEP.
8. Failure to adequately train staff working with [REDACTED]
9. Failure to complete an agreed upon independent psychological evaluation.
10. Failure to address [REDACTED]'s social-emotional issues.
11. Failure to provide [REDACTED] a FAPE.

Relief Requested:

The family requests the following remedies:

1. 40 hours per week combined school/home ABA program supervised by Behavior Solutions or a similarly qualified board certified behavior analyst for a full year, including ESY 2010.
2. Reimbursement for ESY 2009 ABA training and therapy.
3. Trauma evaluation by a qualified evaluator
4. Independent Assistive Technology Evaluation
5. Two years of compensatory services
6. Reimbursement for Dr. Daniels' evaluation

STATEMENT OF FACTS

[REDACTED] is an 11 year old 5th grader in the [REDACTED]. He was diagnosed with [REDACTED] at an early age, and began receiving special education services from the District when he was in pre-school. The events that gave rise to the Parents' due process complaint began during the 2005-06 school year when [REDACTED] was a student in Ms. [REDACTED]'s [REDACTED] class. At some point during the year, [REDACTED] began to exhibit severe anxiety that caused him cry, scream, and cover his ears in response to loud noises. (3/22/06 IEP, C571, Ex 8) Mrs. W., [REDACTED]'s mother, testified that the Parents also observed behaviors at home that were troubling. In late 2005, the Parents sought help from [REDACTED] and [REDACTED] co-directors of [REDACTED] Institute. (Jones-Bock CV, J9, Ex 7; Michalak CV, J21, Ex 20) [REDACTED] and [REDACTED] testified about their efforts to assist the family and school staff as the team sought to address [REDACTED]'s learning needs. Both have extensive experience in educating children with [REDACTED] and I found them to be knowledgeable and credible witnesses.

According to [REDACTED], she and [REDACTED] began providing assistance to the family in February 2006. Besides providing assistance at home [REDACTED] and [REDACTED] communicated regularly with District staff, offering suggestions about teaching materials and methods that might be effective with [REDACTED]. They also participated in most of [REDACTED]'s IEP meetings during the period at issue. They conducted training sessions for District staff and the family in such areas as discrete trial training and PECS. [REDACTED] testified, however, that she has never observed staff implementing either of those teaching methodologies, or the TEACCH method with [REDACTED].

To gain insight into his anxiety in the [REDACTED] classroom, [REDACTED] observed [REDACTED] in [REDACTED]'s classroom in early 2006. [REDACTED] provided the IEP team with a written summary of her observations. (3/06 Points for Discussion, J106, Ex 9) In it, she concluded that [REDACTED] had developed a fear regarding a disruptive classmate, which likely had impacted him emotionally, behaviorally and academically. For that reason, [REDACTED] stressed that the team needed to recognize and address [REDACTED]'s fear. [REDACTED] included possible solutions for the team to consider, such as temporarily placing [REDACTED] in a regular education class, or providing one-on-one instruction in

an alternate environment until he could be reintegrated back into the [REDACTED] class. (*Id.*)

It's unclear what steps the team took to address [REDACTED] anxiety and behavior during the 2005-06 school year. In the fall of 2006, however, the team conducted a functional assessment that specifically focused on [REDACTED] behavior of covering his ears. (10/8/06 Functional Assessment, C495, Ex 12) The FBA confirmed that [REDACTED] exhibited the behavior when certain students in the [REDACTED] class were noisy or disruptive. (*Id.*) Notably, [REDACTED] also exhibited the target behavior when he was presented with an unwanted request or when a difficult task caused him to become frustrated. (*Id.* at C496) The team created a behavior intervention plan to address the inappropriate behavior. (11/6/06 BIP, C490, Ex 13) It recommended several responses to [REDACTED]'s ear covering, including encouraging [REDACTED] to express his frustration through words or expressions. It also recommended that [REDACTED] be allowed to walk around, leave his seat, or leave the room to help reduce his stress. (*Id.* at C498)

By January, [REDACTED] anxiety in the [REDACTED] classroom had not decreased, and the team agreed to temporarily place him in a regular second grade classroom (with an aid) for the entire school day. (*See* 1/8/07 IEP, C428, 447, Ex 121) The team agreed to review his placement at the end of the third quarter. In the meantime, Ms. Walker provided services to [REDACTED] on a consult basis. (*Id.* at C447)

The 2007-08 School Year

On May 15, 2007, the team met to write an IEP for [REDACTED] that was to be in effect for the 2007-08 school year. This is the first IEP at issue in this case. Attendees included the Parents, [REDACTED], a third grade regular education teacher, [REDACTED], [REDACTED] speech and language therapist, [REDACTED], [REDACTED] Special Services Coordinator, [REDACTED], an occupational therapist, [REDACTED], a school psychologist, as well as Dr. Bock from IATTAP, and her colleague, Ms. Michalak. (5/17/07 IEP, C403, Ex 10) [REDACTED] testified about the IEP. She also testified about [REDACTED] performance in her classroom during the 2007-08 school year. I found her to be a credible witness.

First, the IEP includes [REDACTED]'s written comments concerning [REDACTED]'s strengths, level of academic performance and social emotional status. With respect to [REDACTED] social emotional status, the IEP makes clear that [REDACTED] anxiety had decreased to the point where he was able to attend [REDACTED] [REDACTED] class for the whole morning, and that he no longer covered his ears. Unfortunately, that behavior had apparently been replaced by an unwillingness to complete work. (*Id.* at C405) Despite this new behavior, the team chose not to complete a new functional assessment to address it. Rather, [REDACTED] testified that she simply implemented [REDACTED] 2006 BIP to address his unwillingness to complete work. Since the 2006 BIP allowed [REDACTED] to remove himself from situations that were upsetting to him, applying that strategy to address [REDACTED] avoidance of work may have had the unintended consequence of reinforcing the behavior.

In describing [REDACTED] then current academic performance, [REDACTED] reported that [REDACTED] was using level 1 of the Edmark reading series with some success. (*Id.* at C405) His sight vocabulary in May, 2007 included number words, days of the week, months, colors and some basic sight words. He was using Touch Math addition, money and time. He copied his schedule every morning, and also copied his spelling words (from a modified 2nd grade list). [REDACTED] also was participating in the 2nd grade cursive program. His second grade science and social studies were modified. (*Id.* at 405)

In deciding [REDACTED] placement, the team remained concerned about [REDACTED] anxiety in the [REDACTED] class. Thus, they agreed that [REDACTED] should attend [REDACTED] regular 3rd grade class for approximately fifty percent of his day. He was to receive science and spelling instruction in the regular class, and would attend lunch, P.E., recess, media center, music and art with the class. (*Id.* at C 419) [REDACTED] was to have an individual aid in [REDACTED] class, and [REDACTED] was to provide [REDACTED] with consultative assistance.

The team also agreed that [REDACTED] would attend [REDACTED] class for 450 minutes per week -- 90 minutes a day - - to receive instruction in the core academic areas of math, reading, and language arts. They wrote IEP goals and benchmarks for each of those areas. In math, [REDACTED] was to increase his math skills to a first grade level using the Touch Math program. (*Id.* at C409) The benchmarks specifically targeted single factor subtraction

and single factor mixed problems, telling time to the hour, half hour, quarter hour and five minute intervals. The reading goal also was to increase [REDACTED] skills to a first grade level by using the Edmark beginning series. A reading benchmark required [REDACTED] to complete Edmark comprehension worksheets. Other reading benchmarks required [REDACTED] to write personal information, such as his name, address and phone number, and independently write his daily schedule. (*Id.* C410) A separate goal for writing generally stated that [REDACTED] will increase his writing skills." The benchmarks required [REDACTED] to write sentences using a 4 square visual, capitalize sentences and names, use ending punctuation, and independently compile 4 sentences into a paragraph. (*Id.* at C416)

The May 15th IEP also specified that [REDACTED] was to receive 60 minutes per week of speech and language therapy and 30 mpw of occupational therapy. There are several speech and language goals and an occupational therapy goal. (*Id.* at C411-15) 5)

The team agreed that [REDACTED] was eligible to receive ESY services, but that the Parents were providing the summer programming at their request. (*Id.* at C422) Testimony from [REDACTED] confirmed that the Parents enrolled [REDACTED] in a summer camp for [REDACTED] students run by [REDACTED] and [REDACTED].

Consistent with his IEP, [REDACTED] testified that she provided [REDACTED] with approximately 90 minutes per day of instruction as specified by his IEP. To that end, she was asked about her teaching techniques and training in [REDACTED] methodologies. [REDACTED] responded that she has attended several seminars and workshops to familiarize herself with the PECS teaching methodology, as well as Handwriting Without Tears, and Neuronet. In addition, [REDACTED] has read about the TEACCH method, but has not received training. She believes her class is organized in a way that is consistent with TEACCH principles. She further noted that [REDACTED] and [REDACTED] provided her with training in classroom organization techniques, and data collection. During the time that [REDACTED] was in her class, [REDACTED] had received any training in applied behavior analysis (ABA). Significantly, though Walker had received some training in autism methodologies, she made clear that she did not rely on any particular technique when teaching [REDACTED]. Nor did she follow established protocol when utilizing teaching methodologies like PECS or the Edmark reading series. Instead, [REDACTED] testified that it was her practice to adapt programs in ways she believed were beneficial to [REDACTED] and her other students.

Though it was less than the previous year, [REDACTED]'s anxiety remained a concern. As early as September, for example, [REDACTED] wrote [REDACTED] that [REDACTED] had begun exhibiting anxiety again. (9/17/07 [REDACTED] email to [REDACTED] G206, Ex 31) About a week later, [REDACTED] sent an email to [REDACTED] in which she echoed [REDACTED] concerns. (9/25/07 Parent Email to [REDACTED] and [REDACTED] G207, Ex 128) Specifically, [REDACTED] described a field trip in which [REDACTED] "screamed his head off," and had to be taken back to school. Significantly, [REDACTED] believed that [REDACTED]'s outburst was attributable to the school's failure to use social stories to prepare him for new experiences and transitions. (*Id.*) She repeated her frustration in an email sent the following day, after school staff asked her to create a social story for an upcoming field trip. Rather than agreeing to write the social story, she noted that she intended to go to school to teach [REDACTED] how to write social stories. (9/26/07 Parent email to [REDACTED] G208, Ex 129)

While [REDACTED] apparently exhibited less anxiety in the regular classroom, the evidence indicated that he didn't benefit academically from his placement in [REDACTED]'s class. Indeed, [REDACTED] confirmed that the placement was not meeting [REDACTED]'s needs in an email to Ms. Michalak. [REDACTED] put it:

I feel as if I am doing [REDACTED] a great injustice in many ways this year. This third grade class, number aside, is all consuming!....I don't think we have stepped up the academics, and I have met with [REDACTED] only once since school started. (10/8/07 [REDACTED] email to [REDACTED] G209, Ex 32)

[REDACTED] meaningful academic instruction time was therefore limited to the 90 minutes per day that he received from [REDACTED]. As noted in [REDACTED]'s IEP, however, [REDACTED] was expected to address [REDACTED]'s needs in the core academic areas of reading, math and writing within that time frame. [REDACTED] challenges were made greater by the District's failure to provide her with the materials she needed. Specifically, though [REDACTED]'s IEP specifies that the Touch Math program was to be used (Ex 10 at C409), [REDACTED] testified that she didn't receive

the Touch Math subtraction materials until halfway through the school year. She also testified that the Parents provided her with Touch Math money. [REDACTED] testimony was confirmed by [REDACTED]. Indeed, [REDACTED] recalled that she was prompted to try and locate Touch Math subtraction after she realized that [REDACTED] was being given the same addition worksheets over and over again. (See 11/14/07 Parent email to Nelson, G-227, Ex 46) (requesting help from [REDACTED] in locating Touch Math materials)

According to [REDACTED], the family began working with [REDACTED], an ABA consultant, in the fall of 2007. [REDACTED] observed [REDACTED] at school and prepared a report of her observations that she subsequently shared with [REDACTED] IEP team. (4/10/08 Observation Report, Dist. p. 1057, Ex 114) On the day of her observation, [REDACTED] did not exhibit any heightened anxiety or notable behavior problems. [REDACTED] did observe, however, that [REDACTED] was frequently off task, and often failed to respond during lessons. She recommended that [REDACTED] would benefit from a teaching approach that focused on antecedents, behaviors and consequences, the "ABC" approach. Similarly, [REDACTED] also stressed the importance of finding effective reinforcers for [REDACTED], and using them frequently. (*Id.* at 1062-63) Notably, [REDACTED] also stressed that [REDACTED]'s teacher, aids and speech therapist were all "very interested" in learning ABA approaches to teaching [REDACTED]. (*Id.* at 1057)

[REDACTED], a program director at [REDACTED], also conducted an observation of [REDACTED]. She prepared a report of her observation that included a number of specific recommendations and ideas for staff. (5/22/08 [REDACTED] Observation Report, B1, Ex 39) [REDACTED] testified about her report and recommendations, and I found her testimony to be helpful. In particular, like [REDACTED] [REDACTED] observed that it was difficult to keep [REDACTED] engaged in activities. She recommended providing more motivators of high interest throughout the day. [REDACTED] also recommended collecting data to better identify [REDACTED]'s needs, teaching similar concepts -- like using the voice chart -- in all places, and using the computer for activities in reading and math. She also suggested that the team consider using the social worker for support and guidance in building [REDACTED]'s social skills. (*Id.* at B4-5)

When asked about the teaching methodologies that she observed, [REDACTED] testified that she observed the use of Neuronet, a sensory diet, and written prompts. She also saw choices being offered to [REDACTED]. While she observed PECS, she conceded it was not being used as intended. She agreed, however, that Neuronet is not a scientifically based method of instruction, nor is offering choices. Finally, [REDACTED] agreed that [REDACTED] needs interventions at home as well as at school.

• The May 28, 2008 IEP

The team met on May 28, 2008 to review [REDACTED] progress and to write an IEP for the next year. Since [REDACTED] was aging out of [REDACTED] class, finding an appropriate placement was a significant issue. Participants in the meeting included the Parents, [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], the Parents' ABA consultant, and [REDACTED] who was a resource room teacher at [REDACTED] school, and who, as it turned out, became [REDACTED] special education teacher in 2008-09. (5/28/08 IEP, C380, Ex 14)

In the meeting, the team discussed [REDACTED] then current academic performance, social/emotional status, as well as his speech/language performance. (*Id.* at C382) [REDACTED] description of [REDACTED]'s academic performance indicated that [REDACTED] had made little, if any, progress in reading, math and writing, as compared to his May 15, 2007 IEP. Specifically, in May, 2008, [REDACTED] continued to work in the Edmark Level I reading series, just as he had a year earlier. Unlike [REDACTED] 2007 IEP, the 2008 IEP does specify that [REDACTED] had mastered 91 words. But the description of those sight words, matched the previous year's description. (See Ex. 10 at C405) In math, [REDACTED] continued to work on the same skills from the previous IEP -- Touch Math addition, money and time "with limited success." (Ex. 14 at 382) Nor was there any discernable progress in his writing skills.

In the regular classroom, the IEP candidly notes that the size of the classroom was a "detriment to the teacher being able to spend more time with [REDACTED]." The IEP also states that [REDACTED] had not been a "participating player" in the third grade classroom, and that [REDACTED] worked in tangent to the rest of the students. (*Id.* at 382)

With respect to [REDACTED] social emotional status, [REDACTED] reported that [REDACTED] seemed fairly comfortable in

school during the school year. That statement seems at odds, however, with her observation that [REDACTED] became extremely anxious when a particular child in her room cried, or when [REDACTED] heard young children cry outside of school. Significantly, [REDACTED] also reported that [REDACTED] had hit, pushed, thrown chairs and lifted the table when these events happened. On the positive side, [REDACTED] noted that [REDACTED]'s expressive language seemed to be developing and [REDACTED] was verbalizing more. [REDACTED]'s observation was consistent with [REDACTED]'s testimony that she noticed a "big increase" in [REDACTED]'s language from the summer of 2007 to the summer of 2008.

The team also wrote IEP goals for [REDACTED] that are consistent with his unchanged academic performance levels. Indeed, the IEP goals are largely the same as the goals in [REDACTED]'s previous IEP. Like [REDACTED]'s 2007 IEP, for example, the May 28, 2008 IEP once again includes a reading goal that [REDACTED] will increase his reading to the first grade level. (Ex.14 at C388) Like the previous year, reading benchmarks require [REDACTED] to write his personal information and daily schedule. A benchmark aimed at comprehension is different in that it targets sight words up to the mid-second grade level. A new benchmark requires [REDACTED] to create words from word families. (*Id.*)

The math goal is nearly identical to [REDACTED]'s 2007 math goal. It specifies that [REDACTED] will increase his math skills to the first grade level, and the benchmarks once again focus on single factor subtraction, mixed problems, and telling time. A benchmark requiring [REDACTED] to identify quantities is new. (*Id.* at 387) The 2008 writing goal is likewise identical to the 2007 goal as are the benchmarks. (*Id.* at C394) The only difference is a 2007 benchmark requiring [REDACTED] to order sentences into a paragraph has been deleted from the 2008 IEP (*Id.*)

With respect to speech and language, [REDACTED] thought it necessary to continue working on some of the same skills that she worked on in 2007. She also added several new goals and benchmarks to [REDACTED]'s IEP. (*Id.* at C389-93)

Notably, though the May 2008 IEP continues to target reading, math and writing, [REDACTED]'s special education time was significantly increased from 450 to 875 mpw. (*Id.* at C397) [REDACTED] testified that she believed the increase was necessary so that [REDACTED] could get more of what he needed in an autism classroom. [REDACTED] continued to receive 60 mpw of speech and language and 30 mpw of direct occupational therapy. (*Id.* at C397) The team agreed that [REDACTED] was eligible for ESY services, but the IEP makes no mention of the type of services that were to be provided. Particularly notable is the fact that the team agreed [REDACTED]'s behaviors impeded his learning, yet did not initiate a functional behavior analysis or create a new behavior intervention plan to address the behaviors. (*Id.* at C395)

The parties had not come to a decision about [REDACTED]'s placement when the May 28th meeting came to a close. The District had proposed three possible placements for the Student, which the Parents were considering. One proposal was for [REDACTED] to attend a self-contained class for mildly cognitively impaired students at another school in the district. Another option was a classroom for moderately cognitively impaired students, also at a different school in the district. A third proposal would have allowed [REDACTED] to remain at his home school, but would have placed him in a class of students with emotional and behavioral disorders. According to [REDACTED], the parents gave careful consideration to each of these possible placements and concluded that none were appropriate for [REDACTED]. In listening to her testimony concerning the basis for that decision, it was evident that the Parents had legitimate reasons for questioning the appropriateness of the proposed placements.

In June, the Parents met with Superintendent [REDACTED] to continue discussions about a placement for [REDACTED]. (*See* 6/6/08 [REDACTED] Memo, Dist. p. 2389, Ex 177) [REDACTED] testified that the Parents had heard good things about [REDACTED] the resource room teacher at [REDACTED]'s school. They asked [REDACTED] about a possible placement that would allow [REDACTED] to attend Ms. [REDACTED]'s resource room for part of the day and be mainstreamed for part of the day for socialization purposes. [REDACTED] subsequently confirmed to the Parents that the District was willing to accommodate their placement request. (6/18/08 [REDACTED] email to Parents, G231, Ex 178)

The 2008-09 School Year

In August, 2008, [REDACTED] met with the Parents and with [REDACTED] to finalize the decision about [REDACTED]'s placement. According to [REDACTED], who appeared at the hearing, Superintendent [REDACTED] informed her that

██████████ was on her class list. Since she had not met the Student, ██████████ requested an opportunity to work with ██████████ for a couple of weeks to familiarize herself with his IEP, and determine if any revisions might be appropriate. The Parents and ██████████ agreed. ██████████ also testified that ██████████ assured her that the District would provide her with additional training in autism.

The IEP team met again on September 8, 2008, after ██████████ had had an opportunity to get to know ██████████ (See 9/8/08 IEP, C355, Ex. 49) This IEP is largely unchanged from the May 28th IEP, but there are some notable differences. Specifically, the team reduced the amount of time that ██████████ was to receive special education services to 700 minutes per week from 875 mpw. (*Id.* at C356) Of those 700 minutes, ██████████ was to receive 113 minutes per day of special education instruction in reading, math and writing. (*Id.* at C373)

In addition, while the May 28th IEP specified that ██████████ behaviors impeded his learning, his September 8th IEP states that ██████████ behaviors *do not* impede his learning. (*Id.* at C370) The team's determination is at odds with statements about ██████████ social emotional status, which specify that ██████████ "gets extremely anxious" when he hears children cry, and that, "[h]e has hit, pushed kicked and shoved items in his path when this happens." (*Id.* at C357) Indeed, school psychologist Trace testified that, had she been at the May 28th meeting when these behaviors were first discussed, she would have recommended that the team complete a new functional behavior analysis and behavior intervention plan for ██████████.

Finally, with respect to ██████████ IEP goals, the September 8th IEP is essentially identical to the May 28th IEP. ██████████ did recommend that some of ██████████ writing benchmarks be made less demanding for ██████████. (*Id.* at 366) ██████████ also changed ██████████ reading curriculum from the Edmark series to Reading Milestones. (*Id.* at C357)

The evidence showed that ██████████ was conscientious in her efforts to implement ██████████ IEP. She testified, for example, that she regularly conferred with ██████████ and ██████████ concerning ██████████ instruction. ██████████ also rearranged her teaching schedule to allow her more one-on-one instruction time with ██████████. Finally, to help ██████████ feel more at ease in his learning environment, ██████████ reconfigured her classroom so that ██████████ could have his own fort-like learning space. For the first quarter, ██████████ believed that ██████████ had progressed from what she had observed at the beginning of the year. (See Special Education Progress Report, Dist. p. 1186, Ex. 63) As ██████████ described it, ██████████ had initially refused to do much work but became more cooperative as the quarter progressed.

By the second quarter, however, ██████████ behavior began to deteriorate. According to ██████████ testimony, ██████████ exhibited more echolalia, increased his voice level, and became more aggressive, including acts of physical aggression towards an aid. ██████████ consulted with ██████████ and ██████████. Initially, the three believed that ██████████ behavior could be addressed through informal interventions that included meeting with the parents. ██████████ recalled that she tried to schedule a meeting with the Parents in November, but was unsuccessful. In the meantime, ██████████ negative behaviors continued to escalate to the point where ██████████ felt it necessary to convene a domain meeting to decide how to address them. The domain meeting took place on January 27, 2009.

In preparation for the domain meeting, ██████████ completed a referral form that provides significant insight into ██████████ behaviors and academic performance at the time. (School Report/Referral for Case Study Evaluation, B13a, Ex 52) In particular, ██████████ made clear that ██████████ behavior has prevented him from learning and that it had become more aggressive. (*Id.* at B15) Tellingly, though ██████████ was mainstreamed for fifty percent of the day, ██████████ stated that he was "unable to learn with his age appropriate peers." (*Id.* at B13a, B15) She described ██████████ academic performance as being at the kindergarten to first grade level in reading, spelling and writing. Language skills were at the first grade level and ██████████ math skills were at the first to second grade level. (*Id.*) In response to this information, the team (including ██████████) agreed that ██████████ school psychologist would conduct a functional assessment. (1/15/09 Domain Review, C589, Ex 117)

Ms. Trace, who has conducted numerous functional assessments in her position as a school psychologist,

testified about her functional assessment of [REDACTED]. It consisted of teacher consultations, teacher and parent rating scales, daily log documentation, a review of student records, school and classroom observations, and interviews with parents and other professionals. (See 4/14/09 Report of Functional Assessment, C306, Ex 118) Curiously, though her report analyzes and interprets the information gained through these sources, [REDACTED] testified that she destroyed all of the underlying data prior to sharing her report with the team. She apparently believed this was necessary to protect [REDACTED] privacy. The report, however, does offer some description of the data that she collected.

Specifically, [REDACTED] reported that several of [REDACTED] behaviors appeared to have an impact on his learning, including worrying, physical lashing out, increased vocalizations/echolalia and reactions to crying. (*Id.* at C310) [REDACTED] believed that [REDACTED] was reacting to the unpredictability of his many environments at school. She also believed that his behaviors evidenced [REDACTED] desire to gain control, security, safety and consistency by his teachers. (*Id.* at C311) Significantly, though [REDACTED] observed that [REDACTED] had difficulty adjusting to change, she also testified that she did not see any social stories being used to help [REDACTED] prepare for transitions.

Based on her findings, [REDACTED] recommended that the team create a behavior management plan that would help [REDACTED] to develop coping skills. [REDACTED] also suggested that [REDACTED] physical aggression could be diminished by providing verbal cues, and by removing him from situations that [REDACTED] perceived as threatening. (*Id.*) Notably, [REDACTED] report fails to offer any new intervention strategies for [REDACTED]. Moreover, [REDACTED] report stops short of recommending that the team consider changing [REDACTED] schedule, despite her belief that [REDACTED] was being exposed to too many environments and people.

The team met on April 14, 2009 to consider the results of [REDACTED] functional assessment and to write an IEP and behavior intervention plan for [REDACTED] (4/14/09 IEP, FBA/BIP, C300, Ex 15). [REDACTED] reported on [REDACTED] then current social/emotional and academic status. Specifically, [REDACTED] observed that [REDACTED] anxiety had increased during the second semester and that he was "stressed and on high alert." (4/14/09 Draft IEP, Report of Social Emotional Status, C312, C314, Ex 15a) She further reported that [REDACTED] was unable to remain on task, because he was listening for crying. When redirected, he had to start all over again. (*Id.*) Not surprisingly, [REDACTED] also reported that [REDACTED] had not made much progress academically during the second semester. (*Id.* at C314)

According to [REDACTED] Director of Special Services, and attendee of the meeting, both [REDACTED] and [REDACTED] voiced concern that the FBA was not complete. The team decided to conduct additional assessments of [REDACTED], and immediately held a domain meeting to determine the types of assessments that were to be administered. (4/14/09 Identification of Needed Assessments, C295-99, Ex 45) The team agreed to evaluate [REDACTED] academic achievement, functional performance, cognitive functioning, communication status, motor abilities and social/emotional status. Each of the assessments were to be conducted by private evaluators. Specifically, [REDACTED], of Behavior Solutions, was to conduct a functional analysis of [REDACTED] behavior. With respect to the remaining elements of the evaluation, the parties agreed to select two evaluators who would collaborate in their assessments of [REDACTED] at the District's expense. The Parents selected [REDACTED], and the District selected [REDACTED]. As will be discussed in greater detail below, the District ultimately determined that it would not agree to retain [REDACTED]. The Parents nevertheless asked [REDACTED] to proceed with his assessment of [REDACTED] and are seeking reimbursement for his efforts.

- [REDACTED], Behavior Solutions

[REDACTED] is a board certified behavior analyst employed by Behavior Solutions. (See Behavior Solutions Team Description, G156-57, Ex 67) As noted above, [REDACTED] was retained by the District to conduct a functional assessment of [REDACTED]. She continues to work as a consultant for the District helping to establish an educational program for [REDACTED] using ABA methods. [REDACTED] testified about her functional assessment of [REDACTED] and her subsequent involvement in creating and overseeing a discrete trial training program for [REDACTED]. Her testimony was very informative and helpful.

As part of her functional assessment, [REDACTED] observed [REDACTED] at his school for two days, specifically focusing on several target behaviors. (6/7/09 Functional Behavior Assessment and Recommendations, A53, Ex 69) The target behaviors were: [REDACTED] inappropriate vocalizations/verbalizations, noncompliance and physical aggression. (*Id.*) Each time [REDACTED] observed a target behavior, she also analyzed the antecedent and consequence of the behavior.

With respect to antecedents, [REDACTED] observed several different antecedents, which varied depending on the target behaviors. Significantly, in analyzing consequences, [REDACTED] observed that school staff often reinforced [REDACTED] maladaptive behaviors by allowing escape avoidance (removing tasks or making them easier), and access to preferred items and activities. (*Id.* at A55-6) In [REDACTED] opinion, the fact that [REDACTED] was frequently in the presence of other students made teachers more likely to reinforce his maladaptive behaviors. Because these behaviors have been reinforced for such an extended period, [REDACTED] stressed that they might be persistent and resistant to extinction. (*Id.*)

[REDACTED] made a number of recommendations to address [REDACTED] behaviors. First and foremost, [REDACTED] recommended that her suggestions be implemented by a board certified behavior analyst "given the intensity and long history of [REDACTED] behaviors." According to [REDACTED], a BCBA could work directly with staff to model procedure, provide corrective feedback and assistance to ensure success. (*Id.* at A56) [REDACTED] report also includes many specific recommendations for working with [REDACTED]. (*Id.* at A56-58)

Though [REDACTED] was unable to attend, the team considered her report in an IEP meeting that took place on June 10, 2009. Whether it was at this meeting or a subsequent meeting, (there were several over the next few months) the team agreed with [REDACTED] recommendation that a BCBA should work with staff to implement an educational program for [REDACTED]. Thus, as will be discussed more fully below, [REDACTED] has continued to act as the District's consultant to implement the recommendations in her report.

[REDACTED] is a pediatric neuropsychologist who was retained by the District in the spring of 2009 to assist in conducting a comprehensive evaluation of [REDACTED]. She testified that, initially, she understood that she was to collaborate with [REDACTED] on [REDACTED] evaluation. After the District chose not to retain [REDACTED], [REDACTED] stated that they still collaborated on certain aspects of the evaluation, e.g., they discussed which tests to administer. She stressed, however, that she did not rely on any of [REDACTED] testing in her findings or recommendations. [REDACTED] presented the report of her evaluation at the hearing. (*See Comprehensive Cognitive and Social/Emotional Evaluation Report, A38, Ex 2*) I found her to be a credible and knowledgeable witness.

In conducting her evaluation, [REDACTED] administered a number of tests to assess [REDACTED] cognitive skills, academic achievement, receptive and expressive language, and visual motor and perceptual skills. She also administered the [REDACTED] Diagnostic Observation Scale to gain additional insight into specific treatment recommendations. (*Id.* at A44-6) Prior to administering any tests, [REDACTED] conducted a classroom observation of [REDACTED] in part, to ensure that [REDACTED] would be accustomed to her presence when the testing began. The report notes that [REDACTED] believed the testing results were a valid representation of [REDACTED] neurobehavioral strengths and weaknesses. (*Id.* at A43)

In testifying about the results of her evaluation, [REDACTED] stated that [REDACTED] is capable of higher level reasoning skills. His behaviors, which are consistent with a diagnosis of [REDACTED], have prevented [REDACTED] from functioning on grade level. In particular, tests indicate that [REDACTED] receptive language skills are consistent with an age equivalent of 7 years 11 months. [REDACTED] expressive language was measured to be an age equivalent of 4 years 8 months. Academically, [REDACTED] functions at the first grade level in his ability to read sight words and comprehend what he has read. (*Id.* at A45) [REDACTED] testified that she did not attempt to measure [REDACTED] math skills beyond a fundamental level of ability. Significantly, [REDACTED] stressed her clinical opinion that [REDACTED] should be further along than he is.

Based on the results of her testing, [REDACTED] concluded that [REDACTED] requires an intensive and specific program

to address his autistic behaviors, such as ABA or TEACCH. The components of the program should include small student/teacher ratio and a full day, year round curriculum. (*Id.* at A48) [REDACTED] specifically noted that [REDACTED] would benefit from a rigorous, ABA program that integrated discrete trial learning. (*Id.*) Notably, [REDACTED] stressed that [REDACTED] program should not be limited to school but should also be implemented at home to provide consistency, and to extend and intensify his intervention. Indeed, [REDACTED] testified that a home program for [REDACTED] is critical to ensuring that he is able to generalize the skills and behaviors that are being taught. To that end, [REDACTED] recommended that [REDACTED] be involved in structured social and educational programming for no less than 25 hours per week *in addition* to his school day. (*Id.* at A48; *See also* Notes of 6/10/09 IEP Meeting, C191, C251, Ex 10) [REDACTED] stated that daily communication between home and school is vital for the success of academic, behavioral, organizational and social interventions. (Ex 2 at A49)

[REDACTED] also concluded that [REDACTED] should receive services from an [REDACTED] consultant to provide [REDACTED] teachers with information about educational strategies that would benefit [REDACTED] in the classroom. She stressed the importance of carefully formulating -- and revising when necessary -- [REDACTED] s IEP goals, in order to effectively guide and measure [REDACTED] progress. Thus, when asked, [REDACTED] agreed that it would be helpful for the team to meet every few months to assess [REDACTED] s progress. [REDACTED] also recommended that [REDACTED] be reevaluated in one year to further assess his progress and to generate new goals. (*Id.* at A51) She also stated that [REDACTED] should receive an assistive technology evaluation. Assistive technology, according to [REDACTED] would help [REDACTED] overcome his significant speech and language delays. (*Id.* at A50)

Finally, [REDACTED] was asked her opinion about whether [REDACTED] program should be limited to ABA methodologies, or whether an eclectic approach might be appropriate. She testified that she believes that ABA training should account for most of [REDACTED] program, but noted that other methods could be used in order to maximize [REDACTED] skills. For example, [REDACTED] believes that [REDACTED] teachers should be able to rely on their judgment in determining how best to address [REDACTED] emerging skills. While she agreed that this is sometimes called an eclectic approach, she also stressed that all interventions with [REDACTED] should be established, evidence-based treatments as identified by the National [REDACTED] Center's National Standards Report. (*See* National [REDACTED] Center's National Standards Report, 11-1168, Ex 6)

[REDACTED] is a clinical psychologist who has experience in evaluating and treating children with [REDACTED]. (*See* Daniels CV, J1, Ex 102) Along with [REDACTED] [REDACTED] evaluated [REDACTED] and shared his observations and recommendations with [REDACTED] IEP team in June 2009. [REDACTED] did so at the Parents' request after the District decided not to retain him.

According to his report and testimony, [REDACTED] administered a number of tests to [REDACTED] to assess his intellectual functioning, language skills, academic achievement and visual motor skills. (Report of Psychological Evaluation, A10, A16, Ex 103) Notably, [REDACTED] believed his own testing results were low estimates of [REDACTED] s current level of functioning. (*Id.* at A18) He relied instead on [REDACTED] testing results, and informal observations to conclude that [REDACTED] has higher than average intellectual ability. (*Id.* at A19, A23)

In addition to testing, [REDACTED] report includes a description of [REDACTED] educational history, and also summarizes Parent and teacher responses to adaptive and behavior rating scales. Particularly relevant to [REDACTED] was a 2005 incident in which a paraprofessional was accused of kicking a child in [REDACTED] s classroom. (*Id.* at A12) While the allegations were never verified, [REDACTED] was concerned by the Parents' report that [REDACTED] anxiety greatly increased, and he experienced a significant change in functioning at around the same time. (*Id.* at A12, A21-2) [REDACTED] concluded that [REDACTED] may have witnessed a traumatic event, and may be suffering from post traumatic stress disorder. He noted, however, that the diagnostic picture concerning the trigger to [REDACTED] s anxiety has been complicated by the District's use of worksheets that require [REDACTED] to note how frequently he hears crying during the day. According to [REDACTED] s, such worksheets would likely reinforce [REDACTED] s hypervigilance toward crying, rather than extinguish it. (*Id.* at A23) [REDACTED] concluded that [REDACTED] should receive a trauma evaluation to properly diagnose his anxiety. (*Id.* A29)

██████████ made a number of other recommendations, many of which were the same or similar to ██████████ recommendations. Specifically, ██████████ recommended that ██████████ receive an educational program using research-based practices such as discrete trial training (ABA), pivotal response treatment, which also utilizes principles of ABA, or TEACCH. ██████████ stressed that none of these practices would be effective without the proper supervision. (*Id.* at A24) Thus, like ██████████, ██████████ recommended that the District retain a consultant to oversee ██████████ educational program. The consultant, according to ██████████, should have expertise in training and supervising the implementation of a specific, research-based methodology for treating ██████████. (*Id.* at A24) ██████████ also agreed with ██████████ recommendation that ██████████ program must be year-round and include both school and home-based services. While Dr. Johnson recommended 25 hours a week of home services, ██████████ believes that 15 hours a week of home services would be appropriate for ██████████ in addition to his school day. (*Id.*) Significantly, in testifying about his recommendations, ██████████ stressed his belief that ██████████ will require these services for a minimum of 3 years or face the likelihood of severe emotional and behavioral difficulties.

Finally, ██████████ also agreed with ██████████ emphasis on the need to facilitate social interactions between ██████████ and his peers. ██████████ specifically recommended the Circle of Friends Curriculum, as well as games and activities that require social interaction. (*Id.* at A27) He also recommended that an assistive technology evaluation be administered to ██████████ as soon as possible. (*Id.* at A28)

As noted above, the Parents retained ██████████ to complete his evaluation of ██████████ after the District decided to sever its relationship with ██████████. The District made this decision after ██████████, ██████████ Special Services Director, participated in a telephone conversation with ██████████ that caused her to question his objectivity. Specifically, according to ██████████ testimony and notes of the conversation, ██████████ placed a call to ██████████ on May 22, 2009, to discuss an upcoming IEP meeting, and to discuss details of the District's proposed contract with ██████████ (Notes of May 22, 2009 Phone Conversation with ██████████, Ex. 109)

██████████ asserted that during the conversation, ██████████ requested documents relating to the incident in 2005 in which a paraprofessional was accused of kicking a student in ██████████ class. ██████████ made clear that he wanted the notes to help him assess whether ██████████ anxiety was rationally or irrationally based. ██████████ explained that such information was relevant to determining the appropriate behavioral interventions for ██████████ (*Id.*)

At some point thereafter, the conversation turned to the issue of ██████████ attendance at ██████████ IEP meeting. ██████████ suggested that he attend by telephone to save the District the expense of his travel time. According to ██████████, ██████████ also stated:

If I find that you did something wrong, you could be looking at around \$100,000 including legal fees and compensatory time. You know that ██████████ have the resources to take this case all the way to the next level. Wouldn't it make more sense to spend that money on programming that can be used for ██████████ and other students instead of lawyers' fees?

(*Id.*) In the same conversation, ██████████ recommended that ██████████ participate in a training that he was going to conduct in the ██████████ School District. ██████████ suggested that ██████████ could split the \$100,000 cost with ██████████. (*Id.*)

██████████ testified that she believed the tone of the conversation was threatening. Indeed, she was so concerned by the discussion that, after it was over, she immediately made notes of what had been said, while the comments were still fresh in her mind. (See ██████████ Handwritten Notes, Dist. p. 1950, Ex 156) I found ██████████ testimony to be credible, particularly in light of the fact that she had made contemporaneous notes. Moreover, ██████████ agreed with much of ██████████ description of the conversation. He admitted, for example, that he said legal fees can be very expensive, and that ██████████ had argued cases before the federal appeals court. He also admitted that he suggested that the District should spend its money on programming, rather than legal fees. Finally, ██████████ conceded that he suggested that Jacksonville participate

in the training with [REDACTED], which would cost up to \$100,000.

He expressly denied, however, saying that the District faced \$100,000 in legal fees if he found that they did something wrong.

Based on this evidence -- which I found to be troubling -- I conclude that the Parents failed to show that the District acted unreasonably when it severed its relationship with [REDACTED]. My conclusion is further buttressed by the fact that the District had not finalized a formal agreement with [REDACTED] when it made its decision. That said, it is important to note that there was nothing in [REDACTED] report, or in his testimony about [REDACTED] that caused me to question his impartiality. To the contrary, [REDACTED] conclusions and recommendations concerning [REDACTED] are nearly identical to Dr. Johnson's.

The Summer of 2009: IEP Meetings and ESY

As noted above, the team met to consider the reports of [REDACTED], [REDACTED], and [REDACTED] on June 10, 2009. (See Notes of 6/10/09 IEP Meeting, Dist. 1296-1327, Ex. 157) The notes of the meeting indicate that the team engaged in a comprehensive discussion about the type of program that [REDACTED] needed. In particular, the Parents voiced their concern that [REDACTED] placement in the LD resource room had caused heightened anxiety in [REDACTED]. The Parents also stated their belief that [REDACTED] needed a teacher who was formally trained to work with students with [REDACTED]. (See 6/22/09 IEP, Notes of 6/10 Meeting, C158, 161, Ex 159) The team also discussed extended school year services and IEP goals for [REDACTED]. It is unclear what, if any decisions, were made that day, but the team reconvened on June 22, 2009 to continue planning for the Student.

At the June 22nd meeting, the team first focused on creating goals and objectives for [REDACTED]. They agreed to ten goals that address [REDACTED] needs in reading, math, increasing social skills, i.e., increasing social interaction and expressing feelings, writing, communication, sensory processing skills (OT) and compliance. Notes of the meeting indicate that all parties, including the Parents, were in agreement on the goals when they were completed. (Ex. 158 at C274)

The team also discussed ESY services for [REDACTED], [REDACTED], who was one of the attendees, (See Ex. 158 at C259) stated her opinion that [REDACTED] needed an intensive program with evidence-based instruction. (*Id.* at C159) The Parents agreed with [REDACTED]'s recommendation, and specifically requested that [REDACTED]'s ESY program be a home ABA program. (*Id.*) Apparently, both the District and Parents had tried unsuccessfully to contact Behavior Solutions to determine whether it could provide those services. The team considered other ESY options within the District and at a nearby private school, which the Parents rejected. Thus, no final decision was made concerning ESY during the June 22nd meeting. Likewise, though the team discussed placement options for the fall, no final decision was made on that day.

On June 26, 2009, the District confirmed Behavior Solutions' availability to work with [REDACTED] in July and August, and provided the Parents with a training schedule for [REDACTED]. (6/26/09 [REDACTED] email to [REDACTED], G140, Ex 145) The email makes clear that the District agreed the Parents would receive training in the program, as well. Two weeks later, the District confirmed its agreement to allow [REDACTED] of Behavior Solutions to set up a summer program for [REDACTED] in the [REDACTED] home. (See 7/10/09 [REDACTED] Letter to [REDACTED] H51, Ex 147) Curiously, though Behavior Solutions specializes in ABA interventions, the District insisted that Behavior Solutions would use an eclectic approach, not a strictly ABA program. The District also made clear that the program would be implemented by Behavior Solutions personnel, and that the District would not agree to pay for other instructors for [REDACTED]. (*Id.* at 51-52) Evidence showed that [REDACTED] did provide training to two of the Parents' care providers, but according to [REDACTED] this was at the Parents' expense. (See, e.g., 7/20/09 Parent Email to [REDACTED], G30, Ex. 78)

Evidence confirmed that [REDACTED] implemented a summer program for [REDACTED] as agreed to by the District. (See 8/10/09 [REDACTED], Dist. 1493, Ex 99) Out of necessity, early sessions focused more on observing and assessing [REDACTED], and training implementers. [REDACTED] was receiving some instruction, however, by mid July. His ESY home program continued until the end of August. (See Ex 145)

The IEP team met again on August 11, 2009. (8/11/09 IEP, C100, Ex 17) The focus of the discussion was on [REDACTED]'s placement for the fall. The team was in agreement that [REDACTED] would continue to receive the discrete trial training that he had received in his summer ESY program. [REDACTED] was to continue to train staff and oversee implementation of [REDACTED]'s program. (*Id.* at C102) The team disagreed, however, on where the program should be located. The Parents favored continuing [REDACTED]'s program at home for the time being, with [REDACTED] returning to school when his anxiety had diminished. (*Id.*) The District favored returning [REDACTED] to a self-contained school setting as soon as school began.

[REDACTED], who attended by telephone, stated her opinion that a program that was identical to the home program could be set up at school. She specifically recommended that [REDACTED] receive individual instruction in a separate classroom provided by a trained paraprofessional. The paraprofessional would be closely monitored by a classroom teacher. (*Id.* at 102) [REDACTED] conceded that [REDACTED]'s maladaptive behaviors would likely increase at first, she was optimistic that the Parents and staff had a "good handle" on behavior management. To that end, [REDACTED] noted that she was completing a behavior management plan that could be transferred from home to the school setting. (*Id.* at 102-3) Though the Parents did not agree on the timing of the placement, the team decided to place [REDACTED] at [REDACTED] in a special education placement for 100 percent of his day. The team did not take any action on [REDACTED] and [REDACTED] recommendation to provide [REDACTED] with 20-25 hours per week of home instruction. They agreed to meet again on September 29, 2009.

The 2009-10 School Year

As planned, the team held another IEP meeting on September 29, 2009. (9/29/09 IEP, C1, Ex 4) The team added two IEP goals intended to address [REDACTED] aggression and inappropriate vocalizations. When asked about these goals at the hearing, [REDACTED] testified that she did not believe that the goal concerning aggression was written in a measurable way. With respect to the vocalizations goal, [REDACTED] liked the goal, but felt that the benchmark evaluation criteria were inconsistent with the goal.

The September 29th IEP provides a detailed description of [REDACTED] placement. Specifically, it makes clear that, for the 2009-10 school year, [REDACTED] will attend a self-contained special education classroom, with instruction provided in an individualized setting using an ABA program. (*Id.* at C31) The IEP also specifies that qualified behavior specialists, including [REDACTED], will train staff on appropriate scientifically-based methodologies and techniques, including ABA and ABA discrete trial. In addition, the behavior specialist will implement and monitor the program, and advise the District as to [REDACTED] progress. The IEP specifies that the team will meet in December and March to discuss the Student's progress and determine if any changes are necessary to the current program. (*Id.* at C31-2)

[REDACTED] testified about [REDACTED] performance since his discrete trial training program has been implemented. Based upon her observation and comprehensive supporting data, [REDACTED] believes the program is appropriate for [REDACTED] and that he is making academic and behavioral progress. Specifically, with respect to academics, [REDACTED] testified that [REDACTED] has met several of his IEP benchmarks. Behaviorally, [REDACTED] noted that [REDACTED]'s level of aggression and instances of crying have decreased. She also stressed that, in her opinion, [REDACTED] is blossoming at [REDACTED] school. She sees that [REDACTED] and the staff have a good rapport. She also has observed [REDACTED] use more spontaneous speech, and interact more with his peers. She conceded that [REDACTED] has continued to exhibit some avoidance behaviors, but she has communicated some suggestions for addressing that issue.

[REDACTED] testified that she also believes [REDACTED] has benefited from his current ABA program. Specifically, she testified that [REDACTED] exhibits more compliance and less stress and anxiety. From the reports that the school is providing, she stated that it appears [REDACTED] is making academic progress. Ms. W. made it clear, however, that she still has concerns about the services that the District is providing. In particular, [REDACTED] stressed the lack of a home program, which she believes is necessary for [REDACTED] academic and social needs.

The Parents assert that there are other deficiencies in [REDACTED]'s current educational program, as well. Specifically, the Parents do not want the District to curtail [REDACTED]'s current discrete trial program prematurely. They stress

that, while [REDACTED]'s current IEP contemplates increased mainstreaming for [REDACTED] the IEP is devoid of any criteria that establishes when additional mainstreaming will be appropriate, or considered successful. Second, the Parents also contend that the behavior intervention plan currently incorporated into the September 29th IEP, is deficient because it is substantively different from the plan prepared by [REDACTED]. This is contrary to the team's intention that [REDACTED] BIP was to be attached to [REDACTED]'s IEP and implemented. (See 9/25/09 [REDACTED] fax to [REDACTED], C58, 60, Ex 96) The evidence supports the Parent's contention. The revised BIP, for example, specifies that [REDACTED] must be removed from a situation when he becomes verbally disruptive. (*Id.* at C54) [REDACTED] testified that she does not agree with that strategy and didn't include it in the plan she prepared.

CONCLUSIONS OF LAW

The Individuals with Disabilities Education Act (IDEA) establishes that all students between the ages of 3 and 21 are entitled to a free appropriate public education. (FAPE) (34 C.F.R. § 300.301) To satisfy that obligation IDEA requires districts to identify and evaluate students who are in need of special education and related services. (34 C.F.R. §§ 300.111(a), 300.301, 300.303-300.305) Once identified, IDEA mandates that a district address a student's educational needs by providing the student with an individualized education program in the least restrictive environment. (*Id.* at §§ 300.111, 300.112, 300.114)

In analyzing whether a school district has provided FAPE, the starting point must be *Board of Educ. v. Rowley*, 458 U.S. 176, 188-89 (1982). That case established that a free appropriate public education is an education "specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction." In *Rowley*, the United States Supreme Court set forth a two pronged test to determine whether a school district has offered a student FAPE. The first inquiry is whether the school district has complied with the statutory procedures required by IDEA. (20 U.S.C. 1401 et seq.) IDEA establishes that procedural violations cannot be deemed a violation of FAPE unless they have impeded a child's right to a free appropriate public education, significantly impeded the parents' right to participate in the decision making process, or caused a deprivation of educational benefits. *Id.* at § 1415(f)(3)(E)(2007)

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 this requirement, *Rowley* establishes that a school district must provide a "basic floor of opportunity" in the form of specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child. *Id.* at 201. In addition, FAPE requires a school district to "open the door of public education to handicapped children, not to educate a child to her highest potential." *Board of Education of Murphysboro Comm. Unit. Sch. Dist. No. 186 v. Illinois State Board of Educ.*, 41 F.3d 1162, 1166 (7th Cir. 1994) An individualized education plan is acceptable "when it is 'likely to produce progress, not regression or trivial educational advancement.'" *Alex R., ex. Rel. Beth R. v. Forestville Valley Community Unit School Dist. # 221*, 375 F.3d 603, 615 (7th Cir. 2004)(quoting *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 248 (5th Cir. 1997)). Moreover, whether an IEP confers meaningful benefit to a child must be gauged in relation to the potential of the child at issue. *Deal v. Hamilton County Bd. of Ed.*, 392 F.3e 840 (6th Cir. 2004) Finally, in considering whether the District has met the requirements of FAPE, it is important to note that the burden of proof rests with the party seeking relief. *Schaeffer V. Weast*, 546 U.S. 49, 62 (2005) Here, the Parents bear the burden of proof. My findings on the specific issues alleged by the Parents are discussed below.

1. Whether the District Failed to Conduct a Functional Behavior Analysis and Develop an Appropriate IEP?

The Parents' first contention is that the District failed to conduct a functional behavior analysis and develop an appropriate intervention plan for [REDACTED]. The District maintains that the behavior intervention plan it created in 2006 was appropriate to apply to all of [REDACTED] behaviors until it initiated a new functional assessment of [REDACTED] in

the January of 2009.

Under the law, when a child's behavior impedes the child's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies to address that behavior. 34 C.F.R. §300.324(a)(2)(i) Moreover, courts have held that a district's failure to conduct a behavior assessment and develop a behavior plan can result in the denial of FAPE. For example, in *Neosho R-V S.D. v. Clark*, 315 F.3d 1022 (8th Cir. 2003), the court upheld an administrative panel's ruling that the school district had denied the student FAPE when it failed to provide the student with an appropriate behavior management plan. Without a behavior plan, the student's behavior problems became increasingly inappropriate and interfered with his ability to benefit from his education. Significantly, in reaching its decision, the court noted that the student's teacher attempted to manage the student's behavior problems with several methods that might be found in a behavior management plan, but which had never been analyzed. (*Id.*) As in *Neosho*, the evidence demonstrates that for the relevant time period, the District denied [REDACTED] FAPE by failing to conduct an appropriate functional behavior assessment and create a behavior intervention plan for [REDACTED].

Specifically, the evidence showed that the District did develop a behavior plan for [REDACTED] in 2006. The plan specifically targeted [REDACTED]'s practice of covering his ears, and was effective in eliminating that behavior. When the team met on May 15, 2007 to write [REDACTED] IEP for the 2007-08 school year, [REDACTED] advised them team that [REDACTED] had developed a new behavior of avoiding work. The District, however, did not conduct a functional assessment to address this new maladaptive behavior. Rather, [REDACTED], testified that throughout the 2007-08 school year, she simply used the same strategies in the 2006 plan to address [REDACTED] work avoidance. As in *Neosho*, however, the team never analyzed whether it was appropriate to use strategies from the 2006 plan to address [REDACTED] work avoidance. Indeed, applying the consequences from the 2006 plan -- such as allowing [REDACTED] to remove himself from a stress inducing situation-- may have reinforced his avoidance of work.

Moreover, just as the student's behavior in *Neosho* became increasingly inappropriate, so too did [REDACTED]. As early as September 2007, [REDACTED] voiced concern about [REDACTED]'s increasing anxiety. After their observations of [REDACTED] in the spring of 2008, both [REDACTED] and [REDACTED] noted that the Student was frequently off task and often didn't respond during lessons. When the team met on May 28, 2008 to write [REDACTED] IEP, [REDACTED] reported that [REDACTED] anxiety had increased, and that he was unable to complete a task in a timely fashion. More troubling, [REDACTED] had become aggressive to the point of hitting, pushing, and throwing chairs when he heard other children crying. While the team agreed that [REDACTED] behavior impeded his learning -- and expressly noted it in his IEP -- they failed to initiate a functional assessment or create a new behavior plan for [REDACTED]. Significantly, [REDACTED] school psychologist, [REDACTED] testified that, based on the behavior described in [REDACTED] May 28th IEP, she would have recommended that a new behavior plan be created for [REDACTED].

[REDACTED]'s inappropriate behaviors, including increased aggression toward others, continued to escalate during the 2008-09 school year. His teacher, [REDACTED], initiated a domain meeting in January to address the Student's behavior. Tellingly, in completing the referral form for the meeting, [REDACTED] indicated that [REDACTED] behaviors *had prevented him from learning*. At the domain meeting, the team agreed to conduct a functional assessment. School psychologist [REDACTED] conducted the assessment and presented her findings and recommendations to the team in April 2009. The team, however, found the data to be incomplete. They agreed to retain a consultant ([REDACTED]) to conduct a more comprehensive behavior assessment and provide advice on a behavior intervention plan. [REDACTED] conducted a behavior assessment and completed a behavior intervention plan for [REDACTED] by August 2009. The evidence shows that this plan has been effective in reducing [REDACTED]'s inappropriate behaviors. Notably, in conducting her functional assessment of [REDACTED] [REDACTED] observed that school staff's responses to [REDACTED] inappropriate behaviors often *reinforced* the behaviors rather than discourage them.

Finally, as in *Neosho*, the evidence unquestionably demonstrates that the District's failure to implement an appropriate behavior intervention plan for [REDACTED] significantly interfered with his ability to receive educational benefit. During the 2007-08 school year, for example, [REDACTED] anxiety and inappropriate behaviors in the [REDACTED] classroom were so extreme that the team chose to place him in a regular classroom for fifty percent of his day. The evidence showed, however, that [REDACTED] did not receive educational benefit from instruction in regular education classroom. Moreover, with just 90 minutes per day of special education instruction, and no

appropriate plan to address his behaviors in the autism class, [REDACTED] was unable to make meaningful educational progress in reading, math and writing. Though it was anecdotal, [REDACTED]'s testimony that [REDACTED]'s expressive language skills had improved from the summer of 2007 to the summer of 2008 does suggest that [REDACTED] may have received benefit from his speech and language therapy.

With respect to the 2008-09 school year, [REDACTED] referral, as well as the observations of [REDACTED] and [REDACTED] further demonstrate the negative effect [REDACTED] behaviors had on his learning. Likewise, in addition to noting that staff reinforced [REDACTED] maladaptive behaviors, [REDACTED] also testified that [REDACTED] teachers avoided presenting [REDACTED] with new tasks (acquisition skills) because they were concerned about his outbursts. Instead, they simply reinforced skills [REDACTED] had already learned.

In short, the District's failure to appropriately address his behaviors denied [REDACTED] FAPE from the fall of 2007 and continuing until May 2009, when [REDACTED] initiated a functional assessment of the Student. As noted, the evidence showed [REDACTED]'s assessment to be comprehensive and data oriented. The evidence also indicated that the behavior intervention plan created by [REDACTED] has thus far been effective in reducing [REDACTED] target behaviors. Accordingly, this plan -- not the altered plan in [REDACTED] September 29, 2009 IEP -- is to be implemented by the District.

2. Whether the District Failed to Use Scientifically Based Methodology?

The Parents assert that the District failed to provide [REDACTED] with effective instruction because it failed to use scientifically based methodology as required by IDEA. *See* 34 C.F.R. § 300.320(a)(4) The District maintains that it provided [REDACTED] with appropriate instruction throughout the relevant time period. It further asserts that it satisfied the requirements of IDEA by utilizing an eclectic approach (a combination of several scientifically based approaches) in teaching [REDACTED]

Whether an eclectic approach is an accepted method of instruction for teaching students with [REDACTED] was a point of dispute at the hearing. Both [REDACTED] and [REDACTED] agreed that the National [REDACTED] Center's *National Standards Report* (11, Ex. 6) is the principal authority in determining whether an [REDACTED] treatment is established, emerging, or unestablished. The report makes no explicit reference to an eclectic approach, and [REDACTED] argued that research has shown it to be ineffective. [REDACTED] asserted, however, that the *National Standards Report* contemplates the use of an eclectic approach by recommending that professionals use their judgment in determining if a treatment is effective. Notably, [REDACTED] stressed that only evidence based practices should be used as part of an eclectic approach. Assuming that an eclectic approach is appropriate, as [REDACTED] asserted, the evidence fails to support the District's contention that it appropriately or consistently used an eclectic approach with [REDACTED]

First, as [REDACTED] made clear, to be appropriate, teachers who rely on an eclectic approach must employ research-based methodologies. [REDACTED] testified that she had received training in [REDACTED] and has read about the TEACCH approach -- both accepted or emerging research-based methods of instruction for children with autism. By her own admission, however, [REDACTED] did not follow established protocol when using either of those approaches. Rather, she testified that she adapted them. Indeed, [REDACTED] testified that she observed elements of [REDACTED] in [REDACTED] classroom, but stressed that it was not being used as intended. Likewise, while [REDACTED] testified that she uses Neuronet and sensory integration in her instruction, neither is a research-based, established method of instruction for [REDACTED] students. Further, while [REDACTED] testified that she used social stories with [REDACTED] the evidence showed that she failed to do so consistently. Similarly, [REDACTED] who has been [REDACTED]'s teacher since the fall of 2008, testified that at the time she became [REDACTED] teacher, her training in research-based, autism methodologies was limited to a 2 day seminar in [REDACTED]. She had not received training in TEACCH or writing social stories. [REDACTED] subsequently attended a seminar in Asperger's Syndrome, a condition that she conceded [REDACTED] does not have. Finally, during the period at issue, neither [REDACTED] nor [REDACTED] had received any ABA training.

Assuming *arguendo* that the District appropriately utilized an eclectic approach with [REDACTED] the evidence indicated that it was not effective. As demonstrated in my discussion of the facts, [REDACTED] relevant IEP's confirm

that he failed to make meaningful academic progress during the relevant time period. Indeed, both [REDACTED] and [REDACTED] testified that, in their opinions, [REDACTED] should have made more progress than he did. In contrast, preliminary evidence indicates that [REDACTED] is making steady progress with his current discrete trial program.

Accordingly, I find that the evidence confirms that the District failed to appropriately use scientifically based methodology in teaching [REDACTED]. The methodologies that it did employ failed to provide [REDACTED] with educational benefit, and denied him FAPE.

3. Whether the District Failed to Provide [REDACTED] with an Appropriate Placement?

The Parents also contend that District denied [REDACTED] FAPE by failing to provide him with an appropriate placement. In particular, the Parents assert that District failed to provide [REDACTED] with special education instruction that was sufficiently intensive to address his needs. Related to that contention, the Parents assert that [REDACTED] was unable to receive educational benefit from his placement in a regular education classroom. The District maintains that [REDACTED] received educational benefit from each of his placements

First, for the 2007-08 school year, the evidence showed that [REDACTED] received special instruction in the [REDACTED] classroom for 450 minutes per week, or 90 minutes per day. During that time, [REDACTED] was responsible for his instruction in reading, math and writing. [REDACTED] also was mainstreamed into a regular 3rd grade classroom (with a one-to-one aid) for approximately 50 percent of his day, where he received instruction in science and social studies as well as other non-academic subjects.

The evidence showed that the team's decision to mainstream [REDACTED] for such a significant portion of his day was due to concern about [REDACTED]'s anxiety in the [REDACTED] class -- not because [REDACTED] was able to participate and succeed in the regular classroom. To the contrary, [REDACTED]'s then current IEP made clear that [REDACTED] functioned significantly below grade level in each of the academic areas with severe language and communication impairments. That his placement in the regular classroom was inappropriate was confirmed by his teacher who described it as an "injustice" to [REDACTED]. Moreover, [REDACTED]'s May 28, 2008 IEP makes clear that [REDACTED] had not been a participating player in the class, and that his work was done in tangent to his classmates.

While [REDACTED] spent too much time in the regular classroom, the evidence indicates that he received too little special education instruction to allow him to make meaningful progress. Indeed, a comparison of [REDACTED]'s 2007 and 2008 IEP's shows that [REDACTED]'s academic levels remained virtually unchanged. Likewise, his IEP goals and benchmarks are, to a large extent, identical. Not surprisingly, when the team met to write IEP for 4th grade, they significantly increased [REDACTED]'s special education instruction time from 450 to 875 minutes per week. When asked about this change, [REDACTED] candidly responded that she felt [REDACTED] needed more time in the [REDACTED] room to get the things he needed.

Significantly, none of the witnesses who testified about [REDACTED]'s placement in the regular classroom in 2007-08 or the following year, suggested it was academically appropriate. Indeed, [REDACTED] testified that she was surprised by the placement. Rather, they stressed that the team believed it was necessary in light of his extreme anxiety in the [REDACTED] room. In seeking to address [REDACTED]'s emotional needs, however, the District was not entitled to overlook [REDACTED]'s academic needs. To the contrary, the District still was required to provide [REDACTED] with an IEP that was reasonably calculated to provide him with educational benefit. (*See Hibbing v. J.T.*, 2006 WL 517648 (D.Minn.)) The District failed to meet its responsibility.

[REDACTED] placement for the 2008-09 school year was similar to his third grade year. While [REDACTED] had aged out of [REDACTED] classroom, the District accommodated the Parents' request to place [REDACTED] in [REDACTED] resource room for part of the day, and mainstream him into a regular 4th grade class for part of the day. The evidence showed that [REDACTED] did receive more special education instruction time in the resource room -- approximately 565 mpw in math, reading and writing. He continued to be mainstreamed for a significant portion of his day, however (his IEP specifies more than 40 percent). Unfortunately, just as in the previous year, [REDACTED] was not a participating player in the regular classroom, and the evidence showed that he didn't

receive academic benefit in that placement. While it is true that the Parents specifically requested that [REDACTED] be mainstreamed, they are not responsible for [REDACTED]'s lack of progress. According to [REDACTED], the Parents wanted [REDACTED] to be mainstreamed for socialization purposes. This could have been accomplished with much less time in the regular classroom. Indeed, placing [REDACTED] in a regular classroom for such a significant portion of his day was clearly an inappropriate placement for [REDACTED] and the District bears responsibility for that decision.

It is less clear whether [REDACTED]'s placement in [REDACTED]'s classroom was inappropriate. While the evidence showed that [REDACTED] failed to make meaningful progress in the resource room, his lack of progress was in large part due to [REDACTED]'s behavior issues and lack of an appropriate behavior plan. [REDACTED] recognized that and initiated the domain meeting that led to a functional assessment for [REDACTED]. Thus, while I find that [REDACTED] placement in the regular classroom during the 2008-08 school year was inappropriate, the evidence fails to show that [REDACTED]'s placement in [REDACTED]'s resource room was inappropriate.

Finally, while the Parents' have objected to some aspects of [REDACTED] current program, they have not argued that [REDACTED] placement in a separate classroom for discrete trial training is inappropriate. Nor have they objected to mainstreaming him into the adjacent special education classroom, when he is ready. In any event, the evidence available to date indicates [REDACTED] current placement to be appropriate.

4. Whether the District Failed to Have an IEP in Place for the Beginning of the 2009-10 School Year?

The Parents argue that the District failed to have an IEP in place for [REDACTED] for the beginning of the 2009-10 school year. Though it was not clearly articulated by the Parents at the hearing, the allegation apparently rests on the School Code's requirement that, having begun the process of evaluating [REDACTED] at the end of the 2008-09 school year, the District had a duty to provide [REDACTED] with a completed IEP prior to the first day of school for the 2009-10 school year. *See* 105 ILCS 5/14-8.02

As a threshold matter, by alleging that the District failed to comply with applicable statutory procedures, the Parents are asserting that the District committed a procedural violation of IDEA. As explained above, a procedural violation cannot be deemed a violation of FAPE unless it has impeded a child's right to a free appropriate public education, significantly impeded the parents' right to participate in the decision making process, or caused a deprivation of educational benefits. *Id.* at § 1415(f)(3)(E)(2007)

Here, while [REDACTED]'s IEP had not been completely finalized by the beginning of the 2009-10 school year, the facts fall far short of demonstrating a denial of FAPE. Specifically, the evidence indicates that beginning in April 2009, the parties agreed to conduct a comprehensive evaluation of [REDACTED] that included a functional assessment by [REDACTED] and a psychological evaluation by [REDACTED] and [REDACTED]. The parties met to consider the results of those assessments on June 10, 2009. By agreement, the parties met again on June 22, 2009 to create IEP goals and decide on an appropriate program and placement for [REDACTED]. By the end of the June 22nd meeting -- which lasted for several hours -- the parties had agreed to IEP goals for [REDACTED], and had discussed, but not finalized, his program and placement. They agreed to meet again on August 11, 2009. At that meeting, the evidence shows that the parties agreed on a program and placement for [REDACTED]. The only remaining component of the IEP that had not been completed at that time was a behavior intervention plan for the school environment. Thus, according to the evidence, when school began in the fall, [REDACTED] IEP provided him with an educational program, IEP goals and placement. Moreover, the evidence showed that in each of these meetings, the parties adhered to a collaborative, deliberative approach, in which the Parents fully participated, and to which, the Parents did not object.

Accordingly, I find that the Parents have failed to demonstrate that the District denied [REDACTED] FAPE by failing to have a completed IEP in place at the beginning of the 2009-10 school year.

5. Whether the District Failed to Provide [REDACTED] with Sufficient ESY Services?

The Parents assert that for the relevant time period, the District failed to provide [REDACTED] with timely and adequate

ESY services consistent with the requirements of IDEA. *See* 34 C.F.R. § 300.106(a) The District does not dispute [REDACTED]'s need for ESY, but contends that it complied with the requirements of the law in offering and providing ESY services to CW.

First, the Parents presented very little evidence concerning [REDACTED]'s ESY programs for the summers of 2007 and 2008. [REDACTED] testified, however, that the Parents chose to have [REDACTED] attend the summer camp for [REDACTED] children that is run by [REDACTED] and [REDACTED]. The Parents presented no credible evidence to indicate otherwise. Moreover, the Parents presented no evidence to indicate that the District had refused to provide [REDACTED] with ESY, or that its ESY services were inadequate.

Second, with respect to the summer of 2009, the Parents contend that the home ABA program provided by the District through [REDACTED] was untimely and inadequate. In particular, the Parents contend that [REDACTED] ESY program was limited to approximately 2 weeks of home ABA. The Parents' contentions are not supported by the evidence. Specifically, the facts demonstrate that the parties engaged in an extensive discussion concerning appropriate ESY services for [REDACTED] in the June 22nd IEP meeting. The discussions took into account [REDACTED] and [REDACTED] recommendations for [REDACTED]. The parties also considered a number of potential ESY placements for [REDACTED] with the Parents favoring setting up a home ABA program. The evidence showed that by the close of the meeting, the District had not agreed to the Parents' request. Within a few days, however, the District notified the Parents that it had arranged for [REDACTED] to set up a home ABA program for [REDACTED] ESY services as the Parents had requested. According to the record, the program began in early July and continued to the latter part of August. Admittedly, the evidence also showed that implementing the program required some preliminary steps, e.g. assessing [REDACTED] and training providers. Even with those requirements, however, the evidence showed that [REDACTED] was beginning to receive instruction by mid July, which as noted above, continued until late August. This is significantly longer than the 2 week period of instruction alleged by the Parents. Given that fact, as well as the fact that the home ABA ESY program was implemented at the Parents' request, their assertions that such services were inadequate fail.

6. Whether the District Failed to Address [REDACTED]'s Assistive Technology Needs?

The Parents assert that the District has failed to comply with IDEA's requirement that assistive technology devices and/or services must be provided to a student if needed for FAPE. *See* 34 C.F.R. § 300.105 In support, the Parents assert that the District has failed to respond to several requests and recommendations that [REDACTED] receive assistive technology. The Parents specifically cite a recommendation by [REDACTED] in her May 22, 2008 report, a request by the Parents for an AT evaluation in April 2009, and a recommendation by [REDACTED] in June 2009 that [REDACTED] could benefit from assistive technology.

With respect to [REDACTED]'s recommendation, which specifically recommends that [REDACTED] be allowed to work on computers, the District presented evidence showing that [REDACTED] did do activities on the computer at school. The District concedes that the Parents' requested an AT evaluation and that [REDACTED] also recommended an AT assessment for [REDACTED]. It points out, however, that [REDACTED] recommended that the assessment be postponed to allow [REDACTED] time to adjust to the discrete trial program. This recommendation is clearly stated in [REDACTED] September 29, 2009 IEP. There is no indication in the IEP, nor did the Parents present any other credible evidence to indicate that they disagreed with [REDACTED] recommendation and the team's decision to wait.

The District concedes that the team has since agreed to proceed with an AT evaluation. It maintains that it has made diligent attempts to retain a consultant to conduct the assessment, but until recently, had been unable to find someone able and available to do so. Indeed, the District presented evidence at the hearing to demonstrate the numerous attempts it had made to find an AT evaluator for [REDACTED]. Notably, the District also confirmed that it recently has identified two evaluators who are able to conduct an AT assessment of [REDACTED]. With this evidence in mind, I find that the Parents have failed to demonstrate that the District has not adequately addressed [REDACTED] assistive technology needs. That said, I expect that the District will immediately arrange for [REDACTED] to be evaluated, now that it has identified two available evaluators.

7. Whether the District Failed to Provide CW with an Appropriate IEP?

The Parents allege that the District failed to provide [REDACTED] with appropriate IEP's throughout the relevant time period, as evidenced by [REDACTED]'s lack of progress. In support, Parents pointed to [REDACTED]'s IEP's, which showed that his academic performance remained essentially unchanged throughout the period at issue. Consistent with that fact, many of [REDACTED]'s IEP goals and benchmarks also remained the same from year to year. Significantly, the Parents also showed that [REDACTED]'s lack of progress is not due to a lack of ability. [REDACTED] stated, for example, that [REDACTED] has above average intelligence, and should be further along than he is. [REDACTED] and Ms. [REDACTED] concurred with [REDACTED]'s opinion. As described above, I agree that the District failed to provide [REDACTED] with IEP's that appropriately addressed his behavioral needs and placement requirements. I also agree with the Parents' contention that [REDACTED] failed to make meaningful progress for the 2007-08 and 2008-09 school years.

The Parents' complaint did not allege specific procedural violations with respect to the content of [REDACTED] IEP's. Evidence presented at the hearing, however, did show that [REDACTED]'s IEP's were not flawless. There were instances, for example, when academic levels and goals were imprecise. In another instance, speech goals that were presented to the Parents as draft goals, were incorporated into the working IEP through a computer processing error. I conclude, however, that none of the procedural errors -- either separately or taken as a whole -- resulted in a denial of FAPE to [REDACTED].

Finally, in considering [REDACTED]'s current IEP, (September 29, 2009) I find that it is inadequate in two ways. First, the current IEP fails to include home instruction as part of [REDACTED]'s educational plan. That [REDACTED] requires a home program in order to satisfy FAPE was overwhelmingly demonstrated at the hearing. [REDACTED], for example, testified that [REDACTED] requires a home program in order to extend and intensify intervention. Though he recommended fewer hours, [REDACTED] concurred with [REDACTED]. He further stressed that such intervention is particularly critical in light of [REDACTED]'s lack of meaningful progress up to this point. [REDACTED] agreed that [REDACTED] needs a home program in addition to his instruction at school, as did [REDACTED] and [REDACTED].

Second, whether through clerical error, or deliberate revision, the September 29, 2009 IEP incorporates a behavior intervention that is substantively different than the BIP prepared by [REDACTED]. The evidence showed that the team agreed to implement [REDACTED]'s BIP, not the revised one. The District must rectify the error by attaching [REDACTED]'s plan to [REDACTED]'s IEP, and by ensuring that [REDACTED]'s plan is implemented.

Accordingly, for the reasons stated above, I find that the Parents have shown that the District failed to provide [REDACTED] with appropriate IEP's throughout the entire period at issue.

8. Whether the District Failed to Adequately Train Staff Working with [REDACTED]?

The Parents contend that the District failed to train staff in instructional methods and behavioral interventions to adequately address [REDACTED]'s needs as a student with [REDACTED]. As noted in the legal analysis above (*See* Nos. 1 and 2), [REDACTED] required an educational program that addressed his behavioral needs through a highly structured, data driven plan. Academically, the evidence showed that [REDACTED] required research-based methods of teaching proven to be effective with [REDACTED] students. As a threshold matter, the evidence clearly showed that [REDACTED] teachers held the appropriate state certifications to teach students with [REDACTED]. But, as fully described above, the evidence also showed that school staff had little to no training in the specific autism methodologies that [REDACTED] unique needs required. Since the implementation of [REDACTED]'s discrete trial training program, the District has begun to provide staff with additional training. These efforts should continue as [REDACTED]'s needs evolve and additional staff provide [REDACTED] with services.

9. Whether the District Failed to Complete an Agreed Upon Independent Psychological Evaluation?

The Parents allege that the District breached its agreement to retain and pay ██████████ to complete a psychological evaluation of ██████████. A discussion of the evidence and my findings on this issue can be found on pp. 15-16 of this decision.

10. Whether the District Failed to Address ██████████ Social-Emotional Issues?

The Parents allege that the District failed to appropriately address ██████████'s social-emotional issues. In support, the Parents cite evidence that ██████████ exhibited extreme anxiety and inappropriate behavior as a 3rd and 4th grader at ██████████. As noted above, (See Legal Issue No. 1) I agree with the Parent's contention that the District failed to conduct a functional assessment of ██████████ and create a behavior intervention plan as needed.

To the extent, however, that the Parents seek an order requiring the District to conduct a trauma evaluation of ██████████, I find that they have failed to meet their burden of proof. Though ██████████ recommended a trauma evaluation, his recommendation is based on an unsubstantiated and --by evidentiary standards-- unreliable report that a paraprofessional kicked a student in ██████████ class. That ██████████'s severe anxiety reportedly appeared at around the same time is concerning. However, the evidence showed that any number of factors, including loud noises or a disruptive student may have contributed to ██████████'s increased anxiety. Despite the de minimis evidence of trauma, I nevertheless carefully considered the Parents request. My decision not to order an evaluation is in large part due to reports by staff and ██████████ confirming that ██████████'s anxiety has noticeably decreased in his current structured, self-contained setting, with his behaviors being addressed through an appropriate behavior intervention plan.

11. Whether the District Failed to Provide ██████████ with FAPE?

My findings concerning the District's adherence to the requirements of FAPE are fully articulated above.

Pursuant to the above findings of fact and conclusions of law, it is hereby ordered:

1. The Parents' request for a 40 hour per week combined school/home ABA program supervised by ██████████ or a similarly qualified board certified behavior analyst for a full year, including ESY 2010 is granted, with the following qualification: The Parent's request is granted for the remainder of the 2009-10 school year, including ESY 2010. I am not requiring the District to provide ██████████ with a year round program. In addition, pursuant to 34 C.F.R. § 300.34 (c)(8), the behavior analyst will provide the Parents with the necessary training to implement the home program.
2. The Parents' request for reimbursement for ESY 2009 ABA training and therapy is denied since the Parents failed to present adequate evidence of their expenses. Likewise, to the extent that Parents are seeking reimbursement for expenses incurred from November 7, 2009 (when the hearing was not completed) to the present, they have also failed to provide adequate evidence of their expenses.
3. The Parents' request for a trauma evaluation by a qualified evaluator is denied.
4. The Parents' request for an independent assistive technology evaluation is granted. The District is ordered to proceed without delay in completing the evaluation.
5. The Parents' request for two years of compensatory services is granted. Specifically, for the 2010-11, and 2011-12 school years, the District shall continue to employ ██████████ or a similarly qualified board certified behavior analyst to oversee ██████████ educational program. The analyst's responsibilities will continue to include monitoring, implementing and evaluating ██████████ program, as well as conducting necessary training of staff and the Parents. The District shall employ the analyst for a reasonable amount of time to allow her to complete her responsibilities.

6. The Parents' request for reimbursement for [REDACTED] evaluation is denied.
7. The parties shall convene an IEP meeting within 30 days of this order to incorporate the order into [REDACTED]'s IEP. Consistent with the record in this case, and in addition to the relief specified above, the team must also:
 - revise [REDACTED]'s IEP to include measurable criteria to determine when [REDACTED] may begin receiving instruction in [REDACTED]'s self-contained classroom;
 - revise [REDACTED]'s IEP to include measurable criteria to determine when [REDACTED] transition from discrete trial training to participating in [REDACTED]'s class will be deemed successful;
 - incorporate the current [REDACTED] behavior intervention plan into [REDACTED]'s IEP
8. Consistent with [REDACTED] recommendation, the District shall conduct an evaluation of [REDACTED] at the end of this school year to assess his progress. The evaluation must be conducted by an examiner, like [REDACTED] who has experience and expertise in evaluating students with [REDACTED]
9. The District shall provide proof of compliance with the aforesaid orders to the Illinois State Board of Education, Compliance Division, 100 No. First St., Springfield, IL 62777-001, on or before March 15, 2010.

RIGHT TO REQUEST CLARIFICATION

Either party may request clarification of this decision by submitting it in writing to the undersigned Hearing Officer within five 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 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 5/14-8.02a(i)(2004), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision is mailed to the parties.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the aforesaid Decision and Order was transmitted to the parties by email on January 25, 2010, hard copies of the decision to be sent U.S. Mail no later than January 27, 2010.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the aforesaid Decision and Order was transmitted to the parties by email on January 25, 2010, hard copies of the decision to be sent U.S. Mail no later than January 27, 2010.

DATED: January 25, 2010



Kristine L. Anderson
Impartial Hearing Officer
P.O. Box 7065
Evanston, IL 60204

[1] The due process complaint does not specify the time period in which these alleged violations were said to have occurred. Since IDEA imposes a two year statute of limitations period, (*See* 34 C.F.R. § 300.511(d)) the relevant time period extends back to August 21, 2007.

[2] Though some of the events that I describe are outside the relevant time frame (and are not at issue in this case) I include them in my discussion of the facts because they provide necessary background and context to the facts and issues that are in dispute.

[3] The cause of [redacted] heightened anxiety was a source of much contention at the hearing. The Parents assert that [redacted] witnessed at least one incident in the [redacted] class in which a classroom aid mistreated a child. The District conceded that an aid in Ms. [redacted]'s class had been accused of kicking a student, but maintained that a thorough investigation failed to confirm the charges. Indeed, the only evidence of the alleged incident was an accusation by a classroom aid that *another* aid told her she had witnessed the kicking incident. When asked by District administrators, however, the aid who purportedly witnessed the incident denied having seen anything, and denied having made such a claim to the other paraprofessional. Though I am troubled by the allegation, given the unreliability of the report, I have given it little, if any, weight in my decision.

[4] According to [redacted], the [redacted] Spectrum Institute provides information and support to families and school districts on issues related to [redacted]. In addition, the Institute houses the [redacted] and Technical Assistance Program (TAP) which provides training courses on [redacted]. In testifying about her involvement in this case, [redacted] stressed that neither she nor [redacted] were retained by the District to act as consultants. Rather, [redacted]'s role was to provide support to the family. Decisions concerning [redacted]'s educational plan remained the responsibility of the IEP team.

[5] [redacted] recalled she recommended that a new FBA be completed.

[6] Testimony from [redacted] and [redacted] confirmed that the Parents chose to have [redacted] attend their summer camp.

[7] In addition to [redacted] testimony, [redacted] testified about his involvement in the decision concerning [redacted] placement. His testimony about these events, which I found to be candid and credible, was consistent with [redacted] testimony.

[8] Though [redacted] is certified to teach students with [redacted], she testified that her training in autism teaching methodologies is limited to a 2 day seminar in [redacted] and a seminar on Asperger's Syndrome and high functioning [redacted]. The District paid for her to attend the Asperger's seminar after she began teaching [redacted]. She conceded, however, that [redacted] does not have Asperger's Syndrome.

[9] According to [redacted], the meeting was initially supposed to take place on January 15, and she filled out the domain review form in anticipation of that fact. The meeting had to be rescheduled to January 27, however, due to a snow day.

[10] [redacted]'s notes refer to the "incident of 2006." Other evidence presented at the hearing indicates that the incident was alleged to have occurred in December, 2005. (*See* Walker's redacted report of the incident, J244, Ex 123)

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While [REDACTED] testified about the approximate amounts that the Parents paid to have their providers trained, the Parents failed to offer evidence specifically documenting their expenditures.

[1.2] The Program, which was created by [REDACTED] was attached as an exhibit to the IEP.

[1.3] My finding applies specifically to the 2007-08 school year, and most of 2008-09, up to April of 2009, when the team decided to retain [REDACTED] to conduct a thorough FBA of [REDACTED]

[1.4] By deciding to place [REDACTED] in a regular classroom, the team either overlooked or rejected other ways of addressing [REDACTED]'s anxiety while still attending to his academic needs. As noted, the team failed to conduct a functional assessment of [REDACTED]. In addition, in her March 2006 Points for Discussion Memo, [REDACTED] suggested providing [REDACTED] with one-on-one instruction in an alternative environment. The District finally adopted that strategy in 2009 when it agreed to provide [REDACTED] with discrete trial training. By all accounts, [REDACTED]'s anxiety has decreased *and* he is making academic progress.

[1.5] As noted in my discussion of the facts, [REDACTED]'s 5/28/08 IEP provided him with 875 mpw of special education time. In his IEP of 9/8/08, the time was reduced to 700 mpw.

[1.6] Notes of that meeting indicate that [REDACTED] reported that she was completing the behavior management plan that had been used in [REDACTED]'s program at home to be transferred to school. In addition, while the August 11th IEP does not provide for a home program for [REDACTED] the evidence indicates that this was considered and rejected by the District. Indeed, whether [REDACTED] educational program requires home instruction is an issue to be decided at this hearing.

[1.7] Though social work services were not at issue in this case, it is worth noting that [REDACTED] did suggest that the team consider providing [REDACTED] with school social work support.

[1.8] Since it was a point of contention at the hearing, I note that each of the private consultants as well as District staff agreed that convening regular meeting to assess [REDACTED]'s progress was appropriate and positive. I agree that this makes sense, but I do not order it.