

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

MAY 23 2014

Student,
v.
Local School District.

SPECIAL EDUCATION SERVICES
CASE NO. 2014-0557
MARY SCHWARTZ
Impartial Hearing Officer

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.*, the Illinois School Code, 105 ILCS 5/14-8.02a *et seq.*, and her appointment as hearing officer by the Illinois State Board of Education (ISBE) on March 27, 2014.

PROCEDURAL BACKGROUND

The district received the parent's due process complaint on March 21, 2014. Upon appointment, the undersigned hearing officer issued several preliminary orders, including a statement of the parties' rights, and held an initial status conference with the parties on April 2nd. Each party is representing itself in this matter.

This dispute arises out of the district's proposal to move the student from his current out-of-district program in the [redacted] classroom to a special education self-contained cross-categorical classroom located in the district for the upcoming 2014-15 school year. The proposed program, known as the [redacted], is located at a district school, [redacted]. The current dispute has an important historical background: the parent had filed a prior due process complaint after the district proposed the same change for school year 2013-14. A hearing was held in that case on September 3, 2013, and a decision was issued on September 23, 2013.¹ The September 23rd decision (2013 Decision) found that the district's 2013 proposed program was "an inappropriate placement" because it could not implement a fundamental component of the student's IEP - a "sufficiently intense analog to the [redacted] Program." 2013 Decision, ¶63 (PD 14; SD

¹ To ensure clarity in the record, the current hearing officer is not the hearing officer who was assigned in the parent's prior due process complaint and who issued the September 23rd decision.

126). Therefore, the prior hearing officer ordered that the student "shall remain at the [REDACTED] at [REDACTED] for the remainder of this school year". 2013 Decision, ¶70 (PD 15; SD 127). He also ordered that if the IEP team determined at the end of school year 2013-14 that the student "should be transferred," it must develop a transition plan and determine "whether and how Student can be accommodated for voluntary daycare programs before and after school." 2013 Decision, ¶71 (PD 15; SD 127).

On March 31, 2014, the district filed its response and a motion to dismiss the parent's complaint, arguing that the district's proposal complied with the prior hearing officer's order. The parent responded to the motion on April 9th. After considering both parties' positions and applicable law, the undersigned denied the district's motion. The parent requested a stay-put placement at [REDACTED] during the April 2nd status conference, and the parties were given time to file written statements on the stay-put issue. After considering the parties' positions, relevant law, and the student's IEP, the undersigned granted the parent's request and ordered that the student's stay-put placement throughout the pendency of the due process proceedings is the [REDACTED] classroom.

The prehearing conference was held by telephone conference call on April 15th, and a final prehearing conference was held on April 28th. Because both parties are representing themselves, the hearing officer reviewed the parties' rights with them during the initial prehearing conference. The hearing officer also ordered the parties to hold an IEP meeting because there was no IEP that memorialized the district's proposed program for the 2014-15 school year. The IEP meeting was held on April 30th. The proposed IEP includes a provision that the student would begin transitioning to the district's proposed [REDACTED] classroom on May 12th. The undersigned hearing officer issued a second stay-put order on May 2nd, ordering again that the student must stay at the [REDACTED] classroom throughout the pendency of these proceedings.

The due process hearing was held on May 12 and 14, 2014, at [REDACTED]. The hearing was closed, as the parent requested. The parent represented himself. The district was represented by its superintendent, [REDACTED], and the special education director, [REDACTED]. Each party's evidence binder - Parent's PD 1-48 and District's SD 1-133 - was entered into evidence. The parties presented closing statements, which are part of the hearing record. [REDACTED] of [REDACTED] Reporting Service was the court reporter on both hearing days.

The following people appeared as witnesses: the father; [REDACTED] staff including [REDACTED] (program supervisor), [REDACTED] ([REDACTED] teacher), [REDACTED] (speech/language pathologist), [REDACTED] (social worker); [REDACTED] (consulting psychiatrist, who testified by telephone); and,

██████████ staff including ██████████ (special education teacher and assistant special education coordinator), ██████████ (special education coordinator), ██████████ (teacher), ██████████ (speech/language pathologist), ██████████ (behavior itinerant), ██████████ (autism itinerant hired by district on part-time basis), and ██████████ (occupational therapist).

The district requested an extension of the 45-day timeline, which was granted on May 9th and extended the timeline up to and including May 29, 2014. Neither party requested a transcript, so none was issued; therefore, the testimony referenced below is based on the undersigned's written hearing notes and memory. In rendering this decision, the undersigned has considered all documents entered into evidence, testimony presented by witnesses, the parties' opening and closing arguments, and the hearing officer's independent research. This decision is issued within ten business days after the hearing's conclusion, as required by Illinois law. 105 ILCS 5/14-8.02a(g55)(5).

ISSUE

The parent's complaint raises one issue: whether the student's IEP must be implemented at ██████████ classroom to provide the student a free appropriate public education (FAPE) and the opportunity to receive educational benefit. The parent asks that the hearing officer order the district to continue the student's placement in the ██████████ program.

The district has a statutory duty to produce evidence that the ██████████ classroom will adequately and appropriately meet the student's needs. 105 ILCS 5/14-8.02a(g-55). However, the district's obligation to present evidence does not place the burden of proof on the district. *Kerry M. v. Manhattan Sch. Dist. #11*, 106 LRP 58547 (N.D. Ill. 2006). The parent filed the complaint and thus must show by a preponderance of the evidence that the IEP must be implemented in the ██████████ program to provide the student a free appropriate public education.

FINDINGS OF FACT

The student, who is 11 years old, is currently in fifth grade. (SD 1). He began receiving early intervention services when he was 18 months old and has received special education services since age three as a student with autism. (PD 33, 34; SD 1). He currently attends the ██████████ classroom at the ██████████ for 1215 minutes/week. (SD 29). The ██████████ is a special education school run by the ██████████ (██████████), and the district is a member of the ██████████ cooperative. The ██████████ classroom is for students with autism spectrum disorders. The student also participates in the general education setting for lunch, recess, music, art, and physical education for 360 minutes/week at ██████████. (*Id.*) A

paraprofessional accompanies the student in his general education setting. (SD 29). [REDACTED] is a public school located close to the [REDACTED] and is not part of [REDACTED] School District [REDACTED]. (SD 4).

The proposed IEP is identical to the student's current IEP, except for the proposed change to the LOP classroom and updated meeting notes and progress reports. (SD 1-46). Required related services include: 200 minutes/month direct speech/language services and 40 minutes/month indirect speech/language services; 160 minutes/month direct counseling services and 20 minutes/month indirect counseling services; 120 minutes/month direct occupational therapy services and 40 minutes/month indirect occupational therapy services; 240 minutes/month adapted physical education and 40 minutes/month indirect adapted physical education; and, 15 minutes/month consult school health services. (SD 85, 86).

The IEP has four functional goals and three academic goals. The functional goals are to remain engaged and on topic for 15 minutes with one adult cue in a small group with a shared activity; to notice what his peers are doing and match his behavior to theirs 80% opportunities in a class period with one adult cue in a large (mainstream) group; to remain focused on the teacher leading the lesson and his work/lesson 4/5 opportunities when an adult enters the classroom; and, to follow directions in the classroom the first time they are given, without protesting, arguing with the teacher or making noises, given two adult cues 3/5 times. (SD 64-71). The academic goals are to use a checklist to self-correct personal writing with 80% accuracy, as measured by the average of the three most recent samples during the benchmark period; based on a reading comprehension leveling system, to read at a 5th grade instructional level text and answer comprehension questions at 80%; and, within 36 weeks, to score 13 (at least 80%) on given grade 3 untimed math applications probes consisting of 12 problems, where a score of 16 represents 100%. (SD 72-76).

To address the student's academic and functional needs, the IEP includes environmental modifications and accommodations such as visual supports and cues, a structured schedule, clear expectations, sensory breaks and activities, and small group instruction. (SD 78). Academic modifications and accommodations include breaking tasks down into small steps, repeating directions, small group instruction, cues and prompts to remain on task, graphic organizers, shortened assignments, and an assignment notebook. *Id.* The student is to have extended time and frequent breaks on evaluations, and tests are to be administered in a small group or separate setting. *Id.*

The [REDACTED] addresses the student's difficulty focusing on his work when an adult enters the classroom. (SD 26). The Behavior Intervention Plan includes strategies and supports to address this behavior,

including: proximity to the teacher, social narratives, role playing, redirection, visual cues, social skills lessons, a positive behavior system, rewards for completing tasks, and allowing the student to approach adults at the appropriate time. (SD 82, 83).

The student has a pragmatic language skills deficit that impacts his ability to learn and to interact successfully with his peers, use social cues and understand social expectations, and maintain awareness of his environment, follow directions, use language in a socially appropriate way, ask for help when he needs it, and understand how his behavior impacts others. (SD 4-6, 8, 10, 12, 14, 22, 23, 26, 27). The [REDACTED] classroom focuses on social skills, pragmatic language, and emotional regulation throughout the day and provides direct social skills instruction. [REDACTED], who has been the student's teacher for two years, testified that she addresses his difficulty paying attention during instructional times by reminding him to stay on task. Social skill instruction is an integral part of the academic instruction in her classroom. She also collaborates with the related service providers to address his problems interacting with staff and peers and being aware of social expectations in the classroom setting. [REDACTED] testified that the [REDACTED] classroom does not have a social skills program for students with autism.

Sometimes the student growls and makes noise when asked to do things he does not want to do. He is frequently off-topic during peer group activities, and others have trouble following his train of thought. He is distracted by adults who unexpectedly come into the classroom. The related service providers testified that they address these problems in the classroom through verbal and non-verbal interventions designed to help the student focus and understand social cues and how his behavior impacts others. Staff provide consistent social/emotional instruction throughout the day and use the same or similar terminology to address targeted behaviors and expectations. For example, Ms. Rothstein cues the student to "think with his eyes" when he has difficulty paying attention or becomes disengaged from his peers. This verbal or physical reminder (by pointing to her eyes) reminds the student to notice what his peers are doing and match his behavior to theirs. He also has visual cue cards to help him follow directions, and he is given a sensory break every 30 to 40 minutes.

The [REDACTED] staff expressed concern that the student sometimes "gets lost in his own world." Ms. [REDACTED] testified that he was becoming "increasingly disconnected" in December 2013, although he could easily be brought back to reality. The [REDACTED] staff requested a psychiatric consultation in December 2013 after the student jumped off a climbing wall in gym class and injured his leg. (SD 4). Ms. [REDACTED] testified that the student told her that he had been imagining that he was Spider Man while climbing on the wall. Although the student did not think his actions were unusual, Ms. [REDACTED] was concerned about safety issues created by

his involvement in his fantasy life and the impact his internal involvement had on his peer relationships.

The consultation was conducted on March 19, 2014 by [REDACTED] a child and adolescent psychiatrist. (PD 33, 36; SD 60). Dr. [REDACTED] met separately with the student, the student's father, and SEDOL staff who work with the student and also reviewed available records. (PD 33). The consultation, which Dr. [REDACTED] stressed was not an evaluation, confirmed the autism spectrum diagnosis and many of the needs identified on the student's IEP: difficulty with social cues and higher level language functioning, problems relating to peers and maintaining social relationships, and preoccupation with a fantasy world at certain times. (PD 35). Dr. [REDACTED] also reported that the student has a "significant discrepancy" in achievement scores, with reading fluency at the 46th%ile, reading comprehension at the 10th%ile, writing at the 32nd%ile, and math at the 5th%ile. (PD 34). The student "struggles in math and in his ability to inhibit his behavior and utilize working memory." (PD 35). The student's IEP corroborates Dr. [REDACTED]'s statements of these academic difficulties. (SD 61, 74). Although Dr. [REDACTED]'s report recommends that the student remain in the [REDACTED] classroom for the upcoming school year, he testified that he was unaware of changes that would occur in the [REDACTED] classroom in the fall when he made that recommendation. He also was unaware of the proposed transition plan and testified that he thought a transition plan was a "reasonable" idea. Dr. [REDACTED] has never visited the [REDACTED] or [REDACTED] classrooms.

Although the IEP states that Dr. [REDACTED]'s report was reviewed at the April 30th IEP meeting, Ms. [REDACTED] testified that she read a summary of the report and its recommendations to the team at the meeting and that there was no discussion of the report. (SD 61). No changes were made to the student's IEP in light of Dr. [REDACTED]'s consultation.

[REDACTED] staff testified that if the student remained in the [REDACTED] program for sixth grade, he would be faced with several programmatic changes. Both his classroom teacher and classroom location would be different. The sixth grade classroom is on the school's upper level, whereas the student's fourth and fifth grade classrooms were on the lower level. Because of the grade transition, many of his classmates are likely to be new to him. His current social worker, Ms. [REDACTED], is retiring, so a new social worker would be assigned to work with him. Finally, his general education program would be held at a different school because of his advancement to sixth grade. Despite these changes, the student's [REDACTED] teacher and related service providers recommend that he remain in the [REDACTED] program for the 2014-15 school year because of its consistent social skills instruction.

The testimonial and documentary evidence shows that the student has made progress on his social skills and pragmatic language deficits in the [REDACTED] classroom and is comfortable with the program's structure and his classmates. On both functional and academic goals, he either completed or was making expected progress on the majority of benchmarks measured this year. (SD 89-102). The evidence also shows that his preoccupation with his internal fantasy life remains but has not increased since the psychiatric consultation.

The [REDACTED] staff visited the district's proposed placement in February for about an hour. Both Ms. [REDACTED] and Ms. [REDACTED] testified that the [REDACTED] classroom focuses on academic instruction rather than social skills instruction. Ms. [REDACTED] testified that the [REDACTED] classroom does not have as many supports in place for the social skills instruction the student needs. However, she also testified that she could not say whether the district's program could offer the student a FAPE because she has not seen him in that classroom. Ms. [REDACTED] testified that the [REDACTED] classroom builds social skills into academics.² While the testimony of each of these witnesses is credible, the weight given to the testimony is limited by the fact that they had one short visit to the classroom.³

The father expressed concern that the [REDACTED] classroom could not provide the same amount of attention to working with the student on his IEP goals as he receives in the [REDACTED] classroom. He is also concerned that the student's emotional and social needs would not be met in the proposed classroom. He testified that the student was in the [REDACTED] classroom when he was living with his mother and said the student "got lost" in every aspect of his life at that time. Ms. [REDACTED]'s testimony that the student had attendance problems and other struggles when he lived with his mother supports the father's testimony. The father's closing statement gives a poignant description of that time, including an allegation that the district kicked the school out of school for three months due to what appear to be suspicions about residency.⁴ When the student was placed in the [REDACTED] classroom, he was able to "center himself." The father's distrust of the district's motives and programming is clear.

The district's [REDACTED] classroom is a cross-categorical classroom, which means that unlike the [REDACTED] classroom, it is comprised of students with differing disabilities, including specific learning disability, other health impairment, and

² It is noted for the record that several [REDACTED] staff testified that they did not voice their opinions at recent IEP meetings that the student should remain in the [REDACTED] classroom for the upcoming school year. Tension between the [REDACTED] staff who work with the student and other IEP team members was apparent throughout the hearing, although the reason for this is unknown.

³ The determination that a witness's testimony is credible means that the witness believed what s/he testified to at hearing, i.e., that the witness was presenting the facts as s/he believed them to be and was not lying. This differs from a determination that a particular witness's testimony is persuasive. J.P. v. County Sch. Bd. of Hanover County, Virginia, 06-2068, 07-1320, 108 LRP 8342 (4th Cir. 2008).

⁴ The undersigned is well aware that, as in every situation, there are at least two sides to the story. The hearing officer makes no determination on the father's allegations. It is included as part of his evidence on why the [REDACTED] classroom would not meet the student's needs.

speech/language impairments. The classroom day is divided into blocks of time for academic instruction and direct instruction in social-emotional skills. The teacher, Ms. [REDACTED], monitors the students' academic progress weekly and adjusts a student's instruction if necessary according to the reports. The classroom uses a token economy through which students earn tickets for being respectful and responsible and doing good deeds. Because the focus is on group work, there is a reward for the class when the class accumulates 500 tickets.

Ms. [REDACTED] testified that she uses positive reinforcement, teacher proximity, and verbal cues for social skills instruction. The classroom has a sensory break area for students to use as needed. The students have visuals on their desks to indicate "zones of regulation," such as stress or feeling overwhelmed, throughout the day. If a student is under high stress, he can take a sensory break or a walk or leave the classroom. Ms. [REDACTED], the district's assistant special education coordinator, testified that several students in the [REDACTED] classroom have functional and academic goals similar to this student's goals. She also testified that social skills instruction is embedded in the [REDACTED] classroom, meaning that behavior is immediately addressed, direct instruction is given on how to behave, and supports are in place to help a student meet expectations.

As in the [REDACTED] classroom, the district's related service staff provide both push-in and pull-out instruction for students in the [REDACTED] classroom. Students receive group, small group, and 1:1 instruction from the related service providers. Related service providers collaborate with Ms. [REDACTED] on the social/emotional skills that are taught each week. Testimony from the classroom teacher and related service providers supports a finding that the teacher and related service providers immediately address behavior targeted on a student's IEP and provide direct instruction on behavior, including social skills instruction.

The [REDACTED] related service providers who would work with the student in the proposed placement spent a morning visiting the [REDACTED] classroom. They also have reviewed the student's current IEP and talked with the [REDACTED] staff about the student's needs and techniques they use to meet his needs. Each of the [REDACTED] providers stressed the importance of maintaining consistency in strategies and techniques that have been successful with the student, including established cues and behavioral prompts. Ms. [REDACTED], the speech-pathologist, is familiar with the Michelle Garcia curriculum and has found it useful for a wide range of students. She also uses social stories and YouTube videos to work with students on pragmatic language and social skills. The district's occupational therapist, Ms. [REDACTED], has worked with students with autism and sensory regulation problems. She has found alternative seating, movement breaks, fidget toys, and visuals helpful for students who have sensory needs. She also would develop strategies for the classroom teacher to address the student's sensory needs.

In addition to the related service providers, the district has two support staff who would be available to work with the student and provide instruction and support for the [REDACTED] providers in the proposed classroom. The autism itinerant, Ms. [REDACTED], is in the district one full day a week. She has experience working on intervention strategies for students with autism and is trained in the Michelle Garcia technique. She trains classroom teachers in strategies to address behavioral problems that impact academic functioning. Although Ms. [REDACTED] has not met the student, she has reviewed his IEP and appeared quite familiar with his needs. She has successfully helped four other student with autism transition to the district and would be involved with transitioning this student to the [REDACTED] classroom. She offered extensive ideas on ways to help him transition successfully. She stressed the importance of direct services to students with autism. Notably, she was the only witness who provided concrete suggestions on how to work with the student's preoccupation with his inner fantasy life and the intrusion of his fantasies on his social and academic functioning, a major concern of [REDACTED] staff. Ms. [REDACTED] emphasized the importance of understanding when the student retreats to fantasy in the classroom and what is happening at such times. This would help clarify the function of his retreat to fantasy and what he gets out of his fantasies. She also suggested using fantasy characters to help make non-preferred activities more interesting and setting up expectations of when the student "go into" his fantasies. It is her opinion that trying to make the student give up his fantasy life is not the correct approach. The district's behavior itinerant, Ms. [REDACTED], also provides support to the [REDACTED] teacher and related service providers. She observed the [REDACTED] classroom and testified that the both classrooms use many of the same behavioral strategies, including immediate social skill instruction throughout the day and positive behavioral interventions.

The district offers before and after school programming for district students. (SD 131). According to Ms. Barkley, the before school program includes breakfast and games. The after school program is structured to provide time for homework and games. Students with disabilities, including students with autism, participate in the before and after school programming. If the student participates in this programming, district staff would set up interventions and techniques to help the student interact appropriately with other students in the program.

The district proposed a transition plan during the October 2013 IEP meeting, which it insists it was required to do in the prior hearing officer's order. The IEP notes report that district staff would "make frequent visits to the [REDACTED] program" to observe the student and services and supports that he was receiving in that program. (SD 4). District staff visited the [REDACTED] classroom three times between November 2013 and January 2014 to observe the student in that program. (SD 133). In January 2014, [REDACTED] and district staff met to prepare a draft transition plan. (*Id.*) The IEP team met again on February 24, 2014. (SD 4).

The February 24th meeting notes state that “the parent does not agree with the transition plan and the change of placement.” (SD 5). The district planned to institute the transition plan April 7, 2014. (*Id.*)

The IEP team met on April 30th pursuant to the undersigned’s order to convene a meeting to memorialize the district’s proposed placement. According to the notes of that meeting, the transition plan would require all [REDACTED] and [REDACTED] staff involved with this student to “take individual data on goals that they are working on and a report will be given by each team at the conclusion of the transition or earlier. Social emotional as well as educational information will be taken into consideration. The team will communicate daily with each educational team through a notebook” that the student will carry with him between classrooms.” (SD 60). Because of the [REDACTED] staff’s concern that the student would not successfully meet the transition plan’s goals, the IEP team agreed to meet to review and discuss the student’s progress or lack thereof on each of the transition goals before finalizing the proposed placement. No evidence was introduced of an actual written transition plan.

CONCLUSIONS OF LAW

The IDEA ensures that children with disabilities are provided with a free appropriate public education (FAPE) and related services that meet their unique needs. 20 U.S.C. § 1400(d)(1)(A). A district must comply with both the IDEA’s procedural requirements and substantive requirements in order to provide a FAPE to a student. Board of Educ. of the Hendrick Hudson Central Sch. Dist., Westchester County v. Rowley, 458 U.S. 176 (1982). The parent has not raised any procedural violations in this case; therefore, the only issue that may be decided is whether the IEP must be implemented in the LASSO program to provide the student a free appropriate public education.⁵

Special education includes specially designed instruction and related services required to meet a student’s unique needs. 34 C.F.R. §300.39(a). A district must provide special education that is reasonably calculated to enable the student to receive educational benefit; however, it does not have to provide a

⁵ Although the district has argued throughout these proceedings that the student’s least restrictive environment (LRE) is [REDACTED], the parent did not raise LRE as an issue, and the district did not file its own complaint raising LRE as an issue. This hearing officer may not make a decision on an issue that has not been properly raised. Moreover, the LRE analysis focuses on the amount of time a student spends in the general education environment, not on whether the student attends his home or neighborhood school. Board of Education of Township High School District No. 211 v. Lindsey R., 2005 WL 2008929 (N.D. Ill.) 2005; 34 C.F.R. §300.550(b)(2). The evidence shows that the amount of regular education programming is the same regardless of whether the student is placed in the [REDACTED] and [REDACTED] program. The district presented credible testimony that the placement grid in the proposed IEP is a copy of the same page from the October 2013 IEP and was not redone to describe the proposed placement. The description of the program and the amount of time that the student would spend in the general education setting (79% to 40%) are both incorrect. The student would spend less than 40% of his time in the general education setting if placed in the [REDACTED] classroom, which is the same amount of time as he currently spends in the general education setting. (SD 87).

child with the best possible education. M.B. Hamilton v. Hamilton Southeastern School and Hamilton-Boone-Madison Special Services, 58 IDELR 92 (7th Cir. 2011). The special education must produce progress, not regression or trivial educational advancement. Alex R. v. Forestville Valley County Sch. Dist., 375 F.3d 603, 41 IDELR 146 (7th Cir. 2004).

The evidence shows that the student's unique needs, described in the proposed IEP, include both academic needs and social/emotional needs, including significant problems with pragmatic language skills and social skills. Because his social/emotional needs impact his academic functioning, the student requires a program that can address both academic and social/emotional functioning concurrently and consistently. The district argues that although its [REDACTED] classroom has students with disabilities other than autism, the program has been restructured to include direct social skills instruction throughout the day and to integrate related service providers into the classroom. A preponderance of the evidence shows that the teacher and related service providers work together to address the students' academic and social needs, including providing social skills instruction, throughout the day. The district's related service staff provide push-in services in the [REDACTED] classroom and pull-out services as needed. Thus, the weight of the evidence shows that although the [REDACTED] classroom is not a replica of the [REDACTED] classroom, it does incorporate a majority of the strategies, techniques, and instructional methods that have been successful with this student in the [REDACTED] social stories, direct social skills instruction, push-in related services to address the student's functional needs in a small group setting, sensory breaks and a sensory area, and instruction in pragmatic language skills:

Although [REDACTED] staff opined that a major difference between the two programs is that the use of the Michelle Garcia curriculum in the [REDACTED] classroom, the district provided evidence that the [REDACTED] teacher is familiar with that curriculum and uses many of its techniques in working with her class. The speech/language pathologist who would work directly with the student is also familiar that technique. And importantly, Ms. [REDACTED] has been trained in the Garcia method and would be available to provide training for staff, including the classroom teacher.

The undersigned finds that a preponderance of the evidence shows that the district's [REDACTED] program is able to implement the student's IEP and provide the student with special education and related services that are reasonably calculated to confer educational benefit and produce progress for this student. Additionally, the IEP requires the same amount of time in regular education programming, which would be in the same building as the student's special education programming - [REDACTED].

The evidence also shows that transitioning the student to [REDACTED] will be a big change for this student. Thus, a transition plan to monitor his progress, or lack thereof, is essential. Both IEP teams must monitor the student's progress on academics and social skills and provide data on the monitoring. The parties

have agreed to meet during the transition to review the student's progress before finalizing the proposed placement. If the student is successful in transitioning to the [REDACTED] classroom, the IEP will be amended to reflect the [REDACTED] classroom as the student's placement for the 2014-15 school year.⁶

The father's care and concern for his son's well-being and education was clear throughout these proceedings. As noted earlier in this decision, prior experiences with the district and specifically with its [REDACTED] program have made him mistrustful of the district's motives and ability to educate the student. Those are not factors that the undersigned may consider in rendering this decision. However, it is this hearing officer's hope that the parties can find a way to bridge their differences and past history to work together on educating this student. In light of this decision and past circumstances, it is likely that the district will have to initiate this process, perhaps with the assistance of a mediator or IEP facilitator.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered that:

The student shall remain in the [REDACTED] classroom for the remainder of the 2013-14 school year. The IEP team, which includes district staff and [REDACTED] staff, shall meet within three school days of receipt of this order to develop a plan to collect baseline data on the student's academic, functional, and social emotional skills in the following areas, *at a minimum*:

1. Progress on the IEP's current seven goals;
2. Progress on pragmatic language skills;
3. Progress on sensory and emotional regulation; and,
4. Progress on focusing on "here and now", i.e. the ability to control his fantasy life;

The baseline data shall be the foundation for determining whether the student is progressing/regressing/maintaining the same level on each of the identified skills (i.e. 1- 4 above and others added by the IEP team). Teachers and related service providers shall collect the data daily for the remainder of this school year. Based

⁶ Although not at issue in this hearing, it is noted that the September 2013 decision required the district to "determine whether and how Student can be accommodated for voluntary daycare programs before and after school if such programs are made available for nondisabled students." Decision, ¶71. The district has produced evidence in this hearing that it has before and after school programs, that the student is eligible for those programs, and that it would wish to address the student's social/emotional needs.

on the data collected, the IEP team shall develop a transition plan that will measure the student's progress or lack thereof on a regular basis as determined by the IEP team.

The transition plan shall be implemented at the start of the 2014-15 school year on a date determined by the IEP team. Before the first day of school, the IEP team shall determine: the amount of time the student shall spend in the [REDACTED] classroom, the [REDACTED] classroom, and the general education setting at both/either schools; how to familiarize the student with [REDACTED] before the transition plan is initiated; and, how the student will be transported between [REDACTED] and the [REDACTED].

The transition plan shall be in effect for six to eight weeks, as determined by the IEP team, so that sufficient data may be collected. The IEP team shall determine an end date for the transition plan and a date for a final IEP meeting to determine whether the transition is successful. The final IEP meeting shall be held within the last week of the transition plan so that a placement decision is finalized by the date on which the transition plan ends. The IEP team shall analyze the data throughout the transition period and inform all involved - parent, [REDACTED] and [REDACTED] teachers and related service providers, and administrators - of the results of each analysis. The parent shall be included in all steps of the transition process.

If the transition is successful, the IEP team shall meet and amend the IEP to:

1. reflect placement in the [REDACTED] classroom at [REDACTED] with 360 minutes/week in the general education setting;
2. correct the "Placement Considerations" page to include a correct description of the [REDACTED] classroom and the correct percentage of time the student will spend in the general education setting, i.e., less than 40%;
3. include services from the Autism Itinerant and Behavioral Specialist in an amount determined by the IEP team; and,
4. specify how the before/after school program will be informed of the student's special needs and who will work with that program on how to meet the student's needs.

The student shall receive the same amount of related services for 2014-15 as required in his current IEP: speech/language services - direct 200 minutes/month and indirect 40 minutes/month; counseling services - direct 160 minutes/month and indirect 20 minutes/month; occupational therapy services - direct 120 minutes/month and indirect 40 minutes/month; adapted physical education - direct 240 minutes/month and indirect 40 minutes/month; and school health services consult 15 minutes/month.

If the transition plan is not successful, the student shall remain in the [REDACTED] classroom for the 2014-15 school year and receive the same amount of related services and instruction in the general education setting as required in his current IEP.

Within 30 calendar days of receipt of this Order, [REDACTED] shall submit proof of compliance with developing the transition plan. [REDACTED] shall submit final proof of compliance regarding the success of the transition plan and resultant placement [REDACTED] or [REDACTED] no later than November 14, 2014. Proof of compliance shall be sent to:

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

REQUEST FOR 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 APPEAL

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.

IT IS SO ORDERED.

DATE: May 21, 2014

[REDACTED]
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 by certified mail with return receipt to the individuals listed below:

[REDACTED]

Mr. Andrew Eulass
Due Process Coordinator
Illinois State Board of Education
100 North First Street
Springfield, Illinois 6277-0001

before 6:00 p.m. on May 21, 2014.

[REDACTED]

Mary Schwartz
Impartial Hearing Officer
6116 S. University Avenue, 2N
Chicago, Illinois 60637
773.684.3035 (facsimile)
708.912.0755 (cellular)
ihoschwartz@gmail.com