

Case Number: 2008-0247

Hearing Officer: James Wolter

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

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**Impartial Due Process Hearing Decision
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District Name [REDACTED]
Superintendent [REDACTED]
Address [REDACTED]
Represented by [REDACTED]

Phone: [REDACTED]

Grandmother Name [REDACTED]
Address [REDACTED]
Represented by [REDACTED]

Date and Timelines

Date of Written Request: 12/06/2007
Date of Pre-hearing Conf: 04/07/2008

Date of Hearing: 10/27/2008 to 10/31/2008
12:00:00 AM
Date of Decision:

Summary of Decision

The grandparent's initial due process complaint sought to obtain a private special education day school placement, additional related services and additional assessments. The parties were able to agree to a private day school placement but other issues remained and the grandmother amended her due process complaint. By the time the due process hearing was conducted, the district had provided the assessments sought and a majority of the services sought, with the exception of a one-on-one aide, by the grandmother. The grandmother also sought compensatory services.

The district prevailed in all but one aspect of the complaint. The district failed to provide the student with the evaluation when it had cause to know he may have required OT services. The district was ordered to provide the student ten (10) hours of OT consultation service over the next five (5) months to assist the student's teacher develop strategies to improve his writing and organization skills. The district was also ordered to provide the student with 30 minutes of consultation service from the district audiologist.

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)
) ISBE CASE NO. 2008-0247
)
) James Wolter
) Impartial Due Process
) Hearing Officer

PROCEDURAL BACKGROUND:

The attorney for the grandmother/care giver filed an initial due process complaint by letter to the school district dated December 3, 2007. The complaint was received by the Illinois State Board of Education (ISBE) on December 11, 2007 and an impartial due process hearing officer (IHO) was assigned. That IHO was unable to continue with the case and this IHO was assigned to the case on February 14, 2008. This IHO contacted the parties on February 17, 2008 and set the date of the pre-hearing conference for March 19, 2008. The parties requested continuances to enable them work toward resolving their differences. The continuances were granted with the assurance from the parties that the student's education was not adversely effected. The parties agreed to place the student in a private special education day school in May 2008. The grandmother filed an amended complaint by letter to this IHO on July 3, 2008. A pre-hearing conference was held on August 12, 2008. The parties were sent a copy of that report on August 12, 2008. The attorneys' busy schedule did not allow for the start of due process hearing until October 27, 2008. It concluded after five days of testimony on October 31, 2008.

The attorney for the grandmother requested the district to produce printouts of information transcribed from incident reports into a computerized Impact Data Base. The district refused, stating that copies of all incident reports had been given to the grandmother and that the reports are not germane to nor an issue of this due process hearing. The grandmother's attorney then made a verbal motion requesting the hearing officer to order the district to produce a printout of the incident reports from the Impact Data Base. The district objected stating that a dispute over records is not within the scope of IDEA and that there is a specific procedure to handle such disputes. The hearing officer declined the motion because the grandmother's attorney failed to demonstrate the requested documents substantively pertained to the issues of the case, the 5-day disclosure period lapsed, the due process hearing was in progress [there was ample time prior to the due process hearing to make such request] and this is a dispute that falls within the scope of the School Student Records Act [105 ILCS 10] and the rules of the State Board of Education [23 Ill. Adm. Code 375] rather than IDEA.

The grandmother submitted documents consisting of 608 pages that were accepted into evidence. The district submitted documents consisting of 320 pages that were accepted into evidence.

The following witnesses provided testimony on October 27, 2008:*

1. [REDACTED] Student's Private Therapist
2. [REDACTED] Third Grade Teacher

- 3. [REDACTED] Fourth Grade Writing Teacher
- 4. [REDACTED] Fourth Grade Teacher Assistant
- 5. [REDACTED] School Social Worker
- 6. [REDACTED] Case Manager/Assistant Principal

The following witnesses provided testimony on October 28 2008:*

- 1. [REDACTED] School Psychologist/Evaluator
- 2. [REDACTED] School Social Worker
- 3. [REDACTED] Fourth Grade Child Welfare Aide

The following witnesses provided testimony on October 29, 2008:*

- 1. [REDACTED] District Administrator
- 2. [REDACTED] Speech/Language Pathologist
- 3. [REDACTED] Private Day School Director
- 4. [REDACTED] Private Clinical Psychologist
- 5. [REDACTED] Contracted Occupational Therapist
- 6. [REDACTED] Fourth Grade Teacher

The following witnesses provided testimony on October 30, 2008:*

- 1. [REDACTED] Contracted Speech/Language Pathologist
- 2. [REDACTED] School Psychologist/Therapist
- 3. [REDACTED] District Audiologist
- [REDACTED] Student
- 5. [REDACTED] Private School Teacher Aide
- 6. [REDACTED] Private School Teacher
- 7. [REDACTED] Case Manager 2nd grade
- 8. [REDACTED] Private School Social Worker

The following witnesses provided testimony on October 31, 2008:*

- 1. [REDACTED] District Assistive Technology Evaluator
- 2. [REDACTED] District Occupational Therapist
- 3. [REDACTED] Private School Teacher – Summer 2008
- 4. [REDACTED] School Social Worker
- 5. [REDACTED] Multi-sensory Coach
- 6. [REDACTED] Second Grade Teacher Aide
- [REDACTED] Grandmother

*The witnesses will be referred to by title rather than name in the remainder of this document to ensure the privacy of the student. In addition, the district will not be identified by name for that same reason.

The due process hearing was closed and the student was not present, except for a brief appearance to provide testimony, per the grandmother's decision at the pre-hearing conference. Witnesses were sequestered during the hearing and instructed not to discuss their testimony until the hearing was completed.

Legal counsel represented the grand grandmother and the district.

The 45-day timeline for conducting the due process hearing was exceeded because of multiple mutual requests for continuances by the parties. The parties gave the IHO assurances that the continuances would not have a detrimental effect on the student's education.

The hearing officer has jurisdiction to hear this matter under PA 94-1100, Section 14.02(g) of the Illinois School Code, 34 CFR 300.506-509, and 23 Illinois Administrative Code 226 Subpart G.

ISSUES: The issues of this due process per the August 12, 2008 pre-hearing conference report are:

1. Whether the district failed to conduct timely and adequate assessments of all areas of potential disability resulting in an educational program that did not address or inadequately address the student's academic and emotional needs.
2. Whether the district failed to adequately assess the student's cognitive abilities, academic skills, social/emotional needs, communication needs, central auditory processing needs and occupational therapy needs.
3. Whether the student required and the district failed to provide him with assistive technology, school psychological service, school social work service, occupational therapy service, speech/language therapy and a one-on-one aide.
4. Whether school personnel failed to implement and record the use of appropriate physical restraint.
5. Whether the district failed to implement appropriate instructional methodologies in adequate intensity and/or duration to enable the student to make progress commensurate with his abilities.
6. Whether the district failed to provide the student with adequate instruction and curricular in reading, language arts, mathematics, social studies and science resulting in the student's failure to make academic progress.

REMEDIES: The remedies sought in this due process hearing per the August 12, 2008 pre-hearing conference report are:

1. The grandmother desires the hearing officer to order the district to provide the student with an independent educational evaluation in areas of cognitive functioning, academic skills, sensory processing, organizational skills, speech/language and assistive technology.
2. The grandmother desires the hearing officer to order the district to provide the student with the following: 90 minutes per week (mpw) speech/language service, 90 mpw occupational therapy service, and 90 mpw social work service.
3. The grandmother desires the hearing officer to order the district to provide the student with a systematic, multi-sensory reading instruction program by trained staff.
4. The grandmother desires the hearing officer to order the district to provide training, leading to certification, for at least two teachers at the student's private school.
5. The grandmother desires the hearing officer to order the district to assign a teacher to the student's private school who is certified to provide reading instruction in a recognized multi-sensory reading program.
6. The grandmother desires the hearing officer to order the district to provide the

student with compensatory service in the form of 200 hours of reading instruction in the program used by the student's private school over the next two years at times and places designated by the grandmother.

7. The grandmother desires the hearing officer to order the district to provide the student with compensatory service in the form of one hour per week of psychological and/or social work counseling over the next two years at times and places designated by the grandmother.
8. The grandmother desires the hearing officer to order the district to provide the student with compensatory service in the form of one hour per week of speech/language service over the next two years at times and places designated by the grandmother.
9. The grandmother desires the hearing officer to order the district to provide the student with a one-on-one aide through the school day for at least one year.
10. The grandmother desires the hearing officer to order the district to conduct an IEP meeting to implement the relief, if any, ordered by way of this due process hearing.

Findings of Fact:

1. The student is an 11 year old male attending 5th grade in a private special education day school. He is from an English speaking home and has lived with and been raised by his grandmother since birth.
2. The student is eligible for special education under the criteria for Mild Cognitive Delay, Emotional Disturbance and Speech/Language Impairment [Parent Document 002 & 006 (here after PD 002 & 006)]. He has received special education and related services since kindergarten. His grandmother testified that she was satisfied with the student's kindergarten and 1st grade placements. However, he changed schools for 2nd grade because of a change in residence. He was in an instructional special education placement for 1260 mpw within his neighborhood regular education school [PD 131].
3. The grandmother testified that at some point during the 2nd grade school year the student's special education teacher hit the student, the student's teacher aide reported the incident, the Illinois Department of Children and Family Service (DCFS) investigated and the special education teacher was dismissed. The student's Second Grade Teacher Aide offered testimony that supported the grandmother's account of the hitting incident.
4. The grandmother attended an IEP meeting on May 22, 2006 and the student was placed in a special education resource placement of 660 mpw within a general education classroom [PD 111 to 117].
5. The grandmother participated in an IEP meeting on June 5, 2006 [PD 079] at which the student's placement was changed to a special education placement in a separate public special education day school [PD 092] for 3rd grade under the eligibility criteria Emotional Disturbance [PD 106]. It is noted that Speech/Language service was not listed on the student's IEP for the 2006-2007 school year [PD 091]. A communications disorder dismissal summary dated June 5, 2006 stated the student had achieved his speech and language goals/bench marks. The disorder no longer had an adverse effect on his learning and additional intervention was not warranted [PD 210]. The grandmother stated the student started the separate special education day school over the summer of 2006 in an extended school year program that went well for the student. The grandmother

- testified that 3rd grade (the 2006-2007 school year) went well for the student and that she and the student formed a constructive relationship with the Third Grade Teacher.
6. The testimony of the Third Grade Teacher supported this conclusion. She also testified the student was more successful in the morning than the afternoon, particularly when he took his medication in the morning. She stated that he was behind in all academic areas. She had to use hand-over-hand to assist the student write legibly. The May 18, 2007 IEP meeting attended by the grandmother [PD041] confirmed the student made some progress in meeting his IEP goals in mathematics, science and social studies but did not meet his reading and social/emotional goals [PD 085-089].
 7. The student was moved to another class and another teacher for 4th grade because a student more than five years younger than him was assigned to the Third Grade Teacher. The student experienced a number of difficulties in his new class assignment and was transferred back to the Third Grade Teacher. However, by that time the grandmother, who had previously had a constructive working relationship with the Principal, had a falling out with her because, when the grandmother complained about one of the staff, the Principal did not accept grandmother's word. The grandmother filed complaints with the DCFS against two staff members. DCFS investigated but no action was taken by DCFS. The grandmother testified that, of her own volition, she kept the student home and home-schooled him starting in or about October/November 2007; adding her memory was not clear as to whether she pulled the student out of school in October or November 2007. The grandmother stated that the student is doing well in his current private special education day school placement and voiced no specific dissatisfaction with the placement or staff.
 8. The student was transferred to a private special education day school in or about March 2008 [PD 039] by agreement between the grandmother's attorney and district's attorney and met his IEP benchmarks [PD 034 – 040]. It is noted that the student's IEP called for school psychology service [PD 054] but once the student transferred to the private school he was not seen by a school psychologist but by a social worker. It is important to note that the social/emotional goals listed on the student's IEP could just as readily be met by a social worker as a psychologist and were indeed achieved at the private school [PD 034].
 9. The student's Private Therapist testified that he did not observe the student in school, did not participate in the student's IEP meetings, did not interview school personnel and did not review the student's school records. He testified about a letter [PD 636] he sent to the principal of the public special education day school regarding alleged child abuse by the school personnel. He did not report this to DCFS himself and he had the wrong name for the principal. The latter is understandable because his knowledge of the student's functioning at school is exclusively dependent on what the student and grandmother reported to him. Therefore, the credibility of his testimony is severely limited.
 10. All public special education day school personnel testified, under questioning by the grandmother's attorney, that they received training in appropriate use of physical restraint and recorded any time physical restraint was required by any student. They all denied that the student was physically abused by personnel at the day school. The grandmother failed to present a DCFS report or any other credible evidence that child abuse occurred at the public special education day

school. Further, it must be noted, the attorney for the grandmother failed to produce any credible rational or relevancy for pursuing the allegation of child abuse in a due process hearing.

11. The grandmother presented one witness, the Private Clinical Psychologist, to testify that the district failed to provide the student with adequate assessments of all areas of potential disability resulting in an educational program that did not address or inadequately addressed the student's academic and emotional needs. However, that testimony lacks creditability because the Private Clinical Psychologist did not assess, observe or even meet the student until just a moment before giving her testimony. Additionally, she did not speak to the grandmother, any school personnel, the student's therapist or any of the diagnosticians/evaluators. Upon cross-examination, she testified that the WISC IV that was used for the student is the "Gold Standard" for assessing cognitive ability.
12. The Private Clinical Psychologist also testified that the student's IEP was inadequate however on cross-examination she stated that the IEP goals were not faulty but that they just did not go far enough. It is noted that the Private Clinical Psychologist was not a participant in the IEP nor has she spoken to any participant of the IEP meeting other than the grandmother's attorney. Again, this diminishes her creditability.
13. The grandmother testified herself but failed to present any credible evidence, and in fact during cross-examination failed to cite any dissatisfaction with the assessment of student's cognitive abilities, academic skills, social/emotional needs, communication needs, central auditory processing needs and occupational therapy needs. She failed to identify any education or related service personnel who advised her to question or object to the evaluations provided the student by the school district.
14. The District Assistive Technology Evaluator provided uncontested testimony that she provided the student with an evaluation [District Document (DD) 307-309] and ordered equipment for him.
15. The District Occupational Therapist testified that she provided the student with an OT assessment [DD 316-320] and the Contracted Occupational Therapist testified that she is providing the student with occupational therapy per his 2008-2009 IEP. It is noted that the June 5, 2006 IEP team determined the district would provide the student with an OT evaluation upon receipt of a physician's referral [PD 084].
16. The Speech/Language Pathologist testified that she provided the student with a speech/language assessment that included central auditory processing [DD 618-612].
17. The Contracted Speech/Language Pathologist testified that he is providing the student with more minutes of speech/language therapy than contained in the student's IEP [PD 638-640]. He stated that the district is reimbursing him for that time and he never has trouble with the district reimbursing him if he determines the student needs and is ready to receive more speech/language therapy. The Contracted Speech/Language Therapist believes the student requires more speech/language therapy but at this time he is not ready to tolerate more time in therapy. He has no question that the district will authorize more therapy time as the student is able to tolerate it.
18. The Contracted Occupational Therapist testified that the student might benefit from additional OT therapy to assist with sensory stimulation because he sucks

- his thumb and exhibits rocking motion and to assist with disorganization because he is disorganized but the student is only able to tolerate 30 mpw of OT at this time. She has not recommended more OT time to an IEP team or requested more OT time from the district.
19. The Private School Social Worker testified that she is providing the student with social work service per the student's 2008-2009 IEP. She advised against providing the student with more minutes or more frequent social work counseling. She stated the additional time would have a negative effect on the student because he would not view the counseling session as important. The Private School Social Worker testified that she is providing the counseling services as stated on the student's IEP under psychology services.
 20. The district personnel testified that the student was provided assessments in the areas of cognitive abilities, academic skills, social/emotional needs, communication needs, speech/language, central auditory processing and occupational therapy and assistive technology within the past year at the time of the due process hearing as substantiated by the written evidence [PD 584, 585-586, 598-560, 601-602, 612-614, 615-617, 618-620 & 622 and District Documents(DD) 184-185, 186-196, 307-309 & 316-320].
 21. The Multi-sensory Coach testified that she is currently training two teachers selected by the private school teachers to use the Wilson Language System. She is not a certified Wilson Trainer but testified that she is permitted by Wilson Corporation to train the two teachers in the use of the Wilson system. The Multi-sensory Coach has been assigned to the private school for two days per week to help the staff implement the Wilson Reading System as well as other multi-sensory approaches.
 22. The student's Private School Teacher testified that she will attend training by Wilson in December 2008.
 23. The student's Private School Teacher testified that the student is making progress academically and behaviorally. She stated, as did the Private School Teacher Aide, that the student did not require a one-on-one aide and in fact adding a one-on-one aide would be detrimental because the student has adjusted to working in the classroom and is able to work independently for ten minute stretches of time.
 24. Testimony indicates the public school personnel utilized a multiple of techniques to teach the student. They stated the student made limited academic progress consistent with his potential when he attended school and took his medication. His major problem was a difficulty staying focused and remaining on task. Behavioral problems included verbal and physical aggression directed at peers and staff, running out of class and running away from school particularly when he did not take his medication. The student has not exhibited behavior problems at the private special education day school.
 25. It is noted the grandmother presented the student as a witness. He was not sworn in nor was he cross-examined by the district. He answered questions by shaking his head yes and no and on one occasion answered by holding two fingers up. Otherwise he gave intelligible one-word and intelligible short sentence answers. A lay-person would not suspect the student had a problem hearing, understanding or responding to questions in an intelligible manner based upon the student's responses.
 26. The District Audiologist presented examples of techniques that could be employed by the student's teacher to improve his central auditory functioning.

She testified that she has as yet to share those techniques with the teacher.

DISCUSSION OF ISSUES AND CONCLUSION OF LAW:

The grandmother's initial due process complaint of December 3, 2007 sought to have the student placed in a private therapeutic day school. The attorney for the grandmother and the attorney for the district reached an agreement to place the student in his current special education day school in March 2008. The grandmother, through her attorney, submitted an amended complaint dated on July 3, 2008 seeking additional evaluations, related services and compensatory services as listed in the **ISSUES AND REMEDIES** of the August 12, 2008 pre-hearing conference report.

The testimony as supported by the written evidence proves the grandmother had an opportunity to participate in all of the decisions made at the student's IEP meetings and that the IEP meetings were duly constituted [23 Illinois Administrative Code 226.210] and that the district afforded the grandmother all procedural safeguards in conducting and developing the IEPs [23 Illinois Administrative Code 226.230]. The grandmother testified the student experienced difficulty in school starting in December 2005. He was removed from an instructional special education class and placed in an integrated regular education class with resources services delivered in the regular education class as well as pull-out special education service. The IEP team changed the student's placement at the June 5, 2006 IEP meeting. The grandmother testified the student was successful at the special education public day school from June 2006 to September 2007. The grandmother testified that she withdrew the student from school of her own volition because of difficulties he was experiencing from September 2007 to the October/November 2007 date she started keeping the student at home to home school him. All of the testimony, including that of the grandmother, indicates the student is benefiting from his current placement. Therefore, from March 2008 to the present, the district demonstrated that it met both prongs of the *Rowley* test [*Board of Education*, 458 U.S. 176, 102 S.Ct. 3034 (1982)]. It is noted that the courts have held that districts must provide adequate special education services rather than best services [*Doe v. Board of Educ. Of Tallahoma City Schs.*, 20 IDELR 617 (6th Cir. 1993)]. The evidence indicates, with the exception of the brief periods of December 2006 and September 2007, the district designed and implemented an IEP likely to benefit the student at least minimally.

The grandmother is the moving party in this matter. As such, she had the burden of proof in this matter [*Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005)]. This case is primarily a fact driven case. The facts, as they existed at the time the initial due process complaint was filed on December 3, 2007 and the due process hearing was concluded on October 31, 2008, changed with respect to the student's placement, assessments and related services.

DISCUSSION OF ISSUES:

Whether the district failed to conduct timely and adequate assessments of all areas of potential disability resulting in an educational program that did not address or inadequately addressed the student's academic and emotional needs.

The grandmother presented no evidence that the district failed to conduct the initial evaluation or triennial evaluations at the prescribed times. Additionally the district conducted special evaluations when requested by the grandmother.

The grandmother offered the testimony of the Private Clinical Psychologist as evidence that the district failed to adequately assess the student's needs. However, her testimony is not credible because she did not assess, observe, or even meet the student until just before she testified. Further, as indicated in Findings of Facts Number 11, she did not interview the student's teachers, related service personnel, diagnosticians/evaluators or even the grandmother. She had no way of verifying the adequacy or accuracy of her interpretation of the documents she read with her own assessment and clinical observations of the student or with the experience and knowledge of those who work with the student.

The grandmother, as the moving party, failed her burden of proof in this issue [*Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005)].

Whether the district failed to adequately assess the student's cognitive abilities, academic skills, social/emotional needs, communication needs, central auditory processing needs and occupational therapy needs.

The grandmother offered the testimony of the Private Clinical Psychologist as evidence that the district failed to adequately assess and address the student's needs. However, her testimony, as stated above, is not credible because she did not assess, observe, or even meet the student until just before she test nor did she interview the student's teachers, related service personnel, diagnosticians/evaluators or even the grandmother as indicated in Findings of Facts Number 11.

At the time of the due process hearing, as indicated in Findings of Facts Number 19, the district had provide the student with assessments in the areas of cognitive functioning, academic skills, sensory processing, organizational skills, speech/language and assistive technology.

The grandmother, as the moving party, failed her burden of proof in this issue [*Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005)].

Whether the student required and the district failed to provide him with assistive technology, school psychological service, school social work service, occupational therapy service, speech/language therapy and a one-on-one aide.

As indicated in Findings of Facts Numbers 14, 15 & 16, the student is receiving Assistive Technology, Occupational Therapy and Speech/Language services. The testimony indicates the student received Assistive Technology in the form of a calculator and received Speech/Language Therapy in the past. The Speech/Language Therapy was terminated at a duly constitutes IEP meeting.

As indicated in Findings of Facts Number 19, the student is receiving school social work counseling that is equivalent to school psychology counseling service. The testimony and written record indicates the student also received school psychology or school social work counseling service at least two years prior to the due process complaint.

As indicated in Findings of Facts Number 23, the student's Private School Teacher and Private School Teacher Aide testified that a one-on-one aide was not necessary and is counter indicated.

As indicated in Findings of Facts Number 15, the June 5, 2006 determined the student

required an OT evaluation. Additionally, as indicated in Findings of Facts Number 8, the 3rd grade teacher stated the student's handwriting was illegible and she had to employ a hand-over-hand technique to assist the student with written assignments. The district had cause to know the student may have required an OT evaluation and possibly OT services and therefore was required to conduct an evaluation, *ongoing review of each child's performance and progress by teachers and other professional personnel, in order to refer those children who exhibit problems which interfere with their educational progress and/or their adjustment to the educational setting, suggesting that they may be eligible for special education and related services* [23 Ill Adm. Code Section 226.100(a)(2)]. The district's requirement that it receive a physician's referral prior to providing the student an OT evaluation is not supported by state regulation because, *a licensed occupational therapist or licensed occupational therapy assistant may consult with, educate, evaluate, and monitor services for clients concerning non-medical occupational therapy needs* [225 ILCS 75/3.1].

The grandmother, as the moving party, proved the district failed to provide the student with an OT evaluation when it has cause to believe he may have required OT services and, as a result, failed to provide him with OT service. With the exception of the OT service, the grandmother failed her burden of proof in all other aspects of this issue [*Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005)].

Whether school personnel failed to implement and record the use of appropriate physical restraint.

The grandmother spent a considerable amount of time discussing three alleged incidents of assault by school personnel against the student that were reported to the Illinois Department of Children and Family Service. The grandmother failed to provide any credible rationale why these alleged incidents would fall within the scope of authority of an impartial due process hearing officer. Having so stated, the grandmother provided no evidence that the district failed to implement and record the use of appropriate physical restraint.

This remedy is denied because it is beyond the scope of IDEA. Bringing an issue, such as alleged assault, which is beyond the scope of an impartial due process hearing officer's authority, is frivolous. Further the testimony and written record demonstrate two of the allegations, are without foundation and unsubstantiated. The grandmother, as the moving party, failed her burden of proof that the allegations raised in this issue was in any way remotely related to the denial of FAPE [*Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005)].

Whether the district failed to implement appropriate instructional methodologies in adequate intensity and/or duration to enable the student to make progress commensurate with his abilities.

This issue is moot because the grandmother failed to provide evidence to support this issue other than the testimony of the Private Clinical Psychologist whose testimony is not credible because she did not assess, observe, or even meet the student until just before she test nor did she interview the student's teachers, related service personnel, diagnosticians/evaluators or even the grandmother as indicated in Findings of Facts Number 11. The student's teachers testified that he made a little progress and they

utilized multiple approaches to teach him. The district psychologist testified that the student's progress was consistent with his impaired cognitive ability.

The grandmother, as the moving party, failed her burden of proof in this issue [*Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005)].

Whether the district failed to provide the student with adequate instruction and curricular in reading, language arts, mathematics, social studies and science resulting in the student's failure to make academic progress.

Again, the grandmother failed to provide evidence to support this issue other than the testimony of the Private Clinical Psychologist whose testimony is not credible because she did not assess, observe, or even meet the student until just before she test nor did she interview the student's teachers, related service personnel, diagnosticians/evaluators or even the grandmother as indicated in Findings of Facts Number 11. The student's teachers testified that he made a little progress and they utilized multiple approaches to teach him. The district psychologist testified that the student's progress was consistent with his impaired cognitive ability.

The grandmother, as the moving party, failed her burden of proof in this issue [*Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005)].

DISCUSSION OF REMEDIES:

The grandmother desires the hearing officer to order the district to provide the student with an independent educational evaluation in areas of cognitive functioning, academic skills, sensory processing, organizational skills, speech/language and assistive technology.

This might have been a valid issue at the time the grandparent filed a due process complaint on December 3, 2007. However, as indicated in Findings of Facts Number 19, the district had provide the student assessments in the areas of cognitive functioning, academic skills, sensory processing, organizational skills, speech/language and assistive technology by the time the due process hearing was conducted. There is little benefit in ordering the district conduct more assessments, thereby subjecting the student to more evaluations, when the district has the current information required to develop a program that appropriately provides for the student's special education and related service needs. Further, all of the testimony, as supported by the written record, indicate the student is deriving educational benefit from his current special education placement.

This remedy is denied.

The grandmother desires the hearing officer to order the district to provide the student with the following: 90 minutes per week (mpw) speech/language service, 90 mpw occupational therapy service, and 90 mpw social work service.

As indicated in Findings of Facts Number 17, the Contracted Speech/Language Pathologist believes the student requires more speech/language therapy but at this time he is not ready to tolerate more time in therapy. Additionally, the Contracted Speech/Language Pathologist testified, based on past experience, that he has no question that the district will authorize more therapy time as the student is able to tolerate it.

As indicated in Findings of Facts Number 18, the Contracted Occupational Therapist

testified that the student might benefit from additional OT therapy but he is not able to tolerate more at this time. The testimony and written evidence indicates the district had cause to know the student might require OT services as early as June 5, 2006 but it did not conduct an OT evaluation on the erroneous assumption that a physician's referral was required before doing so. This resulted in a delay in providing the student OT service. While the student may not be able to tolerate additional direct OT service, he would likely benefit from additional consultative services in the form of assisting his teacher implement strategies in the classroom and his grandmother implement strategies at home.

As indicated in Findings of Facts Number 18, the Private School Social Worker believes additional social work counseling is counter indicated at this time. There is no justification in ordering the district to provide service the student that he is not able to use and which may actually be detrimental to his progress.

Therefore, with the exception of providing the student consultative OT service, this remedy is denied.

The grandmother desires the hearing officer to order the district to provide the student with a systematic, multi-sensory reading instruction program by trained staff.

As indicated in Findings of Facts Number 21 the district is providing the services of a Multi-sensory Coach to the private school for two days per week to assist the school implement the Wilson Reading System and other multi-sensory approaches into its program. As indicated in Findings of Facts Number 22, the student's Private School Teacher testified that she will attend Wilson training in December 2008. There is no justification in ordering the district to provide a service that it has already started providing.

This remedy is denied.

The grandmother desires the hearing officer to order the district to provide training, leading to certification, for at least two teachers at the student's private school.

This remedy is faulty on two accounts. First, as indicated in Findings of Facts Number 21 and 22, the district has made arrangements for the student's teacher as well as two additional teachers to have Wilson Training. Secondly, this issue pertains to the management of a school and is beyond the scope of authority of an impartial due process hearing officer under IDEA.

This remedy is denied.

The grandmother desires the hearing officer to order the district to assign a teacher to the student's private school who is certified to provide reading instruction in a recognized multi-sensory reading program.

Once again, this remedy is faulty on two accounts. First, as indicated in Findings of Facts Number 21 and 22, the district has made arrangements for the student's teacher as well as two additional teachers to have Wilson Training. Secondly, this is an issue pertains to the assignment of teachers and is beyond the scope of authority granted an impartial due process hearing officer under IDEA.

This remedy is denied.

The grandmother desires the hearing officer to order the district to provide the student with compensatory service in the form of 200 hours of reading instruction in the program used by the student's private school over the next two years at times and places designated by the grandmother.

This remedy is faulty on two accounts. First, the grandmother failed in her burden to prove that the student was entitled to 200 hours of reading instruction per his IEP and that the district failed to provide him with that instruction. There was no rationale presented in terms of the specific hours and times the district denied the student reading instruction that he was entitled to receive. The grandmother failed to establish a nexus between the alleged violation of FAPE and the remedy she is seeking. She failed to establish the specific days and number of hours the district allegedly failed to provide the student with reading instruction and the rationale for requesting 200 hours of compensatory service. Secondly, the times and places staff members are assigned is a management prerogative that an IHO can not wrestle away from a school district nor can an IHO relieve a school district of its responsibility to manage and assign staff on behalf of children. The *Rowley* court, in devising its two pronged test for FAPE, did so in recognition that schools must retain their traditional management prerogatives in order to fulfill their responsibility to appropriately educate children.

This remedy is denied.

The grandmother desires the hearing officer to order the district to provide the student with compensatory service in the form of one hour per week of psychological and/or social work counseling over the next two years at times and places designated by the grandmother.

The testimony, as supported by written evidence, indicates the student has consistently received school social work counseling or school psychology counseling while he was in school. Any claim by the grandmother that the student did not receive school social work or school psychology services is unsubstantiated and without merit. It is noteworthy that in this claim the grandmother correctly equates psychological counseling with social work counseling while at the due process hearing the grandmother attempted to make them distinctly different. As stated above, in Findings of Facts Number 18 the Private School Social Worker stated additional social work counseling is counter indicated at this time. Secondly, also stated above, the times and places staff members are assigned is a management prerogative that an IHO can not wrestle away from a school district nor can an IHO relieve a school district of its responsibility to manage and assign staff on behalf of children.

This remedy is denied.

The grandmother desires the hearing officer to order the district to provide the student with compensatory service in the form of one hour per week of speech/language service over the next two years at times and places designated by the grandmother.

The grandmother is seeking additional speech/language service as compensation for the student's speech/language service being terminated at the June 5, 2006 IEP meeting.

However, the grandmother presented no testimony or written evidence, contemporary to the time that the decision was made to terminate speech/language service, indicating the district had erred in making that decision. As stated above, in Findings of Facts Number 17, the Contracted Speech/Language Pathologist believes the student requires more speech/language therapy but at this time he is not ready to tolerate more time in therapy. Additionally, the Contracted Speech/Language Pathologist has no question that the district will authorize more therapy time as the student is able to tolerate it. Secondly, also stated above, the times and places staff is assigned is a management prerogative that an IHO can not wrestle away from a school district nor can an IHO relieve a school district of its responsibility to manage and assign staff on behalf of children.

This remedy is denied.

The grandmother desires the hearing officer to order the district to provide the student with a one-on-one aide through the school day for at least one year.

As stated above, in Findings of Facts Number 17, the Private School Teacher and the Private School Teacher Aide testified that the student does not require a one-on-one. They believe a one-on-one aide is contraindicated and will be confusing to the student because he is improving in his ability to function independently. The Private Day School Teacher and the Private School Teacher Aide are easily able to redirect him if he gets off task. The grandmother was unable to refute the testimony by the Private Day School Teacher and the Private School Teacher Aide that the student does not require a one-on-one aide.

This remedy is denied.

The grandmother desires the hearing officer to order the district to conduct an IEP meeting to implement the relief, if any, ordered by way of this due process hearing. There is no reason for the IHO to order the parties to conduct an IEP meeting. Therefore, this remedy is denied.

In summery: The facts of this case changed from the time the grandmother filed her initial complaint dated December 3, 2007 and the start of the due process hearing on October 27, 2008. In December 2007 the grandmother was withholding the student from school because she was dissatisfied with the student's instructional program, related services and school personnel. By October 2008, the student was learning and progressing in a private special education day school and receiving related services. The district had completed a series of specialized evaluations and initiated training of the private school staff in a special reading program. After five days of hearings, the IHO found the district had provided the student with the services the grandmother was seeking in her proposed remedies. However, the IHO found the student eligible for ten (10) hours of OT consultation and thirty (30) minutes of Audiologist consultation.

ORDERS:

1. Within fifteen (15) school days receipt of this Impartial Due Process Decision, a representative of the district and a representative of the private special education day school shall meet with the Grandmother, Contracted Occupational Therapist and the student's Private Day School Teacher to present a plan and schedule whereby the student's Private Day School Teacher will be provided ten (10) hours

of OT consultation services over the next five (5) months to assist the student with writing and organization skills.

2. Within fifteen (15) school days receipt of this Impartial Due Process Decision, the District Audiologist shall meet with the student's Private Day School Teacher to provide her with thirty (30) minutes of consultation pertaining to classroom techniques to facilitate the development of the student's bilateral auditory processing.
3. Within twenty-five (25) school days receipt of this Impartial Due Process Decision, the district shall provide the Illinois State Board of Education with written assurance of compliance with these orders.

Right to request clarification:

Section 14-8.02a (h) of the School Code, allows the hearing officer to retain jurisdiction after the issuance of the decision for the sole purpose of considering a request for clarification. A request for clarification must be submitted to me within five (5) days after receipt of the 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 other parties and to the Illinois State Board of Education. The request shall operate to stay the implementation of those portions of the decision for which clarification is sought. I shall issue a clarification of the specific portion of the decision or issue a partial or full denial of the request in writing within ten days of receipt of the request and mail copies to all parties to whom the decision was mailed.

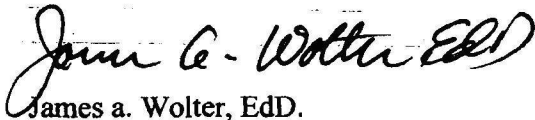
FINALITY OF DECISION: This decision shall be binding upon all parties.

RIGHT TO FILE CIVIL ACTION:

Any party to this hearing aggrieved by the final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 ILCS 5/14-8.02(I) that civil action shall be brought in any court of competent jurisdiction within 120 days after this decision was mailed.

DATE OF DECISION AND ORDER:

This Decision and Order rendered this 6th day of November



James a. Wolter, EdD.
Impartial Due Process Hearing Officer