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**ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING**

DEC 02 2014

**SPECIAL EDUCATION  
SERVICES**

[REDACTED]

Student,

Case No: 2013-0496

v.

Sabrina Wilkins-Brown, Impartial Hearing

Officer

[REDACTED]

School District.

**FINAL DECISION AND ORDER**

**JURISDICTION**

The undersigned Hearing Officer has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq. and the Illinois School Code, 105 ILCS 5/14-8.02a et seq.

**PROCEDURAL BACKGROUND**

On June 11, 2014, the pro se Parents filed the instant due process complaint. The District received the due process complaint on June 13, 2014 and through its attorney, [REDACTED], requested the Illinois State Board of Education (ISBE) to appoint a due process hearing officer. The undersigned was appointed as the Due Process Hearing Officer (DPHO) on June 16, 2014 by the Illinois State Board of Education (ISBE).

On July 1, 2014, the undersigned held an initial telephone status call with the Parties. During the initial status call, the Parties reported that a resolution meeting was held on June 30, 2014 which resolved some but not all issues raised in the due process complaint. The issue of a secondary diagnosis of Intellectual Disability was removed. The Parties reported that a follow-up meeting was planned for additional discussion to see if the remaining issues could be resolved. The Parties agreed to continue the prehearing date and identified tentative hearing dates in August 2014.

On July 2, 2014, the undersigned issued an Order of Continuance which continued the prehearing conference from July 14, 2014 to July 17, 2014 and tentatively set the hearing date for August 4, 2014 with August 6th and 7th as reserve dates.

On July 17, 2014, a telephone prehearing conference was held with the Parties. Participating on the call was the mother, the District's attorney and the District's Director of Student Services. During the prehearing conference, the parties narrowed the issues, discussed the respective exhibit and witness lists, the order of witnesses to testify at the hearing, confirmed the hearing date(s) and set the time, date and location for the hearing. The Parents advised the District and the undersigned that their expert witness, Dr. [REDACTED] had not confirmed her availability to testify for an August 4, 2014 hearing and may need more time. The District objected to any further continuance but offered to accommodate the Parents by offering to arrange for a video or telephone conference or to have Dr. [REDACTED]'s testimony taken out of order.

On July 25, 2014, the undersigned issued the Prehearing Report and Order which included post prehearing matters regarding the Parents representation that their expert witness, Dr. [REDACTED] had no availability to testify until September 17, 2014. A telephone status call was scheduled for July 29, 2014 to further discuss the matter.

On July 29, 2014, a telephone status call was held with the Parties. The Parents requested a continuance of the hearing due to the unavailability of their key witness. The District initially objected to the continuance but later agreed if the Parents obtained a statement from their witness verifying her unavailability. The matters agreed to by the Parties were summarized in an e-mail and sent to the undersigned and the parents by the District's attorney, [REDACTED]. The Parties agreed to continue the hearing since the Parents' expert witness, Dr. [REDACTED] would not be available on any of the hearing dates in August 2014. The Parents provided a letter from their witness, Dr. [REDACTED] indicating her first availability was the afternoon of September 30, 2014.

On August 1, 2014, the undersigned issued an Order of Continuance by agreement of the parties to continue the hearing from August 4, 6 and 7, 2014 to September 23, 24, and 29 (as a reserve date) and September 30, 2014. The September 30, 2014 date was to specifically accommodate the Parents' expert witness testimony which was scheduled to start at 1:30 p.m.

On September 17, 2014, at the Parents request, a telephone status conference call was held. The undersigned prepared a "Summary of Telephone Status Conference". During the status call, the Parents requested a continuance of the due process hearing scheduled to start on September 23, 2014. The reason given by the Parents for the request for a continuance was to obtain an independent evaluation of the Student. The District objected stating the Parents made the same request a few days prior to the hearing in a previous due process hearing. The District further objected on the basis that the Parents had ample time and opportunity to obtain an independent evaluation between the time they filed the due process complaint and the then current date. The undersigned sustained the District's objection.

On September 19, 2014, the Parents sent an e-mail request to the undersigned for yet again a continuance of the due process hearing. The reasons given by the Parents was that after receiving the District's mandatory disclosures, which consisted of five binders with more than 3,000 documents, they felt unprepared to represent themselves in the due

process hearing. The Parents indicated they had been in contact with an attorney who was willing to take their case but the attorney was not available on the September hearing dates. The District objected to the Parents' request for a continuance.

On September 21, 2014, the undersigned issued an Order Denying the Parents' Request to Continue the September 23, 2014 Due Process Hearing for the reasons stated therein.

On September 23, 2014, the Parties convened at the District's administrative offices for the first day of the due process hearing. Present were the pro se Parents, [REDACTED], the District's attorney, [REDACTED] and the District's Director of Student Services, [REDACTED]. At the conclusion of the Parents' opening statement, the Parents again requested a continuance of the due process hearing. The Parents voiced an objection to going forward without legal representation. The Parents stated they had been trying to obtain legal representation through Equip for Equality with no success. On September 19, 2014, the Friday prior to the hearing, the Parents stated they were contacted by attorney [REDACTED] who agreed to represent them in the due process hearing. The undersigned requested the District to respond. The District initially objected but reluctantly agreed to a continuance based on the Parents' representation that they had potentially obtained legal counsel. The District stated a desire for the Parents to feel they had a fair opportunity to be represented by counsel which they then claimed to have. The undersigned terminated the due process hearing. The Parties agreed to participate in a telephone status call on September 30, 2014 in order to set specific dates for the continued hearing and to give the Parents time to retain the attorney.

On September 24, 2014, the undersigned received correspondence from attorney [REDACTED] on her letterhead indicating she informed the Parents of her interest and willingness to accept the case if she could receive sponsorship and support from an appropriate agency like Equip for Equality or the Legal Assistance Foundation. Later that same day [REDACTED] sent an e-mail correspondence to the undersigned and the Parties advising that despite her efforts she was not able to obtain the support she needed and therefore would not be representing the [REDACTED] in the instant due process hearing. On September 24, 2014, the District submitted to the undersigned, a subpoena for [REDACTED] regarding Dr. [REDACTED] as well as others associated with [REDACTED]. The undersigned, after determining the relevancy, reviewed, signed and returned the subpoena to the District.

On September 26, 2014, The District submitted a request for two additional subpoenas. The Parents sent an e-mail to the undersigned objecting to the District's subpoenas and Freedom of Information Act (FOIA) requests stating the subpoenas and FOIA requests were harassing.

On September 30, 2014, following the terminated due process hearing, the undersigned held a telephone conference call with the Parties. The Parties discussed the District's FOIA requests and subpoenas. The undersigned asked the District to explain the relevancy of the most recent subpoenas regarding [REDACTED], one of the Parents' witnesses who was identified as an expert. The District explained that the FOIA requests

were sent to public entities listed on [REDACTED] vitae and the subpoenas were sent to private entities listed on her vitae who are not subject to FOIA. The District further explained the purpose was to challenge [REDACTED]'s credentials as an expert and to impeach the witness' testimony generally. The Parents reiterated their objection and belief that the requests and subpoenas were meant to harass their witness. The undersigned reviewed the subpoenas with the Parties during the conference call and determined one (1) of the two (2) subpoenas were relevant based on the information being sought. The Parents objection was sustained with respect to the subpoena to the [REDACTED] ([REDACTED]). The undersigned sustained the Parents' objection determining that the information sought in the subpoena for the purposes of impeachment did not relate to the information contained in Ms. Doyle's vitae. The District's objection to the denial of the subpoena to [REDACTED] is hereby noted for the record. The District's subpoena to [REDACTED] was determined to be relevant because Ms. [REDACTED]'s resume listed [REDACTED] as an entity to whom she had provided professional, technical and consultative services. The Parents' objection to the denial of the subpoena to [REDACTED] was overruled and is hereby noted for the record. The Parties discussed hearing dates and agreed to continue the due process hearing to November 10, 11, 13 and 17, 2014 with November 18, 2014 as a reserve date. The Parents stated they were ready to proceed to hearing without an attorney and confirmed their expert witness, Dr. [REDACTED] would be available on November 10<sup>th</sup> to testify.

On October 1, 2014, the undersigned issued an Order Granting a Continuance of the September 23, 2014 Due Process Hearing.

On October 8, 2014, the District submitted another subpoena to the undersigned for signature. The subpoena was issued to [REDACTED] ([REDACTED]) for certain records and information pertaining to [REDACTED]. The District's stated reasons for the subpoena was to challenge [REDACTED]'s status as an Autism expert and her credibility in general. The Parents stated an objection to the subpoena to [REDACTED] stating that it was negatively affecting their witness' livelihood, that it was not relevant and that it was untimely. The information sought by the District in the [REDACTED] subpoena was relevant to information contained in [REDACTED]'s vitae to determine her expert status in the field of Autism. The undersigned overruled the Parents' objection since the Parents identified [REDACTED] as an Autism expert to testify at the hearing.

On October 11, 2014, the undersigned issued an Order regarding the [REDACTED] Subpoena. The [REDACTED] subpoena was determined relevant and signed by the undersigned. The Parents' objection to the [REDACTED] subpoena is hereby noted for the record.

On October 20, 2014, the District filed a motion to compel the Parents to sign an Authorization for Release of Information for a subpoena issued to [REDACTED] ([REDACTED]) or alternatively to Exclude the witness' ([REDACTED]) testimony. The Parents refused to sign as they had already objected to the subpoena. The

Parents did not file a response to the motion but instead requested a telephone status call to discuss the matter.

On October 22, 2014, the undersigned issued an Order Denying the District's Motion to Compel the Parents to Sign an Authorization Form for Release of Information submitted to [REDACTED] or in the Alternative to Exclude the Witness' Testimony. The District's basic argument was that the Parents were obstructing the District's purpose by refusing to sign the authorization. The undersigned ruled [REDACTED] and not the Parents were obstructing or frustrating the District's purpose for the reasons stated in the Order.

On November 7, 2014, the Parents advised the undersigned and the District that [REDACTED] advised them that their expert witness, Dr. [REDACTED] had a death in her immediate family and was cancelling all appointments for the following week, the week of the due process hearing. The District inquired of the Parents whether their witness would be available the following week on November 17 or 18, the reserve hearing date. The Parents advised that Dr. [REDACTED] would not be available until sometime in December. The Parents advised they would be proceeding with the testimony of [REDACTED] as their Autism expert at the hearing.

On November 10, 2014, the Parties and the undersigned met at the District's administrative office to continue the due process hearing that was terminated on September 23, 2014. As an initial matter, the District objected to the testimony of the Parents' witness, [REDACTED], who was the Student's special education kindergarten teacher. The objection was based on relevancy and that the time of her involvement fell outside of the two year limitation period under IDEA. The undersigned overruled the District's objection stating that the testimony would be allowed for historical purposes and to establish a benchmark.

The hearing was held over a period of four days (November 10, 11, 13 and 17). At the conclusion of the hearing, the parties were advised that a written decision would be rendered within 10 days of the last hearing date, November 17, 2014. That timeline made the written decision due on November 27, 2014, Thanksgiving Day, and the undersigned stated to the parties that the decision would be issued on or before November 28, 2014. The District advised the undersigned that a transcript of the hearing was not being ordered.

On November 18, 2014, the undersigned sent the Parties an e-mail advising the parties of the corrected timeline for rendering a decision in the instant due process hearing in accordance with the Statute on Statutes, Section 1.11, which excludes holidays, Saturdays and Sundays when the due date falls on one of those days. Accordingly, Thursday, Thanksgiving Day and the Friday following Thanksgiving are considered holidays with Saturday and Sunday being excluded under the Statute as well. Accordingly, the written decision in this due process hearing is due on or before Monday, December 1, 2014, which is the date shown in the ISBE database.

Since no written transcript of the hearing is being produced at this time, references in this decision to witness' hearing testimony is based on the undersigned's tape recording of the hearing and written notes. In rendering this decision, the undersigned has considered all testimony of the parties' witnesses, opening and closing arguments. Only documents referenced, identified and used in the hearing, unless otherwise sustained in objection, will be considered as part of the hearing record and considered in this decision.

This decision is issued as required by Illinois law pursuant to 105 ILCS 5/14-8.02a (g-55)(5).

### **ISSUES AND REQUESTED REMEDIES**

Following are the issues and remedies agreed to by the Parties during the prehearing conference and clarified during the hearing:

- 1) Whether the District's June 4, 2014 IEP recommended placement of the Student in the special education [REDACTED] program at [REDACTED] with participation in general education for art, music, physical education, library, lunch and recess is the least restrictive environment; and
- 2) Whether staff training should have occurred prior to the start of the 2014-2015 school year to further assist the Student's educational development in the inclusion setting given his identified disability.
- 3) The remedy sought by the Parents is for the Student to remain in general education classes at [REDACTED] and be provided with appropriate push in and pull out services; and to
- 4) Immediately provide supplemental and specific staff training to help ensure the Student's success in the inclusion setting for a student with Autism Spectrum Disorder.
- 5) The remedy sought by the District is a finding that its 2014-2015 recommended placement for the Student in the [REDACTED] special education program at [REDACTED] with inclusion in general education for art, music, physical education, library, lunch, and recess is appropriate and is the least restrictive environment; and
- 6) The District seeks a finding that its plan for supplemental staff training is appropriate to meet the needs of the Student.

### **BURDEN OF PROOF**

In a special education administrative hearing, the party seeking relief has the burden of proof. *Schaffer ex rel. Schaeffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 163 L.Ed.2d 387 (2005). The Parents, [REDACTED] filed this due process complaint and are seeking relief. Therefore, the Parents carry the burden of proof in presenting credible evidence in the due process hearing.

### FINDINGS OF FACT

Documents and information from the Student's early learning, pre-kindergarten and kindergarten years were submitted and referenced by both parties in order to establish a benchmark for the Student's progress and will be considered for that purpose only. In November 2008 at 28 months of age, [REDACTED] was evaluated and assessed by the State of Illinois Bureau of Early Intervention and determined to have deficits and developmental delays in the following domains: Personal/Social: (18 mos) 36%, Adaptive: (14 mos) 50%; Gross Motor: (25 mos.) 11%; Fine Motor: (21 mos.) 25%; Receptive Communication: (11 mos.) 61%; Expressive Communication: (15 mos.) 46%; Cognitive: (14 mos) 50%. (Vol. 1- SD 6) At that time, [REDACTED] was having a hard time participating in play with others preferring to play by himself, transitioning from task to task, had very limited eye contact and did not consistently respond to his name when called. (Vol. 1-SD 5- 19) An early intervention plan was initiated which included sixty minutes of individual developmental therapy twice a week; sixty minutes of individual speech therapy twice a week; and sixty minutes of individual occupational therapy twice a week. (Vol.1-SD 24)

During the hearing, the Parents relied heavily on a multidisciplinary evaluation and a psychological evaluation report conducted in August and September 2013 at [REDACTED] by Dr. [REDACTED], OTR/L and [REDACTED], MA., CCC-SLP/L. Although Dr. [REDACTED] was not present to testify to her evaluation, the Parents' expert witness, [REDACTED] and the District's expert witness, Dr. [REDACTED], both testified they were familiar with the evaluation report and agreed with its contents. (11/10/14 testimony of [REDACTED] and 11/13/14 testimony of Dr. [REDACTED]) [REDACTED] is diagnosed with Axis I: Autism Spectrum Disorder – Level 2, Axis II: Cognitive Impairment-Level Unspecified.

[REDACTED]'s overall adaptive behavior composite is in the Low/Moderate deficit range. [REDACTED]'s cognitive skills are "fairly scattered", which could result in an underestimation of his skills and learning potential. [REDACTED]'s social skills are deficient and he has a need to develop the ability to engage others in a reciprocal manner. The report reflects that "teaching [REDACTED] this skill in a structured, predictable manner using verbal supports may be the most effective method." The report also reflects that [REDACTED] should be around typically developing children as much as possible for further development of his social skills. The report notably lacks any mention of or recommendation for an appropriate educational placement given [REDACTED]'s level of cognitive abilities, which are very scattered and range from low average to significantly impaired. (PE-1, pgs 1-9).

From September 9, 2013 through December 4, 2013, at 7 years, 3 months of age, [REDACTED] began receiving services at the [REDACTED] Clinic. (PE-10) During this time, [REDACTED] showed progress in the development of his receptive and expressive language skills. Most notably when tested in December 2, 2013, [REDACTED]'s progress for following 2 step directions with 80% accuracy was achieved using visual cues. [REDACTED]'s progress for correctly demonstrating use of greeting and closings with 80% accuracy over 3 sessions was achieved 75% accuracy using verbal cues and 100% accuracy when provided with an immediate model. [REDACTED]'s progress for engaging in appropriate turn taking with a peer or the clinician with 80% accuracy was achieved 70% accuracy using visual cues during peer play based activities, and 65% accuracy with the clinician when given verbal cues. (PE-10, pgs 1-7)

[REDACTED] is now an eight years old and resides with his parents, [REDACTED] and his six siblings. (PE-1, pg. 2; parent opening). [REDACTED] is currently in the second grade at [REDACTED] in an inclusion or general education setting with special education resource classes. [REDACTED] has a one-to-one aide to assist him with participating in classroom activities.

[REDACTED] spent two years in kindergarten, at his Parents' request. (PE-1, pg. 2; parent opening) [REDACTED]'s first kindergarten year, 2011-2012, was in a special education kindergarten program with [REDACTED] as his teacher. [REDACTED]'s second kindergarten year, 2012-2013, was in a general education classroom with support services with [REDACTED] as his teacher. The placement in the general education kindergarten was supposed to be an eight week trial but was extended after the Parents filed a due process complaint. (Testimony of [REDACTED] and [REDACTED])

The Parties do not dispute that [REDACTED] has made significant progress over the years since his early interventions to the current date. However, the Parents attribute [REDACTED]'s progress to his inclusion in general education classes, while the District attributes [REDACTED]'s progress to the one-to-one instructional therapies outside the general education classroom.

[REDACTED] is the Parent's identified expert witness and the Parents' relative (cousin). [REDACTED]'s resume reflects that she earned a Master's of Science Degree in Business Management from [REDACTED] in 1991. The area of interest for her Masters was Organizational Development and Behavior, Personnel Development and Management, Adult Learning and Teaching, and Systems Change. [REDACTED] earned a Bachelor of Science Degree in Special Education, and a Bachelor of Science Degree in Elementary Education in 1971 from the Illinois State University. The relevant portions of [REDACTED]'s resume considered for purposes of qualifying her as an expert include: a co-authored book titled, "[REDACTED]" in 2004, published by [REDACTED], Inc.; an adjunct faculty position at Southern Illinois University School of Medicine, Department of Psychiatry, Division of Developmental Disabilities from 1997-2012; Member of an Illinois Statewide Professional Advisory Board on Autism from Birth to Six, from 2002-2006. (PE-11, pgs 1-2)

The undersigned determined Ms. [REDACTED] was qualified as an Autism consultant and expert by virtue of her education, background, knowledge and experience, however, noting for

the record that [REDACTED] is not a licensed clinical psychologist. The District voiced its objection to [REDACTED]'s qualification as an Autism expert primarily due to the fact that her work or association with some of the organizations listed on her could not be verified.

At the end of the 2011-2012 school year, on May 14, 2012, [REDACTED] was observed by [REDACTED] at the request of his Parents. [REDACTED]'s observation was conducted to gain insight into [REDACTED]'s potential for placement in general education classes. The observation was also to obtain insight into the educational strategies, learning environment, teacher interaction and curriculum used in the special education kindergarten class. [REDACTED] observed staff's physical shaping and verbal prompting to get [REDACTED] to engage in a completed task. [REDACTED] opined that she would have expected to see more use of visual strategies as a systematic instructional tool. [REDACTED] observed [REDACTED] was not engaged in academic activity. [REDACTED] did not observe text books, bulletin boards of academic charts and no word walls in the classroom. [REDACTED] observed that the children in the special education kindergarten class had language deficits and therefore were not being exposed to peer modeling of verbal auditory behavior. [REDACTED] found the teacher interaction to be kind, supportive and appropriate but lacking in how to fulfill contingencies or effectively use visual strategies. [REDACTED] testified that her personal knowledge of [REDACTED] suggests that he should have achieved better results in the Spec Ed kindergarten. The goals reflected in the 2011-2012 IEP for [REDACTED] included five goals: 1) independent transitioning between classroom areas/activities using a visual schedule, 2) Use of sensory strategies or adaptations as needed, using two hands to effectively manipulate classroom tools and materials, 3) [REDACTED] will increase his expressive language skills, 4) [REDACTED] will increase his receptive language skills necessary for learning, and 5) [REDACTED] will increase his imitation and social interaction skills. (Vol. 1- SD 216-222)

[REDACTED] also made a one day, one hour observation in [REDACTED]'s general education kindergarten classroom. In the general education kindergarten class, [REDACTED] observed [REDACTED] interacting primarily with his aide but working on academics. There was a rich classroom environment with lots of visuals. The aide sat with [REDACTED] and did a lot of verbal prompting working with him on parallel activities. Look at core curriculum and take aspects to teach to spec needs child. [REDACTED] observed that [REDACTED] was being exposed to language being used around him even while working on parallel activities with his aide. [REDACTED] opined that [REDACTED] learns by listening and seeing what his typical peers do in the classroom. [REDACTED] acquires general knowledge by hearing discussions and observing and absorbing appropriate behavior. [REDACTED] opined that it is important to expose [REDACTED] to non-disabled children for this reason.

The AIMSweb (a universal progress monitoring tool used in the District and not aligned to the State Core Curriculum standards) report for [REDACTED] in 1<sup>st</sup> year 2011-2012 (Special Education) kindergarten for "Letter Naming Fluency"; "Oral Counting" and "Number Identification" indicated he did not achieve the expected level of proficiency. (PE-6)

The AIMSweb report for [REDACTED] in 2<sup>nd</sup> year 2012-2013 (General Education) kindergarten indicated a significant improvement from the beginning of the school year to the end of the school year. [REDACTED]'s noted 2012-2013 improved progress from 2011-2012 could be

attributable to what he learned by the repetition of language skills and behavior modeling of peers in the general education class, or the improved progress could be attributable to [REDACTED]'s completing another year of repeating the same material with his added supports regardless of placement.

[REDACTED] admitted that she could not state with any certainty how or where [REDACTED] may have learned a skill unless the skill was taught in isolation. [REDACTED] admitted that she was not very familiar with AIMSweb nor did she know how it was administered or who administered it to [REDACTED]

[REDACTED] also observed the [REDACTED] program at the Parents' request. It was a one day observation between 1-2 hours. The purpose of the observation was to gain insight into the program components, curriculum and staffing. The students in the [REDACTED] program all had significant developmental disabilities and were all non-verbal. [REDACTED] did not observe any books, notebook, paper/pencil, and spent time talking about the calendar, weather and time. The [REDACTED] inclusion component (integration with general education peers) observed by [REDACTED] was library. [REDACTED] did not observe any true interaction. [REDACTED] observed the CASE aid kept special education students away from the general education students and noted the general education students were not supported with efforts to engage or interact with special education students.

[REDACTED] observed [REDACTED]'s 2<sup>nd</sup> grade class in a one day, one hour observation. [REDACTED] observed the aide using parallel materials with [REDACTED]. The other children were observed interacting well with [REDACTED]. There were "brain breaks" and [REDACTED] imitated everything the typical peers did in the brain break. [REDACTED] observed there was use of a huge word wall and charts of all kinds. The teaching strategies observed were appropriate and adequate. [REDACTED] opined she did not observe any justification to remove [REDACTED] from the general education environment. When asked what would justify [REDACTED]'s removal from general education classes, [REDACTED] opined only in situation where he was a danger to himself or to others or if he was interfering with the well-being of others. [REDACTED] opined she did believe [REDACTED] was benefitting or making academic gains from being in the general education class. [REDACTED] opined that [REDACTED]'s lack of exposure to typical peer behavior and language in the [REDACTED] program would be detrimental. In [REDACTED]'s opinion, [REDACTED]'s removal from the general education class would prevent him from performing social relationships and the detriment would be academic, functional and developmental. [REDACTED] observed that [REDACTED]'s aide needed more training regarding using a variety of prompts. According to [REDACTED], there was a need for training in task analysis because [REDACTED] has delayed processing and needs additional time to respond to tasks which she did not observe the aide facilitating. [REDACTED]'s opinion is that the benefits of [REDACTED] being in the general education class are that he will be more in tune to questions and the verbal skills he needs will be more readily acquired. It is expected that [REDACTED]'s interactive play with peers and siblings would increase as would his ability to listen, respond, read books and answer questions about what he is reading [with prompts]. [REDACTED]'s opinion is that [REDACTED] has developed typical peer friendships and continues to develop socially.

██████████ was the Parents' witness and ██████████'s special education teacher for the 2012-2013 school year and had a significant role in developing the 2012-2013 IEP for ██████████. ██████████ has been a special education teacher for 18 years. ██████████ read from the IEP, regarding some of ██████████'s recorded deficits. ██████████ had music, art, library, lunch and recess with is typical peers. ██████████ needed the support of his aide to function in the academic. ██████████ was not able to state his name or his Parents' name when asked. (PE-8, pg. 20).

The IEP team recommended placement of ██████████ was in the self-contained ██████████ (██████████), the Special Education class, with integration into 1<sup>st</sup> grade level specials, lunch and general education field trips and classroom activities. The recommendation also included ██████████ participating in the ██████████ program for modeling and developing social skills and placement. The recommendation included ██████████ receiving the following support services: Speech Language, Occupational Therapy, Social Work Services, 1:1 aide, transportation and consultation and Assistive Technology Specialist. (PE-8, pg. 31) Most supports needed to meet his maximum potential.

During the IEP meeting, the Parents' rejected the IEP team's recommendation. The Parents' voiced concern about their son's lack of achievements over the 2012-2013 school year in the special education program and requested ██████████ repeat kindergarten in a general education setting at ██████████ with a 1-1 aide and appropriate support services. ██████████'s placement was to be on an eight (8) week trial basis and the IEP team was to reconvene and assess ██████████'s progress and performance toward meeting his identified IEP goals and objectives. At that time, the team would determine the appropriateness of ██████████'s placement in the general education kindergarten. (PE-8, pgs 3, 31) ██████████ testified that the Parents' placement request for ██████████ be in the general education class was so that ██████████ would be exposed to more language models. The District agreed to the 8 week trial to avoid a due process complaint.

██████████ disagreed with the Parents' request at the time stating that ██████████'s developmental deficits were significantly less than his typical developing kindergarten peers and that he needed a modified curriculum to learn. ██████████ indicated that in the general education settings, ██████████ would "shut down". ██████████ became more agitated in the general education classes because of his sensory deficits and the fact that there were more students. ██████████ would frequently make "e-e-e-e" sounds and jump up and down when agitated or bothered by the noise of a larger classroom setting. ██████████ testified that she had a word wall, a number line, labeled shapes, alphabets and colors and that her classroom was designed to be visually rich. During 2011-2012 ██████████ responded better to verbal prompts as opposed to visual prompts which often elicited tantrums and other behaviors. ██████████ reportedly made progress in his receptive language skills. (Vol. 1- SD, pg. 221) ██████████ increased his reciprocal play with adult support. (Vol. 1-SD pg. 222)

██████████ testified that she administered the AIMSweb test to ██████████. AIMSweb is a test administered to all students in the District. AIMSweb is a 60 second timed test which tests the student's ability to rapidly recall data within that timed parameter. ██████████ testified that AIMSweb would not be an accurate reflection of ██████████'s skills and abilities due to his sensory processing deficits.

██████████ testified that ██████████ exhibited significant progress over the course of the school year in the special education small group setting that was not duplicated in the pull out general education classes for music, art, library, lunch and recess. After meeting with ██████████, it was decided the use of visual schedules to transition between classroom areas/activities independently would be discontinued. It was decided that ██████████ would be given verbal directions to follow. (PE-8, pg. 2) Over time, ██████████'s interactions with the general education class did improve somewhat but ██████████ still needed a lot of adult support to complete tasks.

██████████ testified that due to his deficit sensory functioning and significantly deficit language skills, she did not believe ██████████ would gain educational benefit from being in a general education class setting.

██████████ was the Parents' witness and has been an Occupational Therapist (OT) since 2009, and with ██████████ since 2010. ██████████'s work involves working with special needs students who have problems with their fine motor skills and have sensory deficits. ██████████ played an active consultative role in preparing the IEP for 2014-2015 IEP, but had no direct interaction with ██████████ in the 2013-2014 school year..

The District objected to the Parents direct examination of ██████████ about her opinion of the capabilities of Autistic children as being outside of realm of knowledge and expertise. ██████████ testified that she is responsible for working with ██████████ to develop his fine motor skills and that she agreed with the recommendation of ██████████'s placement in the ██████████ program. ██████████ has observed the ██████████ classroom and indicated the learning is small group setting through sensory, motor and tactile experiences.

██████████ testified that she has not observed ██████████ mimicking behaviors in the general education classroom and do not believe he would mimick behaviors in the special education classroom. ██████████ indicated one on one ██████████ would be more beneficial to ██████████ than small group OT with sensory motor group in addition to one to one. ██████████'s strengths and improvements over the school year: tolerating the special education classroom environment better and imitating fine motor skills with therapist, writing with a Rocket pencil. ██████████ testified to using isometrics with ██████████ to bear weights into his hands to help strengthen his muscles. ,i.e wheel barrel walks, twizzer tongues, resistive putty. The Bruinicks test was given to ██████████ in August 2013 and measures his fine motor precision, manual dexterity and visual motor integration. A standard score is used to measure development. The scores related to ██████████'s development of fine motor precision fell below age 4 years of age, visual motor integration fell below 4 years, 1 month and manual dexterity fell below 4 years, 1 month.

██████████ was the District's witness and is the regular education kindergarten teacher for ██████████ school in District ██████████. ██████████ has been a teacher for 18 years with 10 years teaching kindergarten. ██████████ was ██████████'s general education kindergarten teacher in 2012-2013. ██████████ did not observe ██████████ gaining any educational benefit from being in the general education classroom for his academics.

██████████ was called as the District's expert and qualified as such. ██████████ is the District's Autism Consultant and is present on a monthly basis to provide consultation and training. ██████████ consults with District staff on all students in special education and in the inclusion (general education) at all levels of Autism Spectrum. ██████████ is a licensed Clinical Psychologist since 1993, a Board Certified Behavior Analyst since 2011 and an Assistant Professor of Clinical Psychology since 2013 at the University of Illinois at Chicago. Dr. Winnega is a Ph.D in the area of Clinical-Developmental Psychology since 1991. ██████████'s resume reflects extensive training and research in children with developmental disabilities including children with Autism Spectrum Disorder. ██████████ has extensive clinical practice experience with children with Autism specifically and children with developmental disabilities generally (Vol. 5- SD 3091-3096) ██████████'s resume is extensive for workshops and trainings on Autism (recognizing, teaching, inclusion, verbal behavior re: Autism Spectrum) she conducted in her field of practice from 1989 through 2013. ██████████'s resume reflects she was one of several authors in a publication titled, "*An Open trial of escitalopram in pervasive developmental disorders*. Published in the Journal of the American Academy of Child and Adolescent Psychiatry (2005) (Vol. 5 -SD 3097-3106)

██████████ has focused exclusively on persons with Autism Spectrum Disorders since 1995 and has conducted structured teacher training since 2008 to the present, including providing training to District 123 staff. (Vol. 5-SD 3096) ██████████ stated that "requesting" is a foundational skill that ██████████ needs in order to use language because it is a specifically reinforced behavior.

In July 2011, ██████████ was asked to do an assessment of ██████████'s skills. During pre-k ██████████ was not verbally communicating and was exhibiting restrictive, repetitive behaviors with a sensitivity to sound and lighting. ██████████ assessed ██████████'s basic language skills initially while he was in his pre-k program. At that time ██████████ was assessed to have very little language and adaptive skills. ██████████'s demonstrated skill level was at the 0-18 month level. Children with Autism can decode words but cannot understand what the words mean because of their language deficits. DSM V- presents three levels of severity The diagnosis Autistic children learn by repetition.

██████████ conducted an evidence based training in verbal strategies and verbal behavior for District staff including ██████████, ██████████'s special education kindergarten teacher (2011-2012). ██████████ expressed a belief that ██████████ would best achieve educational benefit from being in a special education 1<sup>st</sup> grade class. ██████████ stated that she did not observe any negative impact on ██████████ being in the special education kindergarten class. Nor was ██████████ aware of any research based evidence to support the notion that children with disabilities would be detrimentally impacted by being in class with other children with disabilities. ██████████ stated that she researched that issue as it pertained specifically to children with Autism and did not find any published evidence of that being the case. ██████████ stated that ██████████ was developing skills while in the special education kindergarten but that his adaptive skills were still lacking specifically with respect to ██████████'s toileting. ██████████'s opinion was that ██████████ made some progress during his special education kindergarten class as he was

able to use some language to request simple wants and needs, i.e. "water" or "cracker" (meaning I want water or I want cracker). [REDACTED] had supports in place to assist him with language skills and social skills, including adaptive and independent functioning skills.

[REDACTED] stated her research did not indicate that children with Autism would be negatively impacted in their development by being grouped in a class with other special needs children. [REDACTED] stated that the staff receives a good deal of training which is on-going in the use of various strategies, including visual and verbal cues to assist with [REDACTED]'s and other Autistic students' development in language skills.

During the repeat kindergarten year in general education with [REDACTED], 2012-2013, [REDACTED] observed [REDACTED] approximately five occasions. [REDACTED] would often get agitated and be allowed to take sensory breaks. [REDACTED] consulted with the staff and taught his 1:1 aide and special education resource teacher strategies. [REDACTED] had a weighted lap pad to assist him in calming down when getting agitated. [REDACTED] taught the staff to show the general education students to interact with [REDACTED]. [REDACTED] observed that [REDACTED] was responding well in the self-contained setting with the special education resource teacher but not as well when he was in the general education class room setting.

Intensive repetition and reinforcement of skills are best learned in small group settings in the 1:1 aide or with the special education resource teacher, [REDACTED]. [REDACTED]'s professional opinion was that [REDACTED] is not able to learn by simply by being exposed by what other children are doing or learning. [REDACTED] is only focused on himself or his 1:1 aide. Use of a modified curriculum is very different strategy from a parallel curriculum. [REDACTED] used a parallel curriculum when in the general education classroom. A parallel curriculum was described as an entirely different task within the same core curriculum, such as counting the number of dots on dice while the other students are adding and subtracting numbers or solving equations.

[REDACTED] was present at the 2013-2014 IEP and had input into determining placement of JM for the next school year (1<sup>st</sup> grade). [REDACTED]'s recommendation for [REDACTED] at that IEP meeting was placement in the [REDACTED] program. The [REDACTED] program uses structured teaching, with strategic layout of the room, lots of visuals with specific spaces for each learned task. The materials are visually structured with verbal components. [REDACTED] opined that [REDACTED] could not develop his skills in a general education classroom because the general education class is not geared or structured to provide intensive repetitive or verbal strategies which he needs given his current level of functioning. [REDACTED] stated the [REDACTED] program would offer the most educational benefit to [REDACTED] because as she had observed how well he responded to the strategies used by [REDACTED], the special education resource teacher. Those same strategies would be used in the [REDACTED] program. By contrast, [REDACTED] stated she observed that [REDACTED] displayed a heightened degree of agitation in the general education classroom and often needed sensory breaks. [REDACTED] testified that she was one of the architects of the District's [REDACTED] program.

[REDACTED] testified that she was familiar with [REDACTED]'s 2013 evaluation report of [REDACTED] and stated she agreed with the report's findings based on her own professional experience, knowledge and observations of [REDACTED]. [REDACTED] stated she agreed with [REDACTED]

██████████'s recommendation and understood her recommendation for ██████████ would best be served in a special education classroom given ██████████'s] unique learning needs. ██████████ wrote...." *it will be essential that new learning with core academics in particular be provided in an individualized manner in a small, controlled setting.* ██████████'s report went on to provide, ..." *given the increased academic demands of 2<sup>nd</sup> grade, ██████████ will continue to need most core academics and new learning presented in an individualized manner, but should also be mainstreamed in a planned, structured and productive manner to the degree that is possible to provide him with exposure to his typical peers. This should include such activities as specials and academic areas where he can be a functional part of the classroom".* (Vol. 2- SD 942-943)

### CONCLUSIONS OF LAW

The IDEA ensures that children with disabilities are provide 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. Sec. 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 service. 20 U.S.C. Sec. 1401(3)(A).

Autism is one of the enumerated disabilities. 20 U.S.C. Sec. 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. Sec. 300.8(c)(1)(i).

Districts must educate children with disabilities, to the maximum extent appropriate, with children who are not disabled. 20 U.S.C. Sec. 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 one of the issues in this matter.

**Whether the District's June 4, 2014 IEP recommended placement of the Student in the special education CASE program at Hometown School with participation in general education for art, music, physical education, library, lunch and recess is the least restrictive environment?**

The Parents who filed the due process complaint carry the burden of proof in an IDEA due process hearing. As the party requesting the due process hearing, the Parent has the burden of proof. *Schaffer v. Weast*, 546 U.S. 49 (2005); *Board of Education of Township High School District No. 211 v Ross*, 486 F.3d 267, 277 (7<sup>th</sup> Cir. 2007)

The IDEA requires that "to the maximum extent appropriate" disabled children should be mainstreamed, that is educated with children who are not handicapped. *Hartmann v. Loudoun County Bd. of Educ.*, 118 F.3d 996, 1000 (4<sup>th</sup> Cir. 1997). Although the Seventh Circuit has not adopted a test for assessing when 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 (7<sup>th</sup> Cir. 2007); *Beth B. v Van Clay*, 282 F.3d 493, 498-499 (7<sup>th</sup> Cir. 2002)

The Parents argue that [REDACTED] belongs in the general education classroom setting with appropriate push-in and pull out support services, as the least restrictive environment because that is where he has been placed for the prior two years and they have seen him make some progress. The Parents clearly but erroneously attribute [REDACTED]'s progress to his academic placement in the general education classroom but have provided no independent proof that [REDACTED]'s placement in the general education classroom over the past approximately 2 ½ years is why he has made progress.

The Parents' expert, [REDACTED] opined that [REDACTED] would get the most educational benefit from being exposed as much as possible to his typical peers in the general education classroom and testified that she observed [REDACTED] modeling positive behaviors and slight interactions during her observations. However, that opinion of the Parents' expert was refuted time and again by not only the District's Autism expert, [REDACTED], who is heavily credentialed and is a licensed clinical psychologist, but also by the special education kindergarten teacher, the general education kindergarten teacher, the 1<sup>st</sup> grade general education teacher, the 2<sup>nd</sup> grade education teacher and the special education resource teacher.\*

The overwhelming testimony during the hearing was that while [REDACTED] had made significant progress since his early intervention and pre-kindergarten years to the present, that [REDACTED]'s level of functioning remained significantly deficient based on his most recent assessments, summary of findings and interpretation of results as provided in the June 4, 2014 IEP (Vol.2 – SD 946-985) The overwhelming testimony presented during this due process hearing is that [REDACTED] was not getting educational benefit from his placement in the general education classroom.

The Parents' heavy reliance on Dr. [REDACTED]'s evaluation report served their argument no better as Dr. [REDACTED] clearly recommended an individualized small group setting for [REDACTED] based on his current level of functioning. (Vol. 2- SD 942-943)

There is no substantive standard set forth in the IDEA regarding the level of education to be provided, nor does the statute require that local educators must maximize the potential of disabled children or provide a guaranty of any particular outcome for the child. *King v. Board of Educ. of Allegany County*, 999 F.Supp. 750, 764 (D.Md. 1998)).

**Whether staff training should have occurred prior to the start of the 2014-2015 school year to further assist the Student's educational development in the inclusion setting given his identified disability.**

The Parents offered little evidence on this issue. The Parents' witness, [REDACTED] opined that she observed a lack of use of contingencies and visual strategies by staff.

The District on the other hand provided credible testimony and independent documentary evidence of the specialized training received by staff to assist not only [REDACTED] but all the students in the District diagnosed with Autism. (Vol.5- SD 3115-3126)

Accordingly, the training and consultations provided by [REDACTED] on an on-going basis to the staff is deemed appropriate and sufficient.

*\*The repetitive testimony of the some of the District's witnesses were omitted from the findings of facts regarding [REDACTED]'s educational benefit or lack thereof as it pertained to his placement in the general education classes.*

**ORDER**

**IT IS SO ORDERED:**

- 1) The Parents shall immediately facilitate and execute the proper forms, including any and all consent forms to change [REDACTED]'s placement in accordance with the District's recommended placement to the [REDACTED] program per the June 4, 2014 IEP.
- 2) The placement shall be made immediately and in event later than December 5, 2014.
- 3) The District's shall adhere to its identified Autism training program on a current and on-going basis. The program shall be reviewed annually and updated periodically as new strategies and modalities in the field emerge.

**RIGHT TO REQUEST CLARIFICATION**

Either party may request clarification of this decision by submitting a written request for 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 and ISBE. After a decision is issued, the Hearing Officer may not make any substantive changes to the decision. The right to request clarification does not permit a party to

request reconsideration of the decision itself, nor is the Hearing Officer 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.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of this Final Decision and Order was sent before 6:00 p.m. on December 1, 2014 by certified mail with return receipt to the following persons:

[REDACTED]

Mr. Andrew Eulass  
Due Process Coordinator  
Illinois State Board of Education  
100 North First Street

Springfield, Illinois 62777-001

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Sabrina Wilkins-Brown  
Impartial Due Process Hearing Officer

[REDACTED]