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**SPECIAL EDUCATION  
SERVICES**

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

[Redacted]

Student

vs.

[Redacted]

Local School District)

Case No. 2008-245

**CAROLYN ANN SMARON, Hearing Officer**

**DECISION AND ORDER**

**PROCEDURAL MATTERS**

On January 11, 2008 counsel for the mother of the student filed an Amended Request for due process reinstating some of the issues raised in the initial request for due process and asserting a new issue. By Preliminary Order the matter was set for prehearing conference on February 18, 2008. The parties engaged in an unsuccessful resolution session on January 25, 2008.

Counsel for the school district moved to dismiss the reinstatement of the original request asserting that applicable statutes did not authorize a party to "renew issues" from a previously withdrawn due process request. By Preliminary Order issued January 31, 2008, that motion was denied and the prehearing conference date confirmed.

Counsel for the school district moved to dismiss certain portions of the Amended Complaint asserting that the hearing officer did not have jurisdiction to hear alleged violations of §504 of the Rehabilitation Act and parallel provisions of the Americans with Disability Act and in addition asserting that the issue of the parent's request to hold an IEP meeting at 6:30 p.m. had been decided by Preliminary Order issued on December 13, 2007.

By Preliminary Order issued February 13, 2008, the hearing officer dismissed, with prejudice, all claims by the parents sounding in violations of §504 of the Rehabilitation Act and parallel provisions of the Americans with Disability Act. In addition, the hearing officer clarified her previous ruling regarding IEP conferences at 6:30 p.m. concluding that "it is reasonable to schedule an IEP meeting which begins and/or ends with the contractual hours of certified school staff of the school district" Finally, the hearing officer ruled that the hearing officer had no jurisdiction to issue any order or directive regarding any other student other than the student named in the above

captioned case. At the prehearing conference, the hearing officer clarified that the determination of the contractual hours of the certified school staff were those obligations on a "typical" school day at the building where the student attends school within the school district.

The prehearing conference was conducted on February 18, 2008. [REDACTED] represented the interests of the mother of the student and [REDACTED] represented the interests of the school district. Both parties provided the hearing officer with prehearing statements of the issues and preliminary lists of witnesses and documents.

Based on the consensus of the attorneys, the hearing was scheduled for seven days. In fact, testimony was taken on March 19, 2008, April 1, 2008 and April 3, 2008. By agreement, closing statements were submitted on May 28, 2008 at which point the record was closed. All parties received transcripts of the testimony elicited during the hearing.

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

**PARENT ISSUES:**

1. The parent alleges that she made a written request for an evaluation on October 10, 2006 but that the school district did not respond to the parents request within ten (10) days of the request. The parent further alleges that the school district's response was not legally sufficient as to why they refused to conduct an evaluation and further actively misrepresented applicable law on the subject of requests for evaluation.
2. The parent alleges that she made a written request for and consented to an evaluation on November 21, 2006 but that the school district did not complete the evaluation within sixty (60) school days after her written consent.
3. The parent alleges that some but not all of [REDACTED] auditory processing evaluation/recommendations were included in the IEP created on April 11, 2007. The parent asserts that the evaluation/recommendations were not discussed at the aforesaid IEP meeting and does not know how that evaluation/recommendations came to be inserted within the IEP. As a consequence thereof, the parent asserts that she is entitled to reimbursement for that evaluation in the amount of \$300.00 plus her traveling expenses in presenting the student for evaluation by [REDACTED].

**REMEDY REQUESTED:**

A. The parent requests a finding that the school district violated the procedural rights of the student and that as a result thereof, the student should be placed at [REDACTED] at public expense for a period commensurate with the period of time that the student's procedural rights were violated. The parent alleges that the requested compensatory educational services should include tutoring utilizing research-based teaching approaches and requests that those services be provided at [REDACTED] which the parent asserts is an appropriate placement for the student as it uses several research-based teaching approaches that can accelerate the student's progress.

B. The parent requests an Order that the school district reimburse her for the auditory processing evaluation.

**SCHOOL DISTRICT RESPONSE:** The local school district asserts that the special education needs of the child have been appropriately identified and that the special education program and related services set forth in the child's Individualized Education Plans provide the student with a free appropriate public education in the least restrictive environment. Specifically the school district requests a finding that its denial of an evaluation after an evaluation was requested by the parent on October 10, 2006 was appropriate; that it complied with the statute when it completed its evaluation within sixty (60) school days of receiving informed written consent from the parent; and that while it considered the auditory processing evaluation, it was not considered to the extent that the parent should be reimbursed.

**STIPULATIONS**

Counsel for the parent stipulated at the prehearing conference that the parent had not raised the appropriateness of the April 11, 2007 Individual Education Plan in either the initial Request for Due Process or in the Amended Request for Due Process. No testimony or documents was allowed relating to the appropriateness of the April 11, 2007 Individual Education Plan.

**FACTS**

The recitation of the facts of this case was gleaned by a review of the documents within the joint document book and the hearing officer's notes as to the facts elicited or facts that could be inferred from the testimony of the various witnesses.

The background facts are set forth below so as to give context to the parent's allegation that the school delayed beyond ten (10) days in responding to her initial request for a special education evaluation, that the school district delayed beyond sixty (60) days in completing a special education evaluation of the student, and that the school district

utilized the evaluation of [REDACTED] in its evaluation of the student, yet refuses to reimburse the parent for its cost.

### 2004-2005 3<sup>rd</sup> grade

On March 4, 2005 the mother of the student was notified that the student's 3<sup>rd</sup> grade teacher had referred the student for an evaluation because the student was struggling with academic skills. EXHIBIT 2 The mother was invited to attend a conference on March 16, 2005 to review the student's educational status and determine what additional data might be needed to complete the evaluation. EXHIBIT 1 On March 16, 2005 the student's mother and grandmother, the student's 3<sup>rd</sup> grade teacher, a school district psychologist, [REDACTED], and a school district social worker, [REDACTED], concluded that additional data was needed in the area of social/emotional status, general intelligence, and academic performance. The mother gave informed written consent to conduct the evaluation (including securing additional data) on March 16, 2005. EXHIBIT 3-5 On May 10, 2005 the parties, including the student's mother and grandmother, met to review the various evaluation reports in order to determine whether or not the student was eligible for special education and related services.

[REDACTED], the school psychologist, reported that the student's Cognitive Assessment System (CAS) Full Scale standard score was 81, ranking the student at the 10<sup>th</sup> percentile when compared to others her age. EXHIBIT 107-108 [REDACTED] also reported that the student's scores on the Woodcock-Johnson Tests of Achievement-III indicated that her academic performance was in the average range when compared to the average student at grade 3.6. EXHIBIT 109-110 The school nurse reported that the student passed the hearing screening on March 6, 2003 and no concerns about the student's hearing had been raised either at home or in the school setting. The school nurse further reported that the student was under the care of a physician [REDACTED] for treatment of Attention Deficit Disorder/Inattentive type and that after the student started medication there were dramatic improvements. EXHIBIT 111 The school social worker reported that the student had been working with the social worker since 2<sup>nd</sup> grade to address social/behavioral concerns. The social worker reported that these issues had improved considerably since the start of medications for Attention Deficit Disorder. The social worker concluded that there were no social-emotional concerns impacting learning. EXHIBIT 112-113 [REDACTED] also reported that the student had received speech services from November 2000 through January 2004 (speech services had been focused on articulation EXHIBIT 221). Both the student's mother and teacher reported that the student communicated effectively. The participants at the May 10, 2005 meeting concluded that the student was not eligible for special education. EXHIBIT 119 The parties agreed to reconvene at the beginning of 4<sup>th</sup> grade to discuss whether the student might be eligible for a 504 Plan.

### 2005-2006 4<sup>th</sup> grade

On September 27, 2005 the student's mother attended a meeting convened for the purpose of discussing whether the student might be eligible for a Section 504 Plan. The parties agreed that she was and created a Section 504 Plan for the student. The Plan noted that the student was rushing through her work and having trouble working independently. The Plan called for the intervention of teaching strategies to address these issues. The mother of the student gave her written consent for the accommodations. EXHIBIT 124-125. At the request of the mother, the September 28, 2005 504 Plan was reviewed with her and the student on November 1, 2005. EXHIBIT 126.

On April 12, 2006 the parent was advised that the student had accumulated 30 days of absences including 19.5 days in the 3<sup>rd</sup> quarter of the 2005-2006 academic year. EXHIBIT 136-137 The student's grades plummeted during the 3<sup>rd</sup> quarter. EXHIBIT 145 On April 19, 2006 a meeting was convened for the purpose of revising the 504 Plan. The 504 Plan was revised and the mother of the student gave her written consent for the accommodations. EXHIBIT 141-142

The student attended 14 of the 18 days of summer school in 2006. Summer school was focused on reading. The summer school reading curriculum is not the same as the reading curriculum used during the regular school year. The student was not in attendance when the post assessment tests were given and thus it was difficult to determine what progress might have been made. EXHIBIT 147-148.

### **2006-2007 5<sup>th</sup> Grade**

On October 10, 2006 a meeting was convened for the purpose of discussing and revising the 504 Plan. The Plan noted that the student was (a) not following directions on a multistep task and/or problems in class and (b) having difficulty with organization-homework-assignments. The Plan called for the intervention of teaching strategies to address these issues. The mother of the student gave her written consent for the accommodations. EXHIBIT 154-158

On October 10, 2006 the mother of the student requested an evaluation of the student in all subjects. That written request was referred to [REDACTED]. [REDACTED] testified that she administered an academic screening and reviewed the student's grades in 4<sup>th</sup> and 5<sup>th</sup> grade. [REDACTED] testified that the student's grades in the 3<sup>rd</sup> quarter of 4<sup>th</sup> grade declined – the same period when the student was absent 19.5 days. She also spoke to the student's 4<sup>th</sup> and 5<sup>th</sup> grade teachers and the social worker and speech pathologist who had previously worked with the student. [REDACTED] testified that she reviewed the student's 504 Plan dated October 10, 2006. [REDACTED] testified that she was of the opinion that eligibility for special education must be premised upon a conclusion that the student's academic difficulties were not a result of a lack of instruction in reading or math. [REDACTED] testified that if the IEP team had determined that the student's difficulties could be attributed to a lack of instruction in reading or math, the student could not be found eligible for special education. [REDACTED] testified that she believed that the student's

academic difficulties were the result of her excessive absences in 4<sup>th</sup> grade i.e. she had not received the required instruction in reading or math. [REDACTED] testified that she had reviewed the student's summer school progress reports. She noted that the summer school focused on reading. The student's math grades plummeted after her excessive absences in the 3<sup>rd</sup> quarter of 4<sup>th</sup> grade. She concluded that summer school did not address her concern about "lack of instruction in reading and math". [REDACTED] testified that she reviewed the student's ISAT scores and noted that the student barely met State standards in Mathematics and was below State standards in Reading. [REDACTED] testified that she believed that she needed to provide an accurate and thorough response to the parent's request for an evaluation. Her attempts to gather information to provide a complete and accurate response took more than the required ten days.

By letter dated October 27, 2006, [REDACTED] advised the parent that an evaluation would not be conducted for the following reasons:

*[REDACTED] was recently administered an academic screening to determine strengths and weaknesses in the core subject areas. Strengths were indicated in the areas of reading fluency and written expression, while weaknesses were found in reading comprehension, spelling and math. Although she is struggling in the classroom, [REDACTED] poor attendance last year excludes her from being tested or even made eligible for Special Education Services. She needs to have a consistent school experience before testing can be considered. In addition, [REDACTED] was just tested in 2005 and not found eligible for Special Education Services. Therefore, [REDACTED] current 504 Plan will be continued and her progress will be monitored throughout the school year. If little progress is noted by the end of the school year, a new referral can be made.*

[REDACTED] testified that she included a copy of the parent's procedural safeguards with her letter to the parent and advised the parent that she should call her if the parent had any questions.

On November 1, 2006 the mother of the student made a written request for copies of the student's special education records. The school district refused to release the testing protocols but agreed on a meeting date of November 14, 2006 to discuss the testing data. That meeting was cancelled by the mother and rescheduled to November 21, 2006.

On November 21, 2006 the mother, accompanied by an advocate, met with [REDACTED] and her supervisor, [REDACTED]. [REDACTED] is the school district's Coordinator of Diagnostic Services. She is the psychologist at the junior high and is [REDACTED] direct supervisor. At that meeting, [REDACTED] again outlined the basis for her decision that an evaluation was not warranted. [REDACTED] testified that neither the mother nor the advocate would accept the explanation. Instead the mother tendered another handwritten note requesting an evaluation of the student in all subjects. The handwritten note

contained the following additional sentence: "Please consider this my request and consent to evaluate". EXHIBIT 161 ██████████ testified that at the end of the meeting, she reluctantly accepted the mother's referral. ██████████ testified that she accepted the referral because she dislikes having an adversarial relationship with a parent stating "So, I mean - if they're pretty demanding and feel that it would be in the best interest of their child, then I'm going to be on their side and, say, yeah, we're going to take - you know, we'll take it." ██████████ testified that ██████████ advised the mother that a domain meeting would have to be scheduled, similar to the one that the mother had attended in May 2005. ██████████ testified that the parties discussed a date for that domain meeting and concluded that the domain meeting should be scheduled for January 9, 2007. ██████████ testified that it was clear to her that the mother understood that her consent would be sought on the day of the domain meeting.

After the meeting on November 21, 2006, the mother sought a central auditory processing evaluation from audiologist ██████████, a recognized expert in that field. The mother testified that a friend had suggested that she seek out this evaluation. She and student met with ██████████ on December 18, 2006. ██████████ was provided no school records and the information which provided the basis for her recitation of the student's medical and educational background was provided by the mother. ██████████ testified that she was aware that the student had been diagnosed with Attention Deficit Disorder-Inattentive Type but did not include that diagnosis in her report. The mother advised ██████████ that a domain meeting was then scheduled for January 9, 2007.

██████████ concluded that the student had normal bilateral hearing. ██████████ further concluded that the student had a central auditory deficiency in that the student had mildly delayed auditory decoding skills and mildly delayed auditory closure skills. Because of these mildly delayed auditory processing deficiencies, Ms. Reiser stated that the student might be confused when trying to decode or digest new information or might have difficulty understanding information when it is presented quickly. ██████████ concluded that the student had overall poor auditory memory skills and as a consequence was likely to have difficulty remembering what she hears. Finally, ██████████ noted that during testing the student tracked visual stimuli from right to left instead of left to right. ██████████ stated that the student may skip letters, words, or lines when reading. ██████████ recommended certain classroom accommodations. ██████████ bill in the amount of \$300 was paid by the mother. EXHIBIT 165-173, EXHIBIT 189

By letter dated December 20, 2006 the school district confirmed that the mother's written request for an evaluation had been accepted. The confirmation included a formal invitation to a domain meeting on January 9, 2007. When that domain meeting was cancelled by the mother, the domain meeting was rescheduled to January 18, 2007. When that domain meeting was cancelled by the mother, the domain meeting was rescheduled to February 8, 2007.

██████████ report was provided to the school district at the beginning of the domain meeting on February 8, 2007. ██████████, the speech pathologist, testified that she reviewed ██████████ report during the domain meeting, paying particular attention to the assessments utilized by ██████████. ██████████ testified that the report was consistent with her observation of the student on January 29, 2007. In addition she noted that many of ██████████ recommendations were strategies that were then being used in the classroom with and by the student. ██████████ believed that ██████████ report confirmed the domain team's decision that no further speech/language evaluations were needed. ██████████ testified that there was nothing within the ██████████ report to indicate that the student had a central auditory processing disorder or that the delays were anything other than mild. The participants concluded that the student's general intelligence and academic performance required current assessment by the school psychologist. EXHIBIT 186-188 Although offered the opportunity to provide her written consent for the evaluation, the mother did not sign the consent until February 15, 2007. EXHIBIT 196-197

On April 11, 2007 a meeting was convened to discuss the evaluation of the student and determine whether she was eligible for special education. ██████████ assessment of the student's general intelligence utilized the ten subtests of the Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV). ██████████ had previously used the CAS to assess the student's cognitive abilities. ██████████ directed ██████████ to utilize a different assessment in 2007 to avoid any possible "practice effect". The student's full scale IQ was 80 which classified her as within the low average range of intellectual functioning and ranked her at the 9<sup>th</sup> percentile when compared to other children her age. There was no significant difference between her Verbal Comprehension and Perceptual Reasoning scale scores indicating that the student expressed her intelligence equally through verbal comprehension and expression and through manipulation of concrete objects to solve nonverbal problems. ██████████ testified that as a consequence of ██████████ comments in her report about "poor auditory memory skills", she administered specific subtests in the WISC. ██████████ assessed the student's working memory abilities using the Working Memory Index (WMI) and concluded that they were in the Borderline range. ██████████ assessed the student's speed of processing using the Processing Speed Index (PSI). While she concluded that the student had an average range and rank, the student performed inconsistently on the two subtests and thus Ms. Terry concluded that these results should be interpreted with caution. EXHIBIT 211-213 At the hearing ██████████ testified that based on the student's scores on the WISC-IV, there was no reason to suspect that the student had a disability.

██████████ also assessed the student's academic performance using the Kaufman Test of Educational Achievement, Second Edition (KTEA-II) ██████████ concluded that the student's achievement in reading and written language were in the Average range and her achievement in math was in the Low Average Range. EXHIBIT 214-215.

██████████ the school district social worker, reviewed the student's records, interviewed the student's teacher and parent, and observed the student in the classroom. She concluded that there were no social, emotional or behavior concerns which interfered with the student's learning. ██████████ found that the student's adaptive skills were age appropriate. EXHIBIT 218

██████████ the school district speech pathologist, assessed the student's communication status. Her file review revealed that the student had received speech services to address an articulation issue. She observed the student in the classroom on January 29, 2007 and concluded that the student's articulation skills were unremarkable at the level of spontaneous conversation. ██████████ had no concerns with the student's communication performance which would influence her conversational competence within an educational conversational exchange. EXHIBIT 220-221

At the meeting held on April 11, 2007 the participants concurred that the student's suspected disability was not from lack of instruction in reading and math. EXHIBIT 222 All of the school district personnel who testified stated that if the answer had been in the affirmative, the student could not have been found eligible for special education. The participants concluded that the student had a disability described as "moderate inattentiveness" which adversely affected her ability to attend to teacher instruction and the tasks at hand and initiate/complete tasks independently and comprehend reading materials and math story problems. The aforesaid disability fell within the IDEA disability category of "other health impairment/attention deficit disorder" Annual goals were developed the areas of concern. The participants concluded that certain classroom modifications were required. Many of these modifications had been contained within the student's 504 Plans. The participants concluded that the student should receive special education services on a pull-out basis for the remainder of 5<sup>th</sup> grade with placement in the REI setting for 6<sup>th</sup> grade. EXHIBIT 234-236 The mother of the student did not provide consent for the special education services until August 2007.

#### APPLICABLE LAW

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

In an administrative hearing, the party seeking the relief bears the burden of proof. *Schaffer v. Weast*, 126 S.Ct. 528 (2005). In the instant case, the school district bears the statutory burden that at all times relevant it properly identified the nature and

severity of the student's suspected disabilities. The parents bear the burden of proving that the school district violated the procedural rights of the student to such an extent that it denied the student a free appropriate public education.

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

### APPLICATION OF LAW TO THE FACTS

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 CFR 300.513(a)(2).

It is clear to this hearing officer that the parent's letter dated October 10, 2006 represented a request for a special education evaluation. The school district was then responsible for processing the request, deciding what action should be taken, and initiating the necessary procedures. 23 Ill.Admin.Code §226.110(c)(1) [REDACTED] testified that she reviewed the student's records including her attendance, interviewed the student's 4<sup>th</sup> and 5<sup>th</sup> grade teachers, and administered an academic screening. Ill.Admin Code §226.520 required that the school district notify the parents of its decision within ten days of receipt of the request. Instead, the school district notified the parent seventeen days after its receipt of the request. [REDACTED] testified that it took her more than ten days to compile an accurate and complete response to the parent's request. [REDACTED] testified that the delay on her part was inadvertent. The testimony and documents show that prior to, during, and after the school district decision to reject the request, the student was receiving the services provided within her 504 Plan to address the student's inattentiveness and disorganization. Counsel for the parent has failed to provide any evidence that the seven day delay impeded this student's right to a FAPE, impeded the parent's opportunity to participate in the decision-making process or deprived the student of an educational benefit. The seven-day delay did not rise to the level of a procedural violation of IDEA.

At the hearing, counsel for the parent asserted that the reasons given by the school district for the denial of the parent's request for an evaluation were substantively incorrect. [REDACTED] provided the parent with the required notice of the school district's decision in her letter of October 27, 2006. On its face, the letter contains (a) a description of the action refused by the school district; (b) an explanation of why the school district refused to

evaluate the student and a description of each evaluation procedure, assessment, record or report the school district used as a basis for the refused action; (c) enclosure of the Explanation of Procedural Safeguards and (d) contact information for [REDACTED]. The letter dated October 27, 2006 complied in all respects with Section 1415(c) of IDEA. In light of all of the evidence surrounding the student's history including the absences in 4<sup>th</sup> grade, the reports by the student's 4<sup>th</sup> and 5<sup>th</sup> grade teachers, the academic screening and the recent evaluation at the end of 3<sup>rd</sup> grade, the school district's decision not to evaluate seemed to this hearing officer to be entirely reasonable. See *Krista P. v. Manhattan School Dist.*, 255 F.Supp.2d 873 (N.D.Ill 2003) where a school district's refusal to conduct an evaluation of a student receiving services under a Section 504 Plan was found to be substantively sound. In *Krista P.*, the court found that the district had "utilized data and procedures such as 'observation of the child, assessment for instructional purposes, consultation with the teacher or other referring agent, and a conference with the child' in making its determination. 23 Ill.Admin.Code §226.110(c)". *Krista P., supra*, at 886. The school district concluded that the student's Section 504 services met the student's needs and declined to evaluate. In the instant case, the school district's decision was strikingly similar – no necessity for an evaluation accompanied by a conclusion that the then existing Section 504 Plan was meeting the student's needs. See also, *Rockford Public School District 205*, Case No. 2870, SEA IL 2002)

The parent's focus on the school district's seven day delay seems peculiar in light of the subsequent events: the parent's delay in making herself available for a domain meeting until February 8, 2007 and her subsequent delay in consenting to the special education services until August 2007. Counsel for the school district asserts that "one can only conclude that the Parent believed that the Student's Section 504 Plan was adequate to meet her needs". This hearing officer concurs.

The parent's focus then shifts to her meeting with [REDACTED] and [REDACTED] on November 21, 2006. At the end of that meeting, the parent made a second request for an evaluation. Despite her testimony that she had participated in a prior evaluation and was familiar with the concept of a domain meeting and the consent for evaluation component of a domain meeting, the parent now insists that she provided the necessary consent on November 21, 2006 and the 60-day clock started to tick. This component of the parent's due process complaint is patently absurd, particularly in light of the provisions of IDEA regarding the concept of "informed written consent". These provisions codified and made clear that "consent" means that the parent has been fully informed of all information relevant to the evaluation, the parent understands and agrees in writing to the carrying out of the evaluation and the consent describes that activity and lists the records that will be released and to whom. 34 CFR 300.9. On its face, the parent's letter of November 21, 2006 lacks the specificity required by IDEA. On its face, the consent finally signed by the parent on February 15, 2007 complied in all respects with IDEA. The parent's assertion that she believed that she had provided her "consent" and that the evaluation would start in January 2007 is contradicted by her assertion that she had no idea why the school district would ask her to "consent" a second time in February 2007.

Counsel for the parent asserted that the parent was "unsophisticated". The evidence does not support this conclusion. The school district was entirely correct in its belief that it could not proceed with an evaluation of the student in the absence of informed written consent. That informed written consent was secured on February 15, 2007.

The parent's final claim is that she should be reimbursed for the cost of the [REDACTED] evaluation. The parent sought this evaluation in December 2006 and presented the document to the participants at the domain meeting on February 8, 2007. The school district's speech pathologist noted the instruments used and noted that the report confirmed what the school district had been doing for the student at school.

On April 11, 2007 an Individual Education Plan was developed for the student. That IEP contained some but not all of the classroom modifications recommended by [REDACTED]. It is also true that the IEP contained some but not all of the classroom modifications contained in the student's Section 504 Plan. There was no finding at the IEP meeting that the student had a central auditory processing disorder or deficit. In fact, this IEP was developed to address the student's disabling condition - attention deficit disorder, inattentive type. There was nothing contained within [REDACTED] report which identified any educational need that had not already been identified by the school district. This hearing officer finds that there was no basis for the parent's assertion that the school district utilized [REDACTED] report yet refused to pay for it.

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the parent's child; or caused a deprivation of educational benefit. 34 CFR 300.513(a)(2) The evidence supports a conclusion that the student received the accommodations of her Section 504 Plan from October 10, 2006 through April 11, 2007. There was no evidence presented whatsoever in support of her contention that the student received no educational benefits under the Section 504 Plan.

This hearing officer find that the school district's denial of an evaluation was appropriate. The hearing officer further finds that the school district completed its evaluation within sixty (60) days of the date it received informed written consent from the mother of the student. Finally, while the school district reviewed [REDACTED] auditory processing evaluation, it was not considered to the extent that the parent should be reimbursed.

The school district has met its burden of proof that at all times relevant it properly identified the nature and severity of the student's suspected disabilities and that the 504 Plans and the Individual Education Plan developed on April 11, 2007 offered the student a free appropriate public education in the least restrictive environment, consistent with procedural safeguards.

**DECISION**

IT IS HEREBY ORDERED that the parent failed to provide sufficient and compelling evidence that the school district violated the procedural or substantive rights of the student or her mother and consequently all requests for relief are denied.

**RIGHT TO REQUEST CLARIFICATION**

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought and a copy of the request shall be mailed to the party and to the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, Illinois 62777. The right to request such a clarification does not permit a party to request reconsideration of the decision itself and the hearing officer is not authorized to entertain a request for reconsideration. **THE EFFECTIVE DATE OF THIS DECISION IS THE DATE OF RECEIPT OF ANY CLARIFICATION OF THIS DECISION.**

**RIGHT TO FILE A CIVIL ACTION**

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

ISSUED this 4th day of June 2008.



\_\_\_\_\_  
CAROLYN ANN SMARON  
Impartial Due Process Hearing Officer

**CERTIFICATE AND AFFIDAVIT OF DELIVERY**

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

[REDACTED]  
[REDACTED]  
[REDACTED] 8  
  
[REDACTED]  
[REDACTED]  
[REDACTED] 3

Mr. Andrew Eulass  
Due Process Coordinator  
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on June 4, 2008.

CA Smaron

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