

Case Number: 2008-0342

[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

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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: 02/13/2008
Date of Pre-hearing Conf: 05/22/2009

Date of Hearing: 7/21-23, 09/14/2009
Date of Decision: 9/24/09

Summary of Decision

The Parent filed a due process complaint on behalf of her daughter alleging that [Redacted] violated FAPE in several areas, including a failure to adequately evaluate the Student, a failure to provide her with appropriate services, a number of procedural violations that denied the Student FAPE, and a failure to develop and implement an appropriate IEP. After a four day hearing, the Hearing Officer found that the District had appropriately identified the Student as being moderately cognitively impaired, and offered the Student an appropriate placement. The District, however, failed to assess and identify the Student's needs in all areas, failed to allow the Parent to participate in developing her daughter's IEP, failed to develop an IEP that addressed all of the Student's needs, failed to include appropriate goals for the Student, and failed to implement the IEP as written.

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ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

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-) **ISBE CASE NO. 2008-0342**
-)
-) **Kristine Anderson**
-) Impartial Due Process
-) Hearing Officer

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ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

Student vs. Local School District Case No. 2008-342

KRISTINE L. ANDERSON, Hearing Officer

DECISION AND ORDER

This matter comes before me pursuant to the Parent's due process complaint on behalf of her daughter, [redacted]. The family is represented by [redacted] of [redacted] and [redacted]. The District is represented by [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

The case has a lengthy procedural history. The Parent requested a due process hearing on February 8, 2008. The issues raised in her complaint are listed below. Prior to filing the due process complaint, the Parent submitted a written request to the District for an independent educational evaluation on February 1, 2008. The specific evaluations that she sought were: neuropsychological, speech and language, assistive technology and a functional vocational assessment. The District did not respond to the Parent's request for an IEE, either by agreeing to fund the evaluations, or by filing a due process complaint. Nor did it make any mention of the Parent's request for an IEE in its March 7, 2008 response to the Parent's due process complaint. In an April 11, 2008 resolution conference, however, [redacted] agreed to administer assistive technology and speech and language assessments. The parties also agreed that the Student would remain in her current stay-put placement, [redacted] special education instructional classes, during the pendency of the due process proceedings. The parties were unable to reach agreement on the other evaluations that the Parent requested, or other issues raised in the Parent's due process complaint.

In an April 14th status call, I granted the Parent leave to file several motions, including a motion seeking an IEE for the remaining evaluations requested by the Parent, a motion for a classroom observation, and a motion requiring [redacted] to provide prior written notice. I also granted the parties' request for a continuance to allow for briefing, and to allow [redacted] to complete the AT and speech and language assessments.

The parties completed briefing on Parent's motions for an IEE and classroom observations on May 16, 2008. I ruled in favor of the Parent on both of the motions on May 20, 2008. A few days later, I ruled in favor of the District on the issue of prior written notice. The primary basis for my ruling on the IEE was [redacted] failure to respond to the Parent's request for an IEE. I also was concerned that the results of [redacted] most recent reevaluation of the Student seemed to be significantly different from her prior triennial evaluation, and that these differences might have significant implications for the Student's placement. After my ruling on the IEE, the Parent requested a continuance to allow the evaluations to be completed and to allow the parties an opportunity to consider the results. [redacted] did not object and I granted the continuance.

Granting the Parent's motion for independent evaluations resulted in numerous and lengthy delays. For

example, there was a delay of several months in completing the independent neuropsychological evaluation. Once that report was completed, the parties convened an IEP meeting on December 11, 2008. Though the meeting was not completed, the parties reported that there was agreement on a number of issues concerning the Student. They jointly requested a continuance to allow additional evaluations to be completed and to reconvene the IEP meeting.

On January 19, 2009, the Parent submitted another motion for an IEE. In this motion, she reiterated her request for a functional vocational evaluation. She also requested an assistive technology evaluation since [REDACTED] had failed to complete the AT evaluation as promised. The request for a functional vocational evaluation was of concern. It meant that the Parent had not yet obtained the evaluation even though I had granted her motion months earlier. Thus, when [REDACTED] responded that it stood ready and able to complete both evaluations in a timely way, I ordered [REDACTED] to complete the evaluations. By doing so, I hoped to avoid further delay in completing the independent evaluations. While [REDACTED] did complete an AT evaluation, it did not conduct a functional vocational evaluation. Moreover, counsel for [REDACTED] did not admit that it was unable to complete the evaluation until April 15, 2009. At that point, counsel for the Parent informed me that the Parent had separately arranged an independent functional vocational evaluation, which was nearly complete.

With the remaining evaluations completed, I ordered the parties to reconvene an IEP meeting. I also scheduled a pre-hearing conference on April 29, 2009. That IEP meeting never occurred, primarily due to [REDACTED] failure to provide the Parent with timely notice of potential dates. Counsel for [REDACTED] also was unprepared to participate in the April 29 pre-hearing conference. The pre-hearing conference was therefore rescheduled, and took place on May 22, 2009.

The hearing initially took place on July 21-23, 2009. This was the first date that all parties were available to participate. We were unable to complete the hearing in three days, and agreed to reconvene on September 14. The hearing was completed on that day. From a procedural perspective, two things occurred during the hearing that bear mentioning. First, I corrected an erroneous ruling that I had made during the pre-hearing conference concerning the parties' burden of proof on the adequacy of evaluations. Specifically, during the pre-hearing conference I ruled that the District bore the burden of proof to show it had appropriately assessed the Student in each of the four areas specified in the Parent's request for an IEE.

During the hearing, however, I realized that in their resolution session, the Parent had relinquished her request for independent evaluations in assistive technology and speech and language, and instead, had agreed to allow the District to conduct those evaluations. Thus, to the extent that the Parent intended to assert that [REDACTED]' AT and speech evaluations were inadequate, the burden of proof had shifted back to her. With respect to the remaining evaluations -- neuropsychological and functional vocational -- the District bore the burden of proof as to the adequacy of its evaluations. The question of reimbursement was moot, however, since I had previously ordered that they be conducted at District expense.

The second notable occurrence concerned the Student's stay-put placement during the pendency of the due process hearing. Specifically, when it became clear that the hearing would not be completed until mid-September, the parties agreed that [REDACTED] stay-put placement would be at [REDACTED] instead of [REDACTED]. [REDACTED] had attended esy at [REDACTED] and both the Parent and [REDACTED] were pleased with the services she received there. This agreement ensured that [REDACTED] would not have to start another school year at [REDACTED] where the parties could not agree on an appropriate program.

Issues Presented:

- **Parent's Issues**

The Parent presented the following issues in her due process complaint:

1. Failure by the school to allow parent participation in an IEP meeting, and failure to provide a copy of the IEP in a timely manner.
2. Failure to properly evaluate the Student;
3. Failure to develop an appropriate IEP that is reasonably calculated to provide meaningful educational benefit; including measurable goals, meaningful transition planning, appropriate related services such as assistive technology and transportation;
4. Failure to implement the IEP's as written;
5. Failure to address regression by Student;
6. Failure to respond to request by Parent for IEE's;
7. Failure to comply with required stay-put mandates.

- **District's Issues:**

As noted above, since the District refused to agree to the Parent's request for an independent neuropsychological and functional vocational evaluation, the law establishes that [REDACTED] bears the burden of proof to demonstrate that it appropriately evaluated [REDACTED] in those areas. (34 C.F.R. § 300.502(b))

Relief Requested

The Parent requests the IHO issue an Order:

1. That finds the District violated and continues to violate the procedural rights of [REDACTED] and her parent by denying them participation in the formulation of FAPE;
2. That finds the District denied and continues to deny [REDACTED] a Free Appropriate Public Education (FAPE) and her entitled educational opportunities including extended year services;
3. That finds the District's IEPs were inappropriate and continue to be as to their lack of specially designed instruction responsive to the Student's unique needs & inappropriate as to their lack of related services required for the Student to benefit from her special education;
4. That orders the District to provide [REDACTED] with a FAPE as documented in an appropriate IEP that is reasonably calculated to confer an educational benefit as soon as allowed by law;
5. That orders the District to provide Speech & Language and other appropriate related services for [REDACTED] to address her speech and language, auditory processing deficits and other deficits so that [REDACTED] will benefit from her education;
6. That orders the district to undertake the appropriate assistive technology for [REDACTED] in order for [REDACTED] to benefit from her education;
7. That orders compensation for outside evaluations paid for by [REDACTED] family;
8. That orders the District to adopt an appropriate transition plan with services to meet the needs of [REDACTED] in accordance with the functional vocational evaluations conducted;

9. That requires that the District provide an appropriate placement for [REDACTED] and to provide transportation to and from the placement;
10. That orders such compensatory education to make [REDACTED] whole for the period of deprivation of educational opportunity, and for the lack of specially designed instruction, at an appropriate educational facility selected by the Parent at times of their own choosing and convenience;
11. That orders the District to pay for reasonable transportation costs to and from these providers to obtain such compensatory education; and
12. That finds that the District did not comply with the stay- put requirement imposed for [REDACTED] and orders appropriate relief.
13. That orders the District to provide monthly reports on implementation of the order for 12 months to the Parent, her counsel and ISBE.

Findings of Fact

[REDACTED] is a seventeen year old student who has been diagnosed with a cognitive impairment. By all accounts, she is a pleasant, hard working student, who puts forth her best efforts at school. The events that are the subject of this hearing began during the 2007-08 school year when [REDACTED] started attending high school at [REDACTED]. Prior to attending [REDACTED], [REDACTED] had received special education services in a self-contained classroom pursuant to an eligibility classification on her IEP of mild cognitive impairment.

Because [REDACTED] staff believed that [REDACTED] was mildly cognitively impaired, she was placed in instructional classes, i.e., special education classes in the core curriculum areas. After conducting a triennial evaluation during the fall of her 9th grade year, however, the [REDACTED] team recommended that [REDACTED] eligibility classification be changed to moderate cognitive impairment, and that her placement also be changed to a more restrictive self-contained class for moderately impaired students. The Parent disagreed with these recommendations, and also disagreed with the IEP that [REDACTED] subsequently prepared for [REDACTED]. These issues, as well as the other issues articulated above, led the Parent to file a due process complaint on February 8, 2008. Relevant evidence concerning the events in dispute is summarized below.

- [REDACTED]

[REDACTED] is [REDACTED] mother. She believes [REDACTED] should receive an education that helps her to reach her potential and live independently. To that end, [REDACTED] has been an active member of [REDACTED] IEP teams throughout [REDACTED] school career. Outside of school, [REDACTED] encourages [REDACTED] to participate in age appropriate activities as much as possible. [REDACTED] is active in her church choir and takes dance classes. According to [REDACTED], [REDACTED] is able to take public transportation semi-independently, and is adept at using a cell phone. She uses a debit card to pay for things instead of using cash. These skills enable [REDACTED] to take the bus to and from school and, on occasion, to go to movies and restaurants with her friends.

[REDACTED] testified that [REDACTED] was a student at [REDACTED] School prior to attending high school at [REDACTED]. At [REDACTED] she received special education services in a self-contained classroom pursuant to an eligibility classification of mild cognitive impairment. (See 2/20/07 IEP, B-142, Ex. 4) [REDACTED] stressed that [REDACTED] IEP's were developed as part of a team effort, and that staff understood that [REDACTED] was a key member of the team. She was allowed to ask questions and her opinions were taken into account. When IEP meetings were completed, [REDACTED] was always given a copy of [REDACTED] IEP. For these reasons, [REDACTED] believes that the team at [REDACTED] understood [REDACTED] needs and provided her with appropriate IEP's, including the 2/20/07 IEP that was in effect when [REDACTED] arrived at [REDACTED] as a 9th grader. (See Ex 4) In

contrast, ██████ testified that the actions of ██████'s IEP team were confusing and somewhat "foreign."

The events that ultimately led ██████ to file a due process complaint began in the fall of ██████ 9th grade year when ██████ staff initiated ██████ triennial evaluation. After receiving the Parent's consent, (See 11/1/07 Consent for Evaluation, SD 49, Ex 32) ██████ school psychologist, ██████, administered the Stanford Binet Intelligence Scales, the Kaufmann Test of Educational Achievement and the Vineland Adaptive Behavior Scales.

The team met to discuss the results of ██████ triennial evaluation on January 29, 2008. ██████ attended with her advocate, ██████. Other attendees included ██████, ██████, ██████ "provider" and world history teacher, ██████, ██████ case manager, and ██████ science teacher. ██████ presented her report, which included the results of her evaluation, and statements by several of ██████ teachers (including her math, science and world history teachers) indicating that ██████ was struggling in their classes. Based on the results of ██████ testing and teacher input, the team recommended that ██████ disability classification be changed to "moderate cognitive impairment" and that ██████ be transferred to ██████'s self-contained classroom for students with moderate cognitive impairments.

████████ testified that she didn't agree with the team's recommendation. She believed that the self-contained class wouldn't adequately challenge ██████. She also was concerned that transferring ██████ from ██████'s instructional program to the self-contained program would humiliate ██████ in front of her friends and damage her self-image. (See 1/29/08 3-year Re-evaluation Conference Notes, B-178-79, Ex 6) Significantly, ██████ was willing to accept that ██████ might need a more restrictive program. She asked whether there were similar programs at other schools that ██████ could transfer to. She recalled that the team didn't answer her question.

████████ testified that, at this point, she expected the team to move to the IEP portion of the meeting and write goals for ██████. Instead, ██████ recalled that ██████ staff talked among themselves for a while and then abruptly informed her and ██████ that the meeting was over. (████████ provided similar testimony.) There had been no discussion of goals for ██████ nor had ██████ been given any opportunity to provide input into ██████ IEP. According to ██████ she left the meeting believing that the change in placement was a "done deal," and without a copy of ██████ IEP.

Heeding the advice of ██████, her advocate, ██████ either called or returned to ██████ later that same day to ask for a copy of ██████ IEP. She was told it was not yet completed. Two days later, she made another attempt to get a copy of the IEP. Once again, she was informed that it hadn't been completed. This time, however, she made it clear that she would wait until it was ready. At that point, ██████ the case manager, retrieved it for her. According to ██████ ██████ academic IEP goals had been completed without her participation or input. She and ██████ completed a transition plan for ██████ together.

Over the next few days, ██████ took several actions. On February 1, 2008, she formally requested an independent educational evaluation that included a neuropsychological evaluation, a speech and language assessment, a functional vocational assessment, and an assistive technology evaluation. (2/1/08 Parent Letter to Chambers, C-3, Ex 18a) ██████ also prepared a written dissent to the 1/29/08 conference results and the IEP that ██████ gave to her on January 31st. (See Parent's Letter of Dissent, H-99, Ex 18) In the letter, ██████ stressed that she did not agree with the team's recommendation to place ██████ in ██████'s self-contained classroom. She also objected to the manner in which ██████ staff completed ██████'s IEP without including her as a member of the team. (*Id.*) Finally, when ██████ failed to address her concerns, ██████ filed a due process complaint on February 8, 2008.

With the due process complaint pending, and stay-put requirements in effect, ██████ remained in her instructional placement until the end of the school year. Though there was apparently some confusion

surrounding extended school year services, [REDACTED] testified that [REDACTED] attended [REDACTED] School during the summer after 9th grade.

As the 2008-09 school year began, the due process dispute still had not been resolved, and [REDACTED] once again remained in [REDACTED] instructional program. [REDACTED] testified that at the beginning of the year, [REDACTED] did not receive an appropriate schedule -- she was given three lunch periods and no ROTC, for example. [REDACTED] went to the program office and got the schedule fixed but noted that [REDACTED] was placed in two regular classes -- accounting and Spanish.

As [REDACTED]'s 10th grade year came to a close, [REDACTED] received notification that her daughter had been assigned to attend [REDACTED] for a four week extended school year placement. [REDACTED] serves students who are moderately cognitively impaired, and who have attended a regular high school for at least 2 years. Initially skeptical that this placement would be appropriate, [REDACTED] nevertheless visited the school with [REDACTED] and met with [REDACTED], a case manager and school counselor at [REDACTED]. [REDACTED] testified that both she and [REDACTED] liked what they saw, and agreed that [REDACTED] would attend esy at [REDACTED]. Though [REDACTED] still has some concerns that [REDACTED] may be too high functioning for [REDACTED], she stressed that the summer program was a success for [REDACTED]. She also testified that she would be willing to give [REDACTED] a try during the regular school year to see if it continues to meet [REDACTED]'s needs.

- Ms. [REDACTED]

Ms. [REDACTED] has been a teacher at [REDACTED] for eight years where she teaches several history classes for special education students. Though she has taught special education throughout her tenure at [REDACTED], she was not fully certified in that area until last year. Ms. [REDACTED] was a credible and cooperative witness. From her testimony, however, it was clear that she has a fundamental misunderstanding concerning how IEP's are to be created and implemented.

Ms. [REDACTED] testified that [REDACTED] was a student in her 9th grade world history class, and her 10th grade U.S. history class. Though both classes were special education classes, [REDACTED] nevertheless struggled with the work and functioned even further below grade level than was expected. [REDACTED] stressed that lessons had to be repeated over and over because [REDACTED] wasn't able to retain facts and concepts from one day to the next. For that reason, [REDACTED] testified that [REDACTED] failed to make progress in either world history or U.S. history. Indeed, [REDACTED] testified that [REDACTED] received an "F" in 10th grade U.S. history when, despite intensive tutoring from [REDACTED] and repeated attempts, [REDACTED] was unable to pass the Constitution test. (See [REDACTED] 2008-09 Report card, F-34-35, Ex 2) In addition, after the third quarter of 10th grade, [REDACTED] seemed to have given up. [REDACTED] stated that [REDACTED] failed to turn in assignments and often laid her head on her desk during class. She conceded that she did not report [REDACTED] downturn to [REDACTED]

In addition to teaching the curriculum, [REDACTED] also was responsible for implementing the social studies goals on [REDACTED] IEP's. The first goal was in effect when [REDACTED] arrived at [REDACTED] as a 9th grader. It was written by [REDACTED] 8th grade team on February 20, 2007. The goal required [REDACTED] to demonstrate knowledge of political systems, particularly those in the U.S. The goal appears adequately written and measurable, and [REDACTED] asserted that she implemented it. A review of the IEP, however, reveals that [REDACTED] failed to record whether she implemented the goal and, if so, whether [REDACTED] met the accompanying benchmarks. [REDACTED] could not recall whether [REDACTED] met the goal.

Ms. [REDACTED] testified that, besides being [REDACTED] teacher, she was also [REDACTED] provider. In general, a provider is responsible for ensuring that a student's IEP is appropriately implemented. [REDACTED] asserted that she carried out this responsibility by seeing to it that teachers were providing [REDACTED] IEP modifications and accommodations. She relied on informal "teacher conferences" in the hallway to ensure that [REDACTED] special education teachers were implementing the IEP goals. She kept no notes or written record of her discussions with [REDACTED]'s teachers, however. Significantly, none of [REDACTED]'s special

education teachers recorded [REDACTED] progress on either of the IEP's that were in effect during the period at issue.

As [REDACTED] provider, [REDACTED] asserted that it was also her responsibility to write IEP goals for [REDACTED]. Thus, when it came time to complete [REDACTED] triennial review and write a new IEP, [REDACTED] played a key role in that process. Her testimony about the January 29, 2008 meeting was consistent with the Parent's. In particular, she recalled that after reviewing the results of the triennial evaluation, [REDACTED] staff recommended that [REDACTED] eligibility determination be changed from mild cognitive impairment to moderate cognitive impairment. Staff also recommended that [REDACTED] be placed into a self-contained class at [REDACTED] for moderately cognitively impaired students. According to Ms. [REDACTED], the Parent objected to placing [REDACTED] in the self-contained classroom. Mrs. [REDACTED] believed that removing [REDACTED] from her instructional classes in favor of the self-contained program would harm [REDACTED] emotionally and socially. The meeting concluded without the Parent's agreement to [REDACTED] placement, and the team did not write a new IEP for [REDACTED].

Rather than writing goals for [REDACTED] as a team, Ms. [REDACTED] testified that a day or two after the meeting concluded she selected and wrote [REDACTED] academic goals on her own. According to [REDACTED] this was not unusual, but was her general practice. In [REDACTED] case, [REDACTED] testified that selecting goals was particularly challenging because the Student functioned at such a low level academically. Rather than seeking input from the Parent and [REDACTED] teachers concerning what would be appropriate for [REDACTED] Ms. [REDACTED] selected and wrote goals for [REDACTED] based solely on her reading and math levels. In science, for example, [REDACTED] testified that she located a primary level science text book and selected a goal from the book that required [REDACTED] to learn the parts of her body. When asked whether she knew if [REDACTED] already knew the parts of her body, [REDACTED] conceded that she didn't. Likewise, when questioned about a math goal which required [REDACTED] to "learn to count using manipulatives," [REDACTED] again could not say whether this was an appropriate goal for [REDACTED]. Instead, she stressed that her main objective was to select goals that matched [REDACTED] academic levels. She employed the same approach when writing goals for English, and history, too. (See 1/29/08 IEP, B-178, Ex 6) When she was finished writing [REDACTED] academic goals, she gave the IEP to Ms. [REDACTED] [REDACTED]'s case manager.

- Ms. [REDACTED]

Ms. [REDACTED] has been a teacher at [REDACTED] for four years. In addition to her teaching responsibilities, Ms. [REDACTED] also acts as a case manager for students receiving special education services. She has been [REDACTED] case manager since [REDACTED] arrived at [REDACTED] in the fall of 2007. According to Ms. [REDACTED], a case manager's responsibilities are similar to those of a provider. Case managers are responsible for seeing that a student's IEP is implemented and that the student is receiving appropriate services. Case managers, however, are senior to the providers.

[REDACTED] testified that she was not involved in drafting the 2/20/07 IEP that was in effect when [REDACTED] began her freshman year at [REDACTED]. She testified, however, that she and other staff members reviewed the IEP to decide what classes would be appropriate for [REDACTED]. IEP indicated that she was mildly cognitively impaired and called for 1350 minutes per week of special education services. (Ex 4 at B-142, 156) Thus, staff concluded that [REDACTED] should attend special education classes for all of the core academic courses for freshmen. Because they believed her to be mildly cognitively impaired, they placed [REDACTED] in instructional classes rather than the fully self-contained program for students with moderate cognitive impairments.

As noted above, [REDACTED] conducted a triennial evaluation of [REDACTED] in the late fall of 2007. [REDACTED] testified that she became aware that [REDACTED] achievement scores obtained during the triennial evaluation were lower (first grade level), than the achievement levels that were reported by the [REDACTED] team on [REDACTED] 8th grade IEP. (third grade level). (See Ex 7, SD 10, Ex 4, B-148 -155) Ms. [REDACTED] interpreted this information to mean that [REDACTED] had "obviously done better at [REDACTED] than she was doing at [REDACTED]." She stated that she

shared her concerns about the scores with [REDACTED] prior to the 1/29/08 eligibility meeting.

[REDACTED] also attended the eligibility meeting on January 29, 2008. Her testimony about what took place at the meeting was consistent with Ms. [REDACTED]'s and the Parent's recollection. Significantly, [REDACTED] recalled that [REDACTED] did not disagree with the team's diagnosis of moderate cognitive impairment. Nevertheless, according to Ms. [REDACTED] the Parent opposed placing [REDACTED] in the moderately impaired class at [REDACTED] because she feared that the change would be humiliating and damaging for [REDACTED] socially and emotionally. [REDACTED] instead requested that the team consider placing [REDACTED] in a program for moderately impaired students at another school. [REDACTED] testified that the meeting ended at that point - without writing any IEP goals for [REDACTED] -- because [REDACTED] had to ask her supervisor about alternative placements for [REDACTED]. According to [REDACTED] [REDACTED] was offered a program at [REDACTED] as an alternative to the [REDACTED] self-contained class. She turned it down, however, because she didn't believe [REDACTED] was a good school.

Consistent with the Parent's and Ms. [REDACTED]'s testimony, [REDACTED] testified that [REDACTED] came to school to pick up [REDACTED] IEP a couple of days after the January 29 meeting. [REDACTED] retrieved the IEP from [REDACTED] who had completed [REDACTED] academic goals. She and the Parent then completed a transition plan for [REDACTED]. In describing [REDACTED] present level of performance, the transition plan includes the observation that [REDACTED] can "self travel without assistance," and that she plans to enter a cosmetology program after high school. (Ex 6, B-193) To meet her employment goal, the plan states that [REDACTED] will "visit/job shadow a hair stylist." With respect to daily living skills, the transition plan states that [REDACTED] skills "are commensurate with her peers." (*Id.*)

- **Testimony from [REDACTED] Other Teachers**

In addition to Ms. [REDACTED], several of [REDACTED] 9th and 10th grade teachers testified at the hearing. Their testimony was, on the whole, quite consistent. The relevant portions of their testimony are recounted below.

Ms. [REDACTED] was [REDACTED]'s instructional geometry teacher during the 2008-09 school year. She has been a special education teacher since 1979, and has taught at [REDACTED] since 1995. I found Ms. [REDACTED] to be quite knowledgeable, and her testimony was helpful. Specifically, [REDACTED] testified that [REDACTED] was one of approximately 12 students in her cross categorical class. [REDACTED] recalled that [REDACTED] tried to keep up with the work --she was on time, she paid attention, kept the required notebook, and asked questions. Despite her efforts, however, [REDACTED] struggled to understand and recall the concepts presented in class.

[REDACTED] testified that she implemented all of the modifications and accommodations on [REDACTED] IEP. When shown [REDACTED] IEP goal in math (*See* Ex. 6 at B-187), [REDACTED] couldn't recall if she'd ever seen the goal. She agreed, however, that the goal was consistent with [REDACTED] skill level, which was somewhere at the primary level of ability. Because [REDACTED]'s skills were so far below grade level, [REDACTED] didn't believe that [REDACTED] was appropriately placed in her class. [REDACTED] also testified that she thought [REDACTED] IEP should have included more meaningful math goals. For example, rather than adding single digit numbers as was required by [REDACTED] IEP goal, [REDACTED] believed that [REDACTED] should have been taught survival skills, such as learning to add numbers on a receipt. She stated that she shared her ideas with Ms. [REDACTED]

Mr. [REDACTED] taught [REDACTED] biology during her freshman year and chemistry during her sophomore year. Both classes were special education classes. Mr. [REDACTED] believed that [REDACTED] functioned academically at the early primary level of ability. Thus, when shown [REDACTED] science IEP goal that required her to learn the parts of the body and her five senses, [REDACTED] testified he believed the goal was appropriate. He was careful to state, however, that he believed [REDACTED] learned other things in his class, too. Mr. [REDACTED] testified that with modifications and accommodations, [REDACTED] was successful in his class. He conceded, though, that he had had to modify [REDACTED] work even beyond that of the other special education students in his class.

According to Mr. [REDACTED] [REDACTED] was only required to do 50% of the work that the other special education students did.

Mr. [REDACTED] was [REDACTED] 10th grade regular education accounting teacher. According to Mr. [REDACTED] the class was not an appropriate placement for [REDACTED]. Though she tried her best, [REDACTED] stated that [REDACTED] simply could not grasp basic accounting concepts like credits and debits. [REDACTED] recalled attending an IEP meeting for [REDACTED] and that there was a discussion about placing her in a different class. He was unaware of the outcome of that discussion, but noted that [REDACTED] continued to attend his class. [REDACTED] tried to modify assignments for [REDACTED] but ultimately resorted to having her copy things from the book in hopes that "something would stick."

Ms. [REDACTED] teaches regular education Spanish. [REDACTED] was in the class during the 2008-09 school year. Like the other teachers, [REDACTED] testified that [REDACTED] struggled to succeed in her class. Nevertheless, [REDACTED] seemed to enjoy the class quite a bit, and [REDACTED] testified that she was able to make modifications that enabled [REDACTED] to receive some benefit from the class. [REDACTED] stressed, however, that she didn't believe that [REDACTED] would have been able to succeed in a more advanced Spanish class.

Evaluations and Observations

As noted above, one issue central to the Parent's complaint is whether [REDACTED] appropriately evaluated [REDACTED] to correctly identify her needs. To that end, both parties presented evidence concerning the results of several assessments that were administered to [REDACTED]. Relevant evidence is summarized below.

- **Psychological Evaluations**

1. [REDACTED]

[REDACTED] conducted a triennial evaluation of [REDACTED] in the fall of 2007 that included a psychological evaluation administered by school psychologist, [REDACTED]. Ms. [REDACTED] testified at the hearing about the results of her testing and about her report. (See Report of Psychological Evaluation, B-166, Ex. 35) I found her to be a credible witness.

As part of her evaluation of [REDACTED] Ms. [REDACTED] reviewed [REDACTED] educational history to glean relevant information. Significantly, Ms. [REDACTED] reported that [REDACTED] had been found to be moderately cognitively impaired in a 2003 evaluation. She also stressed that in a 2005 IEP, the team agreed that [REDACTED] continued to need services in her then current moderate cognitive impairment program. On the eligibility forms, however, someone had erroneously checked "mild cognitive impairment." (*Id.*)

Ms. [REDACTED]'s report also includes a summary of her interviews with several of [REDACTED] teachers, including her biology, English, algebra and music teachers. Each reported that [REDACTED] tried hard in class, but was unable to understand the concepts. In particular, the biology teacher reported that [REDACTED] was functioning at least two grade levels below other students in the special education class, and that she required "intense one-on-one instruction on a daily basis." (*Id.*) In addition to the teachers' reports, Ms. [REDACTED] testified that she observed [REDACTED] in her algebra class. On that day, [REDACTED] took a quiz and, according to [REDACTED], answered every question incorrectly. (*Id.* at B-169)

Ms. [REDACTED] administered the Stanford Binet Intelligence Scales to obtain a measure of [REDACTED] cognitive abilities. She testified that she selected the Binet because it is less verbal and offers more hands-on opportunities than the Wechsler Intelligence Scale for Children. The results indicated that [REDACTED] received a full scale IQ in the range of 39-47, which indicated an overall cognitive ability in the moderately impaired range of functioning. [REDACTED] exhibited a relatively flat profile with delays in all areas. (*Id.* at B-167) Adaptive behavior skills as measured by the Vineland indicated that [REDACTED] communication, daily

living and socialization skills were all in the low range, with standard scores ranging from 62-68. Ms. [REDACTED] noted that the Vineland scores were somewhat higher than [REDACTED] estimated cognitive potential. (*Id.* at B-167-68) When asked, Ms. [REDACTED] testified that it is not uncommon to see a discrepancy between cognitive and adaptive behavior scores. She conceded that [REDACTED]'s 20 point difference was somewhat unusual, but noted that the Vineland scores were provided only by the Parent and [REDACTED]. Though she asked several teachers to complete the assessment, she did not receive any responses.

Based on her findings, Ms. [REDACTED] recommended that [REDACTED] would benefit from special education services that would address her moderate cognitive impairment.

2. Dr. [REDACTED]

The Parent retained Dr. [REDACTED] to conduct a neuropsychological evaluation of [REDACTED]. Dr. [REDACTED] examination of [REDACTED] included a number of tests that measured [REDACTED] cognitive abilities, academic skills, attention, memory, and visual-perceptual skills. She submitted a draft report of her findings (Neuropsychological Evaluation -Draft, H-112, Ex. 37), and a subsequent report that included her recommendations. (Neuropsychological Evaluation, H-130, Ex. 39) Dr. [REDACTED] testified about her findings at the hearing. Overall, I found her to be a credible witness. Her conclusion that [REDACTED] has a central auditory processing disorder was not persuasive, however, given her concession that she is not qualified to make such a diagnosis.

Dr. [REDACTED] testified that she reviewed [REDACTED] previous testing data to help her select the appropriate tests to administer to the Student. She noted that [REDACTED] testing history revealed that her verbal skills were significantly lower than her chronological age. Thus, Dr. [REDACTED] administered the Universal Nonverbal Intelligence Test (Unit), which, as the title suggests, is a nonverbal test of general intelligence. [REDACTED] achieved a full scale IQ score of 44 on the UNIT, which fell within the "very delayed range." Dr. [REDACTED] also noted that there was no significant variability in her skills. Significantly, she testified that [REDACTED] results on the UNIT were consistent with Ms. [REDACTED] findings in administering the Stanford Binet. Additionally, Dr. [REDACTED] administered several subtests from the WISC-IV-Integrated, which presents the same test items as the standard version of the WISC, but in a multiple choice format. While Dr. [REDACTED] noted that [REDACTED] performed better on the multiple choice vocabulary subtest, she stressed that overall, [REDACTED] performance was consistent with previous results on the WISC.

Likewise, in measuring [REDACTED] academic skills, Dr. [REDACTED]'s results were consistent with [REDACTED] testing. Dr. [REDACTED] found that [REDACTED] functioned in the kindergarten to third grade range in various measures of reading and math and written language. (Ex 37 at H-126-27)

Dr. [REDACTED] assessed [REDACTED] adaptive behavior skills by asking the Parent to complete an assessment form. According to the Parent, [REDACTED] adaptive skills are much higher than one would expect of a student with a moderate cognitive impairment. She noted, however, that the adaptive behavior scores do not include any responses from [REDACTED] teachers and for that reason, provide an incomplete picture.

In describing her observations of [REDACTED] during their testing sessions, Dr. [REDACTED] stressed that a number of [REDACTED] responses were particularly unusual or atypical. This prompted her to suspect that [REDACTED] has a processing disorder in addition to her cognitive delays. She consulted Ms. [REDACTED] and Dr. [REDACTED] about her observations, and, based on Dr. [REDACTED] opinions, concluded in her report that [REDACTED] has a central processing disorder. When asked to explain the practical implications of that diagnosis, she explained she believes a processing disorder could cause [REDACTED] to appear as though she has a moderate cognitive impairment when she actually is mildly cognitively delayed. Notably, Dr. [REDACTED] declined to offer an opinion as to whether [REDACTED] is mildly or moderately impaired. Rather, she testified that [REDACTED] is a complex student who doesn't fit comfortably into either classification.

Finally, to address her educational challenges, Dr. [REDACTED] offered a number of recommendations in her second report including, placement in a small classroom with a cohesive, multisensory approach to instruction. (Ex. 39 at H-131) She also testified that [REDACTED] instruction should focus particularly on functional academics, e.g., learning how to read and complete a job application, and improving her understanding of money.

- **Vocational and Functional Assessments**

1. [REDACTED]

[REDACTED] has extensive training and experience in conducting vocational assessments and vocational counseling. He was retained by the Parent to conduct a vocational evaluation of [REDACTED] Mr. [REDACTED] evaluation included an assessment of [REDACTED] academic skills and daily living skills. Mr. [REDACTED] also administered several work samples that measured [REDACTED] ability to perform a various tasks that are necessary in work situations. I found Mr. [REDACTED] testimony to be very helpful and informative.

First, Mr. [REDACTED] administered the Woodcock-Johnson III Test of Achievement and the Peabody Individual Achievement Test to assess [REDACTED] academic skills in math, reading and writing fluency. His results were consistent with tests performed by Ms. [REDACTED] and Dr. [REDACTED], in that they showed that [REDACTED] functions at a primary level of ability in all areas. In math calculation, [REDACTED] performed at a grade level of 4.9. While this score indicates an improvement from the results of [REDACTED] evaluation in 2007, [REDACTED] points out that it is considerably below average when compared to [REDACTED] age group. Moreover, Dr. [REDACTED]’s results in her administration of the KeyMath test did not indicate improvement.

Mr. [REDACTED] also administered the Street Survival Skills Questionnaire to assess [REDACTED] daily living skills in the areas of basic concepts, functional signs, public services, and understanding time and money. [REDACTED] showed severe deficits in every area other than her understanding of functional or community signs. In particular, [REDACTED] testified that [REDACTED] is unfamiliar with such community services as post offices, banking services, and telephone usage, i.e. matching names and numbers in a directory and dialing 911 in an emergency. In addition, [REDACTED] was unable to consistently tell time or use a calendar. She is unable to count money or make change.

Finally, Mr. [REDACTED] administered several assessments to measure skills that [REDACTED] would need in various work settings. Tests indicated that [REDACTED] exhibited a relative strength when comparing and sorting numbers. Other tests indicated that [REDACTED] has significant difficulty performing tasks that require manual dexterity, eye-hand coordination, visual problem solving, and tasks that require her to apply multiple variables. (*Id.* at H-189) Significantly, [REDACTED] stressed that [REDACTED] was unable to work with both hands at the same time which, according to [REDACTED], has “vast vocational ramifications.” He recommended that [REDACTED] receive an OT evaluation to assess this deficit.

Based on the results of his evaluation of [REDACTED] Mr. [REDACTED] recommended that the IEP team draft a transition plan for [REDACTED] that includes clear and detailed goals in the areas of post-secondary education/training, vocational, independent living and community orientation. (*Id.* at H-191) In addition, [REDACTED]’s job possibilities should be viewed in terms of “gainful work activity” as opposed to competitive employment since, according to Mr. [REDACTED] she is unlikely to be able to meet the demands required in an open labor market. [REDACTED] believes that [REDACTED] likely will not be successful in the field of cosmetology, and

recommended that [REDACTED] be given more opportunities to explore different job settings. He also recommended that [REDACTED] be provided with actual work experience in which she receives hands on learning and demonstration. [REDACTED] also stressed that job coaching will be important in helping [REDACTED] develop a post-secondary vocational plan. (*Id.* at 189-190)

2. [REDACTED]

The Parent retained [REDACTED] to conduct a functional assessment of [REDACTED] (See 4/27/09 Functional Assessment and Transition Plan Recommendations, and 6/5/09 Addendum, H-151 - 160, Ex. 23) Ms. [REDACTED] is a vocational rehabilitation specialist and a certified rehabilitation counselor who has been in the field since 1985. I found her to be a knowledgeable and credible witness.

Ms. [REDACTED] testified that a functional assessment is less formal than a vocational assessment in that it focuses specifically on whether the subject can perform a variety of skills. For example, Ms. [REDACTED] reported that [REDACTED] can read and order from a restaurant menu. She was able to fill out portions of a simple questionnaire, but could not complete it. [REDACTED] was able to use her cell phone to send text messages and obtain stored pictures. She also demonstrated the ability to use a computer keyboard and mouse. [REDACTED] however, was not able to tell time, and reported to Ms. [REDACTED] that she can't count change. (*Id.* at H-155-56) Other than using her cell phone, [REDACTED] was not able to attend to detail.

Based on her assessment of these and other skills, Ms. [REDACTED] concluded that [REDACTED] "appears capable of functioning in the community and working in a community setting with supports." She stressed, however, that [REDACTED]'s stated goal of cosmetologist is not realistic. [REDACTED] recommended that [REDACTED]'s vocational goals be for the least restrictive employment setting as possible. To that end, [REDACTED] concluded that [REDACTED] would not do well in settings that require strict attention to detail and quality. In addition, [REDACTED] recommended seeking employment situations where written and oral directions are minimal. Finally, because of [REDACTED] memory difficulties, [REDACTED] also recommended employment that is routine and doesn't vary from week to week.

To help [REDACTED] achieve that goal, [REDACTED] recommended that [REDACTED] transition plan focus on vocational exploration of realistic jobs. She suggested that [REDACTED] receive the assistance of a rehabilitation counselor to help her select realistic employment goals that are of interest to her. With that first step completed, [REDACTED] recommended that [REDACTED] transition plan then focus on providing [REDACTED] with exposure to real (and realistic) jobs through work trials.

With respect to [REDACTED] independent living skills, [REDACTED] disagrees with [REDACTED] transition plan, which states that her skills are "commensurate with her peers." Based on her assessment, [REDACTED] concluded that at [REDACTED] current functional level, "she will not be able to live independently at the conclusion of her education and training. [REDACTED] recommended that [REDACTED] independent living skills be fully assessed within the next 12 months, with deficient areas being addressed in her transition plan. (*Id.* at H-159-60)

- **Speech and Language**

1. [REDACTED]

[REDACTED], a speech and language pathologist for the District, conducted an evaluation of [REDACTED] on June 12, 2008. (6/12/08 CPS Speech and Language Summary, H-107, Ex 9) Ms. [REDACTED] testified about her report at the hearing. Unfortunately, her evaluation of [REDACTED] offered little, if any meaningful information concerning [REDACTED] language skills and deficits. Though she administered a number of tests to [REDACTED] she refrained from providing any quantitative results. Instead, she simply offered the general conclusion that the tests revealed that [REDACTED] language abilities are "consistent with her general level of functioning." (*Id.* at H-108)

When asked about the absence of quantitative data, Ms. [REDACTED] explained that, because [REDACTED] educational records indicated that her language skills were similar to that of a 7 year old, she administered tests normed for children of that age. This precluded her from being able to provide any reliable scores to measure [REDACTED] performance. In addition, [REDACTED] conceded that she did not attempt to measure [REDACTED] receptive language skills even though she has been found to have a significant deficit in that area.

Ms. [REDACTED] also conducted a classroom observation. She noted that [REDACTED] was able to interact and converse with her peers, and that she "fit in." [REDACTED] also noted that [REDACTED] was able to navigate her schedule and talk to her teachers to express needs and concerns. Based on her testing results and observations of [REDACTED] Ms. [REDACTED] concluded that [REDACTED] did not have a communication disorder that adversely affects her educational (academic, social and vocational) performance. (*Id.*) She did not believe [REDACTED] should be provided with any language therapy.

2. [REDACTED]

The Parent retained Mr. [REDACTED] to conduct a private speech and language evaluation of [REDACTED] Mr. [REDACTED] administered a comprehensive series of assessments to [REDACTED] (Speech-Language Assessment, H-172, Ex 8) [REDACTED] assessment was somewhat unusual in that he administered several measures -- like a test of visual processing skills -- not normally associated with speech and language assessments. Nevertheless, I found Mr. [REDACTED] findings to be credible and informative. I was, however, somewhat skeptical of his claims concerning [REDACTED] prognosis if given intensive therapy. This was particularly true in light of the fact that Mr. [REDACTED] had not reviewed any of [REDACTED] educational history other than the [REDACTED] 6/12/08 speech and language report.

In presenting the results of his assessments, Mr. [REDACTED], unlike [REDACTED], quantified the results. They indicated that [REDACTED] has significant deficits in her receptive and expressive language, as well as in her ability to express herself in writing. [REDACTED] also believes that [REDACTED]'s poor working memory is a major factor contributing to her language deficits.

While [REDACTED]'s findings were much more detailed and specific than the District's, they are consistent in that both found [REDACTED] language skills to be significantly below her chronological age. [REDACTED] strongly disagrees with [REDACTED] conclusion that [REDACTED] significant deficits are not adversely affecting her educational performance. To the contrary, [REDACTED] stressed that he holds the opposite opinion. Moreover, [REDACTED] testified that [REDACTED] language deficits must be addressed to help her function in a work setting and adequately integrate into the community.

Mr. [REDACTED] recommended that [REDACTED] should receive "intensive and direct" speech-language therapy. He believes that [REDACTED] would exhibit significant improvement within 8-12 weeks if she underwent therapy for 2-3 hours a day.

- **Assistive Technology**

[REDACTED] conducted an assistive technology evaluation of [REDACTED] on February 19, 2009. (*See Assistive Technology Evaluation Report, H-199, Ex 1*) The evaluator was unavailable to testify about her findings at the hearing. Her supervisor, [REDACTED], appeared instead. Ms. [REDACTED] testified about the procedures involved in conducting an AT evaluation. She also presented the AT evaluation report.

According to the report, the evaluator consulted with staff and reviewed [REDACTED]'s IEP prior to conducting the evaluation. She learned that [REDACTED] has difficulty with reading comprehension and decoding. To assess these areas, the evaluator observed [REDACTED] while she read the Preamble to the U.S. Constitution (material she needed to access for her history class). She noted that [REDACTED] had difficulty decoding several words, and was unable to answer any comprehension questions about the text. Significantly, the examiner noted that

■■■■ comprehension didn't seem to improve when she was given additional auditory or visual input. The examiner nevertheless believed that ■■■■ reading comprehension might improve with symbol support. She recommended Writing with Symbols software, which would pair a symbol above each word presented to ■■■■

Relevant testimony established that ■■■■ provided ■■■■ with the technology recommended by the evaluator. ■■■■ and some staff members were trained to use the technology, as well. There was testimony, however, that ■■■■ did not use the AT consistently. It was unclear, however, whether ■■■■ failed to sufficiently train ■■■■ and staff to use the AT, whether the program was ineffective, or whether ■■■■ simply didn't want to use it.

To counter, the Parent called ■■■■, an assistive technologist, to offer his opinions about ■■■■ AT evaluation. Mr. ■■■■ made it clear that he did not conduct his own evaluation of ■■■■ and could not offer an opinion about which AT products would be appropriate for ■■■■ -- if any. In reviewing ■■■■ AT report, he questioned whether Writing with Symbols would be effective in light of the examiner's comment that visual cues didn't seem to improve ■■■■ comprehension.

• Occupational Therapy

The Parent retained ■■■■, an experienced occupational therapist to conduct an evaluation of ■■■■ using the interactive metronome. Ms. ■■■■ concluded that the results suggested that ■■■■ experiences difficulty with bilateral motor integration and timing of upper and lower extremity movements. Ms. ■■■■ recommended additional testing be completed to offer more specific findings to better assist with recommendations for treatment.

■■■■ did not conduct an OT evaluation of ■■■■

• Central Auditory Processing Evaluation

1. ■■■■

■■■■ is a certified educational audiologist who has worked for ■■■■ for 23 years. She conducted a central auditory processing evaluation of ■■■■ and testified about her findings at the hearing. (Central Auditory Processing Assessment Report, SD 1, Ex. 16) I found her testimony to be reliable and credible. Specifically, Ms. ■■■■'s report and her testimony demonstrated that her assessment was quite comprehensive. From those results, she concluded that there was not clear pattern of a central auditory deficiency.

2. ■■■■

Dr. ■■■■ testified as a consultant for the Parent. Like ■■■■, Dr. ■■■■ is an experienced audiologist. Unlike ■■■■, Dr. ■■■■ did not assess or observe ■■■■. Instead, she reviewed ■■■■'s ■■■■ evaluation report and concluded that the results indicated that ■■■■ *does* have a central auditory processing disorder. Given that ■■■■'s conclusion was based solely on her review of a report of an assessment that ■■■■ conducted, I did not find Dr. ■■■■'s testimony to be persuasive.

CONCLUSIONS OF LAW

The Individuals with Disabilities Education Act (IDEA) establishes that all students between the ages of

3 and 21 are entitled to a free appropriate public education. (FAPE) (34 C.F.R. § 300.301) To satisfy this obligation IDEA requires districts to identify and evaluate -- and where appropriate, reevaluate -- students who are in need of special education and related services. (34 C.F.R. §§ 300.111(a), 300.301, 300.303-300.305) Once identified, IDEA mandates that a district address a student's educational needs by providing the student with an individualized education program in the least restrictive environment. (*Id.* at §§ 300.111, 300.112, 300.114)

In analyzing whether a school district has provided FAPE, the starting point must be *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 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 have 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. To meet this requirement, *Rowley* establishes that a school district must 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. In addition, FAPE requires a school district 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) 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)). 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 Parent bears the burden of proof on all of issues raised in her complaint. With respect to [REDACTED] evaluations, however, it is the District's burden to demonstrate the adequacy of its psychological evaluation, and that it adequately assessed [REDACTED]'s functional and vocational skills.

Whether the District Failed to Properly Evaluate [REDACTED]

The Parent contends that the District violated its obligation to properly evaluate [REDACTED] thereby failing to appropriately identify her educational needs. In particular, the Parent asserts that [REDACTED] either failed to evaluate, or inadequately evaluated [REDACTED] cognitive functioning, speech and language skills, assistive technology needs, functional vocational skills and occupational therapy needs.

- **Cognitive Testing**

With respect to [REDACTED] cognitive abilities, the evidence demonstrates that the District appropriately evaluated [REDACTED] and that its findings support the conclusion that [REDACTED] exhibits a moderate cognitive impairment. Specifically, Ms. [REDACTED] conducted a thorough triennial evaluation of [REDACTED] in the fall of 2007 that included a cognitive (IQ) measure, an academic evaluation, and a measure of [REDACTED] adaptive skills. The results indicated that [REDACTED] IQ is in the range of 39-47, which indicates a moderate cognitive impairment. Academic testing was consistent with that data. While information from the Vineland

Adaptive Behavior Scales suggested that [REDACTED] functioned at a higher level, the Vineland results were limited to the Parent's and Student's observations. No responses from the teachers were included. In addition, [REDACTED] conducted a central auditory processing evaluation and concluded that the results did not support a finding that [REDACTED] has a central auditory processing disorder.

Testing conducted by the Parent's consultant, Dr. [REDACTED], was consistent with Ms. [REDACTED] findings. Indeed, Dr. [REDACTED] administered the UNIT, a non-verbal cognitive measure, to ensure that [REDACTED] language deficits would not depress her IQ scores. Even without a verbal component, [REDACTED] received a full scale IQ score of 44, which Dr. [REDACTED] conceded was consistent with Ms. [REDACTED] findings. Results of the academic measures she administered were also consistent with [REDACTED] findings. Like [REDACTED] Dr. [REDACTED] found that [REDACTED] adaptive functioning skills appeared to be higher than would be expected given her IQ scores. [REDACTED] noted, however, that the adaptive measure provided an "incomplete picture" since it was limited to the Parent's responses and did not include any responses from [REDACTED] teachers.

Unlike [REDACTED], Dr. [REDACTED] testified that she believes [REDACTED] has a central auditory processing disorder, which may cause her to appear moderately delayed, when she is actually mildly cognitively delayed. She based her opinion on the unusual nature of some of [REDACTED] responses, and on Dr. [REDACTED] opinion that [REDACTED] has a CAP disorder. I did not find Dr. [REDACTED] opinion to be persuasive, however. Specifically, such an opinion fails to take into account [REDACTED] IQ scores on the nonverbal UNIT. In addition, Dr. [REDACTED] opinion rests on Dr. [REDACTED] opinion that [REDACTED] has a central auditory processing disorder. As noted above, I did not find Dr. [REDACTED] testimony to be convincing.

Finally, because I find that [REDACTED] appropriately identified [REDACTED] as being a student with a moderate cognitive disability, I also find that its recommendation to change [REDACTED] placement to a more restrictive setting was appropriate. While the Parent's concern about transferring [REDACTED] to the self-contained class was understandable, it does not mean that the placement would have been inappropriate for [REDACTED]. Moreover, [REDACTED] successful esy experience at [REDACTED] -- as confirmed by the Parent's and case manager's testimony -- is further evidence that placing [REDACTED] in a program for moderately impaired students is appropriate.

- **Functional Vocational Evaluation**

The Parent's request for an IEE included a request for a private functional vocational evaluation. The District never responded to the Parent's request despite the fact that it was legally required to do so. For that reason, prior to the hearing I ordered the District to reimburse the Parent for a private functional vocational evaluation. The Parent, however, did not complete the evaluation in a timely manner. Thus, when the District represented that it was ready to complete it, I rescinded my previous order and allowed the District to proceed. Unfortunately, the District failed to complete the evaluation. Thus, at the hearing the District could not -- and did not -- present any evidence that it had appropriately evaluated [REDACTED] functional vocational skills.

The Parent ultimately obtained a very thorough functional vocational evaluation. The results of Mr. [REDACTED]'s and Ms. [REDACTED] assessments stood in stark contrast to the District's lack of objective information concerning [REDACTED] functional and vocational skills. Moreover, the Parent's evidence also showed that the District's failure to obtain objective data concerning [REDACTED] skills caused the District to develop a transition plan that did not appropriately address her needs. For these reasons, I conclude that the District failed to meet its burden of proof that it appropriately evaluated [REDACTED] functional vocational skills.

- **Speech and Language**

As part of its effort to resolve the issues that were the subject of this hearing, the District agreed to

conduct a speech and language evaluation of [REDACTED]. Unfortunately, Ms. [REDACTED] testimony strongly suggested that her focus in evaluating [REDACTED] was simply to confirm that [REDACTED] doesn't need speech and language therapy. Specifically, the evaluation offered little, if any, specific quantitative or qualitative data concerning [REDACTED] language skills. Ms. [REDACTED] relied on the results to offer the general conclusion that [REDACTED] functions at an age equivalent of approximately 7 years, which, she believes, is consistent with [REDACTED]'s cognitive abilities. From those results and a classroom observation, [REDACTED] concluded that [REDACTED] did not exhibit an educational impact that would indicate the need for speech and language services.

In contrast, the parent's consultant, [REDACTED] administered several measures that were appropriately normed for students of [REDACTED] chronological age. [REDACTED]'s results were consistent with [REDACTED] in that they indicated that [REDACTED] language skills are significantly below other students her age. Mr. [REDACTED] however, strongly disagreed with [REDACTED] finding that [REDACTED] significant deficits have no educational or vocational impact. Rather, [REDACTED] concluded that [REDACTED] should receive language therapy. He also testified that [REDACTED] language therapy should include remediation for her receptive language deficits -- an area that [REDACTED] did not assess. I agree with Mr. [REDACTED] that it is simply not credible for [REDACTED] to conclude that [REDACTED] significant language deficits have no educational or vocational impact. Accordingly, I find that the Parent has met her burden of proof in demonstrating that the District's speech and language evaluation of [REDACTED] was inadequate, and that [REDACTED] denied [REDACTED] FAPE by failing to provide her with speech and language therapy.

- **Assistive Technology**

The District conducted an assistive technology evaluation of AT on February 19, 2009. Though the examiner did not testify at the hearing, the report of her evaluation indicates that she took care to identify the Student's areas of need prior to conducting the assessment. She then assessed whether AT would be useful in minimizing [REDACTED] writing deficits, and whether auditory or visual input helped to increase [REDACTED]'s comprehension. Though the results seemed to indicate that [REDACTED] received no clear benefit from assistive technology, the examiner nevertheless recommended trying a symbol support program for its potential in increasing [REDACTED]'s reading technology.

The Parent did not demonstrate that the District's evaluation was inadequate. The Parent's consultant, Mr. [REDACTED], conceded that he had not assessed [REDACTED] and his testimony questioning aspects of the District's AT report failed to discredit [REDACTED] evaluation.

- **Occupational Therapy**

Neither the District nor the Parent conducted a thorough occupational therapy evaluation of [REDACTED]. However, Mr. [REDACTED]'s finding that [REDACTED] was unable to work with both hands was of concern because of its troubling implications for [REDACTED] future vocational opportunities. Ms. [REDACTED] confirmed Mr. [REDACTED]'s observation in her screening of [REDACTED]. This evidence supports the recommendation that additional testing should be conducted. It does not support a finding that [REDACTED] denied the Student FAPE by failing to conduct an occupational therapy evaluation.

Whether the District Committed Procedural Violations that Resulted in a Denial of FAPE?

As noted above, IDEA requires school districts to comply with relevant statutory, or procedural requirements in order to satisfy the requirements of FAPE. Here, the Parent alleges that the District denied [REDACTED] right to FAPE by committing the following procedural violations: 1) The District failed to allow [REDACTED] to assist in developing [REDACTED] 1/29/08 IEP; 2) It failed to provide [REDACTED] with a copy of [REDACTED] IEP in a timely manner; 3) The District failed to implement [REDACTED] IEP; and 4) It failed to comply with stay-put requirements. (See Issues 1, 4 and 7)

First, with respect to the Parent's assertion that [REDACTED] failed to allow her to participate in the IEP process, IDEA expressly mandates that parents be afforded an opportunity to participate in meetings relating to the identification, evaluation and educational placement of the child. (34 C.F.R. §300.501(b) &(c))

More specifically, IDEA also requires a school district to take steps to ensure that parents are given an opportunity to participate in their child's IEP meetings. (*Id.* at §300.322) Impeding or denying a parent's right to participate in an IEP meeting -- and the decisions that ensue -- is, without question, a denial of FAPE. (*See* 20 U.S.C. § 1415(f)(3)(E)(2007)) When considering the facts of this case in light of applicable law, it is clear that District committed procedural violations that denied [REDACTED]'s right to FAPE.

Specifically, the evidence revealed that the parties met on January 29, 2008 to review the results of [REDACTED] triennial evaluation, discuss [REDACTED] eligibility, and draft a new IEP. [REDACTED] fully participated in reviewing results of [REDACTED] tests, and in the discussions concerning [REDACTED] eligibility and placement. While she disagreed with the team's recommendations concerning eligibility and placement, she nevertheless was allowed to participate in the decision making process.

[REDACTED] however, was *not* allowed to participate in developing [REDACTED] IEP. Indeed, the evidence presented at hearing was undisputed that [REDACTED] staff decided to end the January 29th meeting without developing an IEP for [REDACTED]. Ms. [REDACTED] testified that she subsequently wrote all of [REDACTED] academic goals by herself.

She did not seek any input from the Parent, (or other team members) but simply selected academic goals based on [REDACTED] reading and math levels. Notably, Ms. [REDACTED] conceded that she didn't know for sure if the goals she selected were appropriate for [REDACTED]. These actions constituted a denial of FAPE.

The Parent also asserts that the District's two day delay in providing [REDACTED] with a completed copy of [REDACTED] IEP was a denial of FAPE. I find that this relatively short delay was not a violation of FAPE because it simply is not reasonable to conclude that a two day delay denied [REDACTED] educational benefit.

Next, the Parent asserts that the District violated FAPE by failing to implement [REDACTED]'s IEP as written. The evidence supports the Parent's contention on this issue. In particular, though [REDACTED] special education teachers all claimed to have seen and implemented [REDACTED] IEP goals, there was no objective evidence to support their claims. Indeed, none of the teachers recorded her progress on the IEP by indicating whether [REDACTED] met or failed to meet her quarterly benchmarks. Moreover, none of [REDACTED] special education teachers completed any special education report cards for [REDACTED] as is required. (There was testimony that, because she was [REDACTED] provider, Ms. [REDACTED] was responsible for completing the special education report cards.) Accordingly I find that the District failed to implement [REDACTED] IEP, and that this failure was a denial of FAPE.

Finally, the Parent alleges that once she filed her due process complaint, the District violated [REDACTED] right to a free appropriate education by failing to comply with stay-put mandates. The stay-put provision of IDEA establishes that, unless the parties agree otherwise, a child involved in a due process complaint must remain in his or her current educational placement. 34 C.F.R. § 300.518(a) A review of the evidence fails to support the Parent's allegation. To the contrary, the evidence demonstrated that [REDACTED] remained in instructional program until the parties agreed at the hearing to change her stay-put placement to [REDACTED] School.

The Parent argued that placing [REDACTED] in two regular classes during the 2008-09 school year violated stay-put mandates. However, the evidence showed that [REDACTED] instructional placement included at least one regular class -- ROTC -- prior to the due process complaint. Second, Ms. [REDACTED] testified that as students progress to their sophomore year, they are required to choose a major and select classes related to their selection. As a student in the instructional program, [REDACTED] participated in this process, and [REDACTED] believed that [REDACTED] selected the two regular classes -- accounting and Spanish. That the District erred by allowing [REDACTED] to take accounting is beyond dispute. But it does not demonstrate that the District violated the stay-put law.

Whether the District Failed to Develop an Appropriate IEP for [REDACTED]

The Parent alleges that the District denied [REDACTED] FAPE by failing to develop an appropriate IEP for [REDACTED]. Related to this assertion is the Parent's contention that the District failed to address [REDACTED]'s regression. According to *Rowley*, to provide FAPE, a district must develop an IEP reasonably calculated to enable the child to receive an educational benefit. Here, the evidence demonstrates that the District failed to meet that requirement.

First, as described above, the record indicates that, contrary to the mandates of IDEA, [REDACTED] failed to seek input from important team members such as [REDACTED] teachers and [REDACTED] when developing [REDACTED] IEP goals. Instead, Ms. [REDACTED] unilaterally wrote goals for [REDACTED]. She did not know whether these goals were appropriate, but simply selected academic goals for [REDACTED] intended to match [REDACTED] first grade reading and math levels. On its face, this approach cannot be seen as "reasonably calculated" to provide educational benefit. In addition, the Parent testified that [REDACTED] had already mastered some of the skills that Ms. [REDACTED] targeted in the IEP goals, like naming the months of the year and learning the parts of the body. Finally, Ms. [REDACTED] testified that she did not believe the rudimentary math goals that Ms. [REDACTED] selected for [REDACTED] were appropriate. She believed [REDACTED]'s math goals should have focused on important survival skills that [REDACTED] will need to be independent.

In addition to [REDACTED]'s academic goals, the evidence demonstrated that the District failed to create an appropriate transition plan for [REDACTED]. As noted in the discussion of facts above, the transition plan inaccurately describes [REDACTED] present level of performance, incorrectly concludes that [REDACTED] daily living skills are commensurate with her peers, and establishes as a transition goal that [REDACTED] will pursue employment in the field of cosmetology -- a goal that both Mr. [REDACTED] and Ms. [REDACTED] concluded was unrealistic for [REDACTED].

Finally, as noted above, [REDACTED] IEP failed to provide her with speech and language services and goals despite her significant speech and language deficits.

While the evidence demonstrated that [REDACTED] failed to develop an appropriate IEP for [REDACTED] I do not conclude that [REDACTED] failed to address [REDACTED] regression. By recommending [REDACTED] placement be changed to a class for moderately impaired students, the District was attempting to address the regression that seemed to be occurring in [REDACTED] less restrictive placement. The District was precluded from implementing this placement when the Parent filed her due process request.

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

1. The Student's educational placement shall remain [REDACTED] for the remainder of the 2009-10 school year. Thereafter, she shall continue to attend [REDACTED] if the team agrees that [REDACTED] is an appropriate placement for [REDACTED].
2. [REDACTED] shall be evaluated to more fully assess her occupational therapy needs. The evaluation shall not be limited to [REDACTED] classroom needs, but must assess [REDACTED] skills relevant to her vocational needs, as well. To ensure that the evaluation includes the appropriate focus, the Parent may obtain a private evaluation to be conducted at public expense. Since [REDACTED] has provided some initial assessment information and is familiar with [REDACTED] it is preferable that [REDACTED] complete the OT evaluation if she is available.
3. Within three weeks of this order, the parties shall convene an IEP meeting to develop an IEP for [REDACTED] that takes this decision and order into account. Specifically, the IEP must include the following:

- Appropriate, measurable goals for [REDACTED] that are based on input from team members, including the Parent;
 - Speech and language therapy for at least 60 minutes per week. IEP goals shall take Mr. [REDACTED] findings and recommendations into account;
 - Reading instruction presented through a multisensory approach;
 - A meaningful transition plan that takes into account the findings and recommendations of Mr. [REDACTED] and Ms. [REDACTED]. To ensure that an appropriate transition plan is developed for [REDACTED] the Parent may invite either Mr. [REDACTED] or Ms. [REDACTED] to attend the IEP meeting. The District shall reimburse the Parent's consultant for his or her time.
 - To the extent that the occupational therapy evaluation can be completed in time, the IEP team shall take the evaluator's recommendations into account. Otherwise, the team shall promptly reconvene to consider the recommendations of the OT evaluation when it is completed.
4. The District is required to pay for Mr. [REDACTED]'s speech and language assessment, Mr. [REDACTED]'s and Ms. [REDACTED]'s functional vocational evaluations, Dr. [REDACTED]'s neuropsychological evaluation (including her time spent observing [REDACTED] in the classroom), and for Ms. [REDACTED]'s initial OT assessment. The District shall also pay for Ms. [REDACTED]'s time spent observing [REDACTED]'s classroom for moderate cognitively impaired students.
 5. The District shall reimburse Mr. [REDACTED], Ms. [REDACTED] and Dr. [REDACTED] for their time spent testifying at the hearing, and for Dr. [REDACTED]'s participation at the December 11, 2008 IEP meeting.
 6. Because creating and implementing an appropriate transition plan for [REDACTED] is of paramount importance to her education and future success outside of school, the Parent may invite either Mr. [REDACTED] or Ms. [REDACTED] to participate in a year-end review for [REDACTED]. The District shall pay for the consultant's time.
 7. As a compensatory service for [REDACTED]'s failure to adequately assess and provide [REDACTED] with speech and language therapy, [REDACTED] shall receive private speech and language therapy at District expense. The therapy shall be provided for one hour per week, before or after school, or on weekends, for a period of one calendar year. The Parent may obtain the services of Mr. [REDACTED] or another speech and language therapist included on ISBE's lists of approved therapists. The District shall reimburse the Parent for reasonable transportation costs to and from the provider.
 8. 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 October 24, 2009.

RIGHT TO REQUEST CLARIFICATION

Either party may request clarification of this decision by submitting it in writing to the undersigned Hearing Officer within five 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 other party and to the Illinois State Board of Education. 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.

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 final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-8.02a(i)(2004), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision is mailed to the parties.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the aforesaid Decision and Order was transmitted to the parties by email and by U.S. Mail on September 24, 2009 with first class postage prepaid and directed to the Parent's counsel and District's counsel at their respective addresses.

DATED: September 24, 2009

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

[11] [REDACTED] did complete some limited rating scales that were of little or no value.

[12] In her complaint, the Parent asserted that the District failed to provide her with prior written notice. Since I have already ruled that the District complied with those requirements, I have omitted that issue here.

[13] This issue also was previously addressed in the Parent's motion for IEE's, and in my ruling that the District be required to fund a neuropsychological evaluation and a functional vocational evaluation for the Student.

[14] Though she could not recall giving her consent, the Parent did not dispute that she consented to the evaluation.

[15] The Parent seemed to believe that [REDACTED] had deliberately placed [REDACTED] in inappropriate classes. The evidence, however, didn't support such a conclusion. Rather, the evidence indicated that [REDACTED] may have willingly signed up to take those courses (with parent approval) as part of her "major."

[16] Ms. [REDACTED] appeared at the hearing. Her testimony concerning the family's visit and [REDACTED] participation in the esy program was consistent with [REDACTED]s. [REDACTED] has some concerns that [REDACTED] might be too high functioning for [REDACTED]s program. But she stressed that school staff would endeavor to provide [REDACTED] with a program that would meet her individual needs.

[17] Results of the Kaufman Test of Educational Achievement indicated that [REDACTED] functioned at a first grade level in reading, math and writing. (See 1/29/08 Eligibility Determination, SD 10- 12, Ex. 7)

[18] Mr. [REDACTED] was one of the teachers that the school psychologist interviewed as part of her triennial evaluation of [REDACTED] in November, 2007. His contemporaneous comments indicate that [REDACTED] struggled more than Mr. [REDACTED] recalled while testifying at the hearing. Specifically, [REDACTED] told the psychologist that [REDACTED] functioned "at least two levels behind the other students...and she requires intense one on one instruction on a daily basis." (11/27/07 Report of Psychological Evaluation, B-166, Ex 35)

[19] As will be discussed below, Ms. [REDACTED] is a [REDACTED] audiologist who conducted a central auditory processing evaluation of [REDACTED] and concluded that [REDACTED] does not have a CAP disorder. Dr. [REDACTED] is a private audiologist who reviewed [REDACTED]s report and reached the opposite conclusion.

[100] Dr. [REDACTED] testified that she also administered a few tests to [REDACTED] that are normed for younger children because she wanted to better understand [REDACTED] specific skills and areas of deficit. Dr. [REDACTED] however, also administered a number of measures that provided quantifiable results.

[111] [REDACTED] did participate in creating a transition plan for [REDACTED] with Ms. [REDACTED]. That, according to the evidence, was the only portion of [REDACTED] IEP that she was permitted to help develop.

[112] To the extent that the Parent has paid for these services, the District shall reimburse the Parent. If the Parent has not paid for these services, the District shall pay the Parent's consultants directly. Parent's counsel shall promptly provide the District with the appropriate documentation of fees.