

[REDACTED] provided court reporters for the hearing. The grandparents called the following people as witnesses: [REDACTED]; [REDACTED] principal at [REDACTED] general education teacher; [REDACTED] speech/language pathologist; [REDACTED] City-wide Special Education Teacher; [REDACTED] Special Services administrator; [REDACTED] occupational therapist; and [REDACTED] M.D., the student's treating developmental and behavioral pediatrician (testified by telephone). The district called the following witnesses: [REDACTED] Administrator of Autism and Cognitive Disabilities Programs; [REDACTED] Placement Manager; [REDACTED] the student's special education teacher; [REDACTED] Ph.D., school psychologist; [REDACTED] case manager; Ms. [REDACTED] and, [REDACTED]

At the close of the hearing, the district withdrew the following pages from its evidence binder: SD 107-112, 114-116, 133-146, and 211-233. Those documents were returned to the district. The district moved to enter all other documents in its evidence binder into evidence. The grandparents did not object, and the district's documents were entered into evidence. The grandparents withdrew the following pages from their evidence binder: PD 1-3, 31-33, and 42. Those documents were returned to the grandparents, who then moved to enter all other documents in their evidence binder into evidence. The district did not object, and the grandparents' documents were entered into evidence.

No transcript was issued prior to the date of this decision; therefore, the testimony referenced below is based on the undersigned's memory and hearing notes. In rendering this decision, the undersigned has considered all documents entered during the hearing, testimony by parties' witnesses, the parties' closing arguments and their suggested case law, as well as independent research. This decision is issued within ten days after the hearing's conclusion, as required by Illinois law. 105 ILCS 5/14-8.02a(g55)(5).

ISSUES AND REQUESTED REMEDIES

The grandparents' due process complaint raises three issues:

1. Did the district develop an IEP for the student in a timely manner when she transferred into the district in academic year 2010-11?
2. Did the district conduct a full individual evaluation of the student and develop an appropriate IEP to meet her needs?
3. Did the district's two placements – the student's current placement in a special education classroom with a 1:1 aide and the district's proposed placement in an instructional autism classroom – offer the student a free appropriate public education in the least restrictive environment?

As remedies for the above-alleged violations of the IDEA, the grandparents request that the district place the student in a regular education classroom with a dedicated 1:1 aide at [REDACTED]

The district requests an order that finding that it has complied with all required IDEA procedures and that the appropriate placement for the student is in an instructional program for students with autism.

Throughout the hearing, the grandparents' counsel alluded to alleged procedural violations by the district. However, no procedural violations were raised in the due process complaint or discussed at the prehearing conference. Issues that were not properly raised in the hearing request cannot be heard at hearing. 105 ILCS 5/14-8.02a(g-50)

BURDEN OF PROOF

In a special education administrative hearing, the party seeking relief has the burden of proof. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 531, 163 L.Ed.2d 387 (2005). The grandparents are seeking relief in this case and therefore have the burden of proof on all issues.

FINDINGS OF FACT

The student is finishing first grade at her neighborhood public school, [REDACTED]. She lives with her maternal grandparents, [REDACTED], who are also her legal guardians. (PD 34-38). The grandparents have had legal authority to make educational decisions for [REDACTED] since June 7, 2010. (PD 37). The student and her two sisters – one of whom is [REDACTED]'s twin - have lived in Chicago with their grandparents since June 12, 2010. The grandparents speak Spanish and do not read or speak English. They require an interpreter, or Spanish speaking staff, to communicate with school personnel.

Prior to being placed with her grandparents, [REDACTED] lived in a foster home in Texas at least since September 17, 2009. (SD 189; PD 43). The only information on her school experience in Texas is that gleaned from examining her two available Texas IEPs. In school year 2009 -10, [REDACTED] attended a Texas public school and was eligible for special education and related services as a student with autism and a speech impairment.³ (SD 162-188; PD 4-29). Her October 28, 2009 IEP required placement in

² The grandparents had originally requested that the district place [REDACTED] at the charter school that her twin sister attends. However, the district asserts that it has no authority to make a charter school accept a particular child; thus, that request is not considered in this decision.

³ The student has two Texas IEPs for school year 2009-10. The first is dated September 17, 2009. (SD 189-199). This document is not in the grandparents' evidence binder. The second IEP for that school year is dated October 28, 2009. It is in both parties' evidence binders. (SD 162-188; PD 4-29).

a special education classroom for the majority of the school day, with one period/day in physical education or music with her non-disabled peers. (SD 196; PD 25). She also had a shared aide and received 200 minutes of speech therapy each 6-week grading period. (SD 182, 183; PD 24, 25). The Texas district reviewed her IEP on January 14, 2010 and maintained her eligibility as a student with autism and a speech impairment. (SD 147, 149). Her educational program remained the same as in her prior IEP, including speech therapy services and a shared aide. (SD 155). The special education classroom utilized a functional curriculum. (SD 157).

██████████ were greatly troubled, concerned, and sometimes scared about ██████ behavior when she first came to live with them. She bit and hit herself, wore diapers, and was afraid of the toilet bowl and of bathing. She also screamed a lot. Their concern and efforts to seek help to understand their granddaughter's disability were evident throughout the hearing. The grandfather took ██████ to University Medical Center for her school physical on July 16, 2010. (PD 43). A physician's note indicates that ██████ was diagnosed with autism in 2006. *Id.* The Rush clinic referred ██████ to a developmental pediatrician, Dr. ██████ who examined ██████ on July 30, 2010. (SD 119). ██████ diagnosed ██████ with autism and global developmental delay. He advised the grandparents to register ██████ at their local public school and recommended that the district conduct a case study evaluation. He also recommended that the "best placement" would be an autism instructional program with intensive speech therapy, occupational therapy, and counseling. *Id.*

Following ██████ advice, ██████ went to ██████ twice over the summer to enroll ██████. He was unable to do so because the school was not in session. However, he did speak with someone in the school's office, who gave him the medical and dental forms required for enrollment. He had the forms completed and returned them to ██████ at the end August. He also gave the student's January 14th IEP and Dr. ██████ July 30th letter to ██████⁴ (SD 119).

██████████ began attending ██████ in September, at the start of the 2010-11 school year. Although the grandparents were confused about ██████'s educational program at ██████ the evidence shows that she was placed in a special education self-contained classroom for the majority of the school day and had lunch and "specials" (non-academic classes) with her non-disabled first grade peers. The specials were in a regular education bi-lingual first grade classroom. There also was a shared aide in ██████ classroom.

On September 20, 2010, the district notified the grandparents that it would hold a meeting on September 22nd to review ██████ Texas IEP and determine her educational placement. (SD 1; PD 47). ██████ attended the meeting. (SD 4). ██████ did not attend because he was unable to get time off from work due to the short notice. District

⁴ There was significant dispute over which letters from Dr. Ochoa the district had in the student's file and when the grandparents provided those documents. In this decision, Dr. Ochoa's one page letter dated July 30th is referred to as the "July 30th letter" while his three page report, also dated July 30th, is referred to as the "July 30th report." (PD 44-46).

attendees included the case manager, the student's special education teacher [REDACTED] (a regular education teacher), [REDACTED] (school psychologist), [REDACTED] (school social worker), [REDACTED] speech/language pathologist), and an interpreter for the grandmother. (SD 4). School staff had reviewed the student's January 14th IEP in preparation for the meeting. [REDACTED] had also reviewed [REDACTED] July 30th letter.

School staff reported that [REDACTED] needed maximum support throughout the day to sit in her seat and attend to her work. She was unable to verbalize her wants and needs and communicated through gestures. She was easily distracted and required constant prompts and redirection. She was unable to complete first grade curriculum assessments due to her communication deficits and off-task behavior. The team recommended an occupational therapy evaluation to assess [REDACTED] self-help skills, fine motor skills, and visual motor skills. (SD 5; PD 49). The team reviewed the considerations for students with autism and noted relevant concerns in five out of seven areas. (SD 6; PD 50). [REDACTED] required paraprofessional support throughout the school day. (SD 8, 9; PD 52).

The IEP team developed goals for academic instruction and speech/language therapy. The academic goals are directed toward helping [REDACTED] develop pre-academic skills such as correctly identifying colors, writing numbers, saying or pointing to the letters in her name, and learning to share. (SD 14,15,18-21; PD 57-62). The speech goals address basic language acquisition skills, including being able to repeat one to two word utterances to request or comment during structured language activities. ([REDACTED] 16,17). The team also developed numerous accommodations to address [REDACTED]'s needs in both academic and non-academic classes. (SD 10-13; PD 52-55). The district's instructional week in its elementary schools is 1500 minutes. The team determined that [REDACTED] required direct special education services for 1340 minutes/week, including 40 minutes/week of direct speech/language therapy. The IEP also requires both the speech/language pathologist and the social worker to consult with the special education teacher for 15 minutes/month. Finally, the IEP requires that [REDACTED] participate in regular education classes with her non-disabled peers in physical education, library, and computer classes. (SD 22; PD 63). Bus service is required as a related service. (SD 26). Although the team did not find the student eligible for Extended School Year (ESY) services, it was to "consider" collecting data and to revisit her need for ESY by April 15, 2011. (SD 25; PD 65).

The district provided an interpreter for [REDACTED] at the September IEP meeting. Additionally, several district staff who attended the meeting are fluent in Spanish and spoke with the grandmother in Spanish. Despite that, [REDACTED] testified that she did not understand what was going on and felt scared by the meeting. Although most district staff thought that they had made it clear to [REDACTED] that the IEP required placement in an autism instructional program and that [REDACTED] did not have such a program, [REDACTED] testified that [REDACTED] was confused by this and did not realize that the recommendation meant that her granddaughter would no longer attend [REDACTED]. This meeting was the first of several unfortunate, troublesome communication problems

between the district and the grandparents. After this IEP meeting, the grandparents decided that [REDACTED] would take over communicating with the school, and [REDACTED] would take the children to and from school each day.

The district sent the grandparents a Conference Recommendation on September 23, 2010. The letter memorializes [REDACTED] eligibility as a student with autism and a speech and language impairment and states that she will receive the special education and related services listed on her IEP. It does not use the term "autism instructional program." The grandparents did not sign the form to waive the 10 calendar days before placement would begin. (SD 28).⁵

An autism instructional program is a self-contained classroom that provides students with autism a predictable routine and structured learning environment. The teacher to student ratio is smaller than in regular or special education classrooms. Both autism instructional placements offered to [REDACTED] had one teacher and two paraprofessionals in the classroom. Class size is limited, and is usually 9 to 11 students. The teacher has specific training in working with children with autism. The classroom is laid out strategically, so that children can easily transition between learning areas. The room is designed to address the unique sensory issues that are typical of children with autism, and the teacher modifies her approach to a student's unique sensory needs. Several different strategies are used, including picture exchange system (PECS), applied behavioral analysis (ABA), visual schedules, and social skills instruction. Activities are language based and emphasize repetition and practice. The curriculum is significantly modified, and functional language stressed. There is a sensory break room for the students' use. A student's related service professionals consult with the special education teacher on a regular basis. As students in the program develop academic skills and are able to function independently, they gradually move to more inclusive settings.

In this district, when a student's educational program cannot be implemented at the student's neighborhood school, the district's administrative office is in charge of locating a placement. A placement manager reviews the student's IEP and identifies a school that can implement the IEP. This decision is based on several factors, including which schools are closest to the student's home address and which have an appropriate program and an opening in the required program. Transportation is also considered. [REDACTED] placement manager in the district's Office of Special Education and Supports, reviewed [REDACTED] IEP and based on the foregoing factors, determined that [REDACTED] would be placed at [REDACTED] elementary School. She issued a placement letter on September 27th, informing the grandparents that [REDACTED] would be placed in an autism instructional program at [REDACTED] and explaining how to enroll [REDACTED] at [REDACTED]. The start date for the placement was October 12, 2010. The letter warns that [REDACTED] must be enrolled within 10 days of the start date, or she might lose her placement at [REDACTED] (PD 67).

⁵ The undersigned notes for the record that the form is addressed to the student's biological mother, not to the grandparents who are her legal guardians and who attended the September 22nd IEP meeting

After [REDACTED] received Ms. [REDACTED] letter, they went to the district's central office and met with her. [REDACTED] said the meeting occurred a few days after September 27th. She provided an interpreter for the meeting. [REDACTED] testified that the grandparents were confused by her letter because they thought [REDACTED] was going to remain at [REDACTED]. She explained that [REDACTED] needed more support than [REDACTED] could provide and answered their questions about the [REDACTED] program. She told them that the [REDACTED] classroom currently had four students, one teacher, and two aides. [REDACTED] raised concerns about transportation. In addition to [REDACTED] and her two sisters, [REDACTED] have several of their own children living at home who they take to school each morning. The family relies on public transportation since they do not have a car. In response to [REDACTED]'s concerns, [REDACTED] explained that the district would provide bus service for [REDACTED], and offered to expedite that by taking the form to the transportation office herself as soon as they enrolled [REDACTED]. Transportation does not begin until three to five days after a student is enrolled, and [REDACTED] offer was to help shorten the turn-around time. She told [REDACTED] that he must enroll [REDACTED] at [REDACTED] or the placement would be lost. At the end of the meeting, [REDACTED] thought that the grandparents were going to visit [REDACTED] and enroll [REDACTED] there.

[REDACTED] was closed that week for vacation, and so the grandparents could not visit. They did, however, drive by the school. [REDACTED] testified that he then spoke with some [REDACTED] staff about [REDACTED] and because of the positive feedback he received, he decided to enroll [REDACTED] at [REDACTED]. However, several days later he went back to [REDACTED] office to inquire further about transportation. There is conflicting evidence about what occurred during this second meeting. According to [REDACTED] he asked for a few extra days so that [REDACTED] could start at [REDACTED] on the same day as the district bus service would begin. He said that Ms. [REDACTED] told him that [REDACTED] would lose her special education rights forever if she were not enrolled that day.

[REDACTED] testified that the grandfather declined the placement because of concerns about the racial composition at [REDACTED]. She said that he felt the [REDACTED] staff had misled him into thinking that [REDACTED] would remain at [REDACTED]. Ms. Evans explained that [REDACTED] does not have an autism instructional program and suggested that he ask to reconvene the IEP meeting or talk with the administration about his concerns. She also advised him about due process rights and procedures. She testified that she did not instruct him to revoke consent for services. The undersigned finds [REDACTED] testimony persuasive on this point. Her actions – taking time to meet with the grandparents twice, offering to expedite transportation services, explaining options for resolving the problem with [REDACTED] staff, and advising [REDACTED] about their due process rights – do not fit with the allegation that she said [REDACTED] would lose her educational rights forever if the grandparents did not immediately enroll her at [REDACTED] or the allegation that she instructed them to revoke consent for special education services.

[REDACTED] went to [REDACTED] on October 8th and revoked special education services for his granddaughter. School staff explained that if he signed the revocation form, [REDACTED] would no longer receive special education and related services. She would be placed in a regular first grade classroom without an IEP, accommodations, or modifications. An

interpreter provided interpretation for the grandparents during the meeting. [REDACTED] took the form home for review and returned the signed form to [REDACTED] the following week. (SD 29, 125a; PD 68).

Because of the revocation, [REDACTED] was placed in a bilingual regular education first grade classroom. She began to have behavioral and academic problems immediately. Although neither party called the regular education teacher to testify, the school principal testified that the teacher had told him about [REDACTED]'s problems and need for special education services. His testimony corroborates behaviors described in the teacher's email, which includes random yelling, throwing books on the floor, climbing on her seat, and throwing herself on the floor. The email also raises safety concerns such as trying to leave the classroom, playing with scissors, and attempting to pull another student's hair. (SD 125b). The grandfather reported that he received many notes about [REDACTED]'s misbehaviors at school, including eating dirt and putting chemicals on herself. He was confused by these reports because he and his wife did not see such behaviors at home. Unfortunately, the grandparents interpreted these differences as a sign that [REDACTED] did not want [REDACTED] as a student.

[REDACTED] the district's administrator over programs for students with autism and cognitive disabilities, became involved at this point. Because of her concern about [REDACTED], she called [REDACTED] and asked staff to arrange a meeting with the grandparents. She wanted to provide them with the support and information necessary for making an informed decision about [REDACTED]'s education. The meeting was held October 28, 2010. (SD 31). The grandparents attended with an advocate, an interpreter, and a representative from the foster agency. District staff included [REDACTED]. The meeting began with a "heated" discussion between the principal and the grandfather about enrollment. [REDACTED] was also concerned about an interaction that had taken place between a teacher and the grandmother. The foster agency representative provided historical information about the student's life prior to her move to [REDACTED] which the district found helpful. The district offered to conduct a full case study evaluation (CSE), including assessments of [REDACTED] academic and intellectual functioning, a speech/language assessment, an occupational therapy assessment, and a social work assessment. The district planned to hold an eligibility and IEP meeting after the CSE was completed, to review the assessment results and develop a new IEP for [REDACTED]. The foster agency supported the plan and encouraged the grandfather to consent to the evaluations. Although the Consent for Evaluation form does not include any of the required identification information of the student, the evidence shows that [REDACTED] signed the form on October 28, 2010. (SD 38, 39; PD 70). The grandparents received both Spanish and English versions of the form. The form explains the purpose of the evaluation and the process that will be followed. [REDACTED] then rescinded his October 8th revocation of special education and related services for [REDACTED] (SD 30; PD 69).

[REDACTED] was placed back in the first grade special education classroom and received the comparable services that had been put in place at the beginning of the school year. [REDACTED] the special education teacher, focused on teaching language arts and math to [REDACTED]. She testified that [REDACTED] is frustrated in class and requires lots of

redirection when working on language arts skills. However, she becomes frustrated when redirected and then cries. Although she is good at memorizing flash cards, [REDACTED] has "big" comprehension problems. [REDACTED] testified that [REDACTED]'s strengths are her good visual memory and good fine motor skills. Her biggest needs are in communication and socialization skills. She is unable to verbalize her wants and needs, and she does not socialize with other children. She seems unaware of her peers. [REDACTED] has no special training in working with students with autism, although she did receive some advice from a district specialist on how to work with [REDACTED] after [REDACTED] returned to her classroom.

[REDACTED] the district's citywide support teacher for low incidence disabilities classrooms, observed [REDACTED] twice in [REDACTED] classroom. Based on her observations, she provided [REDACTED] with strategies for working with [REDACTED]. [REDACTED] testified that [REDACTED] had difficulty following instructions and resisted doing anything but being on the computer. [REDACTED] did not interact with the other students. [REDACTED] reported that [REDACTED]'s strengths include computer skills, good matching skills, letter recognition, being able to write her first name, and being easily redirected. Her unique needs include a need for structure and routine, difficulty with transitions, decreased attention span, poor social skills and safety awareness. She testified that [REDACTED]'s needs could not be met in a regular education classroom, even with the provision of a dedicated 1:1 aide. She opined that the use of a dedicated aide often backfires because the student becomes dependent on the aide and does not learn to generalize.

On November 3, 2010, the district documented the assessments that had been agreed upon during the October meeting. (SD 40). The case manager sent the grandparents a conference notice on November 16, 2010, informing them of a meeting scheduled with the school psychologist and social worker on November 19, 2010. (SD 42). The notice was issued in Spanish. The meeting was held as scheduled. (SD 46).

[REDACTED] conducted an extensive psychoeducational assessment of the student including an interview with [REDACTED] observations of [REDACTED] in her special education and regular education classrooms, an adaptive functioning assessment, an autism assessment, and a records review. He also attempted to conduct formal academic and cognitive assessments in English and Spanish but was unable to do so because of [REDACTED]'s limited attention span, inability to sit still and focus, and limited communication skills. On the Vineland Adaptive Behavior Scales (Vineland), which was given to the grandparents, the student was rated as "low" in all areas of adaptive functioning. The Vineland measures functioning in communication, daily living skills, socialization, and motor skills. The Gilliam Autism Rating Scale-2 (GARS-2) was given to the grandparents and to the special education teacher. The GARS-2 scores from both the grandparents and the teacher indicate a very likely probability of autism. Both the school and home ratings show stereotypical behaviors such as staring at objects, avoiding eye contact, and making high pitched sounds; communication problems including repeating or echoing words, babbling, using gestures instead of speech, and using "I" inappropriately; and, social interaction difficulties such as behaving in a fearful

manner and withdrawing from group situations. (SD 43-45 [REDACTED] testified that the student's Vineland scores are consistent with a diagnosis of autism.

When [REDACTED] observed [REDACTED] in her classroom, he noted that she was overstimulated by her peers, demonstrated a great deal of off-task behavior, and did not interact verbally with her peers. His records review included reviewing the student's January 2010 Texas IEP and [REDACTED] letters dated July 30, 2010 and November 2, 2010. (SD 119 -121). He concurred with [REDACTED] diagnosis of autism and recommendation of placement in an autism instructional program.

The speech and language evaluation, done by [REDACTED] included informal and formal assessments (attempted) in Spanish and English, a classroom observation, a records review, and interviews with the grandparents and special education teacher. During the classroom observation, [REDACTED] used some spontaneous language while working on the computer, identified and named some letters, repeated words, and produced one-word spontaneous words. She also used jargon and unintelligible vocalizations. [REDACTED] attempted to interact with [REDACTED], but the student neither acknowledged her nor responded appropriately to her questions. When [REDACTED] tried to engage [REDACTED] through play, the student preferred to play by herself. [REDACTED] was able to name some of the letters in her name. [REDACTED] was unable to assess [REDACTED]'s oral motor structures, voice, articulation skills, or fluency skills. She attempted to administer the Receptive One-Word Picture Vocabulary Test (ROWPVT), but [REDACTED] could not point to pictures correctly in a field of 5. On the Expressive One-Word Picture Vocabulary Test-Bilingual Edition (EOWPVT), she would not look at the pictures. Based on her evaluation, [REDACTED] determined that [REDACTED] has severely delayed expressive and receptive language skills. She communicates primarily through one-word utterances, vocalizations, grunts, and gestures. She recommended speech and language services that focus on improving [REDACTED]'s overall communication skills and implementing a picture exchange program in the classroom. (SD 52-54).

The occupational therapy evaluation, which was conducted by [REDACTED] included an observation of the student in her special education and regular education classrooms, during lunch, and during transition times. In the general education setting, [REDACTED] had difficulty following directions and sitting still, touched other students and screamed if they touched her, and flapped her hands. She seemed more comfortable in the special education room, which had a smaller class size. [REDACTED] was able to do some work but had a hard time following routines and preferred to engage in activities that she liked. She has no gross or fine motor limitations and is independent in all self-help skills. However, she needs supervision to follow the routines of self-help activities. She can manipulate a computer mouse and independently access the classroom's computer programs. On the Developmental Test of Visual Motor Integration, [REDACTED] scored in the below average range. The teacher completed a Sensory Profile, which assesses how a child takes in and processes information. [REDACTED]'s scores show a "definite difference" from other children in auditory, movement, tactile, behavior, registration, and sensory seeking areas. Based on her assessment [REDACTED] recommended occupational therapy services. (SD 55-57).

The school social worker also evaluated the student as part of the CSE. Neither party called [REDACTED] as a witness. Her report provides a review of [REDACTED] psychosocial history. The information on [REDACTED] prior to her move to [REDACTED] is sparse. The biological mother, who is the grandparents' daughter, lost custody of [REDACTED] due to severe neglect, which included leaving the student and her sisters alone for long periods of time. [REDACTED] and her sisters were placed in foster care after their mother denied having an extended family. The three girls were moved to Chicago after the oldest of the three sisters informed the foster care worker that their grandparents live in Chicago. The grandparents told [REDACTED] that [REDACTED] had "strange" behaviors when she came to live with them, including eating excessively, crying and screaming at bath time, and banging her head. They have noticed improvements in her behavior over the months that she has lived with them. She can bathe herself and no longer bites or bangs her head. The social worker's report states that [REDACTED] was initially unresponsive during the interview and then made eye contact; however, she was unable to remain engaged with the social worker. Based on her assessment, [REDACTED] recommended services to help [REDACTED] develop social skills. (SD 46-51).

On December 6, 2010, the district sent a conference notice to the grandparents, informing them that a meeting would be held on December 15, 2010 to review the recent evaluations. (SD 58; PD 71). The grandparents requested that the student's regular education teacher, [REDACTED] not attend the meeting. The district agreed to their request and re-issued the notice, changing the regular education teacher to [REDACTED] (SD 59). Although [REDACTED] teaches a regular education first grade class, [REDACTED] has never been in her class. She attended the meeting to address questions about the regular first grade curriculum and assessments. The grandparents acknowledged receipt of their procedural safeguards on December 10, 2010. (SD 60).

The district held the eligibility determination meeting as scheduled on December 15, 2010. Both grandparents attended the meeting. The district provided an interpreter. (SD 61; PD 72). Although the grandparents insist that the interpreter did not attend the entire meeting, district staff testified otherwise. Assuming *arguendo* that the grandparents are correct, many staff speak Spanish and testified that they assisted with interpretation. Additionally, each of the evaluating clinicians speaks Spanish, and each delivered his/her report in Spanish and English. The evidence shows that interpretation was provided during the meeting. The team determined that the student was eligible for special education and related services as a student with autism. (SD 67; PD 78).

The meeting was lengthy – between two and three hours – so the team did not discuss appropriate placement during the meeting. However, the grandfather did ask the team to consider placing [REDACTED] in a regular education classroom with a dedicated 1:1 aide. He believes that if [REDACTED] receives the same type of program that her twin sister has at a neighborhood charter school, [REDACTED] will develop the skills and make the educational progress that the grandparents claim the twin sister is making. He has consistently asked the district to give this suggestion a trial period to see if it will work. [REDACTED] testified that those IEP team members who sat by the grandparents agreed

with his suggestion of a trial period before moving [REDACTED] to a more restrictive placement. She said that she made an agreement with the grandparents that if their proposed regular education placement did not work, they would go with her to visit an autism program. She testified that [REDACTED] also agreed that the parents' proposal should be tried. However, she said the team – that is, the rest of the staff at the meeting - did not agree with the suggestion. The undersigned finds [REDACTED] testimony credible. She was forthright and answered these difficult questions directly, in contrast to some of her colleagues who had difficulty recalling this part of the meeting. Her honesty is appreciated. The evidence shows that grandparents and at least [REDACTED] left the meeting with the impression that the student would have a trial placement in regular classroom with a 1:1 aide.⁶ However, the team did not fully discuss and determine placement at the December 15th meeting.

On December 30, 2010, the district sent a notice to the grandparents scheduling an IEP meeting on January 12, 2011 to revise the student's IEP and determine her educational placement. (SD 71; PD 80). Both grandparents attended the January 12th meeting. (SD 72, PD 81). The team reviewed [REDACTED]'s functional and academic needs and special considerations for students with autism. They determined that all seven of the autism considerations – verbal and nonverbal communication needs, need to develop social interaction skills and proficiencies, needs resulting from unusual responses to sensory experiences, needs resulting from resistance to environmental change or change in daily routines, needs resulting from engaging in repetitive activities and stereotyped movements, need for positive behavioral interventions to address behavioral difficulties resulting from autism, and other needs resulting from autism that impact [REDACTED]'s progress in the general curriculum, including social and emotional development – are relevant and must be addressed in the student's IEP. (SD 76; PD 85). The team developed accommodations and modifications for both academic and non-academic classes. (SD 79-85; PD 88-93). They decided that [REDACTED] requires a shared aide in her special and regular education classes. (SD 79-81; PD 88-90).

The team updated the student's present levels of performance. In Language Arts/reading, she had progressed from not knowing the letters of the alphabet to knowing at least 85% of them. (SD 14, 18, 86, 90; PD 57, 61, 94, 98). Her basic math ability in counting objects and in independently writing numbers improved. (SD 15, 87; PD 62, 95). The goals were revised to incorporate and build on this progress. (SD 86, 87, 90; PD 94, 95, 98). Her other academic goals were also updated. (SD 88, 89; PD 96, 97). The speech goal is for her to imitate 1 to 2 word utterances and use an augmentative visual system to fully communicate her wants and needs in 7/10 trials. (SD 91; PD 99). Unlike the prior IEP, this IEP has no social emotional goal. Neither this IEP nor the prior one has a parent training goal. The IEP repeats the ESY determination from before: [REDACTED] is not eligible, but the team should consider collecting data and revisit the decision by April 15th. (SD 95; PD 126, 127).

⁶ After Ms. Huerta's testimony, the district decided not to call Ms. Bonilla-Kochanski as a witness.

The IEP increases the student's special education minutes in Language Arts/Reading from 600 to 780 minutes/week. Math special education minutes are decreased by 60 minutes/week, and social science and physical science minutes are decreased by approximately 50%. There are no social/emotional service minutes. Speech/language services are required for 40 minutes/week. The total minutes in special education is decreased from 1340 minutes/week to 1215 minutes/week. The IEP requires consultation between the all related service providers – OT, social worker, and speech pathologist – and the special education teacher. The special education teacher is also to consult with the regular education teacher. The student is to participate with her non-disabled peers in the general education setting in art, music, physical education, library, computer, independent functioning, and social/emotional. (SD 92; PD 123). The program has not been implemented because the grandparents do not agree that it provides █████ an appropriate education in the least restrictive environment. They want her to be placed in a regular education classroom with a dedicated 1:1 aide.

CONCLUSIONS OF LAW

The IDEA ensures that children with disabilities are provided with a free appropriate public education and related services that meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d)(1)(A). To qualify for special education and related services, a child must have one or more of the statute's enumerated disabilities and, because of that disability, need special education and related services. 20 U.S.C. § 1401(3)(A). Autism is one of the enumerated disabilities. 20 U.S.C. § 1401(3)(A)(i). For special education purposes, autism is defined as a developmental disability that significantly affects a child's verbal and nonverbal communication and social interaction. A child with autism may also show other characteristics, such as engaging in repetitive activities and stereotyped movements, resisting environmental change or change in daily routines, and showing unusual response to sensory experiences. 34 C.F.R. § 300.8(c)(1)(i).

The IDEA conditions federal funding on a state's compliance with policies and procedures to ensure, among other things, that school districts provide a free appropriate public education is available (FAPE) to all children with disabilities between the ages of 3 and 21. 20 U.S.C. § 1412(a)(1)(A). Districts must educate children with disabilities, to the maximum extent appropriate, with children who are not disabled. 20 U.S.C. § 1412(a)(5)(A). A child may only be removed from the regular education environment "when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." *Id.* The latter provision, known as the least restrictive environment (LRE) requirement, is at the crux of the dispute in this matter.

Did the district develop an IEP for the student in a timely manner when she transferred into the district in academic year 2010-11?

When a child with a disability, who had an IEP in effect in a previous school district in another state, transfers to a new public school district in a new state and enrolls in a new public school, the new school district must provide the child with a FAPE that includes services comparable to those in the previous IEP. 20 U.S.C. § 1414(d)(2)(C)(II). The comparable services must continue until such time as the new district conducts an evaluation, if necessary, and develops and a new IEP. *Id.* The term "comparable services" is not defined in federal or state law. The Office of Special Education Programs of the U.S. Department of Education interprets "comparable" to have the plain meaning of the word: similar or equivalent. 71 Fed. Reg. 46681 (August 14, 2006). Thus, comparable services are services that are similar or equivalent to the services required in the student's IEP that was in effect in the prior school district.

When the grandfather enrolled the student at [REDACTED] he gave her January 14th IEP to the school. That IEP had been implemented in [REDACTED] and, because it had been developed less than a year earlier, it was still current when [REDACTED] transferred to [REDACTED]. See, 20 U.S.C. § 1414(d)(4)(A)(i). The educational program in January 14th IEP requires special education for all academic classes and one period/day in regular education non-academic classes. It also requires speech/language therapy for 200 minutes per six-week period (approximately 33 minutes/week), an aide, and transportation.

The evidence shows that the district reviewed the out-of-state IEP when [REDACTED] enrolled in the district, determined that the IEP was current since it had been developed within the prior 12 months, and provided her with comparable services by placing her in a special education classroom for academic instruction and a regular education classroom with her non-disabled peers for non-academic subjects. She had a shared classroom aide and received speech/language therapy. The district did not provide transportation because [REDACTED] lives within walking distance of the school. Thus, the district fulfilled its obligation to provide timely comparable services.

Did the district conduct a full individual evaluation of the student and develop an appropriate IEP to meet her needs?

A district must evaluate a student in all areas of suspected disability by using a variety of assessment tools and strategies, including information provided by the parents. 34 C.F.R. §300.304(b)(1). Assessments must be conducted in the student's native language and must be administered by trained and knowledgeable personnel. 34 C.F.R. § 300.304(c)(1)(ii), (iv). The evaluation must be sufficiently comprehensive to identify all of the child's special education and related service needs. 34 C.F.R. 304(c)(6). The evaluation must also consider evaluations and information provided by the student's parents. 34 C.F.R. § 300.305(a)(1)(i)

The grandparents contend that the district should have evaluated the student after receiving [REDACTED] July 30th letter, which recommends that the district conduct a case study evaluation. Although a district must determine if an evaluation is necessary within 14 school days of receiving a request for an evaluation from a parent, there is no

such obligation when a physician recommends an evaluation. 23 Ill. Adm. Code § 226.110(c)(3). There has never been a dispute as to [REDACTED] eligibility as a student with autism. As to the timing of the evaluation, district testimony shows that staff believed [REDACTED] needed time to settle into her new school and new living situation before assessing her. This is a reasonable decision in this instance, where the student's autism results in difficulties with change of routine and overstimulation. Moreover, the district is permitted to implement comparable services until it decides that an evaluation is necessary and develops a new IEP. 20 U.S.C. § 1414(d)(2)(C)(II).

During [REDACTED]'s testimony, he stated that the [REDACTED] evaluation was not reliable. That opinion was not included in his July 30th letter and so the district had no knowledge of this opinion until this hearing. There is no evidence that [REDACTED] ever reviewed the [REDACTED] evaluation. The [REDACTED] IEP, which the grandparents gave to [REDACTED] and to the district, refers to an evaluation but does not provide any substantive information about the evaluation. The undersigned gives no weight to this opinion, as there is no evidence that [REDACTED] actually reviewed the [REDACTED] evaluation.

The district evaluated the student in several areas: the psychoeducational evaluation assessed her intellectual, academic, and functional skills; the speech/language evaluation assessed her communication skills; the occupational therapy evaluation looked at her gross and fine motor skills and her sensory integration processing skills; and, the social/emotional evaluation assessed her emotional functioning, including historical background and current social development and social skills. Each evaluator also observed the student in her classroom, interviewed her teachers and grandparents, and reviewed her educational file. Each evaluator speaks Spanish, and each attempted to communicate and evaluate [REDACTED] in Spanish and in English. There is no allegation that the district's evaluators did not hold the proper credentials for their respective fields. The evidence clearly shows that each evaluator used a variety of assessments, observed the student in her classrooms, and reviewed the available records. With the exception of the occupational therapist, each of the evaluators also met the grandparents. Based on this evidence, the undersigned finds that the evaluation addressed all areas of suspected disability, used a variety of assessment tools and strategies, was non-discriminatory, and was conducted by trained professionals. Additionally, the team reviewed the information provided by parents prior to the date of the evaluations. The district's evaluation meets the standard required by federal and state law.

The IEP team must include the student's parents, a regular education teacher, a special education teacher, a district representative who is qualified to provide or supervise special education instruction, and an individual who can interpret evaluation results. 20 U.S.C. § 1414(d)(B). The student's grandmother attended the September IEP meeting, and both grandparents attended the December and January meetings. District staff that had evaluated the student attended all three of the IEP meetings. A special education teacher and a regular education teacher attended each of the IEP meetings. The evidence shows that when the parents requested that the student's regular education teacher not attend an IEP meeting, the district honored their request

and had another first grade regular education teacher attend to ensure that the staff required by IDEA were at the meetings. The composition of the IEP team meets the statutory requirements.

An IEP must consider a student's strengths, parental concerns, recent evaluation results, and the student's academic, developmental, and functional needs. 20 U.S.C. § 1414(d)(3)(A). Illinois law requires that for students with autism, the IEP also consider the student's verbal and nonverbal communication needs, the need to develop social interaction skills and proficiencies, the needs resulting from the student's unusual response to sensory experiences, the needs resulting from resistance to environmental change or change in daily routines, the needs resulting from engagement in repetitive activities and stereotyped movements, the need for positive behavioral interactions, strategies and supports, and other needs resulting from the disability that impact the student's progress in the general curriculum, including social and emotional development. 105 ILCS 14-8.02(b).

The grandparents contend that the district did not consider their concerns, particularly their request regarding placement. However, the IEPs document their request and their concern that [REDACTED] will not make progress in the district's recommended program. The district also considered [REDACTED] letters, including the March 8th letter in which he changed his placement recommendation to a regular education class with a 1:1 aide. Although the district must consider the grandparents' request, the district is ultimately charged with developing the student's educational program and placement. See, *A.B. v. San Francisco Unified School District*, 51 IDELR 158 (N.D. Ca. 2008); *Fitzgerald v. Fairfax County School Board*, 556 F. Supp. 2d 543, 50 IDELR 165 (E.D. VA 2008). The evidence shows that the district considered all required information when it developed the student's IEPs.

An IEP must be reviewed and revised, if appropriate, to address reevaluation results, information provided by the parents, and the student's anticipated needs. 34 C.F.R. § 300.324(b)(1)(ii)(B)-(D). The IEP team reconvened on January 12, 2011 to develop an IEP based on information from the recent evaluation. The January 12th IEP includes information updated since September. For example, the updated autism considerations include needs resulting from her unusual responses to sensory experience and from her engagement in repetitive activities and stereotyped movements. Assistive technology includes a picture exchange system and a visual schedule. The student's present levels of performance are updated, with some showing progress. In January, she knew 85% of the alphabet, whereas she did not know any in September. Her ability to count, write, and recognize numbers also increased. The team revised the IEP goals to reflect this progress and to help the student gain new skills.

The grandparents' primary objection to the student's IEPs is placement, which is discussed in the following section. As to the content of the IEPs, the undersigned finds that both the September 22nd IEP and the January 12th IEP are appropriate with three important exceptions. First, neither IEP includes parent training as a related service,

nor does either include discussion of whether parent training was considered. Parent training provides information about child development, assists parents in understanding their child's special needs, and helps parents acquire the necessary skills to support the implementation of their child's IEP. 34 C.F.R. § 34(c)(8). [REDACTED]'s efforts to secure help in understanding [REDACTED]'s needs are well documented. Unfortunately for [REDACTED] they do not believe that the district has been helpful in this regard. It is apparent from the testimony of the grandparents and district staff that communication between the parties has often been less than clear. The grandparents feel excluded from [REDACTED] education and do not understand how her unique needs impact her within the school setting. When they see [REDACTED] behaving differently at home, they become worried that the school is doing something wrong. Testimony indicates that they may not understand how to help her with her homework. Since this is their first experience with special education, they are unfamiliar with special education procedures, which are complex and difficult to understand for many parents. The evidence shows that grandparents require parent training on a regular basis to help them understand [REDACTED] unique educational needs and help them develop the skills necessary to support the implementation of [REDACTED] IEP. Only with parent training will they become full partners in developing their granddaughter's IEP and supporting its implementation.

Next, although the January 12th IEP identifies social skills as a deficit and testimony supports a finding that [REDACTED] has severe deficits in this area, the IEP has no goal for social skills development. The September 22nd IEP had a social/emotional goal that addressed the development of basic social skills such as sharing and taking turns. (SD 21). There was no evidence showing that the student had met the benchmarks for that goal, and no evidence showing that the IEP team had considered this in the development of the IEP. The IEP must address all of a student's unique needs in both academic achievement and functional performance. 34 C.F.R. § 300.320(a)(1). The evidence supports a finding that the student requires an IEP goal to address social skill development.

Finally, neither IEP fully addresses ESY services. A district must ensure that ESY services are available as necessary to provide a student with a FAPE. 34 C.F.R. § 300.106(a)(1). ESY must be provided only if the student's IEP team determines, on an individual basis, that ESY services are necessary for the provision of a FAPE. 34 C.F.R. § 300.106(a)(2). Both the September 22nd IEP and the January 12th IEP state that [REDACTED] does not require ESY and suggest that the team consider collecting data and revisit the matter by April 15, 2011. Neither IEP explains how the team determined that the student did not need ESY to receive a free appropriate public education. The team had no data on which to make this determination, as evidenced by the statement that they "consider" collecting data. No such data was adduced at hearing. The evidence shows that the district did not make an individual determination as to whether this student needs ESY services to receive a FAPE and that the district did not follow through on its own recommendation to revisit the ESY question.

Did the district's two placements – the student's current placement in a special education classroom with a 1:1 aide and the district's proposed placement in an

instructional autism classroom – offer the student a free appropriate public education in the least restrictive environment?

A school district must provide a free appropriate public education to students with disabilities. 20 U.S.C. § 1412(a)(1)(A). The FAPE must be provided, to the *maximum extent appropriate*, in a program with students who are not disabled. 20 U.S.C. § 1412(a)(5)(A) (emphasis added). Special classes or the removal of a student with a disability from the regular education environment may occur “only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” *Id.* The term “appropriate” limits the mandate to educate a student with disabilities in the regular education classroom. *Beth B. v. Van Clay*, 282 F.3d 493, 498 (7th Cir. 2002). Although the Seventh Circuit has not adopted a standard for assessing whether a student with a disability may remain in a regular education classroom, it has held that it is “not enough to show that a student is obtaining *some* benefit, no matter how minimal, at the mainstream school.” *Board of Education of Township High School District No. 211 v. Ross*, 486 F.3d 267, 277 (7th Cir. 2007) (emphasis in original).

The grandparents argue that [REDACTED] must be placed in a regular education classroom with a dedicated 1:1 aide to receive a free appropriate public education in the least restrictive environment. Their contention is based on two things. First, they assert that [REDACTED]’s twin sister, who also has autism, has made educational progress in a regular classroom with a dedicated 1:1 aide and pullout special education services at a charter school. They want [REDACTED] to have the same opportunity. Second, [REDACTED]’s pediatrician has recently recommended that [REDACTED] be placed in a regular education classroom with a dedicated 1:1 aide.

Although the grandparents’ request that [REDACTED] be given the same educational program that they believe is working for her twin sister is understandable, it provides no legal basis for this decision. The request is also antithetical to the very purpose of the IDEA, as it asks for a placement to be determined not on the basis of this student’s unique needs but on what allegedly has worked for her sister. See 20 U.S.C. § 1400(d)(1)(A). That is something this hearing officer may not, and will not, do.

As to [REDACTED]’s recommendation, the evidence shows that he initially recommended placement in an autism instructional program and only changed his recommendation on March 8, 2011. Even then, his recommendation was only for a trial basis. His recommendation is based on his observations of [REDACTED] in his office and reports from the grandparents. The evidence shows that one of things the grandparents told him is that [REDACTED] does not have an IEP. [REDACTED] has not spoken with any of the [REDACTED] staff who work with or assessed the student, nor has he reviewed their evaluations or even verified whether the grandparents’ statements are accurate. The district is required to consider all information provided by the grandparents in determining the student’s placement. However, a physician “cannot simply prescribe special education.” *Marshall Joint School District No. 20 v. C.D.*, 616 F.3d 632, 54

IDELR 307 (7th Cir. 2010). The district is required to consider [REDACTED] recommendation, as it did. It is not required to adopt it.

The district argues that [REDACTED]'s complex needs require placement in an autism instructional program, with participation in a regular education classroom for non-academic classes. Since [REDACTED] does not have such program, [REDACTED]'s program must be implemented in a school outside of her neighborhood. Until this matter is decided, the district contends that the least restrictive environment at [REDACTED] is the first grade special education classroom with a shared aide and non-academic classes with non-disabled peers in the regular education bi-lingual first grade classroom.

A. Current Placement

As to the student's current placement, the evidence shows that this placement was agreed upon by the parties until the evaluations were finished and a new IEP was developed. There is no evidence supporting the grandparents' contention that a regular classroom with a dedicated aide would meet [REDACTED] educational needs. Even [REDACTED] who agreed with [REDACTED] that the student should be placed in a regular education classroom, did not believe that [REDACTED] could be successful in regular education. Her agreement was made to secure the grandparents' commitment to visiting an autism instructional program. Her professional opinion was that [REDACTED] would not benefit from a placement in regular education. Other testimony supports that opinion. [REDACTED] opined that because [REDACTED] needs a modified curriculum and has severe deficits in social skills, placement in regular education – even with a dedicated aide – would be in name only. [REDACTED] does not have the academic or social skills to meaningfully participate in or benefit from fulltime placement in the regular education setting. Based on this evidence, the undersigned finds that the student's current placement provides her with a FAPE in the least restrictive environment throughout the pendency of this proceeding.

B. Proposed Placement

The evidence conclusively shows that [REDACTED] has severe deficits in major areas of functioning, including communication, academic achievement, and comprehension. Because of these deficits, none of the evaluators was able to assess [REDACTED] using standardized formal measures, in either English or Spanish. Her severe expressive and receptive language deficits impact her abilities across the curriculum. She is unable to utilize the regular first grade curriculum. Her severely delayed social and pragmatic skills impede her ability to develop relationships with peers, engage in social play, or participate in classroom and group activities. She has a limited attention span and is highly distractible. Her teacher, district evaluators, and district administrators with special training in autism testified consistently that [REDACTED] would receive little, if any, educational benefit from placement in a regular education classroom and that her deficits would essentially isolate her from her classmates, both in school work and social times.

Despite these deficits, [REDACTED] has definite strengths. Staff across the board reported that she has a good visual memory and good fine motor skills. She also has good matching skills and letter recognition. She likes using the computer and is able to manipulate the mouse independently. Although she is highly distractible, she is also easily re-directed. She likes coming to school, and it was clear that many of the staff like her. These are all strengths that can be built on in an environment that meets her needs. Moreover, the placement includes daily programming with non-disabled peers in a regular education classroom. The IEP requires the special education teacher to consult and collaborate with the regular education teacher, thereby providing the regular education teacher with the knowledge to make the experience successful for [REDACTED]. The evidence supports a finding that an autism instructional program is the placement that can meet [REDACTED]'s unique needs and, therefore, provides her a free appropriate public education in the least restrictive environment.

ORDER

IT IS ORDERED THAT:

1. Upon written consent from [REDACTED] [REDACTED] the district shall identify an autism instructional program with a current opening and shall place the student in that program. The district must provide transportation according to the student's IEP, which requires an aide on the bus.
2. The district shall schedule an IEP meeting as soon as possible, and in no event later than May 27th, to revise the student's IEP in accordance with the findings of this decision. Specifically, the IEP team shall:
 - a. Consider whether the student requires ESY services to receive a free appropriate public education. This determination shall not be based on the lack of data since the evidence shows that the district did not consider whether such data needed to be collected. The ESY determination shall be made on an individual basis, as required by 34 C.F.R. § 300.106(a)(2).
 - b. Revise the IEP to provide parent training as a related service and develop parent training goals to assist the grandparents in understanding the student's unique needs, providing them with information about child development particularly as it relates to the development of a child with autism, acquiring the necessary skills to allow them to support the implementation of the student's IEP, and developing and supporting effective communication between the school and the grandparents.
 - c. Develop at least one goal for social skill development, which has been identified as one of the student's unique needs.

Within 45 calendar days of receipt of this Order, the City of Chicago Public Schools District 299 shall submit proof of compliance to:

Illinois State Board of Education
Program Compliance Division
100 North First Street
Springfield, Illinois 62777-0001

Right to Request Clarification

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party(ies) and the Illinois State Board of Education. After a decision is issued, the hearing officer may not make substantive changes to the decision. The right to request such clarification does not permit a party to request reconsideration of the decision itself, and the hearing officer is not authorized to entertain a request for reconsideration.

Right to File a Civil Action

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

ISSUED: April 28, 2011.



Mary Schwartz
Impartial Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Final Decision and Order was sent y certified mail and directed to:



Ms. Michelle Kaplan, Esq.
Due Process & Mediation
Chicago Public Schools
125 S. Clark Street, 8th Floor
Chicago, Illinois 60603

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

before 6:00 p.m. on April 28, 2011.

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

Mary Schwartz
Impartial Hearing Officer
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