

# Indiana Board of Special Education Appeals



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## BEFORE THE INDIANA BOARD OF SPECIAL EDUCATION APPEALS

In the Matter of Z. F., the South Harrison )  
Community School Corporation, and )  
the Harrison County Special Ed. Coop. ) **ARTICLE 7 HEARING NO. 1360.03**  
)  
Appeal from a Decision of )  
Thomas J. Huberty, Ph.D., )  
Independent Hearing Officer )

### COMBINED FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ORDERS

#### **Procedural History**

The Student,<sup>1</sup> by counsel, requested a due process hearing on May 29, 2003, pursuant to 511 IAC 7-30-3.<sup>2</sup> Thomas J. Huberty, Ph.D., was appointed on May 30, 2003, as the Independent Hearing Officer (IHO). The IHO conducted a pre-hearing conference on June 13, 2003. Both parties were represented by legal counsel.<sup>3</sup> The IHO issued a pre-hearing order June 16, 2003, establishing, *inter alia*, (1) the dates of August 18, 19, and 20, 2003, for hearing on this matter; (2) exchange dates for exhibits and witness lists; (3) a date specific when the written decision would be issued; (4) and the issues for the hearing. Although the Student requested the hearing, the School raised additional issues during the pre-hearing conference. The following were the issues for the hearing:

- 1. Is the proposed Individualized Education Program (IEP) for 2003-2004 appropriate?**
- 2. If the School's proposed program for 2003-2004 is not appropriate, then should the School pay for the Parents' proposed private program?**

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<sup>1</sup>"Student" shall refer to the Student and the Student's Parent, unless otherwise indicated.

<sup>2</sup>The hearing request invoked a number of federal laws besides the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* as implemented in Indiana through the State Board of Education's rules and regulations for special education, 511 IAC 7-17 *et seq.* ("Article 7"). However, all relief sought was pursuant to Article 7.

<sup>3</sup>South Harrison Community School Corporation and the Harrison County Special Education Cooperative will be referred to collectively as the "School."

3. a. Was procedural safeguard information provided at the April, 2003 case conference?
  - b. If procedural safeguard information was not provided, was the Student harmed?
4. a. Were the parents properly notified in writing about the reasons for the School's intent to change placement and programming?
  - b. If the Parents were not properly notified of the School's intent to change placement and programming, was the Student harmed?
5. Were School personnel and the parents properly trained in instructional methods to meet the Student's needs?
6. a. Did the School fail to maintain confidentiality of the Student's records?
  - b. If the School failed to maintain confidentiality of the Student's records, was the Student harmed?
7. Did the School withhold reimbursement to the parents in retaliation for filing a request for a due process hearing?

The parties were advised of their respective due process hearing rights. The procedures employed were in concert with Article 7 and Indiana law. The Student, by counsel and during the pre-hearing conference, requested and was granted an extension of time. The IHO, by separate order dated June 16, 2003, granted the extension of time.

The hearing was conducted on August 18, 19, and 20, 2003, but the parties could not complete the presentation of evidence. On August 20, 2003, the parties moved jointly for an extension of time. The IHO granted the request. September 9, 2003, was set for an additional day of testimony. A written decision was to be issued by October 6, 2003.

### **The IHO's Written Decision**

The IHO issued his written decision on October 6, 2003. In his decision, he determined seventy-two (72) Findings of Fact relative to the stated issues *supra*. These Findings of Fact are reproduced below.<sup>4</sup>

#### ***The IHO's Findings of Fact***

1. This matter was properly assigned to this IHO pursuant to IC 4-21.5 *et seq.* and 511 IAC 7-30-3, which give the IHO the authority to hear and rule upon all matters presented.
2. All Findings of Fact which can be deemed Conclusions of Law are hereby deemed Conclusions of Law. All Conclusions of Law which can be deemed Findings of Fact are hereby deemed Findings of Fact.

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<sup>4</sup>The IHO's decision is amended in some parts for consistency with BSEA format and grammatical requirements. No substantive change has occurred in this part.

3. It was determined that all due process procedures were in compliance with requirements of 511 IAC 7-30-3 and IC 4-21.5 *et seq.*

4. The Student was approximately five years, six months of age at the time of the hearing and has been determined to be eligible to receive special educational services under Indiana Article 7 as Autism Spectrum Disorder (511 IAC 7-26-2) as the primary disability and Communication Disorder as a secondary disability (511 IAC 7-26-3). There is no dispute between the parties whether the Student is eligible for services or about the disability areas identified.

5. The Student was evaluated by the Child Evaluation Center in Louisville, Kentucky, in August, 2000, upon referral by the Parents for delayed language and speech development. He was approximately two years, six months of age at the time of evaluation. Medical, psychological, speech-language, and occupational therapy evaluations were completed. He was given a diagnosis of autism and central nervous system (CNS) dysfunction. The Student demonstrated a "...scatter of skills to the 26 month level on a variety of nonverbal problems solving tasks..." and "...marked delays of self-help and social skills." Language skills were assessed to be in the range from six months to eighteen months in age performance. Occupational therapy evaluation indicated that the majority of the areas assessed were in the below average range for development of fine motor skills. Several recommendations were given, including emphasizing the development of social skills, enrollment in a preschool program with typical peers to serve as language and social skill models, utilizing staff trained in autism, provide routine and structure, teach social skills as situations present themselves, and teach social interaction and attending skills. Speech-language and occupational therapy were recommended, although the amount and intensity of services were not described.

6. After the evaluation was completed, the Parents began seeking information about programs and services that could be utilized with the Student. Testimony from the Father indicates that the Parents obtained research articles, books, and information via the Internet about methods used to work with students having autism.

7. Their research led them to conclude that programs using Applied Behavior Analysis (ABA) techniques are considered by some proponents to be the most effective for helping students with autism to develop language, academic, and other developmental skills.<sup>5</sup> The method includes intensive, individualized interventions for several hours a week using the DTT methodology in a fixed, sequential manner. Therapists specifically trained in the method conduct repeated trials

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<sup>5</sup>Applied Behavior Analysis (ABA) was described by expert witnesses as a broad field in which behavioral principles are used to change behavior. Behaviors are subdivided into separate components and then are taught individually, going from beginning levels to requiring more advanced skill performance. When a skill is considered mastered and retained, others are added to the intervention plan in a sequence deemed appropriate for the client. An ABA technique often used with children having autism is discrete trial training (DTT), which is one method of conducting ABA intervention. DTT is based upon the work of Dr. Ivor Lovaas, who used these techniques in initial studies to develop skills in children with autism. Throughout the testimony and evidence, the term "ABA" most often refers to DTT that the Student was receiving and the terms are used interchangeably.

while providing various forms of reinforcement to develop and maintain the desired behaviors. Most often, the therapy is provided in the home setting away from distractions. Over time and depending on progress, a client gradually is exposed to more social situations to provide for generalization of the learned skills. Most proponents of the approach recommend between 30 to 40 hours per week of ABA/DTT every week of the year, with only infrequent cessation for vacations, illness, etc. The length of the program can vary, but typically is continued for a few years until the child has gained maximal benefit or develops kindergarten readiness skills.

8. The Parents contacted the Center for Autism and Related Disorders (CARD) in California, which is a program to train, implement, and supervise ABA programs in various parts of the country. The CARD program provides initial workshop and direct training in the ABA method, followed by training and supervision from experienced therapist. A senior supervisor from the CARD program meets with the therapists, Parents, and the Student about every three months to review the program, the Student's progress, and to make adjustments as needed.

9. The Parents selected the CARD program to implement the ABA program with the Student in May, 2001. The ABA therapy provided to the Student began with approximately two three-and-one-half hour sessions per day, five days per week for a total of about 35 hours per week, which currently continues. The services are provided through an agency which contracts with CARD-trained therapists who work with the Student.

10. In 2001, the Parents asked that the School pay for the ABA program, which the School did not agree to do. A due process hearing request was filed, but was dismissed because the parties entered into a settlement agreement in September, 2001. (The complete text of the agreement is contained in the record and is summarized here.) For the Fall semester of 2001-02, the School agreed to pay for the CARD home-based ABA program and provide speech and occupational therapy and School would evaluate the Student. For the Spring semester of 2001-02, the Student would attend the preschool session five (5) days per week, a paraprofessional would be trained in ABA methods to work with him, and receive three hours of ABA therapy in the home five days per week until School staff were trained in ABA methods. The Student was to transition to the School within forty-five (45) days from the beginning of the semester. The School was to oversee, coordinate, and supervise the implementation of the IEP, allowing input from Parents and their consultants. The School was to schedule a case conference meeting during the Spring semester of 2001-02 to determine whether extended year services (ESY) were appropriate and, if needed, what would be the specific services.

11. The record and testimony indicate that the ABA program and related services were provided as indicated in the agreement. The Student did not attend the preschool five days per week, however. The Father testified that a schedule was not established by the School to implement that part of the agreement.

12. The evaluation included in the settlement agreement was conducted in November, 2001, by "[a]n unbiased school based evaluation team..." when the Student was three years, eight months of age. The Student was not able to complete items measuring receptive and expressive language; therefore, overall scores were not reported. Subtest scores ranged from 40-60,

compared to average scores which are in the range of 90 to 109. Verbal abilities were judged to be significantly below average and low average in some areas measuring nonverbal ability. Except for motor skills, adaptive skills in Communication, Daily Living, and Socialization were significantly below average, as was the Adaptive Behavior Composite. Measures of Social Interaction/Behavioral/Emotional Functioning indicated difficulties in social skills and attention problems. Academic assessment indicated cognitive matching skills in the 39 to 40 month range and the remainder of the scores were scattered below that level. Receptive and expressive language were significantly below average in the two to three year range. He did not appear to understand the use and function of language. Assessment of fine motor skills indicated that the Student was in the average range for all areas, with a possible mild difference from peers in Oral Sensory Processing.

13. A case conference was convened on February 11, 2002. The IEP indicates that goals were established to improve sensory motor skills, receptive language, articulation/oral motor, and expressive language. The goals were stated behaviorally, were consistent with the evaluative data, and included evaluation methods, criteria for mastery, and methods of reporting progress. The parents expressed their preference to focus on academic skills more than on social skills and wanted him to continue with the ABA program. Some staff had been trained in ABA methods. The School recommended a preschool classroom setting to promote generalization and to help the Student learn from modeling behaviors of others. Parents expressed concern that modeling might interfere with verbalizing and asked for scientific studies that supported this approach. The conference concluded with continuing the home ABA program with speech and occupational therapy as related services. The parents signed the IEP, indicating that they had received verbal or written explanation of parents' rights, participated in the development of the IEP, and agreed with the placement and implement of the IEP.

14. Another case conference was convened on August 15, 2002, to discuss the Student's participation in a preschool program. Present levels of performance were retained with the evaluation of November, 2001, with the exception of updated information for the speech and occupational therapy he received from the School. Goals and objectives from the May, 2002, case conference were maintained, and the Student was to begin in the School's preschool program for one morning per week. The Parents agreed to the placement.

15. Another case conference was convened on April 22, 2003, to develop an IEP for the 2003-2004 school year. The School's primary purpose was stated in the notes to discuss the process of transition from the preschool to kindergarten. The School also wanted to complete a new educational evaluation from an experienced doctoral-level psychologist. The proposed teacher of record (TOR) indicated that she and the kindergarten teacher had been trained in autism.

16. The Director of Special Education (hereafter "Director") testified that he viewed the conference as a meeting to present a "concept" of the program and not as a formal case conference. The record indicates that a notice was sent on April 7, 2003, and was titled "Case Conference Notification Letter," which was the form used to notify the Parents of additional case conferences. There is no evidence in the record or on the case conference tape that the Parents were provided information about their rights under Article 7. Other case conferences conducted

during 2002 indicate that the Parents were given information about parents' rights. The Father testified that they had been given information about "seven or eight" times about parents' rights.

17. Prior to the April, 2003 case conference, there had been no formal contact with the Parents about changing the Student's program from the home-based ABA therapy to enrolling him in the general education and special education programs at the elementary school. No documents were provided to the Parents about the proposed change prior to the April, 2003 conference and the "concept" (the term used by the Director) was presented verbally at that meeting.

18. The Parents indicated that they wanted to continue the ABA program in the afternoon and begin kindergarten in the morning. The Director indicated that the School had paid for the ABA program for one year past the time period provided in the settlement agreement, and that the Student had received an average of six hours a day for five days a week without being in the preschool program three hours per day.

19. A transition plan during the summer was discussed, with the School proposing to continue the current ABA plan from about June 1 to July 20. The School proposed a transition plan for the teachers to meet with the ABA therapists and the Student for three hours a day, four days a week for one to two weeks. The plan included asking the therapists to provide progress reports and lesson plans to coordinate with the School's methodology. After that time, the teachers would meet with the Student for three hours per day for three days per week prior to the start of the new academic year. There was no evidence provided to refute the appropriateness of the transition plan, although the Parents had expressed some concern about it.

20. The Student's Father indicated that he believed the School wished to discontinue the ABA program to save money, but the Director indicated that he believed the proposed program to be appropriate to meet the Student's needs. The Parents asked that the Student be enrolled full-time in the four-year-old daycare program. The teacher of the Kindergarten Readiness program did not believe the Student had the skills to function in kindergarten, even with supports. The case conference was continued to May 19, 2003.

21. The multidisciplinary evaluation was completed on May 16, 2003, and included classroom observations in the daycare program by teachers, occupational therapist, physical therapist, speech and language therapist, and school psychologist. The observations were done with the ABA therapist in attendance, who prompted the Student on some occasions to respond to the teacher's requests. Little interaction was seen with other children and the Student was not encouraged by the ABA therapist to interact socially. He demonstrated little spontaneous verbal language.

22. The Student could identify several colors and was able to follow some commands when put into specific language by the ABA therapist. He was able to attend to a book and tell the shapes in the book.

23. The occupational therapist reported that some fine motor skills were at the 4 year, 2 month level and that other skills ranged from 20 months to 35 months, with an average range of 28-31

months. Continued occupational therapy was recommended for 20-30 minutes three times per month.

24. The physical therapist reported the Student's gross motor skills to be between about three years and four and a half years. She recommended physical therapy three times a month to increase balance and strength.

25. The speech therapist noted that the Student is making progress, and Goals 10, 11, and 12 have not yet been assessed. He responds well to therapy with another child and shows increased eye contact. He played games with more interest, requested turns more often, wanted to direct another's activity, and relied less on cue words when another child had imitated a word. Receptive and expressive language age equivalents were reported to be two years, three months and two years, four months, respectively. The standard scores on the Preschool Language Scale-3 (PLS-3) for receptive and expressive skills were 50 for both scales. The PLS-3 was administered in the November, 2001, evaluation produced receptive and expressive scales of 55 and 67. The therapist included goals in the IEP for the Student to obtain PLS-3 receptive and expressive scores of 65 and 75, respectively.

26. The Communication Domain of the Vineland Adaptive Behavior Scale was three standard deviations below the mean and approximated the two-year level. An assessment of early academic and language skills shown receptive and expressive skills to be within the three-year-old range, while another language measure indicated a level of about two years. Intellectual assessment was not done because it was not requested by the case conference committee.

27. Difficulties were noted in attention problems, general adaptive behavior, social skills, adaptability, atypical thought process, and withdrawal. Socialization was indicated to be at about the three-year level.

28. The psychologist concluded that the Student's instructional range is at about the four-year level on a conceptual basis, with language skills less well-developed at the three-year level. He testified that he did not believe that academics should be a major priority at this time, but that emphasis should be placed on language development and that instruction should be natural and in a community-based setting. He believes that the Student will do the best in a school setting and that he needs to generalize his skills as they are learned.

29. Following the evaluation, a case conference was convened on May 19, 2003, to discuss the evaluation data and to prepare an IEP. The Director discussed parents' rights and the Parents indicated that they understood their rights. The evaluators discussed their reports in a manner consistent with the written documents. Three of the four ABA therapists provided information on their work and progress with the Student. Due to the Parents' schedule, there was insufficient time to discuss development of the IEP, and the conference was continued to May 29, 2003, to develop the IEP and to discuss transition to the proposed kindergarten and special education collaborative program.

30. The case conference was re-convened on May 29, 2003, with the proposed special education teacher of record (TOR), the occupational therapist, proposed speech clinician, and kindergarten teacher presenting their recommended goals for the IEP. There is no evidence that the School reviewed parents' rights with them during this meeting.

31. The speech therapist proposed that she would work with the ABA therapists to include their activities with her work with the Student. The Parents agreed with these recommendations and they were included in the IEP. She testified that the Student's language is cue dependent and that he does not produce speech spontaneously to indicate his wants. He made "spotty," minimal progress, and the ABA therapists were working on tasks above his level. She believes that children with autism learn best from peers and modeling them and that generalization of skills must be immediate.

32. The TOR and kindergarten teacher had collaborated and developed coordinated recommendations for the IEP. The School recommended that kindergarten be considered the least restrictive environment (LRE) using Indiana kindergarten teaching standards with instructional assistant support. The plan was to include verbal and behavior methods that included ABA activities and language instruction based on the ABLLS<sup>6</sup> program in the resource room.

33. Recommendations included receptive language goals for listening and participating in a group that would include stories and one-step directions, perhaps increasing to two-step directions. "What-When-Where activities" [quotation marks added] were to be included in developing receptive language. Expressive language goals were to build on the Student's current skills in labeling, asking for one thing at a time, increasing the ability to label words and objects, using words instead of jargon, and describing "Person-Place-People-Things" [quotation marks added]. Language development activities were to include ABA methods coordinated with current levels of development and activities used by the ABA therapists in the home program. All academic goals were to be based upon the Indiana Kindergarten Standards in the ICAN program<sup>7</sup>.

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<sup>6</sup>ABLLS is an acronym for *Assessment of Basic Learning and Language Skills* that lists skills a student may work on during ABA therapy. The ABLLS uses a tabular and graphic format whereby as a student masters skills and subskills, emphasis is placed upon developing others. One of the Student's expert witnesses testified that an ABLLS is developed for each child, and when it is completed, the child is presumed to be ready to enter a classroom setting.

<sup>7</sup>ICAN is an acronym for the *Indiana Curriculum and Assessment Network* and was described by the Director as a program that has been adopted for standards-based curriculum across Indiana for general education by some school corporations. It was described as a database to link IEP objectives to state curriculum standards, based on decision-making about a student's level of performance. The program contains templates for various skill areas and produces a computer-based program report for an individual child, based upon data provided.

34. The School proposed a transition plan as described in Finding of Fact #19. There was no evidence or testimony to indicate that the transition plan was inappropriate.
35. The TOR had attended training in the TEACCH<sup>8</sup> method of working with autistic children and was scheduled to attend verbal behavior training in the fall of 2003. She is a member of the School's autism team.
36. The kindergarten teacher had given the Student a series of tasks to complete, similar to a kindergarten screening. She and the TOR determined that the Student's skills were in the middle range of readiness skills and considered them sufficient for kindergarten with assistance.
37. The TOR believed that the Student had sufficient skills for kindergarten with special education support, and would have included ABA methods in her work, but not to the extent of the home-based program. She had included some of the evaluation data into the ICAN computer program to assist in preparation of the IEP for the Student to attend kindergarten for half a day and the special education program the other half day. She and the kindergarten teacher would collaborate to implement the IEP. The Student would have a full-time aide to assist him and could help with the picture schedule that would be used. She stated that the ICAN can be used in general or special education programs. She is familiar with the ABLLS method and would work on skills listed in it.
38. The TOR proposed in the case conference meetings that, upon her return from the TEACCH training, she would meet with each of the four ABA therapists and the Student to observe their current work with him. She requested that the ABA therapists provide progress reports and recent lesson plans to coordinate their instructional methods with those of the School. When School began for the 2003-2004 years, the IEP would be implemented.
39. The Parents did not agree with the transition and program plan, and asked for research on the effectiveness of the proposed instructional methods. Although they knew of the ABLLS program, it was not the method used by the ABA therapists. They asked that the current ABA program be continued at home and that the classroom instructional assistant be an ABA therapist. They expressed their view that the resource room was not as relevant as the kindergarten room and that social skill activities are not necessary. School personnel indicated that they use a variety of techniques that include ABA methods, but specific amounts, types, and durations were not presented. They indicated that, in their view, children with autism "...generally benefit from involvement in the general education curriculum with special education resource supports and a collaborative approach."

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<sup>8</sup>The TEACCH method of working with children having autism was described by several witnesses as being based in North Carolina and is known as a national program. The TEACCH approach emphasizes working on a student's strengths, relies on visual cuing and materials, emphasizes the development of independence, and includes the student with peers in a classroom setting.

40. The record indicates that the Parents became more “agitated” [term used in the case conference notes]. The time for the meeting to accommodate the Parents’ schedule was about to expire, and the Director suggested that the Parents review the materials and IEP goals overnight and meet with him at his office the next day to determine if agreement could be achieved. On May 30 [sic], the Parents filed the request for the due process hearing, creating a “stay-put” status for the Student during the pendency of the proceedings.

41. There was testimony regarding concerns about confidentiality of the Student’s information. One of the Parents’ concerns was that the case conference was convened in a glass-enclosed conference and participants could be observed. The TOR testified that there had been some difficulties in the building with water and another conference room was not available. The glass-enclosed room was used, and the doors were shut and no one entered the room. The Parents did not request another room or that the meeting be rescheduled.

42. Following the case conference, the Parents received an anonymous letter from an unknown person who observed that the meeting was occurring. The letter included derogatory comments about the TOR, and she contacted the Director and Assistant Director. Both of these persons testified that they did not know who wrote the letter and could not and did not take action on it because it was anonymous.

43. In August, 2003, the Parents provided some of the Student’s records to a private clinical psychologist who reviewed them but did not work with him. He gave a diagnosis of Autistic Disorder and recommended placement in a specialized program for children with autistic disorders or pervasive developmental disorders. He stated that the Student could not function academically or socially in a regular classroom setting. He opined that “...an inappropriate school placement most likely would exacerbate his problematic behavior.” It is not clear from his curriculum vitae if he has had specific training or experience in children with autism in a school setting.

44. An expert witness in ABA testified that he believed ABA to be the most scientifically sound method to work with children having autism. He has conducted extensive research as a developmental psychologist and has background in special education. Children with autism need direct training to benefit from their environment and often have difficulty attending. Without specific training, these children become passive and do not gain as much from a general education environment as they do from direct, one-to-one training. He had not seen the Student, but had reviewed some of his records and concluded that the Student was about one to two years behind academically. There is concern about regression in these children without continued intensive intervention, which often requires 35-40 hours per week for three to four years.

45. One of the Student’s ABA therapists had worked with six children with autism over about a three and one-half year period. She stated that children with autism have difficulty attending and that ABA therapy forces a child to attend. The overall goal is to enable the Student to perform independently in school, but she believes that he cannot learn as well from being in general education. He is learning about one color per month in the program. She testified that she believed the Student is “bright,” but also that he was cognitively behind his peers.

46. The therapist testified that a colleague had talked to her about the cost of an ABA program and surmised that the colleague was referring to the Student's program. She was concerned that information was being given about the Student without permission, but had no specific knowledge about it.

47. The Father testified that the Student has several strengths, including the ability to participate in the ABA therapy, is affectionate, is happy, has good gross motor skills, and interacts well with his siblings and children he knows. His primary concerns are about the Student's language development and social skills deficits are of less concern.

48. The Father asked the School for evidence that the proposed program was appropriate and would consider a program that appeared effective. He did not receive any materials of this type from the School.

49. The Father stated that at the April 22, 2003, conference, the preschool teacher stated that the Student was not ready for kindergarten, even with support. At the May 19, 2003, conference, the Parents were told that the Student was ready for kindergarten. The record supports this testimony. School personnel had not seen the Student before the April conference, and the Parents expressed concern about knowing the Student well enough to develop a program.

50. The Father testified that no functional behavior assessment (FBA) or behavior intervention plan (BIP) was done. At that time, the Student was attending the preschool one day per week with the ABA therapist for a few hours and had not demonstrated behavior problems. His primary behavior problems were described by the father as "stimming," i.e., engaging in self-stimulating behaviors.

51. The Student's Mother testified that he does not have good attending skills and would not attend to instruction in the classroom. He still engages in self-stimulatory behavior, as well. She is concerned that he might become frustrated and react poorly to kindergarten. She also expressed concern that the School did not provide specific information about how the IEP would be implemented and what would be the role of the instructional aide. She preferred that the aide be an ABA therapist.

52. The Director testified that, in his experience, students with autism do well in a program such as that proposed by the School. At the April, 2003, conference, he proposed the "concept" of a transition to the school setting and that it would consist of a variety of methods, including ABA approaches, although they would not be as intense or as frequent. He believes that children with autism should spend time with their peers. Some problems with the preschool program had occurred prior to his arrival, and he asked an autism specialist to observe and give recommendations for the program.

53. The Director testified that, at one point, the agency providing the services to whom the School was sending payment for the ABA program became inoperative. The Parents then began paying for the services and asking for reimbursement. When the Director saw that the agency

was not submitting the statements, he ordered that the check be written, but withheld payment until the matter could be resolved. When it was resolved, he resumed payment. These events occurred soon after the Parents had filed for the due process hearing.

54. The Director testified that the School has an “Autism Team” consisting of six members that has become inactive. He is in the process of reactivating it to assist teachers and specialists who work with children having autism. The team will consist of general education and special education teachers, a psychologist, and other specialists. Training of some staff in the TEACCH method has been accomplished and more staff are to be trained. He anticipates having the team functioning during the first semester of the 2003-2004 year.

55. The principal of the Student’s elementary school testified that she attended the case conferences and that the TEACCH program was discussed. She was in agreement with the proposed program.

56. The Assistant Director of Special Education testified that the TEACCH program combines several methods, including ABA techniques. She views the program as being one of the best in the nation. The teachers would be trained in autism and the Student would get academic support and have a full-time, one-to-one instructional aide. She did not see that the Student had made much progress in verbal skills since being in the ABA program. She believes that, for the most part, the Parents and the School agree on the Student’s needs and that the proposed IEP is appropriate if it is completed.

57. The receiving TOR for the 2003-2004 year was another teacher than the one who was involved in the evaluation and planning in April and May of 2003. She graduated with her bachelor’s degree in May, 2003. She is licensed as a special education teacher, has learned the TEACCH method, and has had some experience using ABA with children having autism. She uses an “inclusion” model by including children with disabilities in the general education setting as much as possible. At the time of the hearing, she had not met the Student or his Parents.

58. The preschool teacher does not believe that a complete ABA program enables a child to try new things. She believed that the Student was not ready for kindergarten because he could not deal with children his age or older very well. She did not observe many words from the Student and did not see much progress. She testified that the ABA therapists were working on sound blends of letters when he did not know single letters well. She indicated that, by Parent report, he was producing more language at home.

59. Another ABA therapist testified that the Student has made good progress, and is babbling and using some words. She has a graduate degree in psychology, but no documented experience working in school settings. She testified that general education is not appropriate for the Student and that language is very difficult for him. Most of her work has been in his room at home, and she recently has begun generalization in other areas of the house. Socialization needs are important, but he needs help to develop those skills. She described the Student as “very smart” but a year behind his peers. He has improved his ability to label things, but does not do it spontaneously.

60. An expert in ABA testified that the Student needs much training and he is significantly behind his peers. The ABA approach emphasizes working on a Student's weaknesses and the TEACCH method emphasizes strengths. He would like the Student to develop the ability to use verbs, adjectives, pronouns, and other forms of language structure. Half of the Student's time should be in a natural setting and an instructional aide should be able to fade out assistance as needed, but about 40 hours of ABA therapy should continue. He is not aware of any studies documenting effectiveness of the TEACCH method.

61. The ABA supervisor testified that the Student has delays and has learned about twenty (20) skills. He would benefit from peer modeling and recommended about thirty hours of ABA therapy and ten hours in the school setting.

62. The receiving kindergarten teacher testified that she has had training in autism, but did not assert that she was an expert. She has had several children with autism in her classes over her years of teaching. She believes that children with autism can learn in general education, and that, after having participated in the evaluation in May, 2003, he is ready for kindergarten. She would begin where the Student is and would be working closely with his TOR. In her view, instructional aides should help when needed and was not concerned about his lack of spontaneous socialization.

63. The receiving speech language therapist had not yet met the Student at the time of the hearing, but had talked with the preschool therapist. Her initial goals had been presented at the May, 2003 case conferences, but were subject to revision when the Student entered school. She recommended 60 minutes of speech therapy per week, with 40 minutes in small group work and 20 minutes in individual work. She would emphasize social and expressive language. She has 30 years of experience as a speech therapist and has worked with more than 100 children with autism. All school personnel are working on the same goals and she would consult with them at least weekly.

64. The superintendent testified about administrative difficulties with the preschool the Student was attending one-half day per week, which resulted in hiring a consultant to review the program and make recommendations. The problems, however, did not directly affect the Student and were not issues in this hearing.

65. The superintendent testified about the issue of confidentiality and that he did not respond to the anonymous letter the Parents received after the case conference in May, 2003.

66. The consultant who reviewed the preschool program is a speech language therapist and had also observed the Student in August, 2001 for the evaluation and observed him again in May, 2003. She was qualified as an expert in developing school-based autism programs for students, having developed plans for about 250 students in a fifteen-year period in a public school system. She testified that the student had "decent" skills for entering kindergarten and recommended that he be enrolled in a public school program. She has been trained in ABA/DTT methods, but would not use them as much in the school setting as is being done in the home program.

67. The consultant testified that she believes children learn language and socialization from interacting with peers and that his program should begin as soon as possible. She agreed that there are differences in philosophy about educating students with autism, but disagrees that children must master all readiness skills prior to entering kindergarten to receive benefit from it. If the autism team is not fully operational and the staff trained, the Student nevertheless should start school and a consultant may be needed to work with the team on a regular basis.

68. With regard to the use of an instructional aide with the Student, she has concerns about an ABA therapist who might “hover” over him and make him too cue-dependent. The aide should, however, be trained to work with students having autism.

69. The School called a professor of special education as an expert witness in ABA, who was designated as such by the IHO. He testified that there is nothing wrong with using home-based ABA programs and DTT for a period of time to establish initial skills, but they should be integrated into other settings as soon as possible. The work by Dr. Lovaas encouraged taking children with autism into the community within about a year to begin generalizing. The witness stated that there is research suggesting that too much emphasis on DTT leads to lower generalization of acquired skills into other settings. Some skills could be taught in a school setting using DTT and then generalized quickly to other situations.

70. The witness asserted that there are studies indicating that tightly controlled training conditions do not result in generalization of acquired skills.

71. The witness did not agree with the ABLLS approach that all of the skills must be mastered to benefit from kindergarten. He was not aware of any studies that supported the notion that a student could not benefit from the classroom setting before having mastered the skills as indicated on the ABLLS.

72. The proposed IEP contains measurable goals and objectives for the Student’s disability areas and related services. Methods of evaluation, reporting methods, and criteria for evaluation and progress are included. It includes provisions for the Student to be in a general education setting with appropriate supports as well as direct instruction from special education staff and related services personnel.

### ***The IHO’s Conclusions of Law***

Based on the seventy-two (72) Findings of Fact, the IHO reached twelve (12) Conclusions of Law.

1. This matter was properly assigned to this IHO pursuant to IC 4-21.5 *et seq.* and 511 IAC 7-30-3, which gives the IHO the authority to hear and rule upon all matters presented

2. All Conclusions of Law which can be deemed Findings of Fact are hereby deemed Findings of Fact. All Findings of Fact that can be deemed Conclusions of Law are hereby deemed Conclusions of Law.

### **3. Issue #1: Is the proposed IEP for 2003-2004 appropriate?**

This issue is the central dispute in this hearing and represents opposing perspectives on the appropriate education of the Student. The evaluation of the Student is deemed appropriate and the proposed IEP contains measurable goals and objectives, criteria for measuring progress, evaluation methods, and reporting mechanisms. The School is not required to demonstrate that the Parents' proposed program is not appropriate; rather it must show that its proposal is appropriate. The landmark case in determining appropriateness of a special education program is *Board of Education v. Rowley*, 458 U.S. 176 (1982), which established that a school's proposed program must provide personalized instruction with sufficient support services to benefit from that instruction and be reasonably calculated to make passing marks and advance from grade to grade. A school is not required to provide the "best" program or design one to maximize educational performance. Similarly, a school is not required to adopt or pay for a program that is considered to be scientifically superior to another technique, although other techniques must be educationally sound.

The Student asked the IHO to take official notice of 511 IAC 7-27-9(d) about offering the Student a full range of services. That provision of Article 7 requires that the School have a range of services available, which the School does have.

With regard to the choice of educational methodology, hearing officers are to give due weight to school professionals when determining appropriateness of a program. *Lachman v. Illinois Board of Education*, 853 F.2d 290 (7<sup>th</sup> Cir. 1988) clearly establishes that parents, no matter how well meaning, cannot compel a school to adopt a specific methodology if the school's program is appropriate. Further, a school is not required to list all instructional methodologies in an IEP, because it is recognized that teachers must have flexibility to adapt instruction to the needs of the child and to changes and improvements in performance.

The evidence in this matter indicates that the proposed program, despite some minor adjustments that may be needed, is appropriate for the Student. It provides a "floor of opportunity" for the Student to derive educational benefit from the program and is reasonably calculated for him to progress educationally. It contains methods and techniques that are accepted in the educational field and includes opportunities for increased socialization and generalization of skills that nearly all witnesses and reports agreed are important for the Student. It enables the Student to be in general education with his peers with appropriate instructional support and also provides for direct instruction to develop academic and language skills. Therefore, the proposed program is deemed appropriate for the Student and is to be implemented with necessary adjustments.

### **4. Issue #2: If the School's proposed program for 2003-2004 is not appropriate, then should the school pay for the parents' proposed private program?**

Because the School's program has been determined to be appropriate, this issue is deemed irrelevant and moot.

### **5 Issue #3a: Was procedural safeguard information provided at the April, 2003**

**case conference?**

The evidence establishes that the parents were not given a copy of the School's procedural safeguard information, a violation of 511 IAC 7-22-(d)(2) [sic]<sup>9</sup> and 34 CFR § 300.504(a)(2).

**6. Issue #3b: If procedural safeguard information was not provided, was the Student harmed?**

Although the information was not provided, the Student's placement in the home program was not changed by the Parents. Further, the Father testified that he had received the information at other meetings. Therefore, there is no evidence that the Student was harmed due to failure by the School to provide the information to the Parents.

**7. Issue #4a: Were the Parents properly notified in writing about the reasons for the School's intent to change placement and programming?**

The School did not provide written notice of its intent to change placement and programming, although there had been a settlement agreement that indicated the Student was to begin attending the public school. Nevertheless, there was a technical violation of 511 IAC 7-22(d)(6) and 34 CFR § 300.503(a)(i).

**8. Issue #4b: If the Parents were not properly notified of the School's intent to change placement and programming, was the Student harmed?**

The Student was maintained in his home-based therapy program and therefore was not harmed.

**9. Issue #5: Were School personnel and the parents properly trained in instructional methods to meet the Student's needs?**

School personnel had some training and experience in working with children with autism, but had limited knowledge of his needs because he attended the preschool for only one-half day per week. Testimony indicates that many of the staff were trained to some degree in TEACCH and ABA methods. The autism team had become inoperative and some members needed training. The Parents had received extensive training in ABA through the program paid for by the School, which is the program they preferred. Because the Student's attendance in a School program was limited at their decision, the Parents were trained in ABA. Thus, the School is not in violation of 511 IAC 7-26-2(d) or 511 IAC 7-28-1(a)(8) and 34 CFR § 300.24 (7)(i), (ii), (iii).

**10. Issue #6a: Did the School fail to maintain confidentiality of the Student's records?**

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<sup>9</sup>The citation should be 511 IAC 7-22-1(d)(2). This is a minor matter and did not affect any party's rights.

Although there was testimony about the anonymous letter, the case conference being in a glass-enclosed conference room, and gossip, there is not sufficient evidence to indicate that the Student's records were released or compromised. Therefore, the School is not found to be in violation of 511 IAC 7-23-1 or 34 CFR § 300.572(a).

**11. Issue #6b: If the School failed to maintain confidentiality of the Student's records, was the Student harmed?**

Because the School did not violate 511 IAC 7-23-1 or 34 CFR § 300.572(a), this issue is deemed irrelevant and moot.

**12. Issue #7: Did the School withhold reimbursement to the Parents in retaliation for filing a request for a due process hearing?**

Although the Director of Special Education did withhold reimbursement for a brief time at about the time the Parents filed for a due process hearing, the testimony establishes that it was for an administrative reason. Therefore, the School is not found to have failed to reimburse them in retaliation for requesting a due process hearing.

***The IHO's Orders***

Based upon the Findings of Fact and the Conclusions of Law, the IHO issued the following nine (9) Orders:

1. The School is to implement the proposed IEP as presented within fifteen (15) school days of receipt of this decision. During this period, the School is to implement the transition plan or its equivalent as described in the hearing testimony and documents. Adjustments may be made in the schedule to accommodate the Student and School staff, but the transition plan may not be less than is stated. The School is to pay for the ABA therapists' time.
2. The amount of speech therapy is to be increased to ninety (90) minutes per week, although the speech therapist may use discretion as to how those minutes are allotted with regard to direct and indirect services and the input of a consultant, as described below.
3. The School is to activate the autism team and train its members in how to work with and educate children with autism. The cost of training may not be a basis for delaying the training. All training is to be completed by the end of the Fall semester. Training in both TEACCH and ABA methods are to be included. The autism team will develop a plan to provide regular and consistent input to the teachers and staff.
4. The School is to provide necessary training and counseling to the Parents as the program is implemented.
5. The School is to obtain the consulting services of an autism specialist who will work with the staff to develop and implement instructional methods for the Student. The School is to attempt

to contract with the speech therapist/autism consultant who observed the Student and gave testimony at the hearing, if she is available or interested in serving. The consultant will have full discretion as to how to provide the consultation to the School staff. The School is to assume all costs of the consultant's time, which shall not be required to extend past the current school year.

6. The School is to provide an instructional aide assigned to the Student and who is trained in working with children having autism and knows of the Student's needs. The aide shall be supervised by the special education teacher of record. The aide may not be someone who uses only ABA methods of classroom assistance, although some ABA instruction is permitted.

7. Payment for the home-based ABA program is to discontinue on the day the Student begins coming to school after the transition phase is complete.

8. The School is to complete a thorough assessment of the Student's cognitive ability by a licensed school psychologist or clinical psychologist within thirty (30) days of receipt of this decision. Written parental consent is not required and the School is authorized to provide necessary information to the evaluator who may proceed in the manner deemed appropriate.

9. The Parents are to notify the School in writing within five (5) school days of receipt of this decision whether they will enroll the Student under conditions set forth herein. If they do not elect to enroll him in the program or fail to notify the School within five (5) school days after receipt of this decision, then the School may discontinue payment for the home ABA program effective immediately.

The IHO appropriately advised the parties of their respective appeal rights.

### **APPEAL TO THE BOARD OF SPECIAL EDUCATION APPEALS**

On November 4, 2004, the Student, by counsel, requested an extension of time within which to prepare and file a Petition for Review. The Board of Special Education Appeals (BSEA) granted the request on November 5, 2004, and issued an order, granting the Student an extension to December 22, 2003, in order to prepare and file his Petition for Review. The time frame within which the BSEA must conduct its review and issue its written decision was likewise extended to January 21, 2004.

#### **Student's Petition for Review**

The Student filed his Petition for Review on December 22, 2003. In what is styled as a "Preliminary Statement," the Student takes exception to the IHO's orders containing time frames that expire during the time the Student has the right to seek administrative appeal. The Student argues that this violates the "stay put" requirement. Specific exception is taken to the IHO's Orders Nos. 1 and 9. Although the School and the Student elected to reach a different compromise, the Student intuitively feels bias on the part of the IHO because of these two Orders.

The Student also takes exception to the IHO's determination the School's proposed IEP was appropriate. The Student also objects to the proposed educational placement. He also objects to the IHO's determination of the qualifications of the experts testifying and relied upon expert testimony from less qualified person.

The Student objected to the following:

Finding of Fact No. 11 to the extent the Finding of Fact indicates the Parents breached the settlement agreement.

Finding of Fact No. 13 to the extent it indicates School staff received training in ABA methods.

Finding of Fact No. 14 (purportedly incomplete), Finding of Fact No. 17 (purportedly incomplete), Finding of Fact No. 18 (biased), Finding of Fact No. 19 (regarding the appropriateness of the proposed transition plan), Finding of Fact No. 20 (conflicts with Finding of Fact No. 16), Finding of Fact No. 21 (inaccurate), Finding of Fact No. 28 (incomplete), Finding of Fact No. 29 (inaccurate), Finding of Fact No. 30 (erroneous), Finding of Fact No. 31 (erroneous), Finding of Fact No. 32 (erroneous), Finding of Fact No. 34 (erroneous as to transition plan), Finding of Fact No. 37 (inaccurate), Finding of Fact No. 39 (erroneous), Finding of Fact No. 40 (erroneous and biased), Finding of Fact No. 42 (incomplete), Finding of Fact No. 45 (false), Finding of Fact No. 56 (incomplete and biased), Finding of Fact No. 64 (incorrect), Finding of Fact No. 72 (erroneous), Conclusion of Law No. 3<sup>10</sup>, Conclusion of Law No. 4 (based on the purported errors in Conclusion of Law No. 3), Conclusion of Law No. 5, Conclusion of Law No. 9, Conclusion of Law No. 10, and Conclusion of Law No. 11. The Student also objected to the IHO's Orders Nos. 1, 2, 8, and 9.

Although the following were mentioned in the Student's Petition, no specific exception was taken: Finding of Fact No. 35 and Finding of Fact No. 68 (part of sentence missing on copy of Parents' written decision by IHO).

Lastly, the Student asserts the IHO should have ruled that the Parents did not receive Progress Reports as required by 511 IAC 7-27-6(a)(7)(B).

### ***School's Response to Petition for Review***

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<sup>10</sup>Student's counsel did not note which Conclusions of Law to which she takes exception. She is reminded that in the future, failure to do so could result in dismissal of the Petition.

The School, by counsel, moved on December 23, 2003, for an extension of time in order to prepare and file its Response pursuant to 511 IAC 7-30-4(f). The Student's counsel did not object to the School's request. The BSEA granted the School an extension of time to and including February 2, 2004, to file its Response. The written decision of the BSEA would be due by March 3, 2004. The BSEA's Order to this effect was sent to the parties on December 23, 2003.

On February 2, 2004, the School filed its Response to the Student's Petition for Review. In its Response, the School asserts the record supports Findings of Fact Nos. 11, 13, 14, 17, 18, 19, 20, 21, 28, 29, 32, 34, 35, 37, 39, 40, 42, 45, 56, 64, and 72.<sup>11</sup>

The School represents that Finding of Fact No. 30 could be corrected because the Speech/Language Pathologist was not at the May 29, 2003, case conference committee, as the IHO's Finding of Fact seems to indicate. However, this is a minor change and does not affect the Finding of Fact, the affirmance of which the School urges. In like manner, the School represents that Finding of Fact No. 31 should be clarified to indicate the Speech/Language Pathologist was at the May 19, 2003, case conference committee and not at the May 29, 2003, case conference committee meeting. In all other respects, the School argues this Finding of Fact should be affirmed.

The School states that the IHO's Conclusions of Law should be upheld as supported by the record and the Findings of Fact. The IHO also ruled correctly on the alleged procedural errors. To the extent the IHO did not rule on the School's purported failure to provide Progress Reports to the Parents, this issue has already been addressed through the Complaint Investigation process at 511 IAC 7-30-2, as noted in the Student's attachments. The School has engaged in corrective action.

The School also argues the IHO's Orders Nos. 1, 2, 8, and 9 should be upheld, except for those portions that may have exceeded his authority, notably Order No. 1 and Order No. 9.

Lastly, the School argues that the IHO did not demonstrate bias in the conduct of this matter.

### ***Student's Further Response***

On February 25, 2004, the Student, by counsel, provided a Response to the School's Response to the Student's Petition for Review. The Student complains that the School has portrayed the Student as breaching the settlement agreement the parties previously agreed to. In addition, the Student argues that by agreeing to a new IEP, the settlement agreement was superseded. The Student also complains the School misrepresented certain facts, *i.e.*, the Father did not seek to cancel the case conference committee meeting and that the Parents did not state that socialization

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<sup>11</sup>Both parties indicate that a portion of Finding of Fact No. 68 was missing. Neither party requested a corrected copy. The BSEA did note that the written decision of the IHO, at Finding of Fact No. 68, was missing some language. The IHO's diskette did contain the full statement of this Finding of Fact. It is reproduced *in toto supra*.

skills were not important. The Student also asserts, without support, that testimony from a person no longer employed as a teacher is irrelevant. The Student also questions the background in autism of several school personnel who observed the Student. The Student also asserts there is no research to support the School's proposition that students with autism learn from modeling peers.

### **REVIEW BY THE BOARD OF SPECIAL EDUCATION APPEALS**

The record was photocopied in its entirety and provided to the Members of the BSEA on January 14, 2004. The parties were notified by the BSEA on February 18, 2004, that it would conduct review of this matter without oral argument and without the presence of the parties. On March 1, 2004, the BSEA convened in Indianapolis for the purpose of conducting its review of this matter. All three members appeared. Based upon the record as a whole, the requirements of state and federal law, the Petition for Review, the Response thereto, as well as the supplemental Response by the Parent, the BSEA now decides as follows.

### **COMBINED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The BSEA is a three-member administrative appellate body appointed by the State Superintendent of Public Instruction pursuant to 511 IAC 7-30-4(a). In the conduct of its review, the BSEA is to review the entire record to ensure due process hearing procedures were consistent with the requirements of 511 IAC 7-30-3. The BSEA will not disturb the Findings of Fact, Conclusions of Law, or Orders of an IHO except where the BSEA determines either a Finding of Fact, Conclusion of Law, or Order determined or reached by the IHO is arbitrary or capricious; an abuse of discretion; contrary to law, contrary to a constitutional right, power, privilege, or immunity; in excess of the IHO's jurisdiction; reached in violation of established procedure; or unsupported by substantial evidence. 511 IAC 7-30-4(j). The Student timely filed a Petition for Review. The BSEA has jurisdiction to determine this matter. 511 IAC 7-30-4(h).
2. Decisions of IHOs must be based upon evidence that is substantial and reliable. An IHO's "experience, technical competence, and specialized knowledge may be used in evaluating evidence." I.C. § 4-21.5-3-27(d). A critical function of an IHO is to determine what evidence, including testimonial evidence, is substantial and reliable. This often includes relative assessments of credibility. In this matter, the Student's counsel has alleged bias on the part of the IHO in several particulars, but she fails to demonstrate how the IHO was biased. An IHO's determination of what evidence, including testimonial evidence, is substantial and reliable will not be reversed absent any evidence other than the IHO's disinclination to accord greater credibility to the Student's evidence and testimony. There is no evidence the IHO was biased in this matter. The parties were both provided the due process contemplated by Article 7.
3. The BSEA, after careful review, upholds the following challenged Findings of Fact as supported by the record: Findings of Fact Nos. 11, 13, 14, 17, 18, 19, 20, 21, 28, 29, 32, 34, 35, 37, 39, 40, 42, 56, 64, and 72. In addition to sustaining the IHO's Finding of Fact No. 42, an anonymous letter does not demonstrate a breach of confidentiality.

4. The BSEA amends Finding of Fact No. 30 to remove the language “proposed speech clinician,” as the parties agree—and the record supports—the Speech/Language Pathologist was not present when the case conference committee reconvened on May 29, 2003.
5. The BSEA amends Finding of Fact No. 31 to begin with the following language: “At the May 19, 2003, case conference committee, the speech therapist proposed that she would work with the ABA therapists to include their activities with her work with the Student.” The remainder of this Finding of Fact is sustained as written.
6. Finding of Fact No. 45 is amended in the last sentence so as to read: “She estimated that he would learn one color per week in the program.” The remainder of this Finding of Fact is sustained as written.
7. The BSEA sustains the IHO’s Conclusions of Law Nos. 3, 4, 5, 9, 10, and 11 as written. The Conclusions of Law are supported by the Findings of Fact and the record.
8. The BSEA amends the IHO’s Order No. 1 to read as follows: “The School is to implement the proposed IEP as presented within fifteen (15) school days following the expiration of the thirty (30) calendar day time line from receipt of this decision for seeking judicial review in a civil court with jurisdiction but no such review is sought.” In all other respects, Order No. 1 is sustained as written.
9. Order No. 2 is sustained as written.
10. Order No. 8 is amended as follows: “The School is to complete a thorough assessment of the Student’s cognitive ability by a licensed school psychologist or clinical psychologist within thirty (30) days following the expiration of the thirty (30) calendar day time line from receipt of this decision for seeking judicial review in a civil court with jurisdiction but no such review is sought.” In all other respects, Order No. 8 is sustained as written.
11. Order No. 9 is amended as follows: “The Parents are to notify the School in writing, within five (5) school days of receipt of this decision following the expiration of the thirty (30) calendar day time line from receipt of this decision for seeking judicial review in a civil court with jurisdiction but no such review is sought, whether they will enroll the Student under conditions set forth herein. If they do not elect to enroll him in the program or fail to notify the School within five (5) school days following the expiration of the thirty (30) calendar day time line from receipt of this decision for seeking judicial review in a civil court with jurisdiction but no such review is sought, then the School may discontinue payment for the home ABA program effective immediately.”
12. To the extent the Student complains that his IEP does not provide for Progress Reports, the Student’s IEP indicates that Progress Reports will be reported every nine weeks. The issue is moot.

## ORDERS

In consideration of the foregoing, the Board of Special Education Appeals rules as follows:

1. The IHO's decision, as amended, is sustained.
2. Any allegation of error in the Petition for Review not specifically addressed above is deemed denied..

DATE: March 1, 2004

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Richard Therrien, Chair  
Board of Special Education Appeals

#### APPEAL RIGHT

Any party aggrieved by the decision of the Board of Special Education Appeals has the right to Seek judicial review in a civil court with jurisdiction within thirty (30) calendar days from receipt of this written decision, as provided by I.C. 4-21.5-5-5 and 511 IAC 7-30-4(n).