

Case Number: 2010-0144
[Redacted]

Hearing Officer: Sheana Hermann

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: 7735531000

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

Parent Name [Redacted]

Phone: [Redacted]

Address [Redacted] N. [Redacted] Avenue [Redacted]
Represented by [Redacted]

Date and Timelines

Date of Written Request: 10/13/2009
Date of Pre-hearing Conf: 11/13/2009

Date of Hearing: 01/12/2010 to 1/20/2010
Date of Decision: 02/01/2010

Summary of Decision

Parents of a Student on the [Redacted] Spectrum bring a due process hearing request based on the District's failure to provide the Student with a free appropriate education. Parents are seeking placement of the Student in a specific private therapeutic program. The Student is currently a freshman in high school in a self contained [Redacted] classroom. Parents fail to meet their burden of persuasion in showing that the IEPs are inappropriate. The District's placement is appropriate. However, the District ignores a transition accommodation it drafted in a revised IEP to ensure that the Student is in a placement with peers from his elementary school and the Parents are awarded compensatory training services.

-
-
-

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

) ISBE CASE NO. 2010-0144

) Sheana Hermann

) Impartial Due Process

) Hearing Officer

HEARING DECISION AND ORDER

This matter comes before this hearing officer pursuant to the Individuals With Disabilities Education Act of 2004 (IDEA) on the Impartial Due Process Hearing Request of Mr. Allen Cruz and [REDACTED] ("Parents") by and through their attorneys, [REDACTED] and [REDACTED] of the Law Offices of [REDACTED] on behalf of the "Student", against the [REDACTED] of [REDACTED] ("District") represented by its attorneys [REDACTED] and Ms. [REDACTED] of the District's Due Process and Mediation Department. This Hearing Officer has jurisdiction to hear and decide this matter under 105 ILCS 5/14-8.02(a) et. seq., 23 Illinois Administrative Code 226.600 et. seq., The Individuals with Disabilities Improvement Act of 2004 (IDEA) 20 U.S.C. 1415, and 300 C.F.R. 507 et. seq. The parties were informed of their rights according to 105 ILCS 5/14-8.02(a), 23 Ill. Admin. Code 226, subpart G, 300 C.F.R. 300.512.

Procedural History

An Impartial Due Process Hearing request was file on behalf of Student on October 13, 2009. It was received by the Illinois State Board of Education (ISBE) on October 23, 2009. This hearing officer was assigned the case on October 26, 2009. This hearing officer immediately contacted the parties to advise them that she was assigned to the case and to apprise the parties that she had previously worked for the District in the capacity as a Due Process Coordinator and that she would recuse herself if either party wished. Both parties acknowledge the prior employment but agreed to allow the hearing officer to remain on the case. (IHO Ex. 1 and 2). The parties attempted resolution on November 3, 2009 (SD Ex. 152) but were unsuccessful. A pre-hearing conference was conducted on November 13, 2009 at which time the District's attorneys were unavailable. The pre-hearing conference was reconvened on December 9, 2009. The hearing was conducted on January 12, 13, 20, 2010 at the [REDACTED], [REDACTED] and on January 14 and 19, 2010 at [REDACTED]. The following witnesses testified: [REDACTED], District's case manager at [REDACTED], Student's private [REDACTED]; [REDACTED], Student's special education teacher at [REDACTED], [REDACTED], social worker at [REDACTED], [REDACTED], District's [REDACTED]; [REDACTED], District's [REDACTED] and [REDACTED], pathologist at [REDACTED], District [REDACTED]; [REDACTED], District's case

manager at [REDACTED], Student's special education teacher; [REDACTED] District aide; [REDACTED] who performed evaluation in the Student; [REDACTED] district [REDACTED] District office of specialized service manager; and the Parents. The parties acknowledged receiving their rights.

Issues Presented

The Parents have stated the following issues:

1. [REDACTED] did not provide a free and appropriate education during the period from October 2006 through the present time based on: (The Parents have stipulated that they are seeking relief for failures from October 2007 to the present due to the Statute of Limitations, but have October 2006, for background).
 - a. Failure to conduct timely and adequate assessments of all areas of potential disabilities, with the result that the student's educational program for the period did not address, or addressed inadequately, his learning impediments, communication impairments and behavioral management;
 - b. Failure to develop IEPs that considers:
 - i. the student's strengths and weaknesses;
 - ii. development of communication and self-monitoring skills;
 - iii. additional resources and supports to be accessed through the school district and through community resources, respectively;
 - iv. strategies for strengthening the student's functional, developmental and through ameliorating recognized deficits in areas of attention, social/emotional fragility and behavior problems;
 - v. the attentional and organizational limitations of the student;
 - vi. what research-based methodology is required to remediate? student's behavioral challenges;
 - vii. sufficient related services, despite evidence of communication and behavioral difficulties that interfere with the student's education;
 - viii. an adequate level of assistive technology, which is required for the student to make reasonable academic progress;
 - c. Failure to provide essential related services, with adequate levels of intensity, in areas of social work, speech language, occupational therapy, assistive technology and behavior therapy;
 - d. Failure to offer sufficient 1:1 instruction with the result that the student did not make progress in communication and behavior management skills;
 - e. Failure to provide regular written communication with the parents in accordance with their requests;
 - f. Failure to conduct assistive technology and augmentative communication evaluations regarding equipment necessary to promote effective communication skills;

- g. Failure to develop an effective functional behavior analysis and behavior intervention plan for the student.
- 2. The parents contend that the student's IEPs for the last two years:
 - a. Included statements of present levels of performance that do not accurately and objectively state the student's skills and functional levels;
 - b. Provides goal statements that are vague and not measurable, and where the goals set an increase in skill level, the goal is not commensurate with the student's potential for development;
 - c. Fail to address adequately communication and behavioral limitations of the student;
 - d. Fail to authorize sufficient extended school year services;
 - e. Provides for an inadequate level of related services, specifically:
 - i. Speech language services are authorized at 40 minutes per week, but should be at least 90-120 minutes per week for a child with significantly depressed expressive and receptive language skills;
 - ii. The current IEP fails to offer behavioral therapy services, despite evidence of poor social interaction by the student;
 - iii. The current IEP fails to offer occupational therapy, despite evidence of sensory impairments;
 - iv. Fails to offer a 1:1 aide, although constant and consistent supervision and direction is essential for the Student to make reasonable progress;
 - v. Fails to offer assistive technology resources required for the student to make adequate progress.

Parents Are Seeking the Following Relief:

1. Order [REDACTED] to place the student at [REDACTED] at public expense;
2. Direct that [REDACTED] pay for independent educational evaluations in areas of identified need, including communication, attentional and organizational deficits, occupational therapy, sensory processing deficits, assistive technology devices and services needed to access the curriculum and social assessment;
3. Direct [REDACTED] to offer related services in sufficient intensity to allow student access to educational opportunity, including
 - a. at least 60-90 mpw of direct social work services and/or psychological counseling;
 - b. assistive technology services, as may be recommended by an independent evaluator;
 - c. occupational therapy services to address sensory processing, attentional, and organizational concerns, as may be recommended by independent evaluator;
 - d. speech therapy services, as may be recommended by an independent evaluator
 - e. behavior therapy services, as may be recommend by an independent evaluator
4. Direct [REDACTED] to provide compensatory education services for loss of FAPE during the past two years including but not limited to:
 - i. behavior therapy for 10 hours per week after regular school hours by a therapist

- supervised by a board certified behavior analyst;
 - ii. tutoring two hours per week after regular school hours by a certified special education teacher;
 - iii. 30 minutes per week speech therapy after school hours for at least one year;
 - iv. 20 hours training for the parent in use of whatever communication techniques and methods may be adopted by the school pursuant to this order;
5. Direct [REDACTED] to convene an IEP meeting that will consider results of evaluations and implement the foregoing relief.

District's Position

The Student is a [REDACTED] old who is currently a [REDACTED] at [REDACTED]. Is qualified for special education services under the [REDACTED] spectrum disorder classification. The District provided the Student with a free and appropriate education in the least restrictive environment. The placement at [REDACTED] school neatly dovetails with his present levels of functioning and that the requested relief presumes that the Student is more severely impaired than the evidence supports. A separate day school is unwarranted by the nature and extent of the Student's disability and that the Student does not need such a restrictive placement in order to make educational gains.

District's Motion to Exclude:

The District objected at the morning of hearing to the Parents' witnesses [REDACTED] and [REDACTED] along to the evaluations which were submitted within the 5 day disclosure deadline. The District requested that the witnesses be barred from testimony and that their evaluations be excluded. The District's oral motion was denied.

Parents' Hearing Motions:

During direct examination the Parents' attorneys upon direct exam asked the district witnesses whether they were asked to review their email records regarding the Student all of them responded no. On the third day of hearing at [REDACTED] School, the Parents made an oral motion to compel the email records. The motion was granted and testifying witnesses and witnesses who had testified were asked to review their emails and print out any which would be considered student records. An additional day of hearing was added, January 20, 2010 to allow reexamination regarding the emails. The emails were also added to the record. On January 19, 2010, the Parents also made an oral motion to amend the remedies to request reimbursement of the payment for the private evaluators. As this was deemed to be created by a new issue, which would require a new timeline for the issue alone, the Parents decided to withdrawal their request.

Facts:

The Student is [REDACTED] years of age and currently a [REDACTED] in a self-contained [REDACTED] classroom at [REDACTED] School. The Student's primary qualifying disability is [REDACTED] spectrum disorder and he has been found to also have a moderate cognitive impairment. The last three year reevaluation was conducted in November of 2006 when the Student was attending [REDACTED] (SD Ex. 19). A psychological evaluation was conducted (SD Ex. 07), a speech-language evaluation was conducted (SD Ex. 10) and an occupational therapy summary (SD Ex. 15). At that time the Student's mother was present at the individualized education program meeting on November 21, 2006 (SD Ex. 19). The Parents signed the receipt of explanation of procedural safeguards on October 18, 2006 (SD Ex. 3).

Dr. [REDACTED] conducted the psychological evaluation of the Student. He was unable to complete the Kaufman Brief Intelligence Test or the Kaufman Test of Educational Achievement due to the Student's non-compliance (SD Ex. 8). He relied on the Childhood [REDACTED] Rating Scale and Vineland Adaptive Behavior Scales II along with record review, his observation and teacher interview. The Student's areas of concern are expressive/receptive communication, daily living skills and socialization. Based on previous evaluations, his cognitive abilities are within the moderately cognitive delayed range (SD Ex. 8). The recommendations on the evaluation are the Student should be considered for continuation of services for [REDACTED] Spectrum Disorder. The focus of instruction should be on improving communication, socialization and self help skills. He would also benefit from instruction for cognitive delays with instruction focused on improving basic reading skills, reading comprehension and math computation. (SD Ex. 9). From the time he first met the Student to the time he had finished at [REDACTED], Dr. [REDACTED] had observed the Student make great strides from a Student who cowered in the corner to a student who became an intrategral part of the school. At that time or subsequently, the Student did not exhibit behavior which warranted social work or psychologist service.

[REDACTED] the speech language pathologist administered the speech-language evaluation. The Student was found to have a severe expressive and receptive language disorder as well as a pragmatic disorder related to the diagnosis of [REDACTED] (SD. Ex. 12). She also was the Student's speech and language service provider from 2006-2009. (SD Ex. 101-110). She created IEP goals based on his evaluation and his present level of functioning, she would expect the same progress on goals despite his disability. She writes the goals based on the student and not the disability label. She was in agreement to reduce his service minutes because he was working on his goals in class as it is part of his [REDACTED] program and was making progress on his goals. The parent was okay with this. In the November 2008 IEP, the minutes were written for

high school periods. Goals created with past goals in mind but also one step higher example, one goal had cues next, same goal without cuing. He was making progress, met goals and benchmarks. She explained that it was important for the Student to receive services in a group setting to be able to talk with peers. She also never observed any behavior problems with the Student. She sent out quarterly progress reports to the Parents (SD Ex. 111-113).

██████████ was the Student's occupational therapist at ██████████ and preformed the assessment of the Student in 2006. He observed that the Student's greatest problems are those associated to his ██████████ spectrum disorder. The Student needs structure, has problems communicating and problems with socialization. He discerned his role in the school environment opposed to a clinical environment. In educational setting, the goal of an occupational therapist is to meet the needs of the student to allow the student the ability to access the curriculum. Occupational therapy was discontinued in November of 2008 for the Student as he was able to access the curriculum and functioning in the school environment and his needs can be met in the classroom. (SD Ex. 69 and 100). The occupational therapist is concerned with what happens in class. The Parents were in agreement to discontinuing the Student's occupational therapy services (SD Ex. 99).

Of the witnesses, ██████████, the Student's special education teacher at ██████████ was a credible witness. Out of all the witnesses, he has spent the most time with the Student. He has worked with students who have ██████████ for 20 years. He agreed that the Student's greatest challenges are his ability to function as an adult in the real world, his awareness to danger, his independent life skills. His IEP benchmarks are very similar because he needs much practice as he has significant issues and he still needs to work on these goals, these are ongoing goals for him. He also has seen the Student make progress over the course of two years. When the Student first came to school he had a hard transition; he hid in the closet and was resistant to the class and to instruction. Now he sees the Student as seeking others and his transition problems have dissipated. He agreed that occupational therapy and speech therapy could be reduced; his speech had improved in class and occupationally he was able to what was necessary to function in his classroom. He knew the limits of the Student and was very honest in expressing his concern with the Student's ability to ever grasp safety goals or functional living skills. His classroom was small. He implemented visual schedules. There is a small teacher to student ratio with low distractions. He implemented many strategies such as stimulation toys, count down, three task system, choice, exercise ball, piano, sensory equipment in his classroom. He thought that in the end, the Student was speaking loud and clear, looking in peoples' eyes, seeking people out. As far as occupational therapy, the Student was able to do the things necessary in class, he could write, tie his shoes, get his clothes on. He described the Student as sweet, well-behaved hard working, not having attention difficulties, he was able to focus and finish a task. The Student did not act out aggressively save a couple of incidences during playground activity but these were isolated incidences and never occurred in class. His behavior did not impede his ability to access the curriculum. Mr. ██████████

explained that progress looks different for students on the [REDACTED] spectrum. The repercussions of autism are that it limits a student's ability to access curriculum at a rapid rate. A sensory diet was not needed in the classroom as when the Student needed a break, he was able to provide a break for the Student, however, the Student did not have sensory issues. A behavior plan was not drafted as the Student did not display behavior that impacted his ability to access the curriculum or his daily functioning. He did use visuals for the Student. He could count money but not able to make a purchase without guidance. Mr. [REDACTED] was concerned with the Student's transition into high school. After the Parents were informed that the Student was placed at [REDACTED] School, after knowing that the Parents wanted the Student to be placed in high school with peers from [REDACTED], he supported the Parents attempts to have the Student placed in a school with the Student's peers as from experience, the Student had difficulty transitioning to [REDACTED] and he wanted to avoid the same transition difficulty.

[REDACTED] was the Student's case manager at [REDACTED]. She first met the Student in September of 2007. She facilitated the IEP meetings. During IEP meetings, the Parents never objected to the content or to amount of services. A special IEP meeting was in June of 2009 to address the Father's concern with the Student's high school placement. The Father signed a waiver to revision on June 1, 2009 (PD Ex. 77). In this June 1, 2009 revised IEP, a transition accommodation was created which stated that the Student will attend a high school with several of his elementary school peers (PD 080). The District had already sent a placement letter to the Parents in April, 2009 stating that the Student was to be placed at [REDACTED] a location without peers. (SD Ex 138). The [REDACTED] staff was concerned that the Student has a smooth transition and wanted to accommodate the Parents' placement wishes.

Parents' occupational therapist [REDACTED] performed a clinical evaluation on the Student December 20, 2009 (PD Ex. 155). She agreed that the Student's curriculum needs to be vocational and he needs a placement in a small classroom setting. She did not state he needed a therapeutic day school setting. (PD Ex. 179). Her evaluation had no input from the Student's educators nor did she observe the Student. She attempted to schedule a visit after the due process hearing had commenced.

[REDACTED], Student's mom, stated she is concerned with the Student's independent functioning skills. She is concerned for his safety skills. She agreed at time that occupational therapy was to be discontinued. Away from school, he needs constant prompting. Never asked staff at [REDACTED] for placement at [REDACTED]. She felt that she had a professional relationship with the staff.

[REDACTED] the case manager at [REDACTED] School stated that the District had scheduled dates for the domain meeting but the meeting never took place. Filing of the Due Process hearing request was prior to the three year evaluation, however, the District attempted to schedule the domain meeting with attorneys to commence the re-

evaluation process (SD. 170).

[REDACTED], the student's current special education teacher presented as a very credible witness. Her classroom has 9 students with two aides. All her students have IEPs, all have autism except one. The age range is to nineteen years of age. She describes the Student's greatest challenges as difficult eye contact, he is very shy, needs help joining the group, needs to be prompted to speak, he does not offer answers on his own however, he does speak well when he speaks. His IEP has not changed during school due to the Parents' Due process Hearing Request. The Student knows his schedule he works very independently, he can write, hold pencil, read some, can follow directions, he solve single digit without a calculator. He can complete assignments on his own and does not need a one to one aide. He can count currency he can read out loud, has simple comprehension. He can read directions on own. She said when she first met the Parents the Father had brought an [REDACTED] brochure. The Father had relayed that they were interested in seeking a placement at [REDACTED]. She said that he has come a long way. When he first came to school he was shy, he would not look others in the eye but still got the routine down He has come a long way in the transitioning, from coming from a small school to such a large school, his demeanor is getting better he is not shying away as much, he requires less prompting he is becoming more independent, social communication now during morning routine, he'll answer right away, makes more eye contact, he will ask to go to the bathroom. She is hoping to provide him goals to help him function more independently. She does not see that the Student has sensory issues which would require occupational therapy. She believes that he is receiving sufficient speech services. She does not believe that he needs social work services in the school environment. He is able to take sensory breaks however he does not get overwhelmed, he is able to sustain attention as long as he needs to. He attends to instruction. Academically, he is quite high functioning. She would like to develop a new IEP but the due process stopped the process. He is functioning at the 2nd to 3rd grade level which is the same level that most of her student's function. He does not have a behavior concern which would warrant a behavior management plan. The [REDACTED] program is new to [REDACTED].

[REDACTED] the Student's independent evaluator testified. She performed a neuropsychological evaluation on the Student on January 4, 2010. (PD 214). Her testimony was of limited value for school purposes as she did not have input from the teachers nor did she observe the educational program although she attempted to visit the program after the hearing had already commenced. She recommended a placement at [REDACTED] but has never been to [REDACTED].

[REDACTED] the speech and language pathologist at [REDACTED] reported that the Student had difficulty transitioning at the beginning of the school year but is now doing well. He participates during whole activities, interacts well with other students. She is also seeing more spontaneous interaction with the student. More speech and language minutes are not necessary as his program is language based and he received additional services in the classroom. She has seen him make educational gains at [REDACTED].

████████ spoke. He signed IEP June 1, 2009 to get a better placement for his son. He trusted ██████████ and the educators to help the Student. He was concerned that ██████████ did not have an ██████████ program. He expressed his concerns immediately when he got the letter that the Student's assignment was at ██████████ school. He is greatly concerned with the Student's independence. He states that the Student cannot do anything for himself. The Student does not know danger. The Student also does not know personal space boundaries and can get to "friendly." He also described the Student as physically aggressive with him. He stated that the delay in enrolling the Student in ██████████ was due to the Student's refusal to go.

████████ manager in the District's Office of Specialized Service. Testified in the placement procedure stating that the schools send her IEPs in the spring for the location of placement to be determined. She said she never received the Student's revised June 1, 2009 IEP. (PD Ex. 77).

Summary of Facts:

Although the both Parents described incidences of physical aggression they experienced with the Student, especially the Student's father, through testimony and evidence, it is clear that the Student does not exhibit aggressive behavior in school. A few individuals explained that the Student had exhibited isolated aggression, however, this was more of the exception with the Student rather than a pattern, nor did his behavior impede his ability to access the curriculum. His behavior did not warrant a functional behavior analysis or a behavior plan. The testimony and written evidence support the District's contention that the Parents were not concerned with the program or ever expressed concern for a lack of progress or any concern over the Student's behavior. The Parents initially attempted to secure a placement at ██████████, this placement was denied on two bases, one it was full and the case manager stated that the placement would not be appropriate as it was more academic. The District's office of specialized services placed the Student at ██████████ School in April of 2009. The Parents tried to have the placement changed to ██████████. The staff at ██████████ attempted to have the office of specialized services change the placement to ██████████ but were unsuccessful and ultimately revised the IEP in June of 2009 to state the Student should be placed in a school with peers. ██████████ staffed stated they were stunned to be in due process as they felt they had a strong relationship with the family and that the Student had made much progress with them. However, the District's administrative department did not change his placement this and the Student started to attend ██████████ in later part of September 2009. The Student did not attend extended school year at ██████████. He first was withdrawn when attending ██████████ for the first few weeks but ultimately is described as doing well. His Parents however, do not see that he is making progress and are deeply concern with his independent living skills, a common concern with all his educators, however, the difference is that his educators see him progressing and having the ability to access his curriculum, The staff at ██████████ would like to develop another IEP for the Student to develop more independent living skills however, have been unable to due to the Due Process. The staff wanted to

conduct three year reevaluations of the student but the parties have been unable to schedule a domain meeting.

Conclusion of law

After four days of hearing, it is clear that the Parents are very concerned for their son's ability to be independent. However, it is also clear that District has provided a free appropriate education in the least restrictive environment and that a placement at [REDACTED] is not warranted. It is also clear that the District has met the basic tenets in providing the Student with a FAPE. However, the District failed to implement the transition accommodation as drafted in the revised June 1, 2010 IEP. The school personnel have stated that the Student seems to be transitioning well to [REDACTED] however admit that at first the Student had difficulty. The Father stated he was unable to get the Student to come to class. It is not evident that any other transition services were offered to the Student. However, overall the District has provided the Student with FAPE and the denial which resulted for failure to follow the transition accommodation in the June 1, 2009 IEP is very limited as the IEPs as drafted have conferred an educational benefit on the Student.

Burden of Proof

In a due process hearing, the party commencing the action bears the burden of persuasion in demonstrating that the District's IEP is inappropriate and that their placement is appropriate. *Schaeffer v. Weast*, 546 U.S. 49, at 57-58 (2005). Parents have not sustained their burden of persuasion in showing that the District deprived the Student a FAPE from October 2007 through

Free Appropriate Education

Under the Individuals with Disabilities Education Act as amended in 2004 (IDEIA), a school district is required to provide a free appropriate public education (FAPE) in the least restrictive environment. 20 U.S.C. Section 1412(a) (1)(a).

The Supreme Court in its landmark decision in *Board of Education of the Hendrick Hudson School District v. Rowley*, 428 U.S. 176 (1982), established a two prong test to determine whether FAPE has been provided to a qualifying student, *Id.* at 200. The first prong is whether the school has complied with procedures as set forth in IDEA. The Parents do not claim that the District failed to follow procedures. The second prong in *Rowley* is whether the IEP sets forth a placement and services which address the unique needs of the child and is reasonably calculated to enable the child to receive and educational benefit. The Court in *Rowley*, emphasizes access to educational

opportunity only, not the specific achievement of educational results. As to related services, the District need only apply those services as the Student needs to access Education.

The IEPs in effect for the Student at [REDACTED] and at [REDACTED] are providing a benefit to the Student, although the student initially had difficulty in transitioning, he appears to now be doing well at Shurz.

The Parents was able to fully participate in developing the IEPs. Goals and objectives were made in consideration to the Student's unique needs.

The Parents contend that the Student has made not always met his goals, and some of the goals are the same. Mr. [REDACTED] explained that due to the nature of his disability, the Student will need to practice the same goal. An IEP is not an educational contract guaranteeing that the student will achieve a certain amount of academic proficiency. *Rowley*, (holding that an IEP must provide a "basic floor of opportunity").

In a similar case a court found that slow progress does not reflect a denial of FAPE but rather the Student's impairment. The U.S. District Court, Northern District of California affirmed an ALJ's determination that a district provided FAPE to an 11-year-old with autism spectrum disorder. The student's parents failed to show that her IEPs were not reasonably calculated to enable her to make an appropriate level of progress. *K.S. by P.S. and M.S. v. Fremont Unified Sch. Dist.*, 109 LRP 80008 (N.D. Cal. 12/29/09). The court further stated that, the fact that the [student] achieved but did not surpass the majority of her goals tends to show that the IEPs were designed appropriately. Citing *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 553 IDELR 656 (U.S. 1982), the court noted that districts are required to provide a basic floor of opportunity, not a potential-maximizing education. The Court further stated that Congress enacted the IDEA "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs." 20 U.S.C. § 1400(d)(1)(A). The IDEA provides for a cooperative process between parents and schools which culminates in the creation of an IEP for every disabled student. *Id.* § 1414; *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 53 (2005). "Each IEP must include an assessment of the child's current educational performance, must articulate measurable educational goals, and must specify the nature of the special services that the school will provide." *Schaffer*, 546 U.S. at 53. The IEP must be "reasonably calculated to enable the child to receive educational benefits." *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 207 (1982). Schools are obligated to provide "a 'basic floor of opportunity' to disabled students, not a 'potential-maximizing education.'" *J.L. v. Mercer Island Sch. Dist.*, 575 F.3d 1025, 1033 (9th Cir. 2009) (quoting *Rowley*, 458 U.S. at 197 n. 21, 200).

In this case the District drafted IEP's which did confer a benefit on the Student and the Student was making progress. While much was made of the change of moderate cognitive impairment to mild cognitive impairment during the hearing, the evidence supports that the individuals implementing the Student's IEP were catering to the specific needs of the Student and not to his "label."

The Parents also contend that the a behavior intervention plan should have been drafted. However the Student did not require one the educational setting. Neither Congress, the Department of Education, nor any statute or regulation "created any specific substantive requirements for the behavioral intervention plan contemplated by [the IDEA]." *Alex R. by Beth R. v. Forrestville Valley Community Unit Sch. Dist. #221*, 41 IDELR 146 (7th Cir. 2004).

The staff at [REDACTED] has wanted to develop another IEP for the Student as life skills and vocational skills are more a central to the curriculum but were unable due to the stay-put agreement. The IDEA's stay-put provision, also known as the pendency placement, is a protective mechanism that requires a school district to retain a student in a current placement during the pendency of any dispute relating to the child's special education program, unless the school district and the parent mutually agree on another placement. 34 CFR 300.518. This provision requires schools to maintain the "status quo" while a dispute over the student's placement or services is pending.

In conclusion the parents have not met their burden in showing that a placement at [REDACTED] is warranted or that an increase in speech and language, occupational therapy or behavioral therapies are warranted.

IT IS HEREBY ORDERED:

1. The parties shall meet for a domain meeting no later than February 19, 2010 to commence the three year re-evaluation process and determine appropriate evaluations to be conducted;
2. The District shall have determine the evaluators;
3. The evaluations shall be completed no later than March 12, 2010;
4. An IEP meeting shall be convened to consider the evaluations and any other relevant information to develop an appropriate IEP for the Student no later than March 26, 2010;
5. The District shall provide the Parents with no less than 20 hours of related services in the form training services to reinforce skills that are learned in school.

ENTERED THIS 1st Day of February, 2010

CERTIFICATE OF SERVICE

The undersigned hearing officer certifies that she served copies of the aforesaid Decision and Order upon Parents' counsel (7009 0080 0000 9158 0326), District's counsel (7009 0080 0000 9158 0333), and the Illinois State Board of Education (7009 0080 0000 9158 0340) at their respective addresses by depositing same with the United States Postal Service in Chicago, Illinois with proper certified postage paid before 5:00 p.m. on February 1, 2010.

Sheana Hermann
Impartial Due Process Hearing Officer