

RECEIVED

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

OCT 01 2015

SPECIAL EDUCATION
SERVICES

P.P.,¹

Student,

Case No: 2015-0370

v.

Kathleen C. Fuhrmann, Impartial Hearing Officer

District,

School District.

FINAL DETERMINATION AND ORDER

JURISDICTION

The undersigned 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.*

BACKGROUND

The hearing in this matter involves P.P., a sixteen (16) year old, male, tenth (10th) grade student, currently attending a separate therapeutic day school (██████) pursuant to a District placement. P.P. is eligible for special education and related services under the categories of Autism and Intellectual Disability – Severe. During the regular and extended school year, P.P. receives special education and related services; occupational therapy, speech/language therapy, nursing, and transportation. P.P.'s individual educational curriculum is extensively modified pursuant to the accommodations and modifications in all content areas contained in his IEP (Individualized Education Program) (P- 29, D-135-160, IEP dated April 21, 2015).

Despite a long history of multiple interventions, P.P. is non-verbal, has no functional communication system, is dependent on adults for every aspect of daily living, and is a constant safety risk due to low functioning, his wandering off and lack of awareness of danger. Parents

¹ Personal identification information is provided in Appendix A.

assert that P.P. has made few gains while attending [REDACTED]. Parents obtained an evaluation of P.P., which they believe was consistent with earlier evaluations, except that P.P. is six years away from exiting special education and has filed to develop basic living skills and a functional communication system. The Parents' evaluation recommended an intensive intervention program (24/7) in order for P.P. to acquire skills needed to make it possible for him to enter adult services equipped to function outside of an institutional setting and with less adult support. Parents assert that P.P.'s current program is unable to provide the intensity he needs to acquire these skill-sets and is essential to meet his transition goals. Parents assert that placement in a residential setting, out of state, is required to provide P.P. with an appropriate education (HO-1). District asserts that the IEP developed for P.P. appropriately addresses his needs and provides him with an educational program and placement in the least restrictive environment (LRE) and that P.P. is making progress in this program and placement (HO-3).

Parents, through their attorney, filed the due process complaint notice (DPCN) for P.P. on March 25, 2015 (HO-1). The Illinois State Board of Education appointed the undersigned as an impartial hearing officer (IHO) on March 30, 2015 (HO-2). District, through their attorney, submitted its response on March 31, 2015 (HO-3). The parties waived the resolution meeting on April 21, 2015 (HO-4). The undersigned issued a Preliminary Order, Standing Order and statement of rights on March 31, 2015 (IHO-5).

On April 10, 2015, the undersigned held a status call by telephone, at which time the parties advised that an IEP meeting was scheduled for April 21, 2015 to consider an independent evaluation provided by the Parent. This matter was set for a status call on April 22, 2015. On April 22, 2015, during the status call by telephone, the parties agreed to set the prehearing conference on May 18, 2015 by telephone with the preliminary witness and document disclosures due to the IHO and other party on or before May 8, 2015 (HO-6). In addition, the parties agreed to June 8, 9, and 12, 2015 as tentative hearing dates.

On April 27, 2015 Parents requested a continuance and extension of the 45 day deadline . (HO-7) A status call was held that day and parties agreed to keep the May 18, 2015 Prehearing Conference date and the 45 day deadline was not extended. (HO-8). On May 8, 2015 both parties presented their Preliminary Prehearing Conference Document and Witness Disclosures. (HO- 9, HO-10)

Parent Exhibits Tabs 1-19, 23, 24, 26-44.

District Exhibits pages 1- 945.

The parties gave oral closing arguments. The parties requested electronic service of the Decision and Order. The record was closed on September 17, 2015.

ISSUES

The issues to be determined are as follows:

- A. Whether the April 21, 2015 IEP accurately and completely identified Student P.P.'s needs?
- B. Whether the April 21, 2015 IEP is reasonably calculated to enable P.P. to receive educational benefit?
- C. Whether the District's proposed educational placement, a separate day school, can meet all of Student P.P.'s identified needs?
- D. Is a residential placement necessary to appropriately meet Student P.P. needs?
- E. If residential placement is necessary, which residential placement is appropriate, e.g. [REDACTED] or another school?
- F. The remedy sought by Parent is placement of Student P.P. at [REDACTED], in [REDACTED] at District's expense. The remedy sought by District denial of Parent's request.

The District has a statutory duty to produce evidence that it has properly identified the students disability needs in term of their nature and severity, whether the student has been determined as eligible for special education and related service and that it is providing or has offered a free appropriate public education (FAPE) to the student in the least restrictive environment (LRE).² This obligation to present evidence does not place the burden of proof on the district.³ The standard of proof in impartial hearings under the IDEA is a preponderance of the evidence.⁴ Under this standard, the party seeking relief must establish that the fact sought to be proved is more probable than not.

² 105 ILCS 5/14-8.02a(g-55)

³ *Kerry M. v Manhattan Sch. Dist. #11*, 106 LPR 58547 (N.D.Ill. 2006)

⁴ 20 U.S.C. § 1415(i)(2)(C)(iii)

FINDINGS OF FACT

After considering the evidence and the arguments of the parties, I make the following findings of fact:

1. P.P. is a an easy going, [REDACTED] year old, [REDACTED] ([REDACTED]th) grade student attending [REDACTED], a therapeutic day school. P.P. has attended [REDACTED] for the past five years. P.P. is non-verbal. P.P. uses some signs, PECS, gestures, and physically moving another to a desired object and pointing to during his limited communications. P.P. has a pleasant, sweet disposition. P.P. frequently engages in self-stimulating behaviors, especially rubbing. He usually responds to redirection in the form of physical intervention. (Testimony of Dr. L., Testimony of J.K., sp. ed. teacher, P. Tab 29, and D. pgs135-160.)

2. P.P. has the following medical diagnosis/conditions: autism; cecostomy status; epilepsy, generalized, convulsive; rectal/anal ulcer; and unspecified constipation. (SD pg. 78, and P Tab 26.)

3. On January 29, 2014, it was determined that P.P. is eligible for special education and related services under the categories of Autism and Intellectual Disability – Severe. (SD pgs. 214-221.)

4. P.P.'s 2014-2015 classroom at [REDACTED] is composed of six students and three adults (one teacher and 2 paraprofessionals), and in 2013-2014 the classroom composition was four students and four adults (one teacher, three paraprofessionals). He receives OT and Speech/Language Services 1:1 and in the context of group instruction within the classroom. (Testimony of J.K, Testimony of B.S., and Testimony of C.D., OT)

Eligibility Determination and Identification of Needs

5. The most recent eligibility determination meeting conducted with respect to P.P. was convened on January 29, 2014. Participants included the members of the IEP team as required under 34 C.F.R. §300.321, including, but not limited to Parent. (D – pg.216)

6. The IEP team reviewed P.P.'s level of functioning, reviewing the domains of health, academic performance, general intelligence, communication, and motor skills. Reports

completed by District evaluators were summarized in eligibility determination meeting report. (D – pg.216)

7. Domain: Health: The School Nurse Assessment indicates that reliable vision and hearing screening results could not be obtained. P.P. has been diagnosed by his pediatrician with a developmental delay, Autism, seizures (having a history of Grandmal seizures), skin infection in the groin area, cecostomy tube placement and required modified physical education. (D- pg. 218). The nursing assessment determined that P.P. needs a seizure emergency protocol, reminders to go to the bathroom, modified physical education, and takes Thorazine daily during school hours. Nurse recommends that P.P. is given medication daily and the therapeutic effects of prescribed medication are monitored in classroom. (D- pg. 225).

8. Domain: Academic Performance and General Intelligence: P.P. “presents with autism as well as severe intellectual disability.” P.P. experiences “significant impairment” in adaptive functioning and communication, verbal and non-verbal. The psychologist noted that there has been “slow developmental progress” which is “consistent with his cognitive level of functioning.” P.P.’s overall functioning remains in the “severely delayed range” with deficits in cognitive, communicative, adaptive and academic functioning. P.P. demonstrates significant autistic characteristics, including stereotyped behaviors. The psychologist notes that due to P.P. being “minimally related” he was “unable to be conditioned to the task demands of formal and informal academic assessment.” Therefore, this determination was based on a review of records and current summary reports of service providers, observations, consultation with classroom teacher and various rating scales administered by the psychologist. (D- pg. 218). (D- pg. 226).

9. The report indicates that P.P. can follow one-step directions, can sit and participate in classroom activities for up to 30 minutes. P.P. responds to his name, often smiles when persons speak to him. P.P. can identify the weekday and month. P.P. can eat at a table using utensils and cleaning up, remove his coat and book bag and put it in the cubby with prompting. P.P. can follow a visual schedule with verbal prompting. He follows verbal prompts during transition in the school. He can follow “familiar independent living skills routines” with “minimal to moderate verbal/gestural prompting. He requires hand-over-hand assistance to open and close containers and scoop food. P.P. enjoys music. (D- pg. 218).

10. During observations P.P. was difficult to engage, self-absorbed, avoided eye contact, and failed to interact. P.P.’s behaviors, as rated by his teacher on the Gilliam Autism

Rating Scale – Second Edition and the Teacher Rating form of the Vineland Adaptive Behavior Scales- Second Edition were consistent with previous assessment data and P.P. adaptive functioning is commensurate with Severe Cognitive Impairment. Psychologist states that P.P. “should continue to benefit from an intensive program that can provide the care and supervision he requires, continue to provide sensory input and opportunities for him to participate in the curriculum to the best of his ability, provide a nurturing and stimulating environment that aims at enhancing daily living skills, functional academic, and social skills.” (D- pg. 230).

11. Domain: Communication: P.P. is non-verbal, presenting notable deficits in the areas of expressive, receptive, and pragmatic language. P.P. is weak in functional communication, including augmentative and alternative communication methods (AAC). P.P. utilizes multiple forms of alternative communication including manipulation of object and/or communication partner, eye gaze, picture exchange, gestures and sign, vocalizations, and a parent provided dynamic speech output device to communicate his wants and needs. No one method is more effective than another. P.P. communicates primarily to request preferred items or actions, protest or resist, and gain attention. Attempts to evaluate P.P.’s receptive vocabulary skills with the “Peabody Picture Vocabulary Test-4th Edition (PPVT-4) were unsuccessful due to P.P. inability to meet the basal criteria. Additionally, the PPVT-4 standardization does not include modifications for person with special needs. After therapist made modifications to the administration of the PPVT-4 assessment items, when the visual field of pictures was limited to four (4) items, P.P. as able to correctly identify 3 of 12 test items. When the visual field of pictures was further limited to two (2) items, P.P. was able to identify four (4) additional items. On the “Functional Items Checklist,” an informal assessment using a variety of function objects, P.P. was able to identify (e.g. hand item to examiner) from a field of two, when given a verbal and gestural prompt toilet paper, toothbrush, soap, spoon, plate, ball, shoe, and fork in 8 of 15 attempts. He was able to identify (e.g. match object to picture of the target item) from a visual field of two (2) toilet paper, book, toothbrush, toothpaste, and fork. He was unable to identify cup, soap, deodorant, knife, and bowl. (D- pg. 233.)

12. The ProxPad is the most successful mode of augmentative communication for P.P. due to its large target area for message retrieval and communication tags. P.P. has difficulty categorizing symbols overall on the “Test of Aided –Communication Symbol Performance” (TASP). P.P.’s accuracy increased when the choice field was limited from four (4) to two (2)

items. He is reported to have had difficulty completing the Categorization Skills, Grammatical Encoding and Syntactic Performance Subtests. (D-pg. 234, Testimony of Ms..J., AAC itinerant.)

13. P.P. has limited pragmatic language skills. He responds to greetings with prompting and smiles when interacting with family and preferred staff members. He does not show interest in participating in social interaction with peers and does not seek out social interactions in school. P.P. requires prompting to initiate interactions and engage in turn-taking skills when others are speaking (e.g. eye contact, waiting, listening, facing communicative partner). Recommendations for P.P. include services to address weaknesses functional communication, including AAC methods to be used across environments. (D-pg. 235.)

14. Domain: Motor Skills: P.P. demonstrates overall deficits in vocational and work behaviors. P.P. has difficulty “independently” following a schedule and work routine. P.P. is easily distracted by self-stimulating behaviors. P.P. requires adult prompting to initiate, complete and transition between tasks. P.P. requires assistance in “many independent functioning tasks.” (D- pg. 218).

15. P.P. was assessed using the TEACCH Transition Assessment Profile-Second Edition (TTAP). On the Independent Functioning subtest, P.P. demonstrates appropriate eating habits and the following skills are emerging: recognizes survival signs, delivers message, follows schedule, and washes hands. P.P. failed telling time, recognize money, calculates monetary amounts, uses vending machines, uses money, uses calendar, and write and records checks. On the Vocational Skills assessment, P.P. was not distracted by office noise, he had emerging skills in makes appropriate initial greeting. He failed other items including sorting and matching skills. P.P. is not able to work independently or stay on task. He requires continuous prompting and can be extremely distracted by environmental factors and self-stimulating behaviors. He is complaint, but engages in task avoidance behaviors. (D-pg. 237-241.)

16. P.P.’s gross motor skills are within the functional limits for school, demonstrating the ability to move and avoid objects/people in his path and navigate stairs. He is able to open most food containers with hand over hand assistance and manipulate small objects, but does have any functional writing or typing skills. (D-pg. 237-241.)

17. P.P.’s accuracy in performing familiar independent living skills with prompting is about 50%. He requires assistance and support in many independent functioning tasks, academic tasks, and vocational tasks. (D-pgs. 237-241)

April 21, 2015 IEP

18. Domain: Health: The April 21, 2015 IEP indicates that P.P. takes his medication without prompting.

19. The goal requires P.P. to use a visual schedule to identify the time to transition from class to take his medication with 40% compliance. (P Tab 29, D-135-160, Testimony of B.B., School Nurse)

20. Domain: Academic Performance and General Intelligence: The April 21, 2015 IEP indicates that P.P. restates functional and intellectual abilities listed on the Eligibility Determination Report and indicates that P.P. shows several emerging skills; understanding of basic hygiene and grooming routines and home maintenance tasks, including loading and unloading the dishwasher, making the bed, folding laundry using a folding board, and wiping tables. These tasks must be initiated by adults and require prompting for completion. (P Tab 29, D-135-160.)

21. The academic goals require: that P.P. uses picture or word response and a graphic organizer to independently sequence events related to a passage read to him; that P.P. demonstrates an understanding of the 1:1 correspondence of numbers 10-20; that P.P. selects appropriate attire for 5 different temperature conditions; that P.P. answer “wh” questions after a history passage is read to him with 3 picture choice and a graphic organizer; that P.P. will use the AAC or picture based communication system to use the core vocabulary in making a request, comment; that P.P. will use a visual schedule of ADL and visual supports to complete each task; and that given 3 concrete objects schedule hygiene tasks (wash hands, brush teeth, wipe face) and an initial prompt to check schedule P.P. will independently initiate task. Each of these goals has limited field of responses, number of prompts allowable and accuracy/durational measures as well. (P Tab 29, D-135-160.)

22. These academic areas are designed to develop communication skills, daily living skills and transition skills within the context of the subject area required by Illinois State Standard. Generally, the focus of the benchmarks is to decrease the type and amount of prompting by staff and increase the number and frequency of correct responses by P.P.

23. Domain: Communication: The April 21, 2015 IEP indicates that P.P. restates functional and intellectual abilities listed on the Eligibility Determination Report and indicates that P.P. is able to utilize a digitized voice output communication device during therapeutic and academic settings. P.P. is most accurate when he is provided very limited field of choices. Discrimination between two (2) picture icons is an emerging skill (demonstrating the ability to scan and track) for P.P. (P Tab 29, D-135-160.)

24. The communication goal for P.P. is to use an AAC system, either digitized voice output communication device or picture based communication system, to utilize core vocabulary word (e.g. more, help, finished, want) to make a request or comment from a field of 2 symbols when given 1 visual, gestural or physical prompt per trial with 80% accuracy. (P Tab 29, D-135-160.)

25. Domain: Motor Skills: The April 21, 2015 IEP indicates that P.P. restates motor skills listed on the Eligibility Determination Report and indicates that the parent has reported P.P. has difficulty completing basic hygiene tasks in the home and does not independently initiate any hygiene tasks in the home, including hand washing, brushing his teeth, or wiping his face. At school, P.P. requires prompts to initiate, execute and complete each hygiene task. In addition, P.P. is not participating in management tasks at home (making the bed, doing the dishes/loading the dishwasher, clothing care). Parents give this skill priority. In school, P.P. requires 2-3 gestural prompts and partial physical prompts for assistance in each step of these tasks. (P Tab 29, D-135-160.)

26. The goals in this domain are: (1) given a 3-step concrete objects schedule for hygiene tasks (wash hands, brush teeth, wipe face) and an initial prompt to check schedule, P.P. will independently initiate 3/3 tasks in 3/4 trials, and (2) given a visual schedule of 3 functional activities of daily living (e.g. making the bed, doing the dishes/loading the dishwasher, folding or hanging clothing) and visual support as needed for each task, P.P. will complete each task given no more than 4 gestural/verbal prompts per task in 3/4 trials. (P Tab 29, D-135-160.)

27. Domain: Transition: The April 21, 2015 IEP transition section restates P.P.'s need to develop a communication system, independence in ADL and his need for visual supports. It states that P.P. needs to develop community safety skills. P.P. is described as very friendly and enjoys interactions with familiar people, but does not seek out social interactions. Desired post-secondary outcomes for P.P. included participation in a developmental training

program, and living in a community-integrated setting with his family or in a state-funded residential placement and will participate in age appropriate community activities with support. (P Tab 29, D-135-160.)

28. Activities coordinated to facilitate transition include working on various vocational activities to increase independence and time on task, speech/language services to strengthen his communication skills and occupational therapy skills to increase his independent living and vocational skills. P.P. will receive basic vocational activities and community outings. P.P. will work to complete ADL through his classroom routines and independent functioning goals. (P Tab 29, D-135-160.)

29. P.P. is not able to stay on task and work independently. He needs to be prompted to initiate, sustain and complete during tasks. P.P. needs continual prompting directed to execution of the task and to direct or redirect his attention to the task at hand due to his “stimming” (rubbing items on the table, turning all pages in a book, etc.). A behavior specialist worked with P.P. classroom teacher to evaluate him and to make recommendations for modifications of classroom routines and procedures. (P Tab 29, D-135-160).

30. P.P. is not aggressive and well-behaved in school setting. P.P. demonstrates inappropriate stereotypic behaviors, such as sock twirling, and self-stimulation. P.P. takes food from others, engages in rectal digging and masturbation. At times, P.P. pushes tasks away or pushes staff away as a means of refusal. Staff is generally able to redirect him to the activity. P.P. requires close supervision in the school building and community he is unaware of his environment and common dangers due to his cognitive impairment. He is able to follow the verbal prompts, stop and wait. (P Tab 29, D-135-160).

31. All goals and benchmarks for contained in the April 21, 2015 IEP contain descriptions of the materials and methods to be provided to P.P., the behavior to be measured and the rate and frequency of desired behavior outcome necessary to meet the benchmark or goal. (P Tab 29, D-135-160.)

32. The April 21, 2015 IEP provide for P.P. to receive direct instruction/service in Language Arts/English/Reading, Mathematics, Biology & Physical Sciences, Social Studies, Independent Functioning and Speech/Language in a separate day school. (P Tab 29, D-135-160, Testimony of J.K., sp. ed. teacher, Testimony of B.S., Sp./Lang Path., Testimony of B.S., and Testimony of C.D., OT.)

33. In addition, P.P. receives direct and consultation services in occupational therapy, speech/language therapy, and nursing in a therapeutic day school setting. P.P. is provided transportation as a related service. (IEP dated April 21, 2015, P Tab 29, D-135-160, Testimony of J.K., sp. ed. teacher, Testimony of B.S., Sp./Lang Path., Testimony of B.S., and Testimony of C.D., OT.)

34. The April 21, 2015 IEP contains accommodations and modifications address curricular content and testing adaptations and modifications, and provide for sensory breaks and communication system needs. (P Tab 29, D-135-160.)

35. P.P. was not able to receive special education and related services in the general education setting as he requires a level higher of support, (low student-teacher ratio, small structured setting) than can be provided in the general education setting to enable him to achieve academic and behavioral/emotional success.

36. P.P. has not acquired basic self-care skills; he is unable to dress, bath and complete basic daily hygiene activities, including toileting, independently. (IEP dated April 21, 2015, P Tab 29, D-135-160 and Testimony of C.D., OT, and Mother.)

37. P.P. works in small group with four other students and four adults in the classroom. P.P. works with Speech and OT in co-treat sessions held in the [REDACTED] functional skills suite for 30 minutes per week on activities of daily living. P.P. works on other daily living activities, such as hand washing, dressing skills, eating with utensils, during classroom routines and instructional groups. (Testimony of J.K, sp.ed. teacher, Testimony of C.D., OT, Testimony of B.S., Sp. Path., and Testimony of A.J., sp. ed. teacher)

38. P.P.'s current communication device is the Logan ProxPad, a voice out-put using sound tag cards. P.P.'s scanning and selecting skills are limited to a field of two choices at this time. The sound tag cards have symbols and are color coded. P.P. learns new symbols through repetition during speech sessions. "Help" and finished" are the core words that are being used with this device. P.P. requires support in the form of physical, gestural or verbal to use this device. He has not developed independence in using the ProxPad to express his need for help or to declare that he is finished after using the device at school for more than a year. (Testimony of B.S., Sp./Lang. Path.)

39. P.P.'s ProxPad was not working all summer of 2015. During the period that the device was not working the staff generated the voice output until the device replacement arrived.

The failure of the digital voice output did not render the ProxPad unusable. Staff generated voice output was an appropriate substitute and did not render the device useless or impair the effectiveness of the instructional routine. It was sent home with P.P. daily. P.P.'s ProxPad is frequently out of batteries. (Testimony of J.K., sp. ed. teacher, and Testimony of B.S., Sp/Lang Path., Testimony of A.J., AAC itinerant)

40. The ProxPad was sent home during 2014-15 school year, it was not working properly and using it became frustrating. P.P. is not able to use it independently. (Testimony of Mother.)

41. In the 2013-14 school year, PP.'s ProxPad was used in the classroom for requesting group only. (Testimony of J.K., sp. ed. teacher) The 2015-16 school year teacher uses the ProxPad with every subject. (Testimony of A.J., sp. ed. teacher.)

42. Verbal and gestural prompting is primarily used with P.P. by staff. P.P. has a visual schedule at his desk and uses visual schedules in OT session. (Testimony of J.K, teacher, Testimony of B.S., Sp./Lang. Path., and Testimony of C.D., OT.)

43. P.P.'s is at risk for elopement. P.P. has eloped from his home while in the care of his parents. At ESATS, P.P. frequently leaves his work station and walks about the classroom and has attempted once or twice to go out the door. ESATS staffing enables P.P. to be constantly under direct adult supervision and he has always responded to verbal redirection to return. (Testimony of Mother, Testimony of J.W., case manager, and Testimony of A.J., sp. ed. teacher.)

44. The IEPs developed by the District on November 3, 2014, February 7, 2014, February 4, 2013, and February 8, 2012 all identify and describe P.P.'s needs in the domains of domains of health, academic performance, general intelligence, communication, and motor skills and provide for the provision of special education and related services in a separate day school setting. (D- pgs. 164-207; 242-282; 290-348; 348-390.)

45. P.P.'s progress is extremely slow in meeting his goals and acquiring skills. ESATS staff working with P.P. believe that his needs are being address through his IEP, he is making appropriate progress given his level of impairment, obtaining educational benefit and his placement is appropriate and he does not require a residential placement which would be a more restrictive placement. (Testimony of J.K., and A.J., sp. ed. teachers, C.D., OT, B.S., Sp.Lang. Path., J.W., ESATS case manager, M.P.. ESATS behavior analyst.)

Parents

46. Parents are seeking residential placement for P.P. through Community Service Options using DHS funding because they feel that P.P. is not making progress at [REDACTED]. They are seeking residential placement so that P.P. can be provided with 24/7 care and instruction to increase the rate of skill acquisition and improve his skill development in the areas of functional communication, activities of daily living, leisure and vocational skills. In addition, Parents are concerned about his self-harm behaviors, rectal digging and elopement, causing him to need 24 hour supervision. P.P. is completely adult dependent. Parents cannot provide the level of supervision that P.P. requires in their home. (Testimony of Mother.)

47. Applications for P.P. have been made to numerous Illinois residential facilities. P.P. has not been accepted by any appropriate facility that has an opening due to medical issues arising as a result of his cecostomy tube. Parents would accept any appropriate placement available to P.P. Placement of located in Illinois or neighboring state is preferred by the parents. (Testimony of Mother, and Testimony of S.V., CSO.)

48. Currently, P.P. uses the home-based waiver for a personal support worker. Personal support workers are found and trained by parents. They provide respite care for parents approximately 2 hours per day/ 3 days per week and an occasional weekend. (Testimony of S.V., CSO and Testimony of Mother.)

49. P.P. participates in after-school programs at ESATS, special recreational and religious programs in the community. P.P. enjoys and prefers swimming and other physical activities. (Testimony of Mother.)

50. Parents have purchased and provided many interventions for P.P. They have purchased communication devices through insurance but are unable to provide P.P. with the level of intensive intervention and support that he needs in their home. P.P. cannot do anything independently. (Testimony of Mother.)

51. P.P. has toileting accidents when he is engaging in rectal digging. (Testimony of Mother)

52. P.P. has had toileting accidents at school. (Testimony of Mother and J.K., sp. ed. teacher.)

Independent Educational Evaluation

53. Dr. L., a licensed clinical psychologist, currently employed as the clinical director of an autism assessment, research and treatment service center and assistant professor at a local university medical center, evaluated P.P. in early 2015 at the request of Parents. The parties stipulated to Dr. L.'s qualifications as an expert witness. (P. Tab 27, Testimony of Dr. L.)

54. Dr. L. was a co-author of the Confidential Report of Multi-Disciplinary Evaluation report based on the evaluation conducted on January 27, 2015. Dr. L. completed the psychological portion of the examination. (P. Tab 24.)

55. Dr. L. did not review school records, (i.e. most recent eligibility determination, IEP), she did not speak with school staff before preparing her report. (Testimony of Dr. L.)

56. During Dr. L.'s evaluation, P.P. was very distracted by twirling a sock. Dr. L. noted that it was very difficult to capture and sustain P.P.'s attention. P.P. did better when food or highly repetitive routines were involved, but overall his engagement was very limited. (Testimony of Dr. L. and P. Tab 24.)

57. Dr. L. attempted to give a standardized IQ test, but P.P. wasn't able to do much of it. Dr. L. was able to get a couple of age equivalent scores, but these were not specific, below 2 years, 7-month level, offering very little information about what P.P. can actually perform. Dr. L. administered a series of "folder tasks" to better understand P.P.'s cognitive abilities. (Testimony of Dr. L. and P. Tab 24.)

58. P.P. is able to do some matching when given a limited response bank (2-3 choices). P.P.'s attention to scan items was low and had difficulty with discrimination. As abstraction of the categories increased in the matching items increase, P.P.'s accuracy decreases from 60% to 20% accuracy. As P.P. struggled with tasks his sensory-seeking behaviors increased. P.P. has mastered 1:1 correspondence for the numbers one (1) and two (2) when given a response back of three (3) or less. P.P. demonstrated very low intellectual ability. (Testimony of Dr. L. and P. Tab 24.)

59. P.P. demonstrates significant deficits in all domains of adaptive behavior assessed. P.P.'s self-help skills are largely at the toddler level. He needs as much support or more than a toddler in his daily living activities. P.P.'s performance the areas of motor skills, social interaction and communication skills, personal living skills, community living skills, and

broad independence are significantly lower than age based estimates of his abilities. P.P.'s adaptive function scores are consistent with his level of intellectual function.

60. P.P. has difficulty with social-communication. He is preoccupied with seeking sensory stimulation and engaging in repetitive behaviors which interfere substantially with social engagement. P.P. displays little interest in routine tasks or play. P.P. use of eye gaze is a relative strength. P.P. is largely disinterested in the social overtures from others and is mainly driven by his own interests. (Testimony of Dr. L. and P. Tab 24.)

61. P.P engages in a variety of sensory seeking behaviors and nonfunctional routines, including twirling a sock, swinging his legs, touching items to his mouth, tapping, rubbing items on himself or other surfaces. He also engages in repetitive motor movements, including finger flicking and hand mannerisms. (Testimony of Dr. L. and P. Tab 24, Testimony of M.P. Behavior Analyst) These behaviors create feelings of pleasure for P.P. and are not serving attention or communication functions.

62. Dr. L. finds P.P.'s needs are substantial due to his intellectual disability and autism. Dr. L. recommends specialized and targeted intervention strategies throughout his day (extending beyond typical school hours); including, a low teacher-student ratio, individualized instruction, a reliable means of communication and supervision due to potentially dangerous behaviors, including elopement. P.P. requires 24 hour care and instruction throughout his waking hours and a clear plan for assuring his safety when he is assumed to be asleep. (Testimony of Dr. L. and P. Tab 24.)

63. Dr. L. opined that an appropriate program for P.P. can take multiple forms, including a therapeutic educational placement with extensive in-home supports or residential program. P.P.'s skill instruction should target highly practical skills and incorporate real-world materials in developing skills and use visual supports. P.P.'s cannot benefit from large group instruction, explicit instruction delivered in 1:1 or 2:1 is needed in the areas of self-care, vocational skills, and communication. Instruction should be repetitive and presented in a manner that allows for slow processing, with concrete visual supports. (Testimony of Dr. L. and P. Tab 24.)

64. Dr. L. recommends wraparound support provided in-home with dedicated person trained in working with autism, a direct service providers or providers or residential-based supports to target the development of daily routines to maximize P.P.'s independence. Also

recommended is an increase in the visual types of communication which P.P. uses. Dr. L. believes that P.P. has the capacity to use a picture exchange system, but may need to begin with objects or pictures rather than line drawings. Dr. L. recommends that a commitment to one strategy is made and that P.P. is prompted to use it consistently in all settings. (Testimony of Dr. L. and P. Tab 24.)

65. Dr. L. testified that she completed a 30-40 minute observation of P.P. in his classroom at [REDACTED] on the day after Labor Day (September 8, 2015). Dr. L. described P.P. as appearing anxious. P.P. had missed the bus, was brought to school by his mother and arrived approximately a half hour late. P.P. had a difficult start to the day. (Testimony of Dr. L.)

66. Dr. L. observed that P.P. wandered around after arriving was not given any visual support for about 20-30 minutes and she did not observe any use of any communication system or device other than staff verbally directing and redirecting. (Testimony of Dr. L.)

67. The Functional Behavior Assessment completed after the development of the IEP to assess the impact of P.P.'s maladaptive behaviors: rectal digging and repetitive motor movements. Data, (ABC) was collected across the school environment and home on these two behaviors. The repetitive motor movements appear to be serving a sensory function and that [REDACTED] should be slowly targeted for decrease through a discrimination training program. The goal of this program would be to decrease his use of repetitive motor movements during specific work tasks. The rectal digging is a safety concern which largely occurs during periods when P.P. is not under direct supervision and engaged in task or leisure activity. P.P. stops every time he is verbally directed. This behavior may serve an automatic or sensory function. Recommendations for medical re-evaluation were made and bathroom use is increased, P.P. is given opportunities to practice cleaning himself to prevent the development of a hygiene cause and to develop appropriate replacement behavior. It is assert that this behavior does not occur at school. (D-pgs. 124-130, Testimony of M.P., Testimony of A.J.)

68. P.P. will experience difficulty as an adult if he does not acquire a functional communication system, independence in daily living skills and a set of vocational skills. Failure to acquire some increase level of independence in the next few years will decrease the number of post-secondary options available to P.P. as an adult. (Testimony of E.M.M.)

██████████ School

69. ██████████ School is a day school and boarding school serving children ages 5 through 21. ██████████ serves students with developmental disabilities. Most of Heartsprings students have challenging behaviors that interfere with progress in school, home life and community access. ██████████ develops IEPs to work with students to decrease inappropriate behaviors, increase communications skills and increase student independence in activities of daily living. ██████████' classrooms have between 4-8 students, a teacher and paraprofessionals. ██████████ provides parents with training and support as well as encourages visiting. Boarding students reside in one of seven (7) group homes, staffed by various adults including para-educators to continue direct instructional support during non-school hours. ██████████ professional staff is certified, licensed or credentialed, as appropriate for the profession. Heartsprings has a medical staff that is on campus or on call, 24 hours a day. ██████████ is licensed by the ██████████ State Department of Education and the ██████████ Department of Health and Environment. ██████████ is approved by the Illinois State Board of Education.

70. ██████████ has reviewed P.P.'s application and will accept him for enrollment. P.P.'s acceptance and appropriateness for this program was based on their ability to provide the services contained in the IEP, they have experience with students who engage in rectal digging. (P Tab 23. Testimony of K.B.)

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

I. FAPE

A. Whether the April 21, 2015 IEP accurately and completely identified Student P.P.'s needs?

IDEA ensures that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet

their unique needs.”⁵ FAPE is defined as special education or related services that are provided at public expense, meet the standards of the state, include preschool, elementary, or secondary school and are provided in conformity with an Individualized Education Program (IEP) that meets the requirements of 34 C.F.R. §§ 300.320-324.⁶

The IDEA defines an IEP as “a written statement for each child with a disability that is developed, reviewed, and revised in accordance with 34 C.F.R. 300.320 through 34 C.F.R. 300.324.”⁷ Parents have not alleged any deficiencies of the District’s April 21, 2015 IEP, therefore no findings were made with respect to the requirements of 34 C.F.R. §§300.321, §300.322 and 300.323. (HO -1.)

In addition to other requirements, an IEP must include a statement of the child’s present levels of academic achievement and functional performance, articulate measureable educational goals, including academic and functional goals designed to meet the child’s needs that result from the child’s disability, and specify the nature of the special service that the district will provide.⁸ The failure of an IEP to address a child’s educational and functional needs will likely result in a denial of FAPE.⁹ “An IEP must respond to all significant facets of the student’s disability, both academic and behavioral” to meet the substantive criterion of *Rowley*.¹⁰

Here, Parents assert that due to severe autism and intellectual impairment, P.P.’s needs include a functional communication system; safety concerns (wandering off, lack of awareness of danger and self-injurious behavior); the development of daily living skills, and to decrease

⁵ 20 U.S.C. 1400(d)(1)(A) and *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91 (1982).

⁶ 34 C.F.R. 300.17.

⁷ 34 C.F.R. 300.22.

⁸ 34 C.F.R.300.22 and 34 C.F.R. 300.320(a).

⁹ *Forest Grove Sch. Dist. v T.A.*, 53 IDELR 151 (U.S. 2009).

¹⁰ *Alex R.*

dependence on adult support. District asserts that P.P.'s needs are accurately and completely identified in April 21, 2015 IEP.

In developing the April 21, 2015 IEP, the IEP team reviewed P.P.'s level of functioning and performance in all domains: health, academic performance, general intelligence, communication, and motor skills. The 2014 evaluation reports summarized P.P.'s needs as the following:

(A.) The nursing assessment determined that P.P. needs a seizure emergency protocol, reminders to go to the bathroom, modified physical education, and takes Thorazine daily during school hours. Nurse recommends that P.P. is given medication daily and the therapeutic effects of prescribed medication are monitored in classroom.

(B.) Psychologist states that P.P. "should continue to benefit from an intensive program that can provide the care and supervision he requires, continue to provide sensory input and opportunities for him to participate in the curriculum to the best of his ability, provide a nurturing and stimulating environment that aims at enhancing daily living skills, functional academic, and social skills." (D- pg. 230).

(C.) P.P. requires prompting to initiate interactions and engage in turn-taking skills when others are speaking (e.g. eye contact, waiting, listening, facing communicative partner). Recommendations for P.P. include services to address weaknesses functional communication, including AAC methods to be used across environments. (D-pg. 235.)

(D.) P.P requires assistance and support in many independent functioning tasks, academic tasks, and vocational tasks. (D-pgs. 237-241)

In addition the April 21, 2015 IEP indicates that P.P. shows several emerging skills; understanding of basic hygiene and grooming routines and home maintenance tasks, including loading and unloading the dishwasher, making the bed, folding laundry using a folding board, and wiping tables. These tasks must be initiated by adults and require prompting for completion. It also indicates that P.P. is able to utilize a digitized voice output communication device during therapeutic and academic settings and is most accurate when he is provided very limited field of choices. Discrimination between two (2) picture icons is an emerging skill (demonstrating the ability to scan and track) for P.P. (P- Tab 29, 2-3/38, D pg. 137-139.)

The independent evaluation of P.P. by Dr. L. indicated that his needs are substantial due to his intellectual disability and autism. Dr. L. indicated that P.P. has very low intellectual ability, significant deficits in all domains of adaptive behavior assessed which were quantified as at the toddler level. Dr. L.'s report of that P.P.'s performance the areas of motor skills, social interaction and communication skills, personal living skills, community living skills, and broad independence did not reveal any findings that varied from the District's recent Eligibility Report. Dr. L. opined that were similar to those reported in the January are significantly lower than age based estimates of his abilities. Dr. L. notes P.P.'s significant deficits in all domains of adaptive behavior. Dr. L.'s report noted that P.P. has difficulty with social-communication. He is preoccupied with seeking sensory stimulation and engaging in repetitive behaviors which interfere substantially with social engagement, his lack of interest in others, his relative communication strength of eye gaze is a relative strength and that he is mainly driven by his own interests. Dr. L. noted the variety of sensory seeking behaviors and nonfunctional routines that P.P. engages in constantly. She concluded that these behaviors create feelings of pleasure for

P.P. and are not serving attention or communication functions. Dr. L concluded that P.P.'s adaptive function scores are consistent with his level of intellectual function.

While Dr. L. presented the results of her independent evaluation in terms of the measures and means that she used to complete her evaluation and parents report of P.P. functioning at home and in the community, her identification of P.P.'s needs did not identify any needs which were previously unidentified in P.P.'s eligibility evaluations or IEPs.

Therefore, I conclude that the preponderance of the evidence establishes that the April 21, 2015 IEP accurately and completely identified Student P.P.'s needs.

B. Whether the April 21, 2015 IEP is reasonably calculated to enable Student P.P. to receive educational benefit?

Parents assert the IEP is not reasonably calculated to enable P.P. to receive educational benefit because P.P. requires a very intensive intervention program in order to acquire skills needed to meet his transition goals and to make it possible for him to enter adult services better equipped to function outside of an institutional setting and the IEP does not provide services of needed intensity or duration. District asserts that the April 21, 2015 IEP is designed to meet P.P.'s needs and P.P. has made progress at ESATS for the past 7 years, receiving educational benefit.

A district must develop an IEP that provides a student with a disability specially designed instruction that meet his or her unique needs, regardless of whether the same instruction is provided to other children with disabilities or to children without disabilities, in the child's classroom, grade or building.¹¹ A school district fails to provide a FAPE if it fails to follow proper procedures or the IEP is not reasonably calculated to provide some educational benefit to

¹¹ *Letter to Chambers*, 59 IDELR 170 (OSEP 2012).

the child.¹² In this instance, Parents have not alleged that District failed to follow proper procedures; therefore, the undersigned will refrain from discussing procedural matters. The relevant discussion in this matter is whether the IEP in question meets the substantive standard of the second prong in *Rowley*.

FAPE should provide some educational benefit and be appropriate for the child, it is not necessary to provide the best possible education and it does not matter if the placement chosen by the parents is better.¹³ In addition, this does not mean a school district must furnish “every special service necessary to maximize each handicapped child’s potential.”¹⁴ The IEP must be reasonably calculated to provide more than trivial educational benefits and “likely to produce progress, not regression”.¹⁵ “Factors to consider in making such a determination include: ‘(1) the child’s potential; (2) whether his IEPs were tailored to his unique needs; (3) whether his IEPs provided access to specialized services; (4) whether they addressed disability-related disruptive acts; and (5) whether the child achieved progress during the relevant time period.’”¹⁶

The P.P.’s potential

P.P. experiences “significant impairment” in adaptive functioning and communication, verbal and non-verbal. P.P.’s overall functioning remains in the “severely delayed range” with deficits in cognitive, communicative, adaptive and academic functioning. P.P. demonstrates significant autistic characteristics, including stereotyped behaviors. The District psychologist noted that there has been “slow developmental progress” which is “consistent with his cognitive level of functioning.” This determination was based on a review of records and current summary

¹² *Brad K. v Board of Education of the City of Chicago*, 787 F.Supp.2d 734, 738, (N.D.Ill., 2011), quoting *Todd v. Duneland School Corporation*, 299 F.3d 899, 905 (7th Cir. 2002).

¹³ *Brad K. at 738*.

¹⁴ *Rowley at 199*.

¹⁵ *Alex R. v. Forestville Valley County Sch. Dist.*, 375 F.3d 603, 41 IDELR 146 (7th Cir. 2004).

¹⁶ *Brad K. at 739*, quoting *Jaccari J. v. Board of Education of City of Chicago, District No. 299*, 690 F. Supp.2d. 687, 701-02 (N.D.Ill. 2010).

reports of service providers, observations, consultation with classroom teacher and various rating scales administered by the psychologist. (D- pg. 218).

In addition, Dr. L. stated in her evaluation that P.P. demonstrated very low intellectual ability and demonstrates significant deficits in all domains of adaptive behavior assessed and P.P.'s adaptive function scores are consistent with his level of intellectual function.

Whether his IEPs were tailored to his unique needs

The District Psychologist states that P.P. "should continue to benefit from an intensive program that can provide the care and supervision he requires, continue to provide sensory input and opportunities for him to participate in the curriculum to the best of his ability, provide a nurturing and stimulating environment that aims at enhancing daily living skills, functional academic, and social skills." The April 21, 2015 IEP provides for special education instruction, accommodations and modifications, and related services in the domains of health, academic performance, general intelligence, communication, and motor skills. The April 21, 2015 IEP provides P.P. receives direct instruction/service in Language Arts/English/Reading, Mathematics, Biology & Physical Sciences, Social Studies, Independent Functioning and Speech/Language. The goals in these academic areas are designed to develop communication skills, daily living skills and transition skills within the context of the subject area required by Illinois State Standard. Generally, the focus of the benchmarks is to decrease the type and amount of prompting by staff and increase the number and frequency of correct responses, and eventually independence, by P.P. The accommodations and modifications address curricular content adaptations and modifications, provide for sensory breaks and for development and use of communication systems in response to P.P.'s need and present levels of performance.

P.P. requires prompting to initiate interactions and engage in turn-taking skills when others are speaking (e.g. eye contact, waiting, listening, facing communicative partner). Recommendations for P.P. include services to address weaknesses functional communication, including AAC methods to be used across environments. P.P. receives direct and consultation services in occupational therapy, speech/language therapy, and nursing to enable these related service providers to support and train P.P.'s teacher and the paraprofessionals in the communication and functional systems and methods that are utilized in therapy. In addition, related services are being provided in co-therapy setting to integrate and generalize communication skills with functional skills and activities of daily living rather than in isolation. Finally, the classroom staff works daily on the hygiene skills with P.P. in addition to the time spent with the OT.

P.P. is not able to stay on task and work independently. P.P. requires assistance and support in independent functioning tasks, academic tasks, and vocational tasks. He needs to be prompted to initiate, sustain and complete during tasks. P.P. needs continual prompting directed to execution of the task and to direct or redirect his attention to the task at hand due to his "stimming" (rubbing items on the table, turning all pages in a book, etc.). P.P. need for a small, structured environment, low student-teacher ratio, specialized direct instruction in academic, communication and functional domains, with nursing support for medication are provided in the IEP in a separate day school.

As stated above, Dr. L.'s report did not identify any needs which were previously unidentified in P.P.'s eligibility evaluations or IEPs.

Whether his IEPs provided access to specialized services

The April 21, 2015 IEP provides for placement in a therapeutic day school for students with autism. The IEP provides for P.P. to participate in a special education classroom where the student-teacher/adult ratio is 2:1 for academic services. There is adequate staffing of the classroom to enable the implementation of the IEP goals and provide the necessary accommodations and modifications, such as prompting and sensory breaks and use of AAC device, to be consistently implemented with P.P. P.P. also is assigned to Speech Pathologist, Occupational Therapist, School Nurse, and paraprofessionals who specialize in meeting the needs of students with autism. These staff members work together to provide continuity and consistency for P.P. in the school setting. The IEP provides for P.P. to use an augmentative digital voice output and picture exchange communication systems. Staff encourages the use of these systems in the home and the device is regularly sent home with P.P. School staff has provided training for parents and other caregivers to enable them to implement P.P. communication systems, daily routines and therapy activities (i.e. intervention strategies) in the home. P.P.'s ACC device goes home with him daily.

Dr. L.'s recommendation of specialized and targeted intervention strategies throughout P.P.'s day (extending beyond typical school hours). Her recommendations were consistent with the interventions strategies and service provided in the IEP except Dr. L. asserts that P.P. requires 24 hour care and instruction throughout his waking hours and a clear plan for assuring his safety when he is assumed to be asleep. This assertion was based on research based best practices for individuals with autism disorders and not on the specific needs of P.P. (Testimony of Dr. L. and P. Tab 24.) Mother testified that she received or was offered various trainings by [REDACTED] to enable her to provide consistency of routines. Mother testified that she has been

trained in various methods and has been inconsistent in her application of them in the home with P.P due to other family and work needs. Parents offered no further evidence in support of the assertion that P.P. "needs" wraparound services as part of his IEP to receive FAPE.

District maintains that the safety needs (elopement and rectal digging) of P.P. arise in the home during non-school hours and do not constitute educational needs requiring 24/7 special education and related services.

Whether they addressed disability-related disruptive acts

P.P is easily distracted by self-stimulating behaviors. Each service provider, Dr. L. and Mother testified that P.P. engages in these behaviors consistently. Testimony supports that when prompted P.P., he is easily redirected and generally complies with redirection to engage in more appropriate behavior.

Dr. L.'s report indicates that P.P engages in a variety of sensory seeking behaviors and nonfunctional routines, repetitive motor movements, and these behaviors create feelings of pleasure for P.P. and are not serving attention or communication functions.

The IEP does not specifically address these behaviors. P.P. receives his special education in a therapeutic day school setting that has a low student-teacher ratio and provides him with the level of supervision and support necessary to redirect P.P. from repetitive motor movement to the learning tasks at hand.

Parent raised concerns about rectal digging at the IEP. The school staff does not observe these behaviors at school. Mother asserts that toileting accidents are a result of rectal digging and that P.P. had several accidents at school last year causing her to believe that it is a problem at school. A Functional Behavior Assessment was completed by the District after the development of the IEP. Data was collected at school and home on both behaviors. The P.P.'s current

teacher testified that was that the recommendations contained in the report have been implemented. However, the IEP has not been amended to include these recommendations.

Whether the child achieved progress during the relevant time period.

Parent asserts that P.P. has made few gains while at [REDACTED] P.P. has not acquired any independent in ADLs, has not acquired a functional communication system and has no leisure skills.

District records indicate that P.P. has made “slow developmental progress” which is “consistent with his cognitive level of functioning.”

P.P.’s [REDACTED] educational history marks the slow progress that he has made. Review of eligibility determination meeting reports, IEPs, progress report and progress notes contained in this record reveals P.P.’s slow progress developing cognitive skills, a communication system, ADLs, and vocational skills. In the domain of Health, P.P. has moved from refusal to take medications to taking his daily medication without prompting. In the academic and communication domains, P.P. has been acquiring very basic foundational language/cognitive skills such as identifying or naming people and body parts, being able to identify himself and greeting others. He has learned to identify himself by presenting identification information when asked “who” or his name. P.P. progressed from being able to identify his family members, to identification of school staff, to building a receptive vocabulary of nouns and is now learning to identify characters in stories. P.P. is learning concepts like color, size and shape and has learned to sort by these attributes. P.P. has moved and is moving toward the development of abstract concepts such as understanding numbers and counting, learning to exchange money for items, understanding “wh” questions, sequencing events, making requests, and seeking help. In the vocational domain, P.P. has learned following visual sequences to complete more complex tasks

with increasing numbers of steps, including brushing teeth, face washing, toileting, eating, table setting and cleanup, simple snack preparation, folding clothes, etc. He has been working on motor planning skills of working from left to right. P.P. has worked on the connection between people and their jobs, and navigating to locations within the building. P.P is learning the weather/dressing connection, and is learning to use an AAC to express his wants and needs. They are all basic, necessary, foundation skills for the acquisition of a functional communication system, ADLs and vocational skills. Development of these skills has been impaired by his level of cognitive impairment.

Throughout the documents and testimony presented in this case it is noted that P.P. is adult dependent and his failure to meet goals in the past is largely due to his need for more prompts than allowed by the goal or that the field of choices was too large for P.P. to use effectively and not due to his failure to progress toward the meeting of his goals and acquisition of skills.

The April 21, 2015 IEP has goals and benchmarks were developed for P.P. designed and tailored to his specific needs and incorporating the cognitive, communication, vocational and social skill development at an appropriate level and with appropriate instructional parameters. P.P.'s communication needs are at the center of each goal. The IEP goals and benchmark demonstrate an understanding, consideration and application of P.P.s relative strengths and weaknesses in designing goals and educational programming. As an example, IEP goals all contain a field of response choices. The goals for emerging skills reflect his need for more limited response banks and other goals have slightly increased expectations for with less limited response banks. P.P. has access to all related services providers identified as necessary for him to access his educational program. P.P.'s IEP does not address disability-related disruptive acts

outside of his need for a low student-teacher ratio and the structure and support that is part and parcel of a therapeutic day school placement. There was no evidence present that demonstrated that these behaviors are disruptive to P.P.'s learning or to the school setting. Finally, the records supports the conclusion that P.P. is progressing in his acquisition of skills, albeit very slowly, but his acquisition and development is increasing in complexity even though he is still acquiring some of the most basic and foundational cognitive, communication, social and vocational skills., and albeit slowly, is acquiring skills at a rate that is commensurate with his estimated cognitive ability in his current placement and that the current IEP was developed by the IEP team with attention to P.P.'s needs, strengths and learning styles, all necessary services are available to P.P. and he has made progress that is commensurate with his ability. It is reasonable to assume that he will continue to do so under the April 21, 2015 IEP. Therefore, I conclude that the April 21, 2015 IEP is reasonably calculated to confer educational benefit to P.P. and produce progress for this student and is appropriate under the IDEA.

II. Placement

A. Can P.P. needs be met in current educational placement?

As stated in the section above, the April 21, 2015 IEP addresses the needs of P.P. for special education and related services can be and are being provided at [REDACTED].

B. Is residential placement necessary?

Parents assert that Student P.P. requires a residential placement to provide him with the very intensive intervention program (24/7) he needs to quickly acquire skills needed to make it possible for him to enter adult services better equipped to function outside of an institutional setting and with less adult support and to meet his transition goals. District asserts that Student P.P.'s IEP is appropriate and that the separate day school setting an appropriate setting for the delivery of IEP services, alleviating the need for a more restrictive residential placement.

Placement in a residential facility is appropriate only if it is “necessary to provide special education and related services.”¹⁷ The requirement that the residential placement be necessary furthers the IDEA mandate that children with disabilities are educated in the least restrictive environment and are removed from educational settings with children in the general education setting on when “the nature and 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” and the principle of placement on a continuum of placements with residential placement as the most restrictive.¹⁸

Courts have taken the approach of considering the student and other factors, such as, what lead to the request for residential placement. “Analysis must focus, then, on whether full time placement may be necessary for educational purposes, or whether the residential placement is a response to medical, social or emotional problems that are segregable from the learning process.”¹⁹

The Seventh U.S. Circuit Court of Appeals tells us that the “distinction between services primarily oriented toward enabling a disabled child to obtain and education and services oriented more toward enabling the child to engage in non-educational activities.”²⁰

Parent’s evaluator Dr. L. opined that an appropriate program for P.P. would provide wraparound support provided in-home with dedicated person trained in working with autism, a direct service providers or providers or residential-based supports to target the development of daily routines to maximize P.P.’s independence. Dr. L. recommends that P.P.’s caregivers commit to using one communication strategy and that P.P. is prompted to use it consistently in all settings. Dr. L. states that P.P.’s skill instruction should target highly practical skills and incorporate real-world materials in developing skills and use visual supports. She asserts that P.P.’s cannot benefit from large group instruction. P.P. needs explicit instruction delivered in 1:1 or 2:1 in the areas of self-care, vocational skills, and communication. Instruction should be repetitive and presented in a manner that allows for slow processing, with concrete visual supports. That is exact what P.P. is provided through the April 21, 2015 IEP and his placement at [REDACTED].

¹⁷ 34 C.F.R. §300.104

¹⁸ 20 U.S.C. § 1415(a)(5)(A)

¹⁹ *Kruelle v. New Castle County Sch. Dist.*, 552 IDELR 554 (3rd Cir. 1981)

²⁰ *Dale M.v. Board of Edu. Bradley-Bourbonnais H.S.*, 237 F.3d 813 (7th Cir. 2001)

Parents and Dr. L. assert that P.P. requires 24 hour care and instruction. This assertion by Dr. L. was based, in part, on research based best practices for individuals with autism disorders and not on the specific needs of P.P. This assertion by Parents is due in large part to safety concerns that arise in relation to P.P.'s history of elopement from home and his rectal digging during unstructured time. ESATS is able to provide P.P. with the structure and supervision necessary to address both of these stated needs. As a result, these behaviors occur during non-school hours. The needs are supervisory and medical in nature. For example, P.P.'s elopement does not interfere with or prevent him from acquiring language skills, this is caused by his autism disorder and intellectual impairment. His rectal digging does not prevent him from participating in recreational and religious activities in the community with special recreation groups. The same can be said for his rectal digging, there is no evidence that it is a result of his lack of appropriate hygiene, rather that it is a result of an underlying medical condition. Further, Parents have made numerous applications to Illinois residential facilities with the assistance of S.V. at CSO. Both Mother and S.V. testified that P.P. has not been accepted in various placements due to their inability to provide him with necessary medical care. These are not educational needs and do not require the District to provide for residential placement for P.P. IDEA does not require placement in a residential program merely to enhance an otherwise sufficient day program or simply to remedy a home setting.²¹

For the afore stated reasons, I find that residential placement for P.P. is primarily needed for supervisory and/or medical reasons, is not educationally necessary and is therefore not the responsibility of the District.

C. Which residential placement is appropriate?

In light of the conclusions above, that the April 21, 2015 provides P.P. with a FAPE and that residential placement is not educationally necessary, it is unnecessary to address this issue.

²¹ *Abrahamson v Hershman*, 554 IDELR 403 (1st Cir. 1983).

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

The District fulfilled its statutory duty to produce evidence that it has properly identified the students disability needs in term of their nature and severity, whether the student has been determined as eligible for special education and related service and that it is providing or has offered a free appropriate public education (FAPE) to the student in the least restrictive environment (LRE).

The Parents' request for relief is denied.

NOTICE OF RIGHT TO REQUEST CLARIFICATION

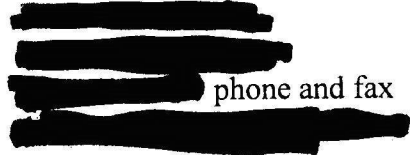
Pursuant to 105 ILSC 5/14-8.02a(h) either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification shall specify the portions of the decision for which clarification is sought. A copy of the request shall be mailed to all other parties and the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777. The right to request 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.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i), any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within one hundred and twenty (120) days from the date the decision is mailed to the party.

Dated: September 27, 2015


Kathleen C. Fuhrmann, Hearing Officer


phone and fax

Appendix A

[REDACTED] v. [REDACTED]

ISBE no. 2015- 0370

Identification Information

P.P.

[REDACTED]

Parents

Father
Mother

[REDACTED]
[REDACTED]

District

[REDACTED]

[REDACTED]

[REDACTED]

J.K.

[REDACTED] Special Education Teacher

B.S.

[REDACTED] Speech Pathologist

C.D.

[REDACTED] Occupational Therapist

J.W.

[REDACTED] Case Manager

A.J.

[REDACTED] Special Education Teacher

Ms. J.

[REDACTED] Augmentative Communication Itinerant, [REDACTED]

O.F.K.

[REDACTED] School Nurse

L.P.

[REDACTED] School Psychologist

A.K.

[REDACTED] Speech Pathologist

M.P.

[REDACTED] Behavioral Analyst

E.M.M.

[REDACTED] Consulting: Disability Services

B.B.

[REDACTED] School Nurse

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

[REDACTED]

Student,

Case No: 2015-0370

v.

[REDACTED]

Kathleen C. Fuhrmann, Impartial Hearing Officer

School District.

CERTIFICATE OF SERVICE VIA CERTIFIED MAIL

I, the undersigned Kathleen C. Fuhrmann, certify that on September 28, 2015, a copy of FINAL DETERMINATION AND ORDER was/were served upon the following persons via certified US Mail delivery by depositing the same in the United States Mail, in an envelope securely sealed, postage prepaid, return receipt requested and legibly addressed to the addresses set forth below:

[REDACTED]

Andrew Eulass
Due Process Coordinator
Illinois State Board of Education
Division of Special Education Services
100 N. 1st Street
Springfield, IL 62777

[REDACTED]

Date: September 28, 2015

Signed:

Kathleen C. Fuhrmann

Kathleen C. Fuhrmann, Hearing Officer

[REDACTED]
phone and fax
[REDACTED]