

Case Number: 2008-0132

[Redacted] vs. [Redacted]

Hearing Officer: Kristine Anderson

Illinois State Board of Education
Special Education Services
100 North First Street
Springfield, Illinois 62777

Impartial Due Process Hearing Decision Cover Page

Instructions: Complete this form and return it along with the decision. The information collected on this form will be used for the purpose of indexing the decision by subject matter as required by 23 Illinois Administrative Code 226-695

District Name [Redacted]

Phone: [Redacted]

Superintendent [Redacted]
Address [Redacted]
Represented by [Redacted]

Parent Name [Redacted]

Phone: [Redacted]

Address [Redacted]
Represented by [Redacted]

Date and Timelines

Date of Written Request: 01/29/2008
Date of Pre-hearing Conf: 03/10/2009

Date of Hearing: 06/16/2009 to 6/17/2009 12:00:00 AM
Date of Decision:

Summary of Decision

Parents brought due process complaint asserting numerous issues relating to the formation and implementation of the Student's IEPs. The HO found that the District had provided the Student with FAPE on the majority of issues asserted by the Parents. The District's failure to address the Student's reading and writing deficits for one school year, and to administer an appropriate vocational evaluation resulted in denial of FAPE

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ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

-)
-) **ISBE CASE NO. 2008-0132**
-)
-) **Kristine Anderson**
-) Impartial Due Process
-) Hearing Officer

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ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

[REDACTED]))
))
vs.	Student)	Case No. 2008-132
)	
[REDACTED])	
	Local School District)	

KRISTINE L. ANDERSON, Hearing Officer

HEARING DECISION AND ORDER

This matter comes before me pursuant to the due process hearing request of the Student's parents, [REDACTED] on behalf of their daughter, [REDACTED]. The family is represented by [REDACTED] of [REDACTED] and [REDACTED]. The District is represented by [REDACTED] of [REDACTED]. I have jurisdiction to hear and decide this matter pursuant to 105 ILCS 5/14-8.02(a) et. seq., and 23 Illinois Administrative Code §§226.600 et. seq.

PROCEDURAL HISTORY

This is a case with a long procedural history. I was appointed on June 11, 2008, and am the third Hearing Officer in this matter. Ms. [REDACTED] who was retained by the family in early January 2009, is the third attorney to represent the family since I have been the Hearing Officer. Her co-counsel, Mr. [REDACTED] previously represented the family and rejoined the case in the days leading up to the hearing. The record indicates that the Parents filed the original due process complaint on October 16, 2007. The parties participated in a resolution conference on November 13, 2007 and were able to resolve some, but not all, of the issues in dispute. In a status call on January 8, 2008, the Hearing Officer at the time ruled that she did not have jurisdiction over the remaining issues in dispute. She granted the Parents' request to file an amended complaint, which the Parents filed on January 21, 2008. On January 22, 2008 the Hearing Officer ruled that there were still a number of deficiencies in the amended complaint, and gave the Parents an additional week to cure the deficiencies. The Parents filed another amended complaint on January 29. On February 14, 2008, the Hearing Officer struck all but two of the issues in the January 29 amended complaint.

In addition to filing the amended complaint on January 29, the Parents provided the District with a request for three independent educational evaluations on January 30, 2008. The District refused the Parents' request and, consistent with applicable law, filed a due process complaint on the issue of independent evaluations on February 4, 2008. ISBE joined the District's complaint with the Parents' pending complaint on February 7, 2008.

The pre-hearing conference took place on February 12 and March 10, 2009.

ISSUES

- **Parents' Issues:**

1. The previous Hearing Officer ruled that two issues in the amended complaint were justiciable. Whether the District failed to implement the mentally impaired Student's IEP as written?
2. Whether the District developed IEPs that denied the Student FAPE and denied her the related services needed to benefit from her special education?

- **District's Issues:**

On January 30, 2008, the Parents requested the District to approve three independent educational evaluations in the areas of assistive technology, speech and language and occupational therapy. Because the District disagreed with the need for these independent educational evaluations, it filed a due process complaint on February 4, 2008. The complaint, which was required by Section 226.180(c) of the Ill. Admin. Code, raises the sole issue of whether the District's evaluations were appropriate and administered properly. Because it is the filing party on the issue, the District bears the burden of proof to demonstrate that its evaluations were appropriate and administered properly.

RELIEF REQUESTED:

- **Parents' Request for Relief**

The Parents request that the IHO issue an Order:

1. That the District violated the procedural rights of the Parents and denied the Parents their right to participate in the formulation of FAPE;
2. That the District denied the Student FAPE;
3. That the District must implement the Student's IEP's fully as written;
4. That finds that the District's IEP's were inappropriate as to their lack of specially designed instruction responsive to the Student's needs, and inappropriate as to their lack of related services required for the Student to benefit from her special education;
5. That requires the District to provide compensatory services to the Student at the [REDACTED] in [REDACTED] IL, in the form of:
 - 2 years of [REDACTED] language programming
 - 100 hours of direct speech and language therapy
 - 100 hours of instruction using the [REDACTED] program
6. That requires the District to provide additional compensatory education consisting of 100 hours of direct occupational therapy services;
7. That requires the District to provide compensatory education in the form of AT services needed by the Student to benefit from her special education, and to be provided by [REDACTED] Inc., [REDACTED] President;
8. That such additional compensatory education shall include a minimum of \$10,000 worth of devices and services, and training in the use of such AT, all according to the Petitioner's own choosing for use at home and during instruction;
9. That requires the District to pay reasonable transportation costs to and from [REDACTED] and other compensatory service providers.
10. That the Petitioners are the prevailing party in this matter and such other relief as justice may require.

- **District's Request for Relief**

The District requests relief in the form of an order denying the Parents' request, as well as a finding that the request was frivolous, unreasonable, without foundation and meant to cause unnecessary delay and

needlessly increase the cost of these proceedings.

FINDINGS OF FACT

█ is a 17 year old student who recently completed her sophomore year at █. For the relevant time period, █ has received special education services under the disability classifications of mental impairment and speech and language. A cognitive evaluation administered by the Parents' consultant in the fall of 2006 is not to the contrary. It revealed that █ functions in the moderately mentally impaired range and has severe language deficits. (9/26/06 Report of Comprehensive Cognitive Evaluation, p. 1, Ex 15) For the period at issue, █ has attended a combination of special and regular education classes. Despite her disabilities, █ Parents want her to be educated in regular classes to the greatest extent possible. Though some of the staff members had misgivings about mainstreaming █ the District has accommodated the Parents on this issue. Indeed, █ participation in regular classes has increased during the period at issue, and the evidence shows that she has succeeded in these classes with modifications and paraprofessional assistance. Notably, all █ teachers who testified stated that █ made academic progress and received educational benefit from her educational program and the classes she attended.

The Parents agree that █ has benefited from attending regular classes. Nevertheless, they contend that the District has denied their daughter FAPE by failing to provide her with IEP's that appropriately addressed her needs in the areas of reading and written language instruction, speech therapy, occupational therapy, and assistive technology to help minimize her deficits. They also assert that the District has failed to adequately provide █ with transition planning to help her prepare for life after she leaves school. In addition, to the extent that █ IEP's included appropriate goals, the Parents assert that the District failed to implement those goals. Relevant testimony and documentary evidence is summarized below.

█ 7th GRADE YEAR

- **The May 19, 2005 IEP**

Because of the two year statute of limitations period, the relevant time period for this matter extends back to January 29, 2006. At that time, █ was in 7th grade and was receiving special education services pursuant to an IEP that was that written on May 19, 2005. (See 5/19/05 IEP, p. P-270, Ex 19) At the hearing, however, it became evident that this period was not in dispute. The Parents did not present any credible evidence to indicate that the District failed to provide █ with an appropriate IEP or by failing to implement the IEP as written. To the contrary, the Parents called two █ 7th grade teachers, Ms. █ (7th grade science) and Mr. █ (7th and 8th grade social studies). They both testified that █ received the modifications and accommodations required by her IEP, that she passed their classes, and received an educational benefit from them.

The May 19, 2005 IEP is nevertheless notable because it demonstrates that the Parents were active and influential members of the IEP team. Specifically, notes from that IEP meeting show that the team initially recommended that █ receive science and social studies instruction in a special education class. The Parents, however, disagreed and persuaded the team to adopt their position. (*Id.* at P-284-87) The IEP, therefore, specifies that █ would attend regular science and social studies classes with the support of a one-on-one aid and several other modifications and accommodations. (*Id.* at P-280-81)

█ 8th GRADE YEAR (2006-07)

- █'s Testimony:

Mrs. [REDACTED] is [REDACTED] mother. She was cooperative and responsive during her testimony. As she testified, it was clear that she is a parent who wants her daughter to receive the best educational services possible. She stated that she believes the District has "given up" on teaching her daughter. [REDACTED] testified that the Parents' concerns about their daughter's education first arose at the end [REDACTED] 7th grade year when they learned that the District wanted to remove [REDACTED] from regular ed science and social studies for her 8th grade year. As Mrs. [REDACTED] put it, the District wanted [REDACTED] educational plan to focus on life skills, instead. Besides wanting their daughter to attend regular classes, the Parents also wanted the District to provide her with assistive technology to help her succeed in school. Finally, [REDACTED] testified that she believes the District also failed to provide [REDACTED] with appropriate services in reading, writing, speech and language, and vocational planning. Notably, on the last issues, there is no evidence in the record to indicate that the Parents believed these services to be inadequate at the time.

Mrs. [REDACTED] testified that [REDACTED] has been receiving special education services since she was in preschool. [REDACTED] is aware of her disabilities, particularly her difficulties speaking, and at times becomes frustrated by them. Nevertheless, Mrs. [REDACTED] (and others) testified that [REDACTED] works hard to accomplish the tasks that are given her.

Because of the concerns that they faced as [REDACTED] approached her 8th grade year, the Parents retained Dr. [REDACTED] in the summer of 2006 to conduct a private neuropsychological evaluation. In addition, they refused to convene an IEP meeting to write [REDACTED] 8th grade IEP until they could retain counsel. The IEP meeting to write [REDACTED] IEP took place on August 15, 2006, and Mrs. [REDACTED] attended. (See 8//15/06 IEP, p. 80, Ex 3) The team wrote a number of goals for [REDACTED] which focused both on academics and life skills. At the hearing, Mrs. [REDACTED] testified that she did not believe that the life skills goals, i.e., cooking and self-care, were appropriate for [REDACTED]. She conceded however, that she didn't voice her position at the IEP meeting. In any event, the goals are not without basis. Mrs. [REDACTED] had identified those very skills as areas of need for [REDACTED] when she completed the Vineland as part of Dr. [REDACTED] evaluation. (See Ex. 15 at 9)

Mrs. [REDACTED] also testified about the eligibility meeting that took place on February 15, 2007. Specifically, she noted that the team added a number of modifications and adaptations to [REDACTED] existing IEP, and that she agreed with those changes. She did not believe that some of the modifications were consistently implemented. In particular, she stated that there was no follow through with the assignment notebook, and doesn't know if lectures were taped.

Mrs. [REDACTED] attended the meeting on May 22, 2007 to write an IEP for [REDACTED] 9th grade year. The Parents were pleased that the team increased the amount of time that [REDACTED] would spend in the regular classroom. When asked her opinion about the IEP goals at the hearing, the only goal with which [REDACTED] disagreed was the goal concerning making change. Mrs. [REDACTED] called it "nonsensical" since [REDACTED] was to attend business math. Her testimony, however, is at odds with a contemporaneous statement she made to Dr. [REDACTED] that [REDACTED] could not make change for purchases of more than a dollar. (See Ex. 15, p. 9) With respect to modifications listed on the IEP, Mrs. [REDACTED] testified that the District did communicate daily with the Parents during [REDACTED] 9th grade year. Finally, [REDACTED] testified that the Parents were initially encouraged that [REDACTED] 9th grade year would be better than the previous year. Their concerns about the lack of assistive technology for [REDACTED] -- which Mrs. [REDACTED] said was supposed to help with her reading and writing -- and their distress over a head lice issue led them to file a due process complaint.

- **The August 15, 2006 IEP**

As noted above, the IEP team met on August 15, 2006 to write [REDACTED] IEP for her 8th grade year. Attendees included [REDACTED] and her counsel, Mr. [REDACTED], middle school principal (the District also was

represented by counsel), Mr. [REDACTED] social studies teacher, Ms. [REDACTED] and Ms. [REDACTED] special education teachers. Also in attendance were Ms. [REDACTED] Director of Special Education of the [REDACTED], Ms. [REDACTED] coordinator, Ms. [REDACTED] the speech pathologist, and Ms. [REDACTED], an occupational therapy assistant. (Ex. 3 at 80) Ms. [REDACTED] testified that she facilitated the meeting and took notes.

The IEP specifies that [REDACTED] was to receive 785 minutes per week of special education instruction and 70 minutes per week of speech and language therapy. The IEP also includes 10 minutes per week of occupational therapy consult services. (EX 3, at 95) The team wrote 11 goals for [REDACTED]. Eight of the goals were to be implemented by Ms. [REDACTED], who was to be [REDACTED] 8th grade special education teacher. The goals addressed the academic areas of reading comprehension, math computation, and written expression. A fourth goal concerned prioritizing educational choices. The remaining special education goals addressed [REDACTED] life skills, such as cooking and grocery shopping, personal hygiene, and oral communication skills. (*Id.* at 85-89)

The IEP also specifies that [REDACTED] was to receive a number of modifications and accommodations to help her succeed in the regular classroom setting, including: increased time on tests in an alternate setting; oral directions on tests; use of a word bank for fill-in-the-blank questions; an assignment notebook to aid with home-school communication; repetition in instruction and note-taking assistance; study guides; tape recorded lectures and limited reading of text. (*Id.* at 94)

In addition to listing goals and modifications, the IEP includes comprehensive notes of the team's discussions during the meeting. The notes provide valuable insight into the team's interactions and its decisions. In particular, the notes make clear that [REDACTED] played a very active role in the meeting. For example, [REDACTED] asked staff to describe the instructional techniques that were used to teach [REDACTED] reading. Mr. [REDACTED] and Ms. [REDACTED] explained that they used various materials such as accelerated readers, the literature textbook, and other materials from school curriculum. Instruction techniques incorporated the use of probing questions, small group instruction, peer partner reading, and reading with adults to increase fluency. (*Id.* at 97-8) In addition to discussing reading, the notes also reveal that the team discussed [REDACTED] OT services, and that [REDACTED] agreed that [REDACTED] should continue to receive OT services on a consultative basis. (*Id.* at 98)

It is also evident from the notes that school staff wanted to hold a domain meeting as soon as possible to plan for [REDACTED] upcoming triennial review. [REDACTED] explained that the Parents were in the process of obtaining a private evaluation. She and her counsel requested that the domain meeting be postponed until October, at which time the evaluator would attend the meeting and share the results of the evaluation. Principal [REDACTED] agreed to [REDACTED]'s request. (*Id.* at 99)

Finally, and perhaps most importantly, the notes confirm that the meeting participants were in agreement as to [REDACTED] IEP goals and objectives. Specifically, the notes state:

Goals with present levels of functioning and objectives were presented.
The team agreed on all [REDACTED] current performance and goals/objectives.
(*Id.* at 97)

Though the Parents subsequently provided written comments to the IEP, their comments do not negate this statement. Instead, the Parents focus almost entirely on their concerns about lice head checks, and do not make mention of the IEP's goals and objectives. (*See* Ex 3 at 103-04)

- **Implementing the August 15, 2006 IEP**

1. Ms. [REDACTED]: **Special Education**

As noted above, Ms. [REDACTED] was [REDACTED] special education teacher during [REDACTED] eighth grade year. Though 2006-07 was her first year teaching at [REDACTED], [REDACTED] testified that she had taught for about five years prior to coming to [REDACTED]. I found Ms. [REDACTED] to be a credible, though somewhat reticent witness.

Ms. [REDACTED] wrote [REDACTED] eight special education goals. She testified that she selected the goals based on discussions with Ms. [REDACTED], [REDACTED] 7th grade special education teacher. Ms. [REDACTED] stressed, however, that the IEP goals and objectives were written with the team's input and approval. In addition, she also testified that the life skills goals were based on the District's life skills curriculum.

For the most part the special education goals were clear and measurable, and included objectively measurable statements [REDACTED] present levels of performance. One area of concern, however, involves the "reading comprehension" goal, which does not require [REDACTED] to read. Rather, the goal requires [REDACTED] to listen to a story and answer questions about it. (Ex 3 at 82) Despite the fact that the goal was misnamed, Ms. [REDACTED] testified that it was an appropriate goal for [REDACTED] and that [REDACTED] listening and reading comprehension skills improved as the goal was implemented.

Goal No. 5 also lacks precision. (*Id.* at 86) The goal apparently was intended to help [REDACTED] identify educational priorities. It is so broadly worded, however, it is difficult to determine what deficit it is intended to address. Likewise, the short-term objectives refer to selecting "educational choices" but offer no insight into what those choices are, or why [REDACTED] should select one of them.

Despite the lack of clarity in describing two of the eight special education goals, the evidence indicates that Ms. [REDACTED] was quite conscientious in implementing each goal and in recording [REDACTED] progress on a monthly basis. With respect to the listening comprehension goal, for example, [REDACTED] recorded that by the end of the school year (5/18), [REDACTED] had achieved the goal by successfully responding four out of five times on objective one, and by responding correctly 3 of 5 times on objectives two and three. (5/17/07 Annual Review Meeting, Ex. 7, p. 159) She also commented that:

[REDACTED] continues to improve oral responses to questions read to her (85-95% accuracy) with stories at her level (2nd -beg. 3rd grade level). (*Id.*)

[REDACTED] kept the same charts and recorded her observations for each of [REDACTED]'s remaining special education goals. Indeed, even on the vaguely written Goal 5, Ms. [REDACTED] records provided insight into the skill that was being taught, as well as [REDACTED] progress in achieving that skill. On April 13, for example, [REDACTED] observed, "[REDACTED] works very hard and puts forth a lot of effort in all classes. She can choose the highest priority item in 4 out of 5 instances."

2. Ms. [REDACTED] Speech and Language

Ms. [REDACTED] testified that she has been a speech and language pathologist for twelve years, and has been employed by the [REDACTED] for approximately six years. Ms. [REDACTED] attended [REDACTED] IEP meeting in August, 2006 and wrote the three speech and language goals. She also attended subsequent meetings concerning [REDACTED] and administered a speech and language evaluation. (Each of which are discussed in more detail below.) I found Ms. [REDACTED] to be a credible and knowledgeable witness.

[REDACTED] testified that she didn't provide direct therapy to [REDACTED] during the 2006-07 school year because there was a shortage of speech and language therapists. Instead, [REDACTED], a speech paraprofessional, met with [REDACTED] seventy minutes per week and implemented [REDACTED] speech and language goals. [REDACTED] was required to supervise [REDACTED] work for at least ten percent of Ms. [REDACTED] time. That translated to 2 hours a week of direct supervision of her sessions with students, and 2 hours of indirect supervision, which included discussing cases, and reviewing data collections and attendance

sheets.

In addition to evaluating her, [REDACTED] observed [REDACTED] in therapy sessions, and discussed [REDACTED] progress with [REDACTED]. According to [REDACTED], [REDACTED] has severe speech and language deficits, which are commensurate with her cognitive abilities. [REDACTED] noted that [REDACTED] exhibited little carryover of skills from her therapy sessions to her normal environment.

[REDACTED] believes that 3 sessions a week for a total of 70 minutes is an appropriate amount of therapy time for [REDACTED]. It is consistent with ISBE's guidelines for students with severe deficits. With respect to [REDACTED] specific IEP goals, [REDACTED] testified that the three goals were chosen based on the results of evaluations that had been administered to [REDACTED]. The first two goals focus on [REDACTED] speech intelligibility in producing the /sh/ and /r/ sounds. Both goals describe [REDACTED] present levels of performance and are clearly stated and measurable. The third goal focuses on improving [REDACTED] expressive language skills. The present level of performance describes specific deficits in [REDACTED] expressive language. The objectives clearly relate to [REDACTED] expressive language deficit. They do not expressly address the deficits listed in [REDACTED] present level of performance, however.

[REDACTED] charted [REDACTED] progress in meeting her IEP goals. (See 8/15/06 IEP, year-end review, pp. 174-77, Ex 17) With respect to [REDACTED] speech intelligibility, [REDACTED] records indicate that [REDACTED] made progress, but did not master every objective. There is nothing in the record indicating [REDACTED] progress on the expressive language goal.

3. Mr. [REDACTED] U.S. History

Mr. [REDACTED] has been a teacher at [REDACTED] for 23 years. He teaches regular education science and social studies. He testified that [REDACTED] attended these classes during her 7th grade year. The next year, 2006-07, [REDACTED] attended [REDACTED] regular education U.S. History class. [REDACTED] described [REDACTED] as a nice and cooperative student. He recalled that her IEP specified a number of modifications and accommodations, such as shortened tests and assignments, assistance from a paraprofessional, audio taped lectures and study guides. (Ex. 3 at pp. 93-94) He stated that he implemented each of the modifications and accommodations that applied to his class. [REDACTED] testified that [REDACTED] received educational benefit from attending his class. Indeed, Mr. [REDACTED] stressed that, in his opinion, [REDACTED] got a "good education."

[REDACTED] also testified that during [REDACTED] 8th grade year, he participated in a group that investigated the possibility of obtaining voice recognition assistive technology for [REDACTED]. [REDACTED] recalled few specifics about this effort. He did recall that there were several informal meetings. He also recalled attending one demonstration where [REDACTED] spoke into a microphone and words appeared on a screen. According to [REDACTED] this particular demonstration was not successful.

- **The October 23, 2006 Domain Assessment Meeting**

By late October, 2006, the Parents' independent neuropsychological evaluation had been completed, and they agreed to allow the team to hold a domain assessment meeting to plan for [REDACTED] triennial review. (10/23/06 Notes of Domain Assessment Meeting, p.105, Ex. 5) According to Ms. [REDACTED], who again facilitated the meeting, the purpose of the meeting was to discuss what they knew about [REDACTED] what questions they had, and what additional evaluations were needed. Besides Ms. [REDACTED] other attendees included the Parents and their counsel, Principal [REDACTED] and counsel for the District, Mr. [REDACTED] the school psychologist, Ms. [REDACTED], Ms. [REDACTED], Mr. [REDACTED], and Dr. [REDACTED], the Parents' private evaluator.

Ms. [REDACTED], whose testimony I found to be credible and informative, testified that Dr. [REDACTED] presented

his report at the domain meeting. [REDACTED] testified that it was impossible for the team to absorb all of the information contained in [REDACTED] report at the meeting since the team was seeing the thirty page report for the first time. Nevertheless, the evidence is clear that the team did take [REDACTED] report and his recommendations into account. For example, the team adopted Dr. [REDACTED] recommendation that an auditory processing evaluation be administered to [REDACTED]. The team also agreed -- though probably independently from [REDACTED] recommendations -- that [REDACTED] should receive speech and language, occupational therapy and vocational assessments. (See Ex. 5 at p. 114) Further, because [REDACTED] had just administered the Wechsler Intelligence Scale for Children, and several academic measures, the team decided not to re-administer those assessments, and relied on [REDACTED] results instead. Most importantly, the record makes clear that the team planned for [REDACTED] to receive a very thorough triennial evaluation.

- **The February 15, 2007 Eligibility Meeting**

On February 15, 2007 the team held an eligibility meeting to consider the results of [REDACTED] triennial review. This meeting was particularly well attended. Attendees included all of the individuals who had participated in the domain meeting. Also in attendance were Ms. [REDACTED] an occupational therapist, and Ms. [REDACTED], a school social worker. The team considered the results of the assessments that had been given to [REDACTED]. According to Ms. [REDACTED] as a result of these findings, the team made 10 additional modifications and adaptations to [REDACTED] IEP, several of which were taken directly from Dr. [REDACTED] recommendations. (See Ex. 7 at 127, 133-34) The team, however, did not add to or change any of [REDACTED] IEP goals.

Ms. [REDACTED] testified that [REDACTED] also made an assistive technology presentation of voice to text software, which he believed would benefit [REDACTED]. According to [REDACTED] and Mr. [REDACTED], the team agreed to investigate AT options for [REDACTED]. Subsequently, a committee was formed to conduct the investigations and to make a recommendation. Evidence concerning the committee and its findings are discussed below.

1. Neuropsychological Report: Dr. [REDACTED]

As noted above, the Parents retained Dr. [REDACTED] to conduct an independent neuropsychological assessment of [REDACTED]. [REDACTED] report was objective and persuasive, but his testimony interpreting the report was somewhat less so. Specifically, while testifying, Dr. [REDACTED] at times assumed the role of an advocate, overstating [REDACTED] relative strengths. In describing [REDACTED] performance on the Test of Nonverbal Intelligence, for example, Dr. [REDACTED] stressed that [REDACTED] intelligence was within the average range when faced with non-verbal tasks. While the TONI does indicate that non-verbal problem-solving is a *relative* strength for [REDACTED]. Dr. [REDACTED] own report confirms that [REDACTED] performance on the TONI placed her in the 8th percentile, or "Borderline" range. (See Ex. 29, p. 67) Though I questioned the objectivity of some of his testimony, Dr. [REDACTED] evaluation was nevertheless quite comprehensive, and his report yielded a number of important insights into [REDACTED] learning profile. Significantly, Dr. [REDACTED] main conclusions, i.e., that [REDACTED] suffers from a mild to moderate cognitive impairment with communication skills that are moderately deficient, mirrors the District's previous findings concerning [REDACTED].

Dr. [REDACTED] administered the Wechsler Scale of Intelligence for Children (Fourth Edition) to assess [REDACTED] global cognitive functioning in the areas of verbal comprehension, perceptual reasoning, working memory and processing speed. [REDACTED] scores in these areas all fell within the mild to moderate mentally impaired range, and her full scale IQ score placed her in the moderately mentally impaired range. Interestingly, [REDACTED] best scores were in the area of verbal comprehension, even though Dr. [REDACTED] believes this is an area of particular weakness for her. When asked to explain this discrepancy, Dr. [REDACTED] opined that [REDACTED] responses likely reflected information that she had learned through her speech and language therapy.

Because he believed that [REDACTED] is hindered by her language deficits, Dr. [REDACTED] administered a non-verbal cognitive measure called the Test of Nonverbal Intellectual Functioning (TONI). [REDACTED] scores on the non-verbal, non-timed TONI were higher than her scores on the WISC, though still below average. As noted above, [REDACTED] TONI scores placed her in the 8th percentile or "Borderline" range. Moreover, while it is important for purposes of planning instruction to understand that [REDACTED] has stronger nonverbal intellectual skills, the subtests on the WISC more closely reflect the types of tasks that will be required in a school environment. Indeed, in school or in the work environment, very few tasks or concepts can be presented in a completely non-verbal way.

Dr. [REDACTED] also administered tests to assess [REDACTED] auditory and visual perceptual skills, auditory processing, phonemic processing, memory, expressive and receptive language, and academic processing. The results of these assessments provided a profile of [REDACTED] as a student who displays severe deficits in the areas of auditory and phonological processing. According to Dr. [REDACTED] deficits in these areas can severely hinder a student's ability to learn how to read. [REDACTED] expressive and receptive language skills were also found to be severely impaired, particularly in the area of higher level problem solving. (Ex. 29 at pp. 12-13) Dr. [REDACTED] did stress, however, that [REDACTED] exhibited a relative strength when asked to listen to a spoken paragraph and answer questions about its content. (*Id.*) Likewise, Dr. [REDACTED] also noted that [REDACTED] displayed average ability in a number of memory related tasks, including her ability to recall details of stories that were read to her. Significantly, [REDACTED] ability to recall information led Dr. [REDACTED] to conclude that she can benefit from attending regular education, content-based classes like science and social studies.

Dr. [REDACTED] also assessed [REDACTED] social, emotional and adaptive functioning skills by asking [REDACTED] to complete the Vineland Adaptive Behavior Scales survey, and by asking Mrs. [REDACTED] and several [REDACTED] teachers to complete the Child Behavior Checklist. (Ex. 29 at 67-68, 74-77) The Parent's responses on the Vineland indicated that [REDACTED] communication skills were in the "moderate deficit" range, with [REDACTED] receptive language skills apparently higher than her expressive or written language skills. With respect to [REDACTED] daily living skills, the Parent's responses placed [REDACTED] in the "mild deficit" range. In particular, [REDACTED] skills were found to be low in the areas of personal care/hygiene, domestic skills such as preparing food (when mixing or cooking is required), and cleaning her room. In addition, [REDACTED] was uncertain whether [REDACTED] could tell time at five minute intervals or count change for a purchase of more than a dollar. (*Id.* at 68) In assessing [REDACTED] socialization skills, [REDACTED]'s observations placed [REDACTED] in the "adequate" range, with her daughter showing an ability to initiate conversations, participate in hobby and non-school sports. Finally, [REDACTED] reported significant maladaptive behaviors at home due to [REDACTED] bedwetting, over dependence, sleep disturbance, school avoidance, anxiety defiant attitude and lying.

[REDACTED] parents and several of her teachers also completed the Child Behavior Checklist. Neither parent indicated a significant concern in any of the areas measured. Their responses placed [REDACTED] in the "normal" range on the Activities, Social and School scales. The teachers' responses were mixed, with one indicating no concerns, and others indicating significant concerns in the areas of social problems, internalizing problems and total problems. They also indicated borderline or significant elevations in the areas of anxiety/depression, somatic complaints, and externalizing problems. Significantly, when given the opportunity to provide open-ended comments, [REDACTED] teachers expressed concern that she "continues to plug along" in her classes while "missing out on a lot of basic functioning skills ... such as basic health/body care." A teacher (unidentified by [REDACTED]) also stated that [REDACTED] did not benefit from her science and social studies classes because she was not capable of doing the work. (*Id.* at 76)

Based on the results of his comprehensive evaluation [REDACTED] Dr. [REDACTED] made a number of recommendations that he shared with the team. As specifically noted above, [REDACTED] recommended that a number of additional tests be given to [REDACTED] and the team agreed with each of those recommendations. [REDACTED] also recommended that [REDACTED] academic skills be re-evaluated in one year. The team apparently did not follow through on this recommendation.

█████ also made many recommendations regarding educational services and accommodations and modifications that he believed would benefit █████ (See Ex. 29 at P-79 -84) Some of the key recommendations are:

- Provide experiential and multisensory learning approaches in academic concept areas;
- Employ a multisensory approach to teach phonetic decoding and word attack; ^(S)
- Direct intervention to improve █████ written language skills
- Provide books on tape to help █████ benefit from her listening comprehension strength;
- Provide instruction that includes basic skills for every day living, e.g., survival skills for reading and math
- Behavioral social skills intervention program
- When mainstreamed, a one-on-one aid
- Extended school year

2. Auditory Processing Evaluation: █████

█████ is an experienced audiologist who conducted an auditory processing evaluation of █████ on December 6, 2006. (See 12/6/06 Auditory Processing Evaluation Report, Ex 46, P-37) Though she didn't attend, the team considered her report in the eligibility meeting. Ms. █████ testified about the results of █████ auditory processing evaluation, which as she succinctly put it, provides insight into how the brain uses what it hears. I found her testimony and report to be thorough and credible.

In reporting on the results of her evaluation, █████ first ruled out a hearing loss as the cause of █████ auditory deficits. (*Id.* at 42) She then conducted several auditory processing tests. According to █████ the results of the tests indicated that █████ "central auditory processing mechanism is unable to function efficiently due to mildly delayed auditory decoding skills and mildly delayed auditory closure skills." (*Id.* at P-45) █████ also stressed that █████ auditory processing deficits compound her mild mental impairment. (*Id.*)

█████ report concludes that █████ auditory processing deficits put her at risk for being a poor reader and speller. In addition, because █████ auditory memory skills were found to be in the lower limits of the normal range, █████ believed that █████ likely has difficulty remembering what she hears or reads. (*Id.*) █████ stressed, however, that █████ difficulties with reading are not solely attributable to her auditory processing deficits, but are also hindered by her limited cognitive potential. Finally, to enhance █████ instruction, █████ offered a number of specific recommendations. Notably, several of █████ recommendations coincide with Dr. █████ They include:

- Information and directions be presented in short segments with frequent repetition;
- Checking in to see if █████ understood information presented (█████ should summarize);
- Classroom assignments should be written on board or in assignment notebook to ensure they aren't forgotten;
- █████ should receive reading instruction through a multi-channel (multisensory) approach to help compensate for auditory deficits;

- Keep parents informed of concepts being presented at school so information can be reinforced at home.

3. Special Education Assessment Summary: Mr. [REDACTED] and Ms. [REDACTED]

In addition to the outside evaluations, Mr. [REDACTED] a school psychologist, and Ms. [REDACTED] a school social worker conducted social emotional and vocational assessments of [REDACTED] which they jointly reported in a Special Education Assessment Summary. (See [REDACTED] Special Education Summary, p. 31, Ex 18) Both offered testimony about their reports and about their experiences with [REDACTED]

First, Mr. [REDACTED] has been a certified school psychologist for approximately 33 years. He has known [REDACTED] since he tested her when she was in preschool. During the relevant time period, he attended several meetings concerning [REDACTED] including the domain assessment meeting and the eligibility meeting. He provided helpful testimony concerning the domain meeting in which Dr. [REDACTED] shared his report and recommendations. According to [REDACTED] after considering [REDACTED] report, the team agreed that it would be duplicative for Mr. [REDACTED] to administer a cognitive measure and academics tests. Instead, the team decided that [REDACTED] would administer "Street Survival Skills," a normed assessment of functional adaptive skills, as well as a vocational interest inventory. When asked whether a more comprehensive vocational assessment should have been given to [REDACTED] Mr. [REDACTED] conceded that he is not certified to give such measures.

According to [REDACTED] report, the results of "Street Survival Skills" were consistent with [REDACTED] adaptive functioning assessment. Specifically, [REDACTED] was found to be in the mildly mentally impaired range with skills significantly deficient in the areas of domestic chores and activities, health and safety issues, and skills relating to money, time and measurement. She was found to have average knowledge of basic signs used in society and basic tools used in the home. (*Id.* at 33)

When administering the vocational interest inventory [REDACTED] stated that he read the questions to [REDACTED] and recorded her answers to account for her reading deficits. [REDACTED] responses showed she has interests in the areas of science or technically oriented areas, social occupations that involve assisting or teaching people, and occupations requiring some mechanical skills such as farmer, mechanic, etc. In his report, [REDACTED] stated that the Parents would be given more information concerning these various vocations at the upcoming eligibility meeting.

In addition to testifying about his report, [REDACTED] was asked to give his opinions about the recommendations that Dr. [REDACTED] included in his report. [REDACTED] agreed with a number of [REDACTED] suggestions including the recommendation that a multisensory approach should be used to teach [REDACTED] reading and math. [REDACTED] however, doesn't believe that the [REDACTED] program is the only multisensory program that can be effective. He believes the [REDACTED] program, which the District uses, also would be effective for [REDACTED] [REDACTED] also agreed that [REDACTED] should receive remediation of her written language skills.

Ms. [REDACTED] has been a school social worker at [REDACTED] (as an employee of the cooperative) for five years. She was a helpful and credible witness. She testified that she first met [REDACTED] during the 2006-07 school year, when she provided general social skills training to all of the students in a special education classroom that [REDACTED] attended. As part of the special education assessment that she and Mr. [REDACTED] administered, [REDACTED] completed a classroom observation [REDACTED] a medical history and a social emotional status that included a parent interview. While observing [REDACTED] in a classroom setting,

██████████ noted that ██████ exhibited anxiety about completing assignments and during transitions. Ms. ██████ therefore, recommended that ██████ begin receiving social work services for 30 mpw during the 2007-08 school year to help her reduce stress related to changes in her routine. (See 5/22/07 IEP, pp. 138, 149, Ex 28) Though the IEP specifies that ██████ would attend a social work group, ██████ testified that she subsequently decided that ██████ would receive more benefit from individual services. She conceded that she did not amend the IEP to reflect that change. When asked about Dr. ██████ conclusion in his report that ██████ exhibited significant maladaptive behavior, ██████ testified that neither she nor ██████ teachers observed such behavior at school. Likewise, ██████ also stressed that she consulted ██████ as part of her social emotional assessment, and that ██████ reported that ██████ liked school.

4. Occupational Therapy Report: Ms. ██████

██████████ is an occupational therapist who has worked for the cooperative for 5 years. Prior to working for the cooperative, she worked as an OT in a hospital setting for 3 years. She testified that the goal of school occupational therapy is to ensure that a student is functional in that setting. ██████ administered the occupational therapy assessment that the team had recommended during the domain meeting. The assessment, which was fairly comprehensive, included a classroom observation, the Beery-Buktenica Developmental Test of Visual-Motor Integration and the School Functional Assessment, which was completed by ██████ special education teacher and scored by ██████

Ms. ██████ testified that the results of the assessment showed that ██████ has severe visual-motor deficits, which are consistent with her cognitive functioning level. The SFA showed that ██████ was able to participate in all aspects of her special education classroom with modifications and adaptations. ██████ was able to legibly copy sentences in print and cursive, though her printing was more efficient.

██████████ recommended that ██████ continue to receive OT services on a consultative basis because her written work is functional. This recommendation was supported by Ms. ██████ the certified OT assistant who has worked with ██████ since she was in the second grade. ██████ testified that ██████ is able to perform the physical tasks required in the school environment. (See Ex. 20 at 43) ██████ also stressed that ██████ handwriting is legible. For these reasons both ██████ and ██████ believe that ██████ should continue to receive OT services on a consultative basis.

5. Assistive Technology: Ms. ██████

Consistent with the team's decision in the domain assessment meeting, the District retained Ms. ██████ of ██████ to administer an assistive technology assessment to ██████ (See 1/8/07 ██████ Report, pp. 57-62, Ex 33) Ms. ██████ testified that she has worked for ██████ for 8 years, and that she does additional assistive technology assessments outside of her work for ██████

According to ██████, ██████ conducts AT collaborations with students and school districts to determine what, if any, AT products might be useful to a student. Her collaboration with ██████ and ██████ was a typical ██████ collaboration. It consisted of an initial consultation with members of the team to discuss the student's areas of need. According to ██████, the team identified writing and spelling as areas of need for ██████ Next, ██████ observed ██████ performing a writing activity in her language arts class. After observing her in the classroom, ██████ took ██████ to a separate room and had her try Co-Writer, a word prediction software that supports spelling. ██████ also introduced Write:Outloud, which is a talking word processor. It is clear from the examples in ██████'s report that both ██████ spelling and sentence construction improved with the use of these AT products. ██████ report, therefore, recommends that the team consider using these or similar products with ██████

The team did not make a decision at the eligibility meeting about what type of AT software to provide to [REDACTED]. As noted above, they agreed to form a committee to investigate their options.

- **Assistive Technology Committee**

In the spring of 2007, several staff members and [REDACTED] worked together to investigate different types of AT products for [REDACTED]. Prior to the formation of the committee, the District had already provided [REDACTED] with her science and social studies texts on tape so that she could listen to the content at home. (See 3/16/07 [REDACTED] letter to [REDACTED] pp. 248-49, Ex. 13) The District also attempted to provide [REDACTED] with a laptop computer for word processing, but [REDACTED] was initially resistant to the idea. (*Id.* at 248, 3/19/07 [REDACTED] letter to [REDACTED] p 250, Ex 14)

Mr. [REDACTED] testified that the team agreed to form an AT committee at the eligibility meeting in February of 2007. The committee's primary purpose was to investigate text to speech, speech to text and writing assistance products. Specifically, the group agreed to focus on Kurzweil 3000, Dragon Naturally Speaking, Co-Writer, Write Outloud, and Read and Write Gold. Team members met on a few occasions in the spring of 2007. [REDACTED] testified that the committee agreed that Read and Write Gold was preferable to Co-Writer and Write Outloud. Kurzweil remained under consideration. According to Mr. [REDACTED] the committee's efforts resulted in the District purchasing Read and Write Gold, a laptop and a flash drive for [REDACTED] in the summer of 2007. [REDACTED] asserted that the materials were provided to [REDACTED] by Superintendent [REDACTED] that same summer. According to Mr. [REDACTED] however, the District was unable to use the materials in [REDACTED] instruction, because the family did not return the laptop or the software to school. Instead they kept it at home for the entire 2007-08 school year. The family finally returned the materials in the fall of 2008. [REDACTED] who was principal at the high school by that time, testified that once the materials were returned, [REDACTED] was trained to use the technology and did so on a daily basis. Her use of the laptop and software has been restricted to school, however, and she is not allowed to take it home.

[REDACTED] also testified about the committee's efforts to provide [REDACTED] with assistive technology. His testimony was consistent with Mr. [REDACTED] concerning the products that the team considered and its decision to purchase Read and Write Gold. He also testified that he agreed that Read and Write Gold was appropriate for [REDACTED] and that Dragon Naturally Speaking was not. He conceded that Mr. [REDACTED] provided him with a laptop and a flash drive. He could not recall if he was provided with Read and Write Gold, though, since he already had a copy of the product at home. [REDACTED] did not dispute [REDACTED] testimony that [REDACTED] did not return the materials to school during the 2007-08 school year. He disagreed, however, with [REDACTED]'s suggestion that the family had acted improperly by keeping the materials at home. According to [REDACTED] Mr. [REDACTED] instructed him to keep the materials at home, and that the flash drive would go back and forth with scanned materials for [REDACTED].

It was not possible to discern what actually happened with respect to the AT materials that the District provided to the family. Whatever the reason that [REDACTED] didn't return the materials to school, one thing is clear. There was no evidence presented to show that [REDACTED] progress was hindered by her failure or inability to make full use of the assistive technology.

9th GRADE YEAR (2007-08)

[REDACTED] began attending [REDACTED] as a 9th grader in the fall of 2008. The IEP team met on May 22, 2007 to write [REDACTED] IEP for 9th grade. As usual, the meeting was well attended. Participants included the Parents and Student and their attorney, Mr. [REDACTED] Mr. [REDACTED] (at that time, the high school principal), as well as counsel for the District, Ms. [REDACTED] from the cooperative, several of [REDACTED]'s teachers and service providers, and the school psychologist, Mr. [REDACTED]. (5/22/07 IEP, p.138, Ex 28) The team agreed that [REDACTED] would continue to be mainstreamed for science and social studies. Significantly, the team also increased the amount of time that [REDACTED] would be mainstreamed by placing her in a regular business

math class and regular English class. (*See Id.* at 153) (Both the English and math classes were co-taught by regular ed and special ed teachers.)

The IEP also provides for [REDACTED] to receive 500 mpw of special education instruction. (*Id.* at 153) During that time, four IEP goals were to be implemented by Ms. [REDACTED], the special education teacher. They included goals to help [REDACTED] learn to make correct change and follow written directions. A transition goal was written to help her learn skills to successfully obtain and keep employment. Finally, the team also included a goal to help [REDACTED] understand and use the text to speech technology that she was to begin using by the fall. (*Id.* at 143-45, 150) Though the transition goal could have been stated more precisely, each goal adequately describes her present level of performance, and provides objectives that are measurable. Moreover, based on the evidence presented at the hearing, each of the goals appears to target a legitimate area of need. As previously noted, the goal to improve [REDACTED] ability to make change, for example, addresses a concern raised by [REDACTED] (*See Ex. 15 at 9*) Notably, there are no goals to address [REDACTED]s reading or writing deficits.

[REDACTED] also was to continue receiving speech and language therapy for 70 mpw, with two speech goals that targeted [REDACTED] intelligibility and expressive language. The goals are clearly stated and measurable. The team also agreed that [REDACTED] would receive 30 mpw of social work services to help her manage stress in the educational setting. Though it can be more difficult to state social emotional goals in objectively measurable terms, the goal for [REDACTED] is adequately stated and, to the extent possible, measurable. Finally, the IEP also notes that [REDACTED] would continue to receive OT on a consultative basis.

As with [REDACTED] 8th grade IEP, a member of the team took contemporaneous notes of the meeting. The notes show that [REDACTED] voiced his desire that teachers who were going to work with [REDACTED] be trained to use her assistive technology before school started. (*Ex. 26 at 155*) [REDACTED] also stressed their desire to see improved communications with the school regarding [REDACTED]. To that end, the team agreed to begin using a daily communication log in which school staff would report to the Parents about [REDACTED] progress and homework assignments. (*Id.* at 156-57) Significantly, though [REDACTED] testified that she disagreed with several of the IEP goals at the hearing, the Parents did not voice any concerns at the meeting (or afterwards) about any of the IEP's goals, modifications and accommodations, or support services.

- Ms. [REDACTED]

Ms. [REDACTED] was [REDACTED] 9th grade special education teacher and case manager. She is relatively new to the teaching profession -- she testified that she was certified to teach in 2006 and the 2007-08 school year was her first year at [REDACTED]. Ms. [REDACTED]s inexperience was particularly evident when she was asked about her duties as case manager. She did not seem familiar with a case manager's administrative responsibilities. Nevertheless, I found her to be a sincere and believable witness.

Ms. [REDACTED] testified that [REDACTED] was mainstreamed for all of her academic classes. In science and social studies, [REDACTED] was assisted by a paraprofessional. The math and English classes were co-taught by Ms. [REDACTED] and a regular education teacher. [REDACTED] also received a number of modifications and accommodations in each of the classes.

[REDACTED] implemented the four IEP goals for which she was responsible. She kept charts [REDACTED] progress and testified that, in her opinion, [REDACTED] met three of the four goals. She was uncertain, however, if [REDACTED] met the assistive technology goal. Specifically, [REDACTED] stated she sent work home on a flash drive for [REDACTED] to do at home, but never confirmed whether [REDACTED] actually completed the assignments. When asked whether she contacted the Parents to determine if [REDACTED] was doing the work (and meeting her IEP goal), [REDACTED] conceded that she did not. With respect to the [REDACTED] transition goal concerning employment skills, [REDACTED] descriptions [REDACTED] progress are somewhat vague, making it difficult to ascertain which skills [REDACTED] learned. (5/22/07 IEP, with year end review notes, pp. P-109, P-117, Ex. 26) [REDACTED] testified that [REDACTED]

met the goal.

In addition to implementing the goals, [REDACTED] was primarily responsible for seeing that the communication log went home to the Parents. She testified that she carried out this responsibility, and [REDACTED] in her testimony, confirmed this to be true. Finally, Ms. [REDACTED] testified that [REDACTED] succeeded in her classes and, in her opinion, made educational progress during [REDACTED] 9th grade year. She did however, concede that [REDACTED] has deficits in English and reading and would have benefited from IEP goals to address those areas. She did not know why [REDACTED] IEP didn't address those deficits.

- Ms. [REDACTED]

By the time [REDACTED] was in 9th grade, Ms. [REDACTED] had begun teaching business math at the high school. [REDACTED] was her student in the class, which [REDACTED] co-taught with Ms. [REDACTED]. Ms. [REDACTED] testimony concerning [REDACTED] performance was brief and unequivocal. She stated that [REDACTED] placement in her class was appropriate. [REDACTED] passed her class, and [REDACTED] was so confident [REDACTED] abilities by the end of the year, that she recommended that [REDACTED] progress to a pre-algebra class for the following year.

THE PARENTS' CONSULTANTS

After filing their amended due process complaint, the Parents retained several consultants to evaluate [REDACTED] and/or review [REDACTED] educational records and provide recommendations. Their testimony is summarized below.

- [REDACTED]: Occupational Therapy

Ms. [REDACTED] is an occupational therapist who owns and operates a private facility that evaluates and provides occupational therapy to children. She testified that she has provided private OT services to clients for more than 10 years. While I found Ms. [REDACTED] to be a knowledgeable witness, her testimony was of limited value given the fact that she did not observe [REDACTED] in a classroom, and, therefore, could not comment on [REDACTED] needs in that setting. Briefly summarizing her report and testimony, Ms. [REDACTED] evaluated [REDACTED] on April 5, 2008. (4/4/08 [REDACTED] Report of Occupational Therapy Evaluation, p. 69, Ex 39) The evaluation consisted of an observation and several tests to assess [REDACTED] sensory-motor integration skills. She concluded that [REDACTED] has deficits in the area of visual perception, fine motor coordination and motor planning. (*Id.* at 71-2) She recommended that [REDACTED] receive direct occupational therapy to address her deficits, specifically those involved in keyboarding and cursive handwriting. (*Id.*) Though she recommended direct OT services for [REDACTED], [REDACTED] did not dispute -- nor could she -- Ms. [REDACTED] assertion that [REDACTED] skills in the classroom were functional.

- [REDACTED] Vocational Testing/ Transition Planning

Mr. [REDACTED] is a certified vocational counselor who owns and operates [REDACTED], which conducts vocational evaluations and counseling for students and adults with disabilities. He has been active in this field since 1973. Mr. [REDACTED] was retained by the Parents to review several [REDACTED] school records from the relevant time period, including her 9th grade IEP, and offer his opinion on whether the District appeared to be providing appropriate transition services for [REDACTED]. Admittedly, Mr. [REDACTED] involvement in this case is somewhat uncommon in that he did not evaluate or even meet [REDACTED]. For that reason, I did not rely on Mr. [REDACTED] testimony to the extent that he offered opinions about [REDACTED] IEP goals. Much of Mr. [REDACTED] testimony, however, focused on the general requirements for providing meaningful transition services to students. I found that testimony to be helpful in assessing whether the District provided [REDACTED] with appropriate transition services. Likewise, Mr. [REDACTED] testimony concerning what constitutes an appropriate vocational evaluation was informative.

According to Mr. [REDACTED] the purpose of a transition plan is to equip a student to achieve independence upon leaving school. To that end a school district is required to consider a transition plan when the student reaches the age of 14 and 1/2. The plan must include goals in four areas: post-secondary education, vocational or training goals, employment goals, and independent living. To ensure that transition goals are appropriate, a student must be evaluated in each of the four areas. Particular attention must be paid to a student's abilities in skills needed for the job market, such as aptitude, dexterity and reasoning. Such data is then used to create corresponding IEP goals in a structured and sequential manner.

Mr. [REDACTED] testified that the assessments administered by Mr. [REDACTED] were inadequate because they didn't assess or identify skills needed for the job market. Moreover, with respect to the interest inventory that [REDACTED] gave to [REDACTED] noted that there were inconsistencies between [REDACTED] interests (plants and animals) and her stated goal of work in the healthcare field. According to [REDACTED] should receive vocational counseling to help her resolve these inconsistencies by better understanding her skills and the skills required for jobs in which she has an interest.

Finally, [REDACTED] testified that vocational counseling and training should not be relegated to post-secondary services, but should happen before a student leaves high school. Moreover, employment goals should include actual work experience, so that the student can learn skills for employability. Mr. [REDACTED] agreed that a student's disabilities, interests, age, and the availability of opportunities in the community all play a role in providing work experience as part of the transition plan.

- **[REDACTED] Assistive Technology**

Mr. [REDACTED] has been active in the field of assistive technology for approximately 40 years. He is currently the president of [REDACTED]. In his business, Mr. [REDACTED] has conducted numerous AT assessments (he estimated over a thousand) of students and adults with disabilities, including cognitive and speech and language disabilities like those exhibited by [REDACTED]. Mr. [REDACTED] was a credible and informative witness.

Mr. [REDACTED] testified that he conducted an AT assessment [REDACTED] on July 14, 2008. (7/14/08 [REDACTED] [REDACTED], Report of Assessment, p. P-3, Ex 44) He described the steps he followed in conducting the assessment, which were essentially identical to the process employed by Ms. [REDACTED] of [REDACTED]. Specifically, though he did not speak with school staff or review any [REDACTED] records, he met with the Parents and observed [REDACTED] to assess her needs. [REDACTED] then selected two products, Dragon Naturally Speaking (a speech recognition product) and Read and Write Gold (a text to voice product), to try with [REDACTED]. He concluded that Dragon Naturally Speaking was not appropriate because it was unable to decipher her speech patterns effectively. (*Id.* at P-7) Mr. [REDACTED] believed that the trial with Read and Write Gold, however, was successful, and that it can help [REDACTED] with reading and writing. Significantly, this is the same product that the assistive technology team selected for [REDACTED] nearly a year before Mr. [REDACTED]'s assessment. [REDACTED] also recommended that [REDACTED] be provided a laptop that she can use at home to complete homework. In addition, [REDACTED] suggested that [REDACTED] also be provided with an MP3 player. Text can be downloaded onto the player and [REDACTED] can listen to it whenever she's mobile.

- **[REDACTED] Speech and Language**

Ms. [REDACTED] is a speech and language pathologist who has been in the field since 2002. After working as a speech pathologist in a public school setting for two years, Ms. [REDACTED] started [REDACTED] a private clinic that provides a variety of educational services to children including, speech and language assessments and therapy, and reading instruction. (*See* [REDACTED] Curriculum Vita, p. P-464, Ex 23) Ms. [REDACTED] conducted a speech and language assessment [REDACTED] on March 21, 2008. (*See* Pediatric Speech and Language Assessment, p. 63, Ex 24) In addition, Ms. [REDACTED] prepared an IEP

Analysis Report in which she considered [REDACTED] IEP's for the relevant period and purported to analyze whether the IEP's appropriately addressed [REDACTED] deficits. (3/31/09 IEP Analysis Report, p. P-513, Ex. 25) Her analysis was not limited to the speech and language goals but included all aspects of [REDACTED] IEP, such as the appropriateness of various academic goals, social work services and occupational therapy. Ms. [REDACTED] willingness to provide such a broad analysis of areas that are clearly outside her level of expertise greatly undermined her credibility. Indeed, by her own admission, Ms. [REDACTED] has participated in, at most, 20-30 IEP meetings. This limited experience hardly qualifies her to assess whether [REDACTED] IEP's were appropriately written.

Despite her diminished credibility overall, I considered her report on [REDACTED] speech and language assessment more carefully, since that is the field in which Ms. [REDACTED] is trained. Significantly, Ms. [REDACTED] findings were largely consistent with Mr. [REDACTED] evaluation of [REDACTED]. In particular, Ms. [REDACTED] agreed that [REDACTED] has verbal apraxia. She noted that her assessment offered some different results in the areas of language processing and auditory memory, but she stated that the District's assessments in these areas were more comprehensive. With respect to [REDACTED] expressive and receptive language, Ms. [REDACTED] testified that her results were quite different from the District's findings. She asserted that the test she administered, the Comprehensive Assessment of Spoken Language, was more comprehensive. She then conceded, however, that she is unfamiliar with the TOLD -- the test that Ms. [REDACTED] administered.

Ms. [REDACTED] report included four recommendations. Ms. [REDACTED] the District's speech pathologist, testified that the District already provides the first two recommendations: It employs the Kaufman Praxis model in its speech therapy with [REDACTED] and [REDACTED] therapy does include goals to address her syntactical, and grammatical deficits. The District has not implemented specific programs that Ms. [REDACTED] recommended -- Fast ForWord Language, or Lindamood-Bell Visualizing Verbalizing. Ms. [REDACTED] noted that the District's report did not include recommendations, and opined that it should have. I agree with her on that point.

- [REDACTED]

The Parents also presented Ms. [REDACTED], an educational consultant, to testify about whether [REDACTED] IEP's were appropriate. Ms. [REDACTED] CV states that she has been a "freelance advocate" for students with disabilities since 2001. Her actual teaching experience, however, appears to have been quite limited and distant in time. (She last taught in 1991.) ([REDACTED] Curriculum Vita, p. P-482, Ex 43) With respect to her involvement with [REDACTED] she testified that she had spoken with [REDACTED] but had not conducted any evaluations of [REDACTED] observed her in her educational setting, or participated in any IEP meetings. Though I allowed Ms. [REDACTED] to provide some limited testimony, upon considering it, I did not find it helpful -- particularly when compared to team members who participated in [REDACTED] IEP meetings, and provided services to her. I did not rely on it in my decision.

CONCLUSIONS OF LAW

The starting point to any inquiry concerning the adequacy of educational services is *Board of Educ. v. Rowley*, 458 U.S. 176, 188-89 (1982). That case established that a free appropriate public education is an education "specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction." In *Rowley*, the United States Supreme Court set forth a two pronged test to determine whether a school district has offered a student FAPE. The first inquiry to be made is whether the school district has complied with the statutory

procedures required by IDEA. (20 U.S.C. 1401 et seq.) IDEA establishes that procedural violations cannot be deemed a violation of FAPE unless they impeded a child's right to a free appropriate public education, significantly impeded the parents' right to participate in the decision making process, or caused a deprivation of educational benefits. *Id.* at § 1415(f)(3)(E)(2007) The second prong of the *Rowley* test is whether the district has developed an IEP reasonably calculated to enable the child to receive an educational benefit. *Rowley* at 206-07.

While there is no bright line test to define what constitutes FAPE, *Rowley* requires a school district to provide a "basic floor of opportunity" in the form of specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child. *Id.* at 201. An individualized education plan is acceptable "when it is 'likely to produce progress, not regression or trivial educational advancement.'" *Alex R., ex. Rel. Beth R. v. Forestville Valley Community Unit School Dist. # 221*, 375 F.3d 603, 615 (7th Cir. 2004)(quoting *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 248 (5th Cir. 1997)). The purpose of IDEA, however, is to "open the door of public education to handicapped children, not to educate a child to her highest potential." *Board of Education of Murphrysboro Comm. Unit. Sch. Dist. No. 186 v. Illinois State Board of Educ.*, 41 F.3d 1162, 1166 (7th Cir. 1994) Moreover, whether an IEP confers meaningful benefit to a child must be gauged in relation to the potential of the child at issue. *Deal v. Hamilton County Bd. of Ed.*, 392 F.3e 840 (6th Cir. 2004)

Finally, in considering whether the District has met the requirements of FAPE, it is important to note that the burden of proof rests with the party seeking relief. *Schaeffer V. Weast*, 546 U.S. 49, 62 (2005) Here, the Parents bear the burden of proof on the two issues relating to the appropriateness and implementation [REDACTED] IEP. The District bears the burden of proof on the issue concerning the adequacy of its evaluations [REDACTED]

In applying the law to the facts of this case, I conclude that, for the relevant time period, the District has largely succeeded in providing [REDACTED] with FAPE. [REDACTED] staff sought to include the Parents in all facets of the decision making process, conscientiously attempted to identify [REDACTED] needs and develop and implement IEPs that appropriately addressed those needs.

The District denied [REDACTED] FAPE, however, by failing to include reading and written language goals in her 2007-08 IEP. Likewise, the District failed to administer an appropriate vocational evaluation. This precluded the District from identifying [REDACTED] specific vocational needs, which, in turn precluded the District from identifying appropriate transition goals on her IEP.

1. Whether the District failed to implement the mentally impaired Student's IEP as written?

The Parents failed to meet their burden of proof in asserting that the District failed to implement [REDACTED]'s IEP's as written. To the contrary, the evidence strongly demonstrated that the District staff faithfully implemented [REDACTED] IEP goals. Ms. [REDACTED] for example, kept specific and regular notes [REDACTED] progress on the goals for which she was responsible. Likewise, though Ms. [REDACTED] did not provide speech and language therapy to [REDACTED] she testified that during the 2006-07 school year, she supervised the service provider (Ms. [REDACTED]), and confirmed that Ms. [REDACTED] met with [REDACTED] for 70 mpw each week, as required by the IEP, and that Ms. [REDACTED] implemented the speech and language IEP goals. [REDACTED] met with a different speech therapist for the 2007-08 school year. The Parents did not present any evidence to indicate that that therapist failed to implement [REDACTED] speech and language goals.

With respect to [REDACTED] social work services during the 2007-08 school year, Ms. [REDACTED] conceded that she met individually with [REDACTED] rather than in a group as the IEP specified. [REDACTED] failure to record

this change on [REDACTED] IEP is a procedural error. As discussed above, however, procedural errors do not constitute a denial of FAPE unless they have the effect of denying the student educational benefit. That was not the case here. Ms. [REDACTED] testified that she implemented the social work goal of helping [REDACTED] to reduce stress. She also testified that she made the switch to individual therapy because she thought individual sessions would be better for [REDACTED]

Ms. [REDACTED], [REDACTED] 9th grade special education teacher, also testified that she implemented the IEP goals for which she was responsible. Though her records do not include the same level of detail as Ms. [REDACTED] they do support her testimony. Ms. [REDACTED] did testify that she was unsure whether the IEP goal concerning assistive technology was met. The reason, however, was not attributable to her failure to implement the goal. To the contrary, Ms. [REDACTED] testified that she regularly downloaded text for [REDACTED] onto a flash drive and sent it home for [REDACTED] to use on the computer that she had at home. She was uncertain, however, whether [REDACTED] made any use of the flash drive at home. Ms. [REDACTED] admission that she didn't follow up by contacting the Parents was troubling. But I cannot conclude that this failure of communication constituted a denial of FAPE, because the Parents failed to present evidence to indicate [REDACTED] failed to benefit from her education as a result. To the contrary, even assuming [REDACTED] did not make use of her assistive technology at home, the record still confirms that she made educational progress during that school year.

2. Whether the District developed IEPs that denied the Student FAPE and denied her the related services needed to benefit from her special education?

The Parents also contend that, for the relevant time period, the District denied [REDACTED] FAPE by failing to develop IEP's that provided her with appropriate goals and services. As noted above, an appropriate IEP is one that is reasonably calculated to provide educational benefit to a child. To meet that mandate, districts must tailor an IEP to meet the unique needs of a student through "an interactive process among teachers, parents, local educational officials and, in appropriate circumstances the child ...herself." *Board of Ed. of the City of Chicago v. Il. State Board of Ed.*, 2006 U.S. Dist. Lexis 75872 (N.D. Il) (quoting *Rowley*, 458 U.S. at 181-82) Thus, one factor that courts routinely consider when deciding if an IEP is appropriate is whether the Parents' had a meaningful opportunity to participate in developing the IEP. See, e.g., *Daniel Boone Area S.D. v. Pennsylvania S.E.A.* 42 IDELR 252 (2004)(that parents were "influential" in developing student's IEP was key factor in court's decision to deny due process claim), *N.G. v. New York City Dept. of Health and Mental Hygiene*, 52 IDELR 65 (S.D.N.Y. 2009)(parents' involvement in IEP process was relevant factor in denying parents' due process claim), *Marcotte v. Palos Verdes Peninsula U.S.D.*, 109 L.R.P 43288 (C.D. CA 2009)(same)

Here, the evidence was unequivocal that the Parents played an active and influential role in developing [REDACTED] IEP's throughout the period in dispute. Evidence concerning their involvement is recounted in detail in the previous section, and I will not repeat it here. Particularly noteworthy examples, however, include evidence that one or both parents attended each IEP meeting during the relevant time period, as well as the domain assessment and eligibility meetings. They were accompanied by counsel each time. Notes of these meetings confirm that the Parents actively participated in the meetings -- they asked questions and offered their opinions about [REDACTED] goals and services. The evidence demonstrates, for example, that the Parents were influential in convincing the team to mainstream [REDACTED] for a number of regular education classes, and to investigate and purchase assistive technology for her. In addition, though the Parents now argue that [REDACTED] should receive direct OT services, [REDACTED] expressly agreed that [REDACTED] should continue to receive OT on a consultative basis in the 8/15/06 IEP meeting. Significantly, the Parents did not disagree with any facet of the [REDACTED] 8/15/06 IEP, either during the meeting, or in the

written comments that they submitted after the meeting.

When the time came to write [REDACTED] 9th grade IEP, both of the Parents and [REDACTED] attended that meeting along with their counsel. Once again, the meeting reflects that the Parents were fully involved in decisions concerning all aspects [REDACTED] IEP. For example, the Parents expressed their concern with what they perceived to be conflicting stories from [REDACTED] and school staff concerning events that happened at school. They requested that a daily communications log be created to address the problem. The team agreed, and added the requirement for a communications log to [REDACTED] modifications. [REDACTED] also stressed his belief that [REDACTED] had benefited from attending regular ed science and social studies. The team agreed that [REDACTED] would continue to attend these regular ed classes and be mainstreamed in math and English as well. Again, the Parents did not disagree with any of the team's decisions concerning placement, goals, accommodations or modifications, or related services either during the meeting or in subsequent comments.

Even if the evidence of Parent involvement had been less compelling, the record still supports a finding that the District fully complied with the requirements of FAPE for [REDACTED] 8th grade year (2006-07). The team collaborated to create an IEP that included 11 goals, each of which appropriately addressed [REDACTED] deficits in academics, life skills and speech and language. Indeed, though the Parents now object to life skills goals for [REDACTED] the goals, in fact, targeted deficits that were identified by [REDACTED] herself. In academics, the team included goals to address [REDACTED] deficits in reading, written expression and math. With respect to reading, I initially was concerned that the team did not address all aspects of [REDACTED]s reading deficits. The notes of the meeting, however, confirm that the team considered [REDACTED] needs in reading, and responded to [REDACTED]s questions about reading remediation for [REDACTED]. In light of this evidence, I cannot conclude that the team's decision to include one reading goal for reading/listening comprehension was inappropriate.

The evidence shows that the District provided [REDACTED] with appropriate related services, too. As noted above, during the May, 2006 IEP meeting, [REDACTED] expressly agreed that OT should continue to be provided on a consultative basis. The District's subsequent OT evaluation confirms that decision was appropriate. With respect to assistive technology, the record indicates that [REDACTED] was provided with assistive technology in the form of books on tape for her 8th grade year. While the Parents argued that [REDACTED] should have received more assistive technology, they failed to provide credible evidence that [REDACTED] progress was hindered because she did not receive the AT services that they preferred.

Most important, the record strongly supports a finding that [REDACTED] received educational benefit from her educational plan and made progress during her 8th grade year. Her progress was confirmed by the testimony of her teachers and by the fact that team deemed it appropriate to increase the amount of time that [REDACTED] was mainstreamed into regular classes for her 9th grade year.

In considering [REDACTED] IEP for the 2007-08 school year, the evidence once again shows that the Parents were closely involved in developing the IEP. Each of the 8 goals that were created for [REDACTED] targeted identified deficits in the areas of life skills, speech and language and employment skills. The IEP again included appropriate modifications and accommodations and appropriately addressed [REDACTED] social work and occupational therapy needs. Unlike [REDACTED] previous IEP, [REDACTED] 9th grade IEP failed to address her deficits in reading and written expression. The team omitted goals in reading and writing despite the fact that assessments showed [REDACTED] to be functioning at a mid-second grade level in both areas. Dr. [REDACTED] noted these deficits in his report and recommended that [REDACTED] receive remediation to address them. Significantly, school psychologist [REDACTED] testified that he agreed with Dr. [REDACTED] recommendations on reading and writing instruction. In addition, Ms. [REDACTED] testified that she believed [REDACTED] should have received instruction in those areas, too.

The notes of the meeting fail address why these deficits weren't addressed. There was ample testimony

throughout the hearing, however, to infer that the Parents preferred addressing [REDACTED] reading and writing needs through assistive technology, i.e., Read and Write Gold, use of a laptop, and books on tape. Though helpful, such accommodations are not a substitute for improving a student's skill level. *See K.L. v. Mercer Island School Dist.*, 46 IDELR 273 (W.D. WA. 2006)(accommodation without increasing skill level does not comply with IDEA) This is particularly true for reading and writing skills, which are of central importance to a student's success. Thus, the District's failure to adequately address [REDACTED] deficits in those academic areas was a denial of FAPE.

The evidence also shows that the District failed to provide [REDACTED] with an appropriate vocational assessment. As Mr. [REDACTED] made clear, an appropriate occupational evaluation must assess a student's skills needed for the employment. The District's assessments did not satisfy that requirement. Instead, Mr. [REDACTED] testified that his assessments measured [REDACTED] employment interests and domestic skills. Such information is undoubtedly relevant to [REDACTED] transition to independent living. But it does not provide the team with the information necessary to create appropriate transition goals that will help [REDACTED] to obtain the skills she will need for the job market. This was a denial of FAPE.

3. Whether the District administered appropriate evaluations in the areas of speech and language, assistive technology and occupational therapy?

The final issue concerns the appropriateness of the District's AT, OT and assistive technology assessments [REDACTED]. Under the law, the District was required to file a due process complaint when it refused to agree to the Parents' request for independent evaluations in these areas. Accordingly, the District bears the burden of proof in demonstrating that its evaluations were appropriate. In considering the District's evidence concerning the evaluations, I find that each of the three evaluations conducted by the District was appropriate and the Parents are not entitled to reimbursement for the private evaluations that they subsequently obtained.

Specifically, with respect to the District's speech and language evaluation, the evidence demonstrates that the tests administered as part of the District's evaluation were comprehensive and reasonably chosen to identify [REDACTED] speech and language needs. They provided objective insight into [REDACTED] skill levels in the areas of oral/motor and articulation, receptive and expressive language, as well as auditory perception, reasoning and processing. The evaluation given by Ms. [REDACTED] was no more thorough. Indeed, Ms. [REDACTED] conceded that in a number of areas the District's evaluation was more in depth than her evaluation. Moreover, [REDACTED] testimony confirmed that her results were mostly consistent with the District's. Though the District's report should have included written recommendations as a feature of the evaluation report, Ms. [REDACTED] testified that she orally shared her recommendations with the team.

With respect to the District's occupational therapy evaluation [REDACTED] the evidence showed the evaluation was thorough and the results were reliable. It measured [REDACTED] skills in the areas of visual-motor integration, visual perception and motor coordination. The evaluation also included a comprehensive functional assessment that measured the degree to which [REDACTED] could perform tasks encountered in the classroom setting. Ms. [REDACTED] testified that the results of the assessment showed that [REDACTED] has severe visual-motor deficits, but that these deficits are consistent with her cognitive functioning level. Despite these deficits, the School Functional Assessment showed that [REDACTED] was able to participate in all aspects of her special education classroom with modifications and adaptations. [REDACTED] also was able to legibly copy sentences in print and cursive, though her printing was more efficient. Because [REDACTED] work is functional, [REDACTED] recommended that [REDACTED] continue to receive OT services on a consultative basis.

The private OT evaluation conducted by Ms. [REDACTED], also concluded that [REDACTED] has severe deficits in visual perception and fine motor coordination. Ms. [REDACTED] recommendation of direct OT services, however, appeared to be based on her perspective as a clinician in private practice. She did not observe [REDACTED] at school and did not base her recommendation on [REDACTED] ability to function in the

classroom setting.

Finally, the District asserts that its assistive technology evaluation of [REDACTED] also was appropriate. The evaluation, or collaboration, was conducted by Ms. [REDACTED] of [REDACTED]. Ms. [REDACTED] testified that she first identified the Student's needs by consulting team members. She observed [REDACTED] in the classroom and then, in a one-on-one setting, had [REDACTED] try out AT products that she thought [REDACTED] might find helpful. She recommended that the team consider Co-Writer and Write Outloud. The Parent's consultant, Mr. [REDACTED] followed essentially the same process as Ms. [REDACTED]. Mr. [REDACTED], however, did not observe [REDACTED] in a classroom. Though Mr. [REDACTED] recommended Read and Write Gold, he did not assert that the products recommended by Ms. [REDACTED] were inappropriate. Instead, he stated that he believed RWG was a good product that was less expensive than the other products. He also conceded that he was not very familiar with Co-Writer and Write Outloud. Though the District ultimately selected Read and Write Gold for [REDACTED] that fact does not render its AT assessment inappropriate.

In addition to the three evaluations discussed above, the Parents also are seeking reimbursement for the neuropsychological evaluation conducted by Dr. [REDACTED], and for [REDACTED]'s time spent in attending meetings to share his results. The District objects to the Parents raising these requests on the grounds that they did not follow the appropriate procedural requirements that would allow them to seek reimbursement in this instance. Specifically, the District maintains that the Parents did not raise the issue of [REDACTED] evaluation -- or their request for reimbursement -- in their due process complaint. Nor did the Parents make a formal request for an independent psychological evaluation as they did with the three evaluations described above. In addition, the District argues that the Parents should be precluded from seeking reimbursement because they refused to allow the District to proceed with its triennial review of [REDACTED] until [REDACTED] evaluation had been completed.

The Parents do not dispute any of the District's assertions. Rather, they purport to rely on an ISBE policy that requires parental reimbursement when a district relies on a private evaluation in lieu of its own. (See ISBE Special Education Policies and Procedures, Section X, Private Evaluations and Independent Evaluations at Public Expense, D., p.74) Even if the Parents' position were tenable, the Parents still had a duty to disclose the issue in their complaint. The Parents failed to do so, however, and on that basis alone their request for reimbursement could be denied.

But the Parents' request for reimbursement also fails because it isn't supported by the evidence. To the contrary, the undisputed evidence demonstrates that in the summer of 2006, the District attempted to schedule a domain meeting with the Parents to plan for its upcoming triennial review [REDACTED]. The Parents, however, preempted that process, choosing to obtain a private neuropsychological evaluation as a first step. They would not agree to schedule the domain meeting or allow the District to proceed with its own evaluations until Dr. [REDACTED] evaluation was completed.

When they finally agreed to schedule the domain meeting, the Parents chose to have Dr. [REDACTED] attend the meeting and present his report. The District took Dr. [REDACTED] report into account as it is legally required to do. (34 C.F.R. § 300.502 (c)(1)) The team then proceeded to plan its triennial review [REDACTED] identifying several additional areas of assessment, which the District subsequently administered. Given the breadth of Dr. [REDACTED]'s evaluation, the team chose not to administer additional cognitive or academic measures. Mr. [REDACTED] testified that this was in part due to the fact that [REDACTED] results were consistent with the District's past findings. Moreover, several of the measures administered by [REDACTED] like the WISC, would have been invalid if the District had readministered them so soon. Given these circumstances, the Parents cannot credibly argue that the District *chose* to rely on Dr. [REDACTED] evaluation in lieu of its own. Nor can they argue that they are entitled to reimbursement for Dr. [REDACTED]'s time spent at meetings. Once again, the Parents chose to have their consultant attend meetings to explain the results of an evaluation that they chose to obtain. The financial responsibility for that decision is theirs. Accordingly, the Parents' request for reimbursement for Dr. [REDACTED] evaluation and for his attendance at

District meetings is denied

Pursuant to the above findings of fact and conclusions of law, it is hereby ordered:

- A. The Parents' request that the IHO issue an Order finding that the District violated the procedural rights of the Parents and denied the Parents their right to participate in the formulation of FAPE is denied;
- B. The Parents' request that the IHO issue an Order finding that the District denied the Student FAPE is denied with respect to the 2005-06 and 2006-07 school years. It is granted for the 2007-08 school year with respect to these areas:
- The District denied the Student FAPE by failing to provide the Student with appropriate IEP goals to address her reading deficits, particularly in the areas of decoding and word attack skills;
 - The District denied the Student FAPE by failing to provide the Student with appropriate IEP goals to address her deficits in the area of written expression;
 - The District denied the Student FAPE by failing to administer a vocational evaluation that appropriately identified the Student's vocational needs; this in turn precluded the District from creating a meaningful transition plan for TG;
- C. The Parents' request that the Hearing Officer find that the District failed to implement the Student's IEP's and order it to do so is denied.
- D. The Parents' request that the Hearing Officer find that the District failed to utilize specially designed instruction is granted solely as it relates to the District's failure to provide the Student with appropriate reading instruction for the 2007-08 school year. The District is ordered to convene an IEP meeting to create a goal or goals to address [REDACTED] reading deficits using a specially designed, multisensory reading approach such as the Lindamood Bell or Wilson method of instruction. It will be the team's decision whether the goal or goals should address reading comprehension, decoding or both. This is intended to be in addition to the compensatory reading instruction described below.
- E. The Parents' request that the Hearing Officer find that the District failed to offer the Student appropriate related services is denied
- F. The Parents' specific, individual requests for compensatory services are denied. The District is, however, ordered to provide the Student with the following compensatory services:
- The District shall provide the Student with no less than two hours a week of reading instruction utilizing a research based multisensory approach such as the Lindamood Bell approach or the Wilson method. The reading instruction must be provided by an instructor who is trained in teaching that multisensory method of instruction. The instruction is to take place either before or after school, and must commence within 30 days of the first day of school for the 2009-10 school year and continue to the end of the school year. The District is not required to retain a private provider of these services, but if it chooses to do so, the District must reimburse the Parents for transportation costs to and from the provider, if the Parents provide the transportation.
 - The district shall provide the Student with no less than one hour per week of written

language instruction. This instruction is to be in addition to classroom instruction that the Student may already be scheduled to receive. The instruction should utilize an approach such as The Power Writing Program, or Three Steps to Powerful Writing, (See Dr. [REDACTED] Report, Recommendation 6), or another specially designed approach selected by the team.

- G. The District shall retain a certified vocational evaluator such as Mr. [REDACTED] or someone with comparable qualifications, to administer a an appropriate vocational evaluation that will identify [REDACTED] skills and aptitudes relevant to finding employment; Once the evaluation has been completed, the District shall convene an IEP meeting to hear the examiner's results and to draft appropriate transition goals for [REDACTED]. The District shall also provide the Student with vocational counseling if the evaluator deems it to be necessary.
- H. The Parents' request that the Hearing Officer enter an order finding them to be the prevailing party is denied. I do not have the legal authority to make such a finding. Moreover, the evidence indicates that the District largely complied with the requirements of FAPE on [REDACTED] behalf.
- I. The Parties shall convene an IEP meeting no later than two weeks from the date of this decision to draft a new IEP for [REDACTED] that takes this decision and order into account.
- J. The District shall provide proof of compliance with the aforesaid orders to the Illinois State Board of Education, Compliance Division, 100 No. First St., Springfield, Il. 62777-001, on or before August 21, 2009.

DATED: July 17, 2009

Kristine L. Anderson
Impartial Hearing Officer
P.O. Box 7065
Evanston, Il. 60204

III
The Parents did not specify a period at issue in their amended complaint. Since they filed their amended complaint on January 29, 2008, the statute of limitations period extends back two years to January 29, 2006. In addition, I ruled that the relevant time period would extend forward to include the time period of the IEP that was in place when the Parents filed the amended due process complaint. Specifically, the IEP that was current at the time of filing was [REDACTED] 9th grade IEP. It was written on May 22, 2007 and extended until the following May. In other words, the relevant time period

encompasses the second semester [REDACTED] 7th grade year, as well as her 8th and 9th grade years.

[REDACTED]

Speech and language was listed as a secondary disability until February 15, 2007, when the team held an eligibility to review the results [REDACTED] triennial evaluation. At that time the team agreed to change [REDACTED] classification to dual primary disabilities of mental impairment and speech and language. This change of classifications, however, did not result in any notable changes in [REDACTED] services.

[REDACTED]

Ms. [REDACTED] testified that the [REDACTED] provides special education services to 16 school districts, including [REDACTED]. Specifically, the Co-op provides school psychology services, social work, speech and language therapy, physical therapy and occupational therapy.

[REDACTED]

Principal [REDACTED] testified about the shortage of speech therapists necessitating the District's reliance on a speech paraprofessional to provide services. [REDACTED] also testified that [REDACTED], another administrator in the District, was responsible for ensuring that District employees had the appropriate qualifications and certifications. Ms. [REDACTED] confirmed to Mr. [REDACTED], that [REDACTED] satisfied applicable requirements to work with [REDACTED]. In addition, [REDACTED] testified that [REDACTED] was registered with the regional office of education, and that she had a bachelor's degree.

[REDACTED]

Though the chart relating to the third IEP goal is missing from the record, Ms. [REDACTED] also kept notes of her sessions with [REDACTED] and the skills that were targeted during those sessions. (See [REDACTED]'s Notes of Therapy Sessions, pp. 181-85, Ex. 22) These notes indicate that Ms. [REDACTED] implemented [REDACTED] expressive language goal.

[REDACTED]

School Psychologist [REDACTED] testified that a primary basis for the decision not to administer another intelligence test was because Dr. [REDACTED]'s results were consistent with results that [REDACTED] had obtained on previous cognitive assessments.

[REDACTED]

At the hearing, however, the Parents argued that the vocational assessments administered by the District -- an interest inventory and a test that primarily measured domestic skills -- fell short of the type of thorough assessment that [REDACTED] needs and that [REDACTED] recommended.

[REDACTED]

In his report, Dr. [REDACTED] specifically referred to the Lindamood Bell program, but during the hearing [REDACTED] testified that he believed similar multisensory programs would also be appropriate for [REDACTED].

[REDACTED]

At the time of the report, Ms. [REDACTED]'s last name was [REDACTED].

[REDACTED]

Ms. [REDACTED] noted that the School Functional Assessment is normed for students up to 12 years of age, but [REDACTED] was 14 at the time of the assessment. [REDACTED] stated that she nevertheless chose to administer the SFA because she believed it would still be helpful in showing [REDACTED] skills and deficits.

[REDACTED]

[REDACTED] testified that she observed [REDACTED] write words on the board as part of a paragraph writing exercise. Notably, and consistent with Ms. [REDACTED]'s and [REDACTED]'s testimony, [REDACTED] stated that [REDACTED] handwriting was legible, though she struggled with spelling. (*Id.* at 57)

[REDACTED]

Members of the technology committee who provided testimony at the hearing were [REDACTED] Mr. [REDACTED] and Mr. [REDACTED].

[REDACTED]

To be precise, [REDACTED] actually participated in extended school year instruction (esy) at the high school in the summer of 2007. Her IEP stated that she would receive instruction for 300 mpw in learning to use the assistive technology that the team had agreed to utilize. She also was to receive instruction in math and language arts. Finally, the IEP generally states that "one to two hours total would be used for transition." (5/22/07 IEP, p. P-109, 142, Ex. 28)

[REDACTED]

Mr. [REDACTED] may have been drawing a distinction between what he considers to be best practices and legal requirements, because the law specifies that transition services should begin no later than the first IEP that is in effect when the student turns 16. 34 C.F.R. § 300.320

[REDACTED]

Because her qualifications were lacking, I would not allow Ms. [REDACTED] to testify about most of the conclusions in her

report. I did allow her to offer her opinion about [redacted] speech and language goals and reading instruction. It must be noted, however, that the record shows that Ms. [redacted] training in reading instruction is fairly limited, too. She testified that she participated in a 3 day seminar in the Lindamood Bell instructional method, and took one course in dyslexia.

1161

As noted above, though [redacted] 7th grade IEP was in effect during the statute of limitations period for this case, the Parents didn't present evidence to indicate that they believed that IEP to be deficient. To the contrary, [redacted] testified that their concerns first arose over services for [redacted] 8th grade year. Accordingly, my decision addresses [redacted] 8th and 9th grade years, and the IEPs that were in effect during that time.

1171

Ms. [redacted] conceded that the School Functional Assessment is normed for students who are younger than [redacted] was at the time. Because [redacted] cognitive functioning level is below her chronological age, however, [redacted] believed the assessment was appropriate and helpful in identifying the skills [redacted] is able to perform in the classroom.

1181

In ordering the District to create a meaningful transition plan for [redacted] I'm mindful that, with only so many hours in a school day, it may be necessary to shift the focus [redacted] educational plan away from its strong emphasis on academics in order to incorporate necessary vocational training for [redacted]