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ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING

SPECIAL EDUCATION  
DIVISION

[Redacted] )  
 )  
 Student )  
 vs. )  
 [Redacted] )  
 )  
 Local School District )

Case No. 2008-85

CAROLYN ANN SMARON, Hearing Officer

DECISION AND ORDER

PROCEDURAL MATTERS

By letter dated September 4, 2007, the mother of the student requested the appointment of a due process hearing officer to resolve her dispute with the school district. That letter was received by the school district on September 6, 2007 and forwarded to the Illinois State Board of Education (ISBE). By letter dated September 26, 2007, CAROLYN ANN SMARON was appointed to serve as the hearing officer. On September 28, 2007 the hearing officer issued a Scheduling Order and Notice of Prehearing Conference. The prehearing conference was held on October 19, 2007. The school district was represented by [Redacted] and the mother was represented by [Redacted]. At the time that the request for due process was filed the student was detained at the [Redacted]. On October 22, 2007 the student was released from the [Redacted] to a 24 hour care facility/shelter known as the [Redacted] and placed at a separate therapeutic day school at [Redacted].

The parties were unable to agree on a common set of documents and thus the hearing officer received a binder containing the school district's documents and a binder containing the parent's documents.

The hearing was initially scheduled for December 19-20, 2007 and January 23-25, 2008 from 9:00 a.m. – 5:00 p.m.. The school district asserted that its contractual obligations with its employees required that the hearing end at various times in the afternoon depending on the contractual obligation of the school district witness. As a consequence, additional hearing days were scheduled for February 26-28, 2008 and

<sup>1</sup> The [Redacted] is an Illinois Department of Children and Family Services licensed facility to receive minors into temporary shelter who would otherwise be detained in the [Redacted]

March 24-25, 2008 with a final date of April 18, 2008. All parties received transcripts of the testimony elicited during the hearing. Both parties presented closing statements and the record was closed on April 18, 2008.

**ISSUES IDENTIFIED AND REMEDIES REQUESTED**  
**AT THE PREHEARING CONFERENCE**

**ISSUE:** The school district failed to provide a free appropriate public education to the student from September 5, 2005 to the present in that the school district failed to provide a full and individualized evaluation in a timely manner in order to adequately identify the nature and extent of the student's disabilities. More specifically, the parents allege that there were multiple events which occurred during the aforesaid time frame which should have triggered an investigation by the school district but did not including but not limited to the student's behavior at school resulting in the student's psychiatric hospitalization on January 11, 2006, the student's test scores on the Iowa Test of Basic Skills discussed at the April 20, 2006 Individual Education Plan meeting, the student's continuing behavior deterioration during the 2006-2007 academic year.

The parent further alleges that every Individual Education Plan developed during the aforesaid time frame failed to appropriately address or did not address the student's academic, functional and social/emotional performance. Specifically, the student's behavior, need for transition planning, need for goals/benchmarks based on accurate levels of performance, need to provide special education services based on accurate levels of performance, need for extended school year in 2006-2007, need for sufficiently intense related services, need for assistive technology in the classroom setting and training of staff, student and parent, and need for a more restrictive placement were not appropriately addressed.

The parent alleges that the evaluations completed by the school district during this time frame were incomplete and inadequate and as a consequence the parent secured private evaluations in the areas of psycho-education, central auditory processing, speech/language, assistive technology, occupational therapy and psychiatry.

**REMEDY SOUGHT:** The parent requests a finding that the Individual Education Plans developed for this student did not and could not provide the student with a free appropriate public education in the least restrictive environment in that the type, level and intensity of services did not and could not provide educational benefit to the student. The parent requests a finding that the least restrictive environment for the student is a residential facility.

The parent requests that an Individual Education Plan be developed by the residential facility that incorporates the findings of the independent evaluators of the student including but not limited to

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- individualized goals/objectives based upon accurate present levels of performance with appropriate modifications/accommodations
- extended school year
- behavior intervention plan based upon an accurate functional analysis of behavior
- transition planning
- direct individual and group psychological, social work, occupational therapy, assistive technology, speech/language and learning disability services across all educational settings

As educational compensation for the failure to provide a free appropriate public education in the least restrictive environment since September 2005 the parent requests

- 1:1 tutoring services beyond the regular school day by a certified special education teacher trained in scientific research based interventions e.g. Wilson, for 60 minutes per session, twice a week, the duration to be determined by the hearing officer determination as to the period when the student was denied a free appropriate public education
- 1:1 speech language services beyond the regular school day by a certified speech pathologist for 60 minutes per week the duration to be determined by the hearing officer determination as to the period when the student was denied a free appropriate public education
- 1:1 occupational therapy services beyond the regular school day by a certified occupational therapist for 60 minutes per week the duration to be determined by the hearing officer determination as to the period when the student was denied a free appropriate public education
- reimbursement for the private educational evaluations in the areas of psycho-education, central auditory processing, speech/language, assistive technology, occupational therapy and psychiatry.

**SCHOOL DISTRICT RESPONSE:** The school district asserts that all of the evaluations conducted have been appropriate and assessed the student's educational needs, that all of the Individual Education Plans appropriately addressed those needs in the least restrictive environment, and that the least restrictive environment for the student is a therapeutic day school.

### FACTS

The recitation of the facts of this case were gleaned by a review of the documents and the hearing officer's notes as to the facts elicited or facts that could be inferred from the testimony of the school district witnesses, the testimony of the student's mother and the remaining witnesses called by counsel for the mother. The statute of limitations precludes any close examination of the facts and documents that preceded September 6,

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2005. References to "SD" refer to School District Documents by page number. References to PD refer to Parent Documents by page number.

**I. 2003-2004 Academic Year – 5th grade**

On November 25, 2003 a Request for Student Support Services was completed by a social worker SD1. At that time the student was in 5<sup>th</sup> grade attending [REDACTED]. The stated reason for the referral was:

*student is presenting severe behavior problems (verbal threats to peers and teacher; fighting/walking out of class/ profanity toward peers and teachers) that are negatively impacting his academic progress and the progress of the students in the classroom*

On December 18, 2003 an Individual Behavior Plan was developed which focused on encouraging the student to decrease his inappropriate behavior. SD2-4 The student entered into a behavior contract. The Behavior Plan was to be reviewed in January 2004. SD5

In February 2004 the student was involved with the juvenile justice system and was incarcerated at the [REDACTED]. At that time the student was living with his grandmother, his uncle, and twelve other children in a large residence in the [REDACTED]. The student's father did not reside in the grandmother's residence. The mother and the student's younger siblings lived elsewhere in the [REDACTED]. On February 2, 2004 the student was transported from the Detention Center to [REDACTED] Hospital (1<sup>st</sup> psychiatric admission). SD185 The Discharge Summary noted that Social Services had attempted to schedule a family meeting on February 10, 2004 but the mother of the student did not attend. Social Services scheduled another family meeting but the mother of the student did not attend that meeting. The student was discharged back to the Juvenile Detention Center on February 13, 2004 with a discharge diagnosis of Oppositional Defiant Disorder. The student was then released to his mother on February 25, 2004 pending disposition of the pending criminal charges.

On March 15, 2004 the student was readmitted to [REDACTED] Hospital (2<sup>nd</sup> psychiatric admission) after being physically restrained at school. The student remained at [REDACTED] Hospital until March 30, 2004. His discharge diagnoses were Oppositional Defiant Disorder and Attention Deficit Hyperactivity Disorder, Combined Type. SD207 The student was discharged with a recommendation for outpatient treatment. The drug Concerta was prescribed.

Meanwhile, the records indicate that at some point there must have been a meeting to discuss the student and consent was secured from the student's mother for an evaluation to determine if the student might be eligible for special education and related services.

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Prior to the April 29, 2004 IEP meeting, a Social Assessment was completed by the school district social worker. That Assessment contained statements indicating that the social worker was aware of the two psychiatric hospitalizations. The Assessment suggests that the social worker had documents from the February 2004 admission but had no paper work from the second hospitalization in March 2004. The Social Assessment contained the following recommendation:

*Because of his constant need for attention and intervention, [REDACTED] needs the benefit of a small structured and therapeutic milieu that would focus on his long history of family dysfunction, behavior and emotional problems. Although the least restrictive environment is a class inside the public school, it is my recommendation that [REDACTED] be considered for a therapeutic day school. Social work services are recommended. (Emphasis added) PD167-170*

Prior to the April 29, 2004 IEP meeting, a psychological evaluation was completed by the school psychologist. The psychologist noted that the student carried a psychiatric diagnosis of "intermittent explosive disorder".<sup>2</sup> The psychologist reported that "on the Stanford Binet, 4<sup>th</sup> edition, the student had a composite IQ within the average range of cognitive development...Academically the student achieved overall a grade level achievement at the beginning of second grade. All core areas indicate significant delays based on age expectancy"<sup>3</sup>. Subtest scores were reported as follows:

	Percentile
Verbal reasoning	28
Abstract (non-verbal) reasoning	31
Short-term memory skills	52

The psychologist administered the Kaufman Test of Educational Achievement and reported the following subtest scores:

	Standard Scores	Percentile	Grade Equivalents
Math applications	73	4	2.4
Reading/Decoding	73	4	2
Spelling	65	1	1.5
Reading comprehension	73	4	2.1
Math Computation	63	1	2.2
Reading Composite	72	3	2
Math Composite	66	1	2

<sup>2</sup> there is no apparent reason why the psychologist incorrectly recorded the student's diagnosis

<sup>3</sup> Percentile scores, rather than standard scores, were reported

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The psychologist reported that the student achieved academically at the beginning 2<sup>nd</sup> grade level with his math skills appearing less well developed at the middle 1<sup>st</sup> grade level. **PD162-164**

An IEP meeting was held on April 29, 2004 attended by the student's mother and the school district members of the IEP team. According to the eligibility determination, the mother reported that in February 2004 the student started having psychological problems, was seen at ██████████ Hospital in February 2004 and March 2004 and takes medication at home. The team concluded that the student had a learning disability and an emotional disturbance. There was nothing written on the IEP suggesting that the IEP team discussed the definition of emotional disturbance or the reason why the IEP team concluded that this particular student had an emotional disturbance.

Despite the psychologist's report that the student was functioning at the 2<sup>nd</sup> grade level in reading, the IEP team developed a language arts goal premised upon a statement that the student was reading at the 3<sup>rd</sup> grade level. Apparently someone reported that the student was decoding one to two syllable words. The language arts goal was formulated as follows: student will read with understanding and fluency at the upper 3<sup>rd</sup> grade level

Despite the psychologist's report that the student was functioning at the middle 1<sup>st</sup> grade level in math (and scores indicating a grade equivalent of 2<sup>nd</sup> grade), the IEP team developed a math goal premised upon a statement that the student was working at the 3<sup>rd</sup> grade level, able to add, subtract and do basic multiplication. The math goal was formulated as follows: student will demonstrate and apply a knowledge and sense of numbers, including basic arithmetic operations, number patterns, ratios and proportions at the upper 3<sup>rd</sup> grade level.

Social work was to be focused on improving the student's ability to demonstrate control. The social worker was to work with the student for 60 minutes per month in individual/small group sessions. Despite the student's behavior at school and two psychiatric hospitalization, no functional analysis of the student's behavior was done and no behavior intervention plan created.

The student was placed in a full instructional setting (self-contained special education classroom) for all core classes except art, gym, library, lab and lunch. Compensatory services were provided because there was a noncertified teacher in his regular education classroom. **SD6-25**

The IEP Summary Sheet described the student's learning characteristics as follows:

- *has difficulty following directions*
- *processes information slowly*
- *is distracted easily and loses focus/concentration often*
- *spells poorly*

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- *has trouble putting ideas on paper*
- *has difficulty understanding concepts*
- *is slow to switch from one task to another SD6-26*

The student remained at [REDACTED] for the remainder of 5<sup>th</sup> grade. The student's progress or lack thereof during 5<sup>th</sup> grade and the appropriateness of the student evaluation are not before this hearing officer. However, the data created by that evaluation is the "the baseline data" as it informed every decision made by the IEP team thereafter.

## II. 2004-2005 – 6<sup>th</sup> grade

The student remained at [REDACTED] until November 1, 2004 when he transferred to [REDACTED]. On March 16, 2005 the student was readmitted to [REDACTED] Hospital. He was discharged on March 29, 2005, with the diagnosis of oppositional defiant disorder, attention deficit hyperactivity disorder and marijuana abuse. The student was brought to the hospital due to his inability to control his anger and physical aggression toward others. At that point the student was still living with his grandmother. Again, the student was stabilized and discharged. PD308

The IEP team reconvened on May 13, 2005 for the purpose of an annual review. The student's case manager [REDACTED], special education teacher [REDACTED], a regular education teacher and the social worker attended the meeting. The mother of the student did not attend but was reported to be concerned about the student's behavior. SD28

[REDACTED] testified that she was the LD resource teacher and case manager at [REDACTED]. She testified that she had reviewed the [REDACTED] Hospital records from the 1<sup>st</sup> psychiatric hospitalization and the 2<sup>nd</sup> psychiatric hospitalization in the Spring 2004. Prior to the IEP meeting, the Slosson Oral Reading Test was administered by Ms. [REDACTED] and she reported that the student was reading at the 3<sup>rd</sup> grade 5<sup>th</sup> month level. Ms. [REDACTED] described the test as the ability to recognize words on a list. Ms. [REDACTED] testified that she did not assess the student's reading comprehension. The Math Computation Test was administered by Ms. [REDACTED] and she reported that the student was working at the 4<sup>th</sup> grade 5<sup>th</sup> month level.

The team apparently reviewed the student's progress on the goals developed on April 29, 2004. The student's special education teacher reported that the student did not meet his language arts or his math annual goals because the student "spent quite some time in a temporary placement". The student's special education teacher reported that the student did not meet his social science and science annual goals because "the student's progress limited his progression". The student's special education teacher reported that the student "has many behavior issues that contribute to his behavior".

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Apparently based upon the Slosson results and the student having not reached his previous goal to read at the 3<sup>rd</sup> grade level, the team developed a language arts goal premised upon the statement that the student was currently working at a mid-3<sup>rd</sup> grade level and had difficulty writing complete sentences. The language arts goal was formulated as follows: "the student will be able to write to communicate for a variety of purposes as well as assess and communicate informally and read with understanding and fluency".

Apparently based upon the Math Computation Test results and the student having not reached his previous math goal student (the student will demonstrate and apply a knowledge and sense of numbers, including basic arithmetic operations, number patterns, ratios and proportions at the upper 3<sup>rd</sup> grade level), the team developed a math goal. The goal was premised upon a statement that the student was then functioning at a late second grade early third grade level in math and had difficulty reading graphs. The math goal was formulated as follows: "the student will demonstrate and apply a knowledge and sense of numbers including multiplication and division as well as interpret and describe numerical relationships using graphs".

Social work was to be focused on the student interacting with peers in a pro-social manner (speak to others in appropriate tone, volume and content) and maintaining personal space. The social worker was to work with the student for 90 minutes per month in a separate setting. While the IEP team checked the box indicating that the student's behavior impeded his behavior, no functional analysis of the student's behavior was done and no behavior intervention plan developed. Thus this emotionally disturbed student completed 6<sup>th</sup> grade and started 7<sup>th</sup> grade with no behavior intervention plan in place.

The student's time in an instructional classroom (self-contained special education classroom) was reduced. The student was placed in an instructional classroom (self-contained special education classroom) for language arts and math and placed in a regular education classroom for science, social studies, library, gym and art.

The IEP Summary Sheet described the student's learning characteristics as follows:

- *processes information slowly*
- *is distracted easily and loses focus/concentration often*
- *spells poorly*
- *has trouble putting ideas on paper*
- *has difficulty understanding concepts*
- *has difficulty following multiple verbal requests. PD90-103*

The student's progress or lack thereof in 6<sup>th</sup> grade are not before this hearing officer.

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### III. 2005-2006 – 7<sup>th</sup> grade

The student was admitted to [REDACTED] Hospital on January 11, 2006 by his mother. At the time of admission, the mother reported that the student was disobedient, defiant, and oppositional. SD239. The intake medical examination contains a notation that the student had been using marijuana. The discharge psychiatric diagnoses were intermittent explosive disorder, attention deficit hyperactivity disorder and substance abuse. The discharge summary notes that the student was noncompliant with the medication previously prescribed at [REDACTED] Hospital. SD254. The student was discharged on January 30, 2006 with two prescriptions.

The student remained at [REDACTED] for 7<sup>th</sup> grade. His case manager, [REDACTED] testified that she was concerned about the student's behavior but did not recommend a more restrictive placement for the student at this IEP meeting. At the hearing, Ms. [REDACTED] testified that a therapeutic day placement would have been a more appropriate placement at that time.

His special education teacher, [REDACTED] testified that the student was nonresponsive to any behavior interventions attempted by her. At the hearing, however, she also stated that the student's behavior was manageable by her. She was unaware of any reports that the student had any physical altercations with his peers. Ms. [REDACTED] testified that in her opinion the student was able to do his school work when he put forth effort to do so. However, Ms. [REDACTED] also testified that the student would often come to school and sleep for a good portion of the day. The student admitted that he had been out all night partying and hanging out. The student admitted to Ms. [REDACTED] that he regularly smoked marijuana. Ms. [REDACTED] testified that the school staff believed that the student was regularly smoking marijuana as he smelled of marijuana and had red eyes. Ms. [REDACTED] testified that the mother of the student acknowledged to her that she did not fill the student's prescriptions regularly and thus did not regularly administer his medication to him.

The IEP team reconvened on April 20, 2006 for the purpose of another annual review. The student's case manager [REDACTED], special education teacher [REDACTED], a regular education teacher, the mother, the school nurse and the social worker [REDACTED] attended the meeting. SD43

The special education teacher reported that the student refused to participate in testing and thus there was no current information reported regarding curriculum based assessments, recent state and citywide tests, etc. There are notations that on some assessment in May 2005 the student was performing at the 3<sup>rd</sup> percentile in reading comprehension (stanine 1) and the 1<sup>st</sup> percentile in math (stanine 1) in math. The team apparently reviewed the student's progress on the goals developed on May 13, 2005. The special education teacher again reported that the student did not meet his language arts

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goals because "his many behavior problems limit his progression". There are no notations as to whether the student met his math goal.

The student's time in an instructional classroom (self-contained special education classroom) was increased to the original level (all core subjects) set forth in his 2004 IEP because of "the student's severe behavior". The parent's request for an alternative school were ignored.

Apparently based upon the student's inability to reach his previous goal and a report that the student was reading at a 4<sup>th</sup> grade level, the IEP team developed a language arts goal. Apparently someone reported that the student could read one syllable words and could answer comprehension orally. No one seemed to have asked whether the student could read. The language arts goal was formulated as follows: student will read with understanding and fluency. There is nothing within this IEP to support the statement that the student was reading at the 4<sup>th</sup> grade level.

Apparently based upon a report that the student was working on a 3<sup>rd</sup> grade level in math, the IEP team developed a math goal as follows: the student will demonstrate and apply a knowledge and sense of numbers, including basic arithmetic operation, numbers, patterns, ratios and proportions.

Premised upon a present level of performance that the student has recurrent emotional issues, believes others are conspiring against him, is often depressed, threatens others, emotional outburst, and off task (not engaged in learning process), the social work goal was formulated as follows: student will increase motivation, production of school work – interest in pro-social manner (speak to others in appropriate volume, tone and content) and comply with school norms. The social worker was to work with the student for 90 minutes per month in a separate setting.

The IEP team concluded that the student's behavior impedes his learning or that of others and thus they developed a functional analysis of behavior and a behavior intervention plan focused on "compliance with classroom expectations, in location in his seat, pro social interactions with peers, and awake and engaged in learning process". PD88

The IEP Summary Sheet described the student's learning characteristics as follows:

- *has difficulty following directions*
- *processes information slowly*
- *has a short auditory attention span*
- *is distracted easily and loses focus/concentration often*
- *spells poorly*
- *has trouble putting ideas on paper*
- *has difficulty understanding concepts*

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- *has difficulty following multiple verbal requests*
- *is frequently distracted by extraneous noises*
- *has difficulty copying from the board*
- *is slow to switch from one task to another PD70-89*

At the hearing, the school district social worker, [REDACTED] testified that he believed that [REDACTED] was not meeting the student's needs. It seemed clear from his testimony that he was concerned about the student's behavior. Despite discussing his concerns with the case manager, [REDACTED] the student's placement remained unchanged.

#### IV. 2006-2007 – 8<sup>th</sup> grade – Re-evaluation April 2007

The mother testified that she transferred the student to [REDACTED] on September 5, 2006. The student was then transferred to [REDACTED] on October 11, 2006 where he remained until he returned to the Juvenile Detention Center on November 30, 2006. He returned to [REDACTED] on January 8, 2007 until he again returned to the Juvenile Detention Center on February 9, 2007 where he remained for the remainder of the 2006-2007 academic year.

While the student was at [REDACTED] the student's teacher in a self-contained special education classroom was [REDACTED]. Ms. [REDACTED] testified that at that time she was not certified to teach special education students and was provisionally licensed to teach regular education students. Ms. [REDACTED] testified that she could manage the student's behavior. Ms. [REDACTED] testified that the student did not demonstrate any aggressive or threatening behaviors in her classroom until the day he learned that he would returning to the Juvenile Detention Center. Ms. [REDACTED] testified that she ultimately developed a good rapport with the student although he was only in her class for about 30 days total. She testified that she was concerned about the student's absences and even attempted to visit the student at his home. Ms. [REDACTED] testified that she was aware of suspensions for out-of-control behavior in other school settings.

By February 27, 2007 the student was detained at the Juvenile Detention Center and attending school at the [REDACTED]. The school district noted that the student's was scheduled for a three-year evaluation. The records suggest that on or about February 27, 2007 there was a meeting at the school to discuss the domains to be investigated. Consent was secured from the student's mother to collect additional information on March 16, 2007. The mother raises a question as to the remaining portion of the mother's consent, specifically the "grid sheet". Neither the mother nor the school district can locate the "grid sheet". [REDACTED] testified that she was the student's case manager and in that capacity, presided over the domain meeting on February 27, 2007. She recalled that there was no discussion as to whether or not the student might require a central auditory processing evaluation and in the absence of any evidence that the student had at one time been eligible for speech/language services, she saw no need to

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consider a speech/language evaluation. There was no occupational therapist or speech language pathologist at the domain meeting.

Subsequent to the domain meeting on February 27, 2007, the members of the IEP team had to access the student's records from his prior schools. The testimony of the student's teachers at [REDACTED] regarding the student's behavior while detained was fairly consistent – the student did not want to be there, the student was vulgar and profane, the student did no work. [REDACTED] testified that he was the student's special education teacher. He described the student as disruptive, aggressive toward him and the other students in the classroom. Mr. [REDACTED] testified that he had not been provided with a copy of the student's 2006 IEP and was unaware of the student's four psychiatric hospitalizations.

Prior to the April 27, 2007 IEP meeting, the school psychologist, Dr. [REDACTED], completed a psychological evaluation of the student. PD107-107b Her report indicated that Dr. [REDACTED] was aware of the [REDACTED] Hospital admission on February 2, 2004 and had apparently reviewed the psychological evaluation completed in 2004. It is unclear if Dr. [REDACTED] actually reviewed the records from the remaining three hospitalizations although it was clear from her testimony that she was aware of them.

Dr. [REDACTED] used the Reynolds Intellectual Screening Test to assess the student's cognitive development and concluded that the student had an overall average rate of intellectual ability. Dr. [REDACTED] testified that she used the brief version of the test because the student was reluctant to test and she wanted to get as much information as she could before the student refused to continue with the process. However, she noted that there was a significant difference between the student's verbal and nonverbal processing ability. The student's scores suggested relatively weaker skills in verbal comprehension – measuring verbal reasoning, word knowledge and verbal concept formation. Cognitive strength was noted in perceptual reasoning-measuring nonverbal concept formation, visual perception and organization, concentration, and the ability to analyze and synthesize visual stimuli. The student demonstrated significantly below average skills in his ability to attend to a stimulus, register the stimulus in immediate memory and then recognize or recall the stimulus.

Dr. [REDACTED] administered the Beery-Buktenica Developmental Test of Visual-Motor Integration. The student's standard score of 73 (mean=100) indicated low performance in the integration of visual stimuli, lack of spontaneity in eye-motor coordination, and less than adequate planning and organization of visual stimuli a/k/a low visual motor integration skills. Dr. [REDACTED] testified that in her opinion the student's score did not give rise to the need for an occupational therapy evaluation. She further testified that none of the student's teachers at the [REDACTED] reported any concerns about the student's fine motor skills or the need for an occupational evaluation.

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Dr. [REDACTED] testified that she typically would refer a student for a speech/language assessment if the student had difficulties in the area of receptive and/or expressive language. Further, she testified that none of the teachers reported any concerns about the student's communication skills. Dr. [REDACTED] testified that she had made referrals for a speech/language assessment but saw no need to do so for this student. Dr. [REDACTED] did not assess the student's auditory processing skills or the student's ability to attend. Dr. [REDACTED] did not have any of the student's teachers complete rating scales and thus it is hard to determine the basis for her opinions regarding the teacher's anecdotal statements to her.

Based upon his average rate of intellectual ability, Dr. [REDACTED] would have expected the student's academics to be at the 8.7 grade level. However, after administration of the Kaufman Test of Educational Achievement, 2<sup>nd</sup> Edition (the updated version of the test administered in 2004) Dr. [REDACTED] concluded that the student's skills were discrepant from his identified cognitive ability based upon her administration of the following subtests:

Subtest	Standard Score	Percentile	Grade Equivalent
Letter & Word Recognition	72	3	3
Reading Comprehension	70	2	2.11
Reading Composite	70	2	
Math Computation	66	1	3

In her evaluation, Dr. [REDACTED] reported that due to the student's lack of proficiency in decoding, his reading comprehension was at the 2.11 grade level. Errors were noted in both literal and inferential comprehension. The student demonstrated limited skills in the recognition or recall of idea, information or events that were explicitly stated in the text. He was also limited in his ability to generate new ideas from those stated in the text by relating concepts, combining information in the text with previously acquired knowledge or evaluating viewpoints of the writer and formulating a personal interpretation of the information presented. Dr. [REDACTED] seems not to have drawn the obvious inference from the student's scores – this student cannot read! Dr. [REDACTED] testified that despite an identified deficit in spelling in 2004, she did not assess the student's spelling in 2007. Decoding was identified as an area of deficit in 2004. Dr. [REDACTED] testified that the letter and word recognition subtest on the newer version of the Kaufman assessed decoding. Despite the student's scores in reading, Dr. [REDACTED] testified that she did not administer any of the reading subtests e.g. phonological awareness, nonsense word decoding, word recognition fluency, decoding fluency, associational fluency, naming facility written language, listening comprehension, or oral expression because the student was either reluctant to test or not in the facility or not available to her. The psychologist offered no explanation for her failure to note on her report that her report was incomplete because she had not spent sufficient time with the student.

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Dr. [REDACTED] reported that the student's math computation scores were at the 3<sup>rd</sup> grade level. The student demonstrated difficulty in identifying and applying basic multiplication, division, addition and subtraction facts and symbols. Weaknesses were also noted in categories requiring knowledge of basic addition and subtraction facts and/or knowledge of regrouping involving redistribution in the ones, tens, hundreds or thousands columns to perform addition and subtraction computations. Finally, she noted that the student demonstrated deficits in requiring knowledge of basic multiplication and division facts and/or knowledge of how to use multiplication and division algorithms to obtain products and quotients. Math applications was identified as an area of deficit in 2004. Dr. [REDACTED] testified that she did not assess this area in 2007 when she chose not to administer the subtest entitled Math Concepts & Applications in 2007. Dr. [REDACTED] testified that she did not assess math fluency, measurement or making change in her assessment. Rather she testified that she believed that the student was street-smart and had practical skills, based upon her informal testing of the student. Dr. [REDACTED] testified that she talked with the student's math teacher, Mr. [REDACTED] who reported that the student was disruptive in his class. Dr. [REDACTED] concluded that the student's current profile suggested the need for remediation of the identified deficits.

Dr. [REDACTED] testified that in her opinion the student made academic progress from 2004 to 2007 in that his grade equivalent in 2004 was 2<sup>nd</sup> grade and his grade equivalent in 2007 was 3<sup>rd</sup> grade. She found that progress to be significant in light of the student's multiple psychiatric hospitalizations, her belief that he had attended multiple schools, and in light of his multiple detentions. She opined that the student would have made additional gains had he not had all those changes in his life. It seemed clear at the hearing that Dr. [REDACTED] considered the student to be maladjusted. It is not clear why she subscribed to the student disability of "emotional disturbance"

Prior to the April 27, 2007 IEP meeting, the school district Social Worker, Dr. [REDACTED] completed a social assessment of the student. Dr. [REDACTED] has been a social worker for the school district for 17 years with an undergraduate degrees in psychology and sociology, master's degree in social work and a doctorate in social work.

Dr. [REDACTED] observed the student in the classroom and testified that the student had difficulty in the classroom, tended to have a hard time focusing and had difficulties with his peers. Dr. [REDACTED] interviewed the student and testified that he had no trouble scheduling his interview with the student. Dr. [REDACTED] testimony indicated that, unlike Dr. [REDACTED] he was able to establish a rapport with the student.

Dr. [REDACTED] testified that as part of his review of the record, he reviewed the previous Social Assessment of the student in 2004. PD167-170. Dr. [REDACTED] testified that as part of his review of the record, he reviewed the [REDACTED] Hospital's Attending Psychiatrists' Assessment of the student in February 2004. PD 361-363 Dr. [REDACTED] testified that as part of his review of the record, he reviewed the Discharge Summary

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from [REDACTED] Hospital in March 2004. PD334-337. Dr. [REDACTED] testified that as part of his review of record, he reviewed the Discharge Summary from [REDACTED] Hospital PD280-282. Dr. [REDACTED] testified that as part of his review of the record, he reviewed the Social Investigation authored by Probation Officer [REDACTED].

In his report, Dr. [REDACTED] noted that previous assessments had indicated that the student had difficulty following directions, processed information slowly, had a short auditory attention span, was distracted easily, and often lost focus/concentration. The classroom teachers at the [REDACTED] reported to Dr. [REDACTED] that the student was "very limited", had a short attention span, and was easily frustrated. Dr. [REDACTED] reported that the student was having great difficulty in his social relationships, constantly had disagreements and arguments with his peers and displayed inappropriate behavior in the classroom on a daily basis. Dr. [REDACTED] concluded that the student had some difficulty in the school setting due to a quick temper and disrespectful and inappropriate behavior toward adults and peers. Dr. [REDACTED] found that the student had a short attention span, poor concentration skills and a low frustration level. Dr. [REDACTED] recommended continued social work services to address poor impulse control, to improve social relationships, and improve the student's respect for authority figures and rules/regulations. Dr. [REDACTED] concluded his report with the statement that the upcoming meeting would determine the most appropriate classroom placement.

Prior to the April 27, 2007 IEP meeting, the school nurse, [REDACTED], completed a nursing report. She reported that the student had been hospitalized in a psychiatric facility on four occasions although she testified that she had not reviewed the records from the March 2005 hospitalizations. It is not clear if Ms. [REDACTED] was able to review documents from the 4<sup>th</sup> hospitalization at [REDACTED] Hospital. Ms. [REDACTED] recommended consultative nursing services for medication management. The case manager testified that Ms. [REDACTED] nursing report was presented at the April 2007 IEP meeting by the social worker and school psychologist.

[REDACTED] testified that she was the probation officer assigned to the student when he returned to the Juvenile Detention Center during the 2006-2007 school year. The student had been arrested and had entered an "admission" on December 21, 2006. The court continued the matter to February 21, 2007 pending completion of Ms. [REDACTED] Social Investigation. On that date the court continued the matter for disposition to March 7, 2007. Ms. [REDACTED] reported that the mother told her that she was unable to properly supervise the student and as a consequence the student was living with his uncle. His uncle reported a similar inability to properly supervise the student who came and went as he pleased. Ms. [REDACTED] also reported that the mother told her that the student was noncompliant with his medication. Ms. [REDACTED] recommended that the student be incarcerated as she did not believe that the student was capable of complying with the terms of any sentence of probation due to a lack of structure and supervision in his home. When Ms. [REDACTED] Social Investigation was presented to the Juvenile Court, the judge delayed sentencing and ordered that the student's case be referred to the [REDACTED].

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██████████ of the ██████████ Probation Office. The case was then assigned to ██████████ who assigned ██████████ to the case as the student's probation officer. All of the foregoing can be gleaned from the Social Investigation SD156 and the testimony of ██████████ ██████████ and ██████████ at the hearing.

The IEP team convened on April 25, 2007. Ms. ██████████ and the mother were in attendance at this meeting along with the case manager, school psychologist and school social worker. The IEP team determined that the student had a learning disability in the areas of basic reading skill, reading comprehension, math calculation and math reasoning. The IEP team concluded that there was a significant discrepancy between the student's achievement commensurate with his age and ability in basic reading skill, reading comprehension, math calculation and math reasoning. SD70 The IEP team also concluded that the student had an emotional disturbance. SD73 Again, there was no documentation about any discussion as to the criteria for finding an emotional disturbance and then an application of that criteria to this student. There seems to have been a casual assumption that the student's behavior should result in this particular disability category.

While there were no documents to indicate whether the student had met his 2006 IEP goals, goals were developed in the areas of language arts, mathematics, science, social science, and social/emotional, with all of the student's special education and related services to be delivered in a self-contained special education classroom for the remainder of 8<sup>th</sup> grade and for the student's freshman year in high school. The team recommended 90 minutes/month of social work services. SD84 ██████████ testified that both she and the student's mother requested a therapeutic day school placement at the April 27, 2007 IEP meeting. However, their request was neither documents nor discussed by the IEP team.

A functional analysis of the student's behavior was completed by the IEP team. As of April 25, 2007 the student still could not control his temper, could not control his anger, could not stop his verbal outbursts and could not stop threatening others. The plan focused on controlling his temper, decreasing verbal outburst, threatening others. Dr. ██████████ testified that he participated in the analysis and creation of the behavior intervention plan. In his opinion, the targeted behaviors in 2007 were different than the targeted behaviors in 2006 to-wit:

- 2006 targeted inappropriate behaviors: yelling-out, falling out of chair, knocking things over, banking on objects; sleeping; threatening others
- 2007 targeted inappropriate behaviors: anger, temper, verbal outbursts, threatening others

Dr. ██████████ testified that the 2007 document contains no statements as to the frequency, intensity or duration of the targeted inappropriate behaviors.

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The IEP Summary Sheet described the student's learning characteristics as follows:

- *has difficulty following directions*
- *processes information slowly*
- *has a short auditory attention span*
- *is distracted easily and loses focus/concentration often*
- *spells poorly*
- *has trouble putting ideas on paper*
- *has difficulty understanding concepts*
- *has difficulty following multiple verbal requests*
- *is frequently distracted by extraneous noises*
- *has difficulty copying from the board*
- *is slow to switch from one task to another PD36-68*

At the time of the development of the foregoing IEP, all of the IEP participants believed that the student would be released into the custody of his father who lived in the south suburbs. It was the understanding of the parties that the father would then enroll the student in school, accompanied by the IEP developed on April 27, 2007. Thereafter the student was released from the Juvenile Detention Center to his father and stayed with his father for about thirty days. The student was returned to the Juvenile Detention Center on or about June 23, 2007 when the father was unable to enroll the student in school. The student's probation was then revoked and testimony at the hearing indicated that the student was also non-compliant with the rules and regulations of the father's home. On June 23, 2007 the student returned to the Juvenile Detention Center, [REDACTED] requested another IEP meeting to discuss the placement of the student and asked that the school district have a residential coordinator in attendance.

[REDACTED] testified that he was a high school mathematics teacher, certified to teach mathematics, computer science and computer programming. Upon the student's return to the Juvenile Detention Center, he was placed in Mr. [REDACTED] classroom. Mr. [REDACTED] testified that he co-taught the class with [REDACTED] a special education teacher. Mr. [REDACTED] reported that the student "chose" not to participate in the math class. Mr. [REDACTED] reported that he had no idea what the student's reading and math abilities were during summer 2007

Mr. [REDACTED] testified that he team-taught with Mr. [REDACTED] and was responsible for making appropriate instructional modifications for the student. Mr. [REDACTED] testified that the student had difficulty following directions, had a short auditory attention span, processed oral information slowly, often lost focus or concentration, was easily distracted, spelled poorly, had trouble putting his ideas on paper, and had little keyboarding skills. Mr. [REDACTED] testified that the student was oppositionally defiant, verbally as well as physically, would throw things and used vulgar profane words. He was aware that the student was functioning at the 3<sup>rd</sup> grade level in reading. Mr. [REDACTED] testified that he could not

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determine if the student had met any of his IEP goals because the student was with him for such a short period of time that summer.

#### V. Placement Change – August 2007

An IEP meeting was held on July 24, 2007 at the [REDACTED]. The mother of the student attended, accompanied by [REDACTED] and [REDACTED]. The student was unable to attend as he had been suspended again from school and was in the Juvenile Detention Center. Dr. [REDACTED] and Dr. [REDACTED] were there along with [REDACTED] one of the school district's residential coordinators. The student's summer school teachers, [REDACTED] and [REDACTED] were in attendance and their testimony was consistent with that of the student's teachers at the April 2007 IEP meeting - the student did not want to be there, the student was vulgar and profane, the student did no work. Mr. [REDACTED] testified that he advised the IEP team that the student was disruptive, that he had a poor relationship with the student and that basically the student did no work in his classroom. Both Dr. [REDACTED] and Dr. [REDACTED] testified that the IEP team reconvened to consider residential placement. Dr. [REDACTED] testified that the student's need for social work services had increased from April 2007 to July 2007 as evidenced by more frequent misconduct reports and suspensions.

The IEP team considered residential placement for the student at the request of the student's probation officers. [REDACTED] testified that she attended the meeting at the request of the student's case manager and recalled that no one from the school district was recommending residential placement. She was provided with no information regarding the student prior to the IEP meeting. Ms. [REDACTED] testified that she reviewed the student's April 25, 2007 IEP while she was at the meeting. She testified that she listened to the reports from the summer school teachers including the teacher reports that the student was out of control in the classroom. She testified that then she determined that the student was not eligible for residential placement. Her testimony on that point as follows:

*Q. Now, when you said you determined he wasn't eligible, what criteria were you using?*

*A. Well, [REDACTED] – I'll just tell you about what I remember from [REDACTED] was the type of student who had some behavior concerns, but he was redirectable by his teachers. He had a good – an excellent rapport with his male teacher. And even though he had a blow-up with a female teacher, he later, uhm, was able to go back and apologize and make that situation right and proceed on, and continue to attend classes. Uhm, that's what I remember. I recall there were, when I read some of his reports, that he a lot of problems outside of school with breaking laws and curfews. I don't remember everything, but I know – I knew – I remember him breaking laws, being picked up by the police officers,*

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*and he had some struggles with his mother, but in the classroom, you know, I recall that, uh, I just remembered that it was just clear to me that this was a student who had some behavior problems but was redirectable. In my mind, that was not a student who had any psychotic features, any bipolar, any schizophrenia, delusions, hallucinations, or anything like that, and, you know, I just don't recall that being an issue.*  
**TRANSCRIPT 1-25-08 p.116-118**

Ms. [REDACTED] further testified that she was aware of the student's psychiatric hospitalizations at the IEP meeting but at the time of the hearing could not recall the student's specific diagnoses, struggling to remember "conduct disorder" or "intermittent". She testified that "If a student's educational process is not being interrupted and he's able to...be educated in a setting ...if his educational process is not being interfered with and he doesn't have those disorders<sup>4</sup>, then in my mind that is a child who can be educated in a lesser restrictive...educational environment. **TRANSCRIPT 1-25-08 pp.118-119.**

Ms. [REDACTED] testified that she wrote on the IEP that residential placement had been denied for this student "...because the educational needs of the student did not appear to be so severe, profound, or unusual that he could not access his education in a less restrictive environment". Finally, Ms. [REDACTED] testified that even if the IEP team had formed a consensus that the student required residential placement, she could have overridden that decision.

Ms. [REDACTED] testified that at the request of the student's probation officer, [REDACTED] the IEP team considered whether to change the student's placement to a private day school. She recalled that the IEP team considered that request and reached a consensus that a private day school would be a better placement for the student than the self-contained setting identified in April 2007. It must be noted that there was no change in the factual underpinnings of the placement determination at the April 2007 IEP meeting. It was thus hard for this hearing officer not to conclude that the therapeutic day placement was thrown out as a "bone" to the mother and the probation officers.

She testified that Probation Officer [REDACTED] then asked if the school district would co-fund the educational portion of a residential placement if the Juvenile Court determined that the student required residential placement for delinquency reasons. Ms. [REDACTED] testified that she then wrote on the IEP that the school district would co-fund a residential placement. She recalled that she believed at that time that the Juvenile Court was considering a residential placement for delinquency issues.

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<sup>4</sup> psychotic features, bi-polar disorder, schizophrenia, delusions, hallucinations

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On or about October 22, 2007 the student was discharged from the Juvenile Detention Center to the [REDACTED]. On or about October 22, 2007, the student started high school at a separate day school housed within [REDACTED].

## VI. Parent's Independent Evaluations

The mother asserts that the school district failed to provide a free appropriate public education to the student from September 5, 2005 to the present in that the school district failed to provide a full and individualized evaluation in a timely manner in order to adequately identify the nature and extent of the student's disabilities. More specifically, the parent asserts that the initial eligibility determination on April 29, 2004 was incomplete. That 2004 evaluation is beyond the reach of this hearing officer. However the testimony of the mother's independent evaluators/experts at the hearing was quite persuasive and is set forth hereafter.

### 1. Dr. [REDACTED] (diagnosis/remediation of learning disabilities)

Dr. [REDACTED] testified that she is the Director of [REDACTED], a private testing and remediation facility in [REDACTED]. She was offered as an expert in the diagnosis of learning disabilities and special education. The school district stipulated that she is an expert in the diagnosis of learning disabilities. The full text of her evaluation can be found at PD228.

Dr. [REDACTED] testified that she administered various assessments to the student over a three day span in her office in September 2007. Dr. [REDACTED] testified that she found the student engaging and cooperative. Dr. [REDACTED] assessed the student's current level of intellectual functioning by administering the Wechsler Intelligence Scale for Children-4<sup>th</sup> Edition (WISC-IV):

	Standard Score	
Verbal Index	75	Borderline Range
Comprehension Index	73	Borderline Range
Perceptual Reasoning Index	83	Low Average Range
Working Memory Index	68	Extremely Low Range
Processing Speed Index	69	Extremely Low Range
Full Scale IQ		

In addition, Dr. [REDACTED] assessed the student's language skills, auditory processing, visual processing, reading, written language, and mathematics. In reviewing the student's IEP's through 8<sup>th</sup> grade, Dr. [REDACTED] concluded that the student needed significant remediation and modification at each grade level for his diagnosed emotional disturbance and learning disabilities. She found no training in phonics or decoding. Dr. [REDACTED] testified that the student has not moved from "learning to read" in the 1<sup>st</sup> through 3<sup>rd</sup> grades to "reading to

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learn" in 4<sup>th</sup> through 9<sup>th</sup> grades. Dr. [REDACTED] found that the student is reading and spelling at a 1<sup>st</sup> to 2<sup>nd</sup> grade equivalent and critically needs a trained multi-sensory phonics teacher and assistive technology programs. Dr. [REDACTED] concluded that her evaluation indicated a profile of a student who has not overcome the debilitating affects of a combination of deficits in oral language, auditory and visual processing, phonological awareness and lack of phonics instruction.

Dr. [REDACTED] diagnosed the student with dyslexia which is a specific learning disability that is neurobiological in origin. The disability is not behavioral, psychological, motivational or social. It is characterized by difficulties with accurate and fluent word recognition and by poor spelling and decoding disabilities. Dr. [REDACTED] recommended a daily structured intensive phonics program of explicit, systematic, multisensory structured phonics instruction. Dr. [REDACTED] testified that the student needs an experiential rule-based structured environment where expectations are clearly stated and consistent routines are established.

Dr. [REDACTED] also found that the student has difficulties in visual-motor integration and copying i.e. the physical coordination aspect of copying and writing is difficult for him. In that regard, Dr. [REDACTED] discussed various assistive technology e.g. keyboarding skills.

Because the student cannot read or write anywhere near grade level, Dr. [REDACTED] concluded that the student cannot function in a classroom with other high school students. She strongly recommended that the student be placed in a small supportive multisensory classroom with individual attention like that offered at a residential program that offers daily oral language therapy, remediation in phonological awareness, and phonics training accompanied by significant social/emotional support. Dr. [REDACTED] made the following recommendation:

*[REDACTED] psychological health is the most important determining factor of his functioning. The priority must be to address his emotional and behavioral needs adequately...Given the chronic, debilitating nature of his psychiatric conditions, [REDACTED] critically needs to be in a highly structured living environment such as that offered in a therapeutic residential school, that can provide a high level of consistent and stability. Consistency needs to be across domains and across caregivers. Placement in a residential setting for children with severe behavioral disturbance is recommended as soon as possible....The extensive interventions that have been tried, which have coordinated medical and psychiatric resources, have not been adequate to stabilize [REDACTED] functioning...Obviously, the residential home will need to include a primary focus on psychiatric symptom management under the care of a psychiatrist with ongoing therapy interventions as an individual and in a group*

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The hearing officer has reviewed the extensive Psychoeducational Evaluation completed by Dr. [REDACTED] and it is clear that she is recommending residential treatment to stabilize and address the student's mental health needs and then address his educational needs. In addition, Dr. [REDACTED] recommended that the student receive an audiological evaluation of his central auditory process, comprehensive speech/language evaluation, occupational therapy, and an assistive technology evaluation.

Dr. [REDACTED] testified that she reviewed the student's IEP dated May 13, 2005 and noted the following:

- there was no reference to decoding
- there was no assessment of reading comprehension

Dr. [REDACTED] testified that she also reviewed the student's IEP dated April 20, 2006 and noted the following:

- the present level of performance for the language arts goals states that the student is reading at the 4<sup>th</sup> grade level, reading one syllable words and answering questions orally. Dr. [REDACTED] testified that students reading at the 1<sup>st</sup> grade level read one syllable words and answer questions orally. Those results are inconsistent with her evaluation of the student.
- there is no mention of how the school district is going to teach the student to read

Dr. [REDACTED] testified that she also reviewed the student's IEP dated April 25, 2007 including the psychological evaluation. She noted the following:

- there was nothing in the psychological evaluation regarding oral expression
- the student's reported IQ was much higher than she found in her evaluation
- the psychologist reported the KTEA letter and word recognition score
- the present level of performance for language arts merely states that the student is "reading below grade level"
- the present level of performance for math merely states that the student is "currently performing below grade level"
- the present level for social/emotional functioning states that the student "has difficulty interacting with peers and accepting instruction from staff"

Dr. [REDACTED] testified that the April 2007 psychological assessments by Dr. [REDACTED] should have given rise to further inquiry on the part of the psychologist i.e. that the test results obtained required clarification. Dr. [REDACTED] testified that the school district's psychological testing did not address spelling, auditory processing, phonological awareness, math applications, fluency skills either in reading or math, word finding skills, oral language skills, and listening skills. In short, Dr. [REDACTED] testified that the

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psychological assessment completed by the school district psychologist was neither comprehensive nor complete given the information available to the psychologist. In her opinion, the student has not made any educational progress in reading, writing or math.

2. Dr. [REDACTED] (auditory processing)

Dr. [REDACTED] is an audiologist with a private practice in [REDACTED] Illinois. The parties stipulated that she is an expert in the field of central auditory processing. In her opinion, a school district should suspect a central auditory processing disorder when a student has difficulty with reading, spelling, written language, speech/language deficits particularly in receptive language, phonemic awareness, early/chronic ear infections, early childhood sensory integration problems, and significant difficulty with music. In her presentations, Dr. [REDACTED] describes "pink flags" to teachers and ways to informally screen in a school setting.

Dr. [REDACTED] assessed the student on October 31, 2007. As part of her evaluation, she reviewed the psychological evaluation prepared by Dr. [REDACTED] on April 2007. In her review, she noticed a number of "pink flags":

- the student was 14 years old with an overall average cognitive ability yet reading at the 3<sup>rd</sup> grade level
- discrepant abilities in verbal comprehension, language development and short-term memory modalities
- processing deficits in the area of visual-motor coordination/integration
- academic performance was significantly discrepant from the student's grade level expectancy in letter and word recognition, reading comprehension and math computation
- working at the 2<sup>nd</sup> grade level in decoding

As part of her evaluation, Dr. [REDACTED] reviewed the psychological evaluation prepared in 2004 while the student was then in 5<sup>th</sup> grade. She looked at the student's scores on the Kaufman and noticed that he was then 3-4 years behind in reading and spelling. That was a "pink flag" to her.

As part of her evaluation, Dr. [REDACTED] reviewed the IEP Summary Sheets attached to the student's May 13, 2005, April 20, 2006, April 25, 2007 and July 24, 2007 IEP's. In her opinion, every learning characteristic attributed to the student was a "pink flag".

As part of her evaluation, Dr. [REDACTED] reviewed the Social Assessment completed by Dr. [REDACTED] on April 24, 2007. In her opinion, she noticed a number of "pink flags":

- the student's academic performance
- the student's history of difficulties

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- the student's difficulties following directions
- the depressed standard scores on the ITBS compared to his age

Dr. [REDACTED] evaluated the student's hearing and concluded that he had perfectly normal hearing. She then administered her usual battery of tests and concluded that the student had difficulty on tests of degraded speech taxing auditory discrimination and closure skills. She found evidence of an auditory decoding deficit which in her opinion almost always affects phonological decoding and reading development.

Dr. [REDACTED] testified that the ability to process auditory information is a neurological condition present at birth. In her opinion, based upon her review of the records, the student should have been evaluated in this area in 2<sup>nd</sup> grade and speech/language services provided to the student to address this area of deficit and appropriate classroom modifications.

3. [REDACTED] (speech/language pathologist)

[REDACTED] testified that she is a certified speech language pathologist who completed an evaluation of the student. Ms. [REDACTED] is also a certified regular education teacher in the State of Illinois. The parties stipulated that she is an expert in the area of speech pathology. Dr. [REDACTED] had recommended that a speech pathologist assess the student to determine whether or not the student had a mixed receptive-expressive language disorder. She met with the student at the [REDACTED] on October 26, 2007. She reported that the student was cooperative and sociable throughout the evaluation.

Based on her assessments, Ms. [REDACTED] concluded that the student demonstrated a severe receptive and expressive language disorder consistent with the findings of Dr. [REDACTED] and Dr. [REDACTED] PD226. In her opinion, the student has had this deficit since birth. She reviewed the student's poor grades in elementary school. Ms. [REDACTED] testified that in her opinion the student should have been evaluated for a possible speech/language deficit as early as 3<sup>rd</sup> grade. She reported that the student's areas of greatest concern included poor interpretation of auditorily-presented information, particularly for development of word meaning and use; difficulty producing sentences with semantic, syntactic and sequential integrity, and limited repair strategies to self-monitor and make himself understood. Ms. [REDACTED] suggested remediation strategies within her report and recommended that the student work with a speech pathologist for one hour/week.

Ms. [REDACTED] reviewed the school district's psychological report prepared in April 2007. In her opinion, the presence of discrepant abilities in verbal comprehension and language development should have been a "red flag" to the psychologist. Ms. [REDACTED] testified that a speech/language assessment should have been done as part of the student's reevaluation.

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Ms. [REDACTED] reviewed the April 27, 2007 IEP, particularly the learning characteristics of the student. In her opinion, those learning characteristics suggest that the IEP team should have considered a speech/language assessment.

4. [REDACTED] – occupational therapy

[REDACTED] testified that she is an occupational therapist who works in the school setting in the suburbs and also has her own private practice. She is certified in the area of sensory integration. In her role as a school based occupational therapist, she focuses on the identified sensory integration needs of student e.g. motor planning, self-care, mobility around school, modulation or regulation.

Ms. [REDACTED] was unable to complete a standardized school-based occupational therapy assessment because she did not observe the student in a school setting. She did, however, review the student's grades from 1997-2004 and concluded that the student was struggling in kindergarten and his grades deteriorated thereafter. PD175 Ms. [REDACTED] reviewed the student's IEP dated May 13, 2005 in particular the Summary Sheet. She noted that in 2005 the student was reported to be easily distracted, to have trouble putting ideas on paper, to have difficulty following multiple verbal requests, etc. Normally, Ms. [REDACTED] would have observed the student to determine whether the student's problems could be attributed to where he was seated in the classroom, problems with self-regulation, whether the task appeared too hard, whether there was a problem with the environment. Normally, Ms. [REDACTED] would have asked questions to determine the settings where the student was usually distracted, whether the student had problems putting ideas on paper, whether the student had difficulty following multiple requests. If the answer to the foregoing inquires had been in the affirmative, then she would have advocated at an IEP meeting for an occupational therapy assessment. In Ms. [REDACTED] opinion, if the student had been reported to have the aforesaid characteristics at an IEP meeting, the IEP team should have sought an occupational therapy evaluation to complete the picture.

Ms. [REDACTED] testified that her assessment would have been focused on whether or not the behavior of the student could be addressed in occupational therapy or whether they could be attributed to other causes. Ms. [REDACTED] noted that the student has been diagnosed with attention deficit hyperactivity disorder and it is not uncommon for students with this diagnosis to have sensory integration issues.

Ms. [REDACTED] testified that she reviewed the student's behavior intervention plans and noted an occupational therapist was not a member of the team that considered the student's behavior and developed these plans. In her opinion, the assessment of a student's behavior should focus on whether the problem is behavioral or a sensory integration issue.

Ms. [REDACTED] testified that she reviewed the student's psychological evaluation in April 2007 and noted the low scores on the Beery-Buktenica of Visual-Motor Integration

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(VMI), particularly given the low scores in the other areas assessed by the psychologist. In her opinion the test protocols suggest that the test was administered in a non-standardized manner but there was no notation within the psychological evaluation regarding a non-standardized administration. In her opinion, the scores obtained for this student should have triggered a referral for an occupational therapy assessment by the psychologist. She recommended that a school-based occupational therapy assessment be completed for this student.

5. Dr. [REDACTED] (assistive technology)

Dr. [REDACTED] testified that she is a speech/language pathologist with a special expertise in the area of assistive technology. The parties stipulated that she was an expert in the area of speech/pathology and assistive technology. Dr. [REDACTED] reviewed the student's records looking for "red flags" i.e. student is struggling with reading, writing and spelling, student is functioning significantly below their age and grade level in those areas. In her opinion, assistive technology would provide a student with the aforesaid profile a way to access print or complete writing assignments.

Dr. [REDACTED] completed an informal assessments of the student in December 2007. She reviewed the student's IEP's from 2004-2007. She reviewed the evaluations completed by Dr. [REDACTED], Dr. [REDACTED] and [REDACTED]. She reviewed the discharge summaries from the four psychiatric hospitalizations. The student presented as significantly below grade and his learning characteristics on each IEP reflected a student struggling in the classroom. The documents suggested that the student lacked social skills. She noted that the IEP dated April 20, 2006 indicated that the team did not believe that the student required an assistive technology assessment. In light of his classroom performance and behavior, Dr. [REDACTED] could not understand that statement. Dr. [REDACTED] reviewed the April 27, 2007 IEP and noted that the standard scores and grade equivalents on the Kaufman Test of Educational Achievement reflected minimal or no educational progress. She noted that the IEP team stated that the student required assistive technology but there was no indication that an assistive technology assessment had been completed. The document merely listed "computer and calculator".

In the opinion of Dr. [REDACTED] taken as a whole, whatever the school district was doing had not been working for this student. In the opinion of Dr. [REDACTED] her review of the student's school records alone provided much evidence that this student has need an assistive technology evaluation and has needed that evolution for a long time. Dr. [REDACTED] recommended that the student receive an assistive technology evaluation, focused on his ability to use software to improve and to give him assistance to access print. She recommended that the evaluation should focus on the student's auditory processing, his reading, his ability to access print, his ability to write and his ability to spell as he is writing.

6. Dr. [REDACTED] (psychiatric)

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Dr. [REDACTED] is a board-certified child and adolescent psychiatrist. She is the clinical director of the day school at [REDACTED] Hospital. In that connection she monitors the progress both educationally and behaviorally of the students. The parties stipulated that she is an expert in her field.

Dr. [REDACTED] testified that she reviewed the student's Individual Education Plans, his psychological evaluations, and Discharge Summaries prior to meeting with the student on September 25, 2007. She spent approximately sixty minutes with the student at the Juvenile Detention Center. Thereafter, Dr. [REDACTED] prepared a Psychiatric Evaluation of the student. PD267 In her opinion the records were clear – the student was impulsive, inattentive, had limited insight, cognitive deficits, and impaired judgment. Dr. [REDACTED] was of the opinion that the student lacks internal controls and needs consistent controls and intensive specialized treatment.

Dr. [REDACTED] concluded that the student would definitely benefit from a more structured therapeutic residential school that could provide a high level of structure, consistency and stability across all domains, in both his living and educational settings. Dr. [REDACTED] testified that the student requires 24-hour supervision of his explosive behavior and continued psychiatric treatment for medication management. Dr. [REDACTED] testified that the goal of 24-hour supervision would be reintegrating the student into the mainstream as quickly as possible.

#### APPLICABLE LAW

The law applicable to the facts in this case is set forth in the Individuals with Disabilities Education Act (IDEA), 20 USC §1401 et seq., the federal regulations to IDEA, 34 CFR Part 300, the School Code of Illinois, 105 ILCS §5/14-8.02 et seq., and the applicable state regulations, 23 Ill.Admin.Code Part 226. The local school district bears the burden of proof that at all times relevant it properly identified the nature and severity of the student's suspected disabilities and if appropriate, that it offered the student a free appropriate public education in the least restrictive environment, consistent with procedural safeguards.

*The term "child with a disability" means a child evaluated in accordance with Secs. 300.304 through 300.311 as ...having a serious emotional disturbance (hereafter after referred to as emotional disturbance) or a specific learning disability and who, by reason thereof, needs special education and related services. 34 CFR §300.8*

*(i) Emotional disturbance a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:*

*(A) an inability to learn that cannot be explained by intellectual, sensory or health factors.*

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- (B) *an inability to build or maintain satisfactory interpersonal relationships with peers and teachers*
- (C) *inappropriate types of behaviors or feelings under normal circumstances*
- (D) *a general pervasive mood of unhappiness or depression*
- (E) *a tendency to develop physical symptoms or fears associated with personal or school problems*

(ii) *Emotional disturbances include schizophrenia. The term does not apply to children who are socially maladjusted unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i). 34 CFR §300.8(c)(4)*

In an administrative hearing, the party seeking the relief bears the burden of proof. *Schaffer v. Weast*, 126 S.Ct. 528 (2005). Pursuant to the Illinois School Code, the school district bears the statutory burden that at all times relevant it properly identified the nature and severity of the student's suspected disabilities.

#### APPLICATION OF LAW TO THE FACTS

In *Board of Education, Hendrick Hudson Central School District. v. Rowley*, 458 US 176 (1982) ("Rowley"), the Supreme Court set forth a two pronged test for evaluating whether or not a school district has complied with applicable special education laws - there must be compliance with statutory procedures and then the individualized education program (IEP) developed through such procedures must be reasonably calculated to enable the student to receive educational benefit.

In *Kevin T. v. Elmhurst Community School District 205*, 2002 WL 433061 (N.D.II 2002) the court restated the basic tenets of *Rowley*, supra:

IDEA seeks to assure that all children with disabilities have available to them...a free appropriate public education ("FAPE"). To assure that disabled children receive a FAPE, the IDEA requires that school districts cooperate with the parents in creating an "individualized education program ("IEP") which sets forth the child's educational goals. To determine whether the school district has provided a FAPE, courts must determine whether the school: (1) complied with the IDEA's procedural requirements; and (2) developed an IEP that is "reasonably calculated to enable the child to receive educational benefits...

However, while the procedural requirements of IDEA have great importance, Congress implemented them to achieve "full participation of concerned parties throughout the development of the IEP. Therefore, where the parents fully participate in the plan to develop the IEP, the first prong of *Rowley* is usually met.

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In the instant case, the mother does not raise any issue regarding procedural irregularities.

The hearing officer has read all of the material presented at the hearing. All of the school district test protocols, evaluations and Individual Education Plans were considered. The hearing officer considered the Discharge Summaries from four psychiatric hospitalizations. The Social Investigation prepared by the Probation Officer assigned to the student by the Juvenile Court of [REDACTED] was considered.

### ***DUE DEFERENCE***

The hearing officer has carefully reviewed the closing statement by counsel for the school district which asks that the hearing officer give due deference to decisions made by educational professionals.

In *Board of Educ. of Murphysboro Community Unit School Dist. No. 186 v. Illinois State Board of Education*, 41 F.3d 1162 (7<sup>th</sup> Cir.1994) the school district argued that the court was required to give deference to the educators. However, the court noted that requiring a court to defer to the educator's decisions would make it very difficult for parents to prevail in situations where they disagreed with the educator's IEP, a result not contemplated by IDEA.

A review of the student's records by this hearing officer leads to the inescapable conclusion that the initial evaluation of this student was delayed beyond the time when any school district should have found appropriate. The student struggled through kindergarten, 1<sup>st</sup> grade, 2<sup>nd</sup> grade, 3<sup>rd</sup> grade and 4<sup>th</sup> grade and at the end of the day HE COULD NOT READ. The student struggled through kindergarten, 1<sup>st</sup> grade, 2<sup>nd</sup> grade, 3<sup>rd</sup> grade and 4<sup>th</sup> grade and at the end of the day, his behavior was out of control. The student transferred schools in Fall 2004 and almost within days of his enrollment, that new school was focused on his behavior. The various assessments of the student were discussed at a meeting on April 29, 2004 and lip-service paid to a determination that the student had a learning disability and an emotional disturbance. The goals and objectives do not address student's inability to read – there was no attempt to provide a systemic phonics based course of instruction to teach this student to read and there was no attempt to place this student in a setting where his behavior would not interfere with his education. The evaluation and the IEP developed in 2004 are beyond the reach of this hearing officer but the documents are compelling evidence as to the reasons the school district proceeded down the path it selected.

The most recent school district psychological evaluation of this student was completed in April 2007 by Dr. [REDACTED]. Dr. [REDACTED] testimony created the clear inference that she was unable to establish any rapport with the student. Dr. [REDACTED] testified that she just could not find the student on enough occasions to complete her psychological evaluation and had to hurry through her assessments on the one occasion she met with the

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student. The only problem with this statement is that Dr. [REDACTED] did not note on her evaluation that she did not have sufficient time with the student.

By the time that Dr. [REDACTED] testified at the hearing she had apparently decided that not only had she completed a comprehensive psychological assessment of the student, there was no need to investigate further, then or now.

Dr. [REDACTED] found that this 8<sup>th</sup> grade student's reading comprehension was at the 2.11 grade equivalent yet she testified that she did not need to administer any further assessments of the student's reading – no tests of the student's phonological awareness, nonsense word decoding skills, word recognition fluency, decoding fluency, associational fluency, naming facility written language, listening comprehension, or oral expression and no test of the student's spelling abilities or lack thereof.

Despite noting that the student had discrepant abilities in verbal comprehension, language abilities and short term memory modalities, Dr. [REDACTED] testified that she did not consider an auditory processing evaluation. Despite noting deficits in the area of visual-motor coordination/integration, Dr. [REDACTED] testified that she did not consider an auditory processing evaluation.

Despite noting discrepant abilities in verbal comprehension and language development, Dr. [REDACTED] testified that she saw no need to investigate further, no need for a speech/language assessment.

Despite low scores on the Beery-Buktenica Test of Visual-Motor Integration and the other low scores obtained by her, Dr. [REDACTED] did not consider an occupational therapy evaluation of this student. Despite information that the student was easily distracted, had trouble putting ideas on paper and had difficulty following multiple verbal requests, the school district members of the IEP team never considered an occupational therapy evaluation of this student.

I find that I cannot defer to decisions predicated upon an incomplete re-evaluation of this student in 2007 which was predicated upon an incomplete evaluation of this student in 2004.

This student has a serious learning disability compounded by an auditory processing deficit compounded by a severe receptive and expressive language disorder, all of which are set forth in the reports completed by and testimony given by Dr. [REDACTED], Dr. [REDACTED] and [REDACTED]. I found the testimony of the foregoing individuals to be truthful, compelling and persuasive. All of these individuals were of the opinion that as a consequence of the failure to accurately assess the student, he now requires intense remediation. All of these individuals were aware of the student's "emotional disturbance" and his psychiatric hospitalizations. Dr. [REDACTED] testimony as to the most appropriate placement for this student was particularly compelling:

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██████████ psychological health is the most important determining factor of his functioning. The priority must be to address his emotional and behavioral needs adequately...Given the chronic, debilitating nature of his psychiatric conditions, ██████████ critically needs to be in a highly structured living environment such as that offered in a therapeutic residential school, that can provide a high level of consistent and stability. Consistency needs to be across domains and across caregivers. Placement in a residential setting for children with severe behavioral disturbance is recommended as soon as possible...The extensive interventions that have been tried, which have coordinated medical and psychiatric resources, have not been adequate to stabilize ██████████ functioning... Obviously, the residential home will need to include a primary focus on psychiatric symptom management under the care of a psychiatrist with ongoing therapy interventions as an individual and in a group

A review of the evidence presents an overwhelming picture of a student whose behavior so interfered with his ability to receive an education that he should have been placed in a therapeutic day placement at the time that he was found eligible for special education. Subsequent thereto, the student's behavior was so out of control and so mis-managed by the school district that he should have been placed in a therapeutic day placement. The testimony showed that some school district professionals considered a day placement but never actually discussed this option at a duly noticed IEP meeting. This was described by ██████████ as the "what are we going to do about ██████████ period. At this point in time, a therapeutic day placement is no longer an option.

Fast forward to April 2007 where it was truly unfortunate for this student that at the time of his three-year evaluation he found himself at the Juvenile Detention Center attending the ██████████. The educational professionals who evaluated this student went through the motions, producing an evaluation that does not even begin to evaluate the student in all areas of suspected disability. The independent evaluations secured by the mother of this student were compelling and persuasive and lead to an inescapable conclusion – the student's behavior is so intertwined in his education that it cannot be separated. This student requires precisely what the independent evaluators recommended – a private residential treatment facility where the student's psychiatric issues can be addressed and consistently monitored and where the student's significant learning disabilities can finally the attention they deserve.

### **NEED FOR RESIDENTIAL PLACEMENT**

The evidence is clear that the student requires specialized placement. The clear inference to be drawn from the testimony of Dr. ██████████ and Dr. ██████████ is that the student cannot receive educational benefit in any setting less restrictive than a residential school. In *Board of Educ. of Township High Sch. Dist. No. 211 v. Ross ex rel Ross, 486 F.3d 267 (7<sup>th</sup>*

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*Cir.2007*) the Seventh Circuit used a common sense approach to the issue of "least restrictive environment" – if the student's education could be satisfactory, then the student cannot be removed into a more restrictive setting. Rather than adopt any sort of multi-factor test for assessing whether a child may remain in a regular school, the court looked at whether the education in the regular education school was satisfactory and if not, whether reasonable measures would have made it so. In *Ross*, the school district successfully argued that it could not make placement at the regular education high school satisfactory. Here, the evidence persuades this hearing officer that there is nothing that the school district could do to make a self-contained special education classroom or a separate day school satisfactory for this student. He requires specialized placement in a residential setting.

In *Dale M. v. Board of Education of Bradley-Bourbonnais High School District No. 307*, 237 F.3d 813 (7th Cir.2001), the court distinguished between services primarily oriented toward enabling a disabled child to obtain an education and services oriented more toward preventing the child from engaging in criminal activities. The former are "related services" within the meaning of IDEA, the latter are not. In that case, the school district was being asked to pay for the residential placement of a student. The court characterized the purpose of the "service" was to keep the student out of jail and concluded that the student's problems were not primarily educational in nature. The court held that the residential placement was merely for the purpose of confinement. In the instant case, it is clear that this student's problems are primarily educational in nature and that his emotional problems cannot be segregable from the learning process. In fact, it is clear from the testimony that unless and until the student's emotional problems are appropriately addressed, this student cannot receive the educational services that he clearly requires.

In *Warren Township H.Sch.Dist.121*, 20 IDELR 130 (SEA IL 1993) the court stated as follows:

*the case does not present a child who is performing well in school but who is out of control at home. In such a case, the emotional problems and need for greater structure outside of the school environment would be independent of the student's educational needs. In this case, the absence of the structure of a 24 hour residential placement leaves the child at the mercy of an environment in which he cannot function appropriately and leads to detentions and hospitalizations which necessarily denies him the educational structure and continuity that he needs to learn. Without that structure any short term gains ...are at risk of being nullified by the external environment...the child's emotional problems and his educational needs cannot be segregated. They are so intertwined that a residential placement is the least restrictive environment in which he can achieve non-trivial, non-fleeting educational benefits.*

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The independent educational professionals all concur – the student requires residential placement. The psychiatric evaluation by Dr. [REDACTED] just puts a final period on all of this. Dr. [REDACTED] is of the opinion that the student requires 24 hour supervision of his explosive behavior and continued psychiatric treatment for medication management. It seems clear that Dr. [REDACTED] is of the same mind as Dr. [REDACTED] – the primary focus of the student’s residential placement should be the stabilization of the student’s emotional disturbance so that he is ready to learn. One cannot happen without the other – they are intertwined.

#### ***DENIAL OF FREE APPROPRIATE PUBLIC EDUCATION***

There is substantial evidence in the record that the student was denied a free appropriate public education during 7<sup>th</sup> and 8<sup>th</sup> grade. The plain fact is that the student could not read in 2004 and in 2007 still cannot read. The student’s behavior within the school setting escalated. Dr. [REDACTED] reviewed the goals and objectives contained within the Individual Educational Plans implemented in 7<sup>th</sup> and 8<sup>th</sup> grade and found statements as to the student’s present level of performance that either could not have been accurate (“reading at the 4<sup>th</sup> grade level”) or so vague that it would be impossible to discern what the author meant or how to measure performance (“difficulty interacting with peers and accepting instruction from staff”). IDEA requires that there be some academic progress. In this instant case, there is no evidence that the student made any progress in the areas of his learning or his behavior and thus the allegation by the mother is sustained. See *Independent School District No. 701, Hibbing Public Schools v. J.T.*, 45 IDELR 92 (D.C.Minn.2006) where the decision of the hearing officer was upheld upon a lack of evidence showing progress.

#### ***COMPENSATORY EDUCATIONAL SERVICES***

This hearing officer finds that the student is entitled to an award of compensatory educational services to put him in the same position that he would have occupied, had the school complied with IDEA. *Sanford School Department*, 47 IDELR 176 (Maine State Educational Agency, October 31, 2006). Further, it is well within the power of this hearing officer to award additional time at an appropriate residential placement. *Sanford, supra*.

#### ***REIMBURSEMENT FOR INDEPENDENT EVALUATIONS***

The evidence is overwhelming that the school district never assessed the student in all areas related to the suspected disability as required by IDEA. The Illinois School Code is clear: if the school district’s evaluation is shown to be inappropriate, the district shall reimburse the parent for the cost of the evaluation. Collectively, Dr. [REDACTED], Dr. [REDACTED], and [REDACTED] provided the missing components of this student’s evaluation. I find that appropriate compensation for the failure to provide the student

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with an education for the last two years requires that the school district pay for or reimburse the mother for the aforesaid evaluations.

**DECISION**

- A. The school district failed to establish that at all times relevant it properly identified the nature and severity of this student's disabilities and that as a consequence the Individual Education Plans developed for the student's 7th and 8th grade and proposed for the student's 9<sup>th</sup> grade did not and would not provide the student with a free and appropriate public education.
- B. The student is in need of intensive remediation as a result of the aforesaid failure.
- C. That the student requires residential placement for educational reasons. The student shall be placed at a residential facility within fifteen days of the effective date of this Decision. The residential facility must be able to address the student's significant emotional and educational needs for the remainder of the 2007-2008 academic year.
- D. That the student's Individual Education Plan developed in July 2007 be revised to reflect that the student has a specific learning disability as more fully described within the report of Dr. [REDACTED]
- E. That the student's Individual Education plan developed in July 2007 be revised to reflect that the student has a mixed receptive-expressive language as more fully described within the report of [REDACTED]
- F. That the student's Individual Education developed in July 2007 be revised to reflect that the student has an auditory processing deficit requiring appropriate speech/language services as more fully described within the report of Dr. [REDACTED]  
[REDACTED]
- G. That the student shall be evaluated by an occupational therapist in the residential setting in the area identified by [REDACTED]
- H. That the student shall be evaluated by an audiologist in the residential setting to determine what assistive technology is appropriate for the student
- I. That the student shall be evaluated by a psychiatrist to determine a definitive diagnosis and course of treatment for the student in the residential setting.
- J. That an IEP meeting shall be held at the residential facility for the purpose of revising almost every component of the July 2007 to reflect the findings and recommendations of the independent evaluators and this Decision.

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- K. That as educational compensation for the denial of a free appropriate public education in the least restrictive environment for the last three years, the school district is ordered to pay for residential placement of this student through the school year ending June 2011.

**RIGHT TO REQUEST CLARIFICATION**

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought and a copy of the request shall be mailed to the party and to the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, Illinois 62777. The right to request such a 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. **THE EFFECTIVE DATE OF THIS DECISION IS THE DATE OF RECEIPT OF ANY CLARIFICATION OF THIS DECISION.**

**RIGHT TO FILE A CIVIL ACTION**

This decision shall be binding upon the parties unless a civil action is commenced. Any party to this hearing aggrieved by this decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-8.01(i), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision was mailed to a party.

ISSUED this 25th day of April 2008.



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CAROLYN ANN SMARON  
Impartial Due Process Hearing Officer

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**CERTIFICATE AND AFFIDAVIT OF DELIVERY**

The undersigned hereby certifies that a copy of the Decision and Order was mailed to the following parties, via certified mail:

Ms. [REDACTED]  
Attorney at Law

[REDACTED]  
[REDACTED], Illinois [REDACTED]

Ms. [REDACTED]  
Attorney at Law

[REDACTED]  
[REDACTED] Illinois [REDACTED]

Mr. [REDACTED]  
Due Process Coordinator  
Illinois State Board of Education  
100 North First Street  
Springfield, IL 62777-0001

on April 25, 2008.

*CA Smaron*

Carolyn Ann Smaron  
Due Process Hearing Officer  
635 Argyle Avenue  
Flossmoor, Illinois 60422  
708 798 0966 (facsimile 708 798 3430)  
[smaron@sbcglobal.net](mailto:smaron@sbcglobal.net)

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