ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

In the Matter of:	)	AUG 3 1 2009
[redacted] by her educational guardian, [redacted], parent	)	
Student,	)	
and	)	ISBE Case No.: 2008-0366
[redacted] Local School District.	)	W. David Utley Impartial Hearing Officer

Decision and Order

The Hearing in the above captioned matter took place on non-consecutive dates including Thursday, June 18, 2009, Friday, June 19, 2009, Tuesday, June 20, 2009, Wednesday, July 1, 2009, Friday, July 10, 2009, Tuesday, July 14, 2009, Monday, July 20, 2009 and Monday, August 17,2009 at the [redacted] The parties were advised of their rights under Section 14.08.02 (a) of the School Code, 34 CFR 300.512 and 23 Illinois Administrative Code 226.625. The undersigned Hearing Officer has jurisdiction to hear and decide this case under 105 ILCS 5/14-8.02 (a) of Illinois School Code, 23 Illinois Administrative Code 226.600 et seq., and the Individuals with Disabilities Education Act 20 USC 1415. The Student was represented by [redacted] and the School District was represented by [redacted]

Procedural Background

The Parent's (Parent will include the Educational Guardian) Request for an Impartial Due Process Hearing was dated March 19, 2009 and was submitted on the Student's behalf by [redacted] Notice of a substituted Hearing Officer was dated April 8, 2009 and the instant Hearing Officer received notice of his appointment on April 9, 2009. Previously, on April 7, 2009, Hearing Officer was contacted by the parent's attorneys via e-mailed and advised of his appointment and the prior Hearing Officer's scheduled Pre-Hearing Conference on April 21, 2009. Hearing Officer immediately responded and requested a status call that week to determine the availability of counsel for a Pre-Hearing Conference and Hearing dates. A Status Call was held on April 13, 2009 and the Pre-Hearing Conference of April 21, 2009 was continued to April 27, 2009 to allow for a resolution session on April 24, 2009. Hearing dates were tentatively scheduled for May 12, 2009, May 15, 2009 and May 28, 2009. The attorneys for the parties jointly requested a continuance of the Pre-Hearing Conference while waiting for clarification from the ISBE as to the appropriate Hearing Officer. The Pre-Hearing Conference of April 27, 2009 was vacated and the Hearing dates of May 12 and 15 were vacated. This matter was set administratively for a Pre-Hearing Conference on May 12, 2009. At a request of the parties, this date was changed to May 13, 2009. At this point, the School District filed a Motion for Continuance of the Due Process Hearing due to certain developments as to the whereabouts of the student. Over objection of the Parent and for good cause shown, Hearing Officer granted the Motion of the School District and continued the Pre-Hearing Conference to May 28, 2009. Said Pre-Hearing Conference was held in person. The attorneys for the parties anticipated 6 or 7 days of testimony and the dates of June 18, 19 and 30 as well as July 1, 14 and 20 were scheduled.

At the request of the Hearing Officer, the parties briefed the issue of the Statute of Limitations relative to the initial Due Process Complaint filed by the School District in respond to the Parent's Request for an Independent Education Evaluation and whether the appropriate period of limitations was two years from the date of the current due process proceedings (March 19, 2007) or whether it should relate back to the School District's withdrawn Due Process Complaint. Hearing Officer ruled in an interim Order to allow testimony during the Due Process Hearing relative to this issue, reserving a decision until the completion of the Hearing and to be included in the Decision.

Parent also requested various records throughout the proceeding and ultimately filed a Motion regarding production of certain records. Hearing Officer entered an Order requiring the School District to comply with the Request and to have an affidavit of [redacted] relative to the efforts to produce records. Hearing Officer ruled orally that the District appeared to have used a good faith effort to produce the requested records but that there may have been additional records which had not been produced as testified to by various witnesses and that the Parent had the right to pursue whatever remedies were available under the Illinois School Records Act and FERPA.

Prior to testimony, Hearing Officer advised the parties of their rights regarding hearings and provide a printed copy of Rights of Parties Related to Hearings [Hearing Officer Exhibit "1"]. The Hearing took place as scheduled and due to the length of testimony and scheduling problems continued through Monday, August 17, 2009 at which time the attorneys rested their cases and closing arguments were presented with the attorneys presenting case law to the Hearing Officer.

Procedurally, the attorneys on behalf of the parties agreed and stipulated to admission of the parent document book [PD 001 - 554] and the School District document book [SD 001 - 0322] and for admission of all the documents contained therein.

Those that testified included parents' Neuropsychologist, [redacted], Parent's Speech/Language and Assistive Technology expert, [redacted] Parent's Occupational Therapist, [redacted] and Parent's Audiologist, [redacted]

The Parent also called witnesses from the [redacted] system at [redacted] (part of the [redacted] system serving the needs of the students at the [redacted]) including [redacted], case manager; [redacted] Special Education Teacher and case manager; [redacted] General Education/computer teacher; [redacted] psychologist; [redacted] Social Worker; [redacted], General Education teacher; [redacted]s; Special Education teacher; and [redacted], General Education and Disciplinarian.

Parent also called various witnesses from [redacted] including [redacted], Social Work; [redacted], Special Education teacher; [redacted], receptionist; [redacted], Administrator; [redacted] Administrator; [redacted], Special Education teacher; [redacted], Aide; [redacted], Administrator; [redacted], Special Education teacher; [redacted], Administrator and Reading Specialist; [redacted] former principal; [redacted] Board of Directors for [redacted]; [redacted], Special Education teacher.

Finally, Parent called various [redacted] staff members including [redacted] and [redacted] Assistive Technology department; [redacted], CPS Audiologist; [redacted] psychologist; [redacted], [redacted] Speech/Language Pathologist; [redacted], [redacted] Administrator; [redacted] Occupational Therapist; [redacted] case manager and District representative; [redacted] School, General Education teacher; [redacted], Special Education teacher, [redacted] School; and [redacted], Speech/Language Pathologist.

In addition, [redacted] and [redacted] of the [redacted] Department and the Parent, [redacted] were called.

Not all witness testimony is summarized herein.

Issues Presented

Per the Parents' Due Process Complaint and Pre-Hearing Conference, the Parents' allege that the [redacted]

1. Failed to either fund the IEE request or timely file for due process within 5 days per school code. First the district did not file within the statutory 5 days as required by the school code. Second, the district committed a procedural violation by refusing to fully fund the parent/guardian's IEE request and withdrawing it hearing request. The guardian/parent has never withdrawn the IEE request of 2/27/08 and continues to disagree with the district's evaluations.

2. Failed to timely provide a full and individualized evaluation in a timely manner in order to adequately identify the nature and extent of [redacted] disabilities from March 19, 2007 to the present.

3. Failed to provide an appropriate educational program/placement (IEP) based on appropriate and individualized evaluation to develop an IEP and related services with sufficient intensity to meet [redacted] educational needs March 19, 2007 to the conclusion of the hearing.

4. Failed to identify in a timely manner and then provide appropriate assistive technology in the classroom setting and for all school work including staff, student and parent training from March 19, 2007 to the present or conclusion of hearing.

Relief Requested:

The Parent has requested this Hearing Officer:

1. Order the district failed to comply with the school code and IDEA to either fully fund the IEE or file for due process within 5 days as the parent/guardian continues to request an IEE fully funded by the district.

2. Order that the district committed a procedural violation by not fully funding the parent/guardian's IEE request of 2/27/08 and withdrawing its due process request on March 18 2009. This violates the parent/guardian's right to a fully funded IEE.

3. An order finding that the district failed to complete a timely full and individualized evaluation to identify the student's unique needs, develop an appropriate IEP, determine placement and provide FAPE to the student.

4. Order the district to fully fund the IEE per the domains of an appropriate evaluation: psychological, speech, AT, OT and CAPD within 30 days of order;

5. Order the district to implement all the recommendations by the IEE providers.

6. Order district to convene an IEP to develop an appropriate IEP for [redacted] including placement;

(1) [redacted] review all evaluation results and recommendations;
(2) [redacted] develop appropriate IEP with individualized-measurable goals/objectives and accurate present levels of performance based [redacted] eligibility and identified educational needs including appropriate modifications/accommodations and ESY needs, developing FBA/BIP and transition plan;
(3) [redacted] identify all direct and related services including, but not limited to psychological (per IEE), social work and speech/language (per IEE), CAPD (per IEE) and OT (per IEE) direct services and by certified staff with appropriate individual and group services across all educational settings;
(4) [redacted] provide appropriate assistive technology per experts including classroom implementation and training to student, parents and staff as required;
(5) [redacted] provide compensatory services for the denial of FAPE to include but not limited to: 1:1 tutoring services beyond the regular school day by a certified special education teacher trained in scientific research based interventions for 60 minutes per session, twice a week for the period denied FAPE; and, 1:1 speech language services beyond the regular school day by a certified speech pathologist 60 mpw, I time a week for the period denied FAPE; 1:1 OT services beyond the regular school day by a certified OT 60 mpw, 1 time a week for the period denied FAPE; or other appropriate compensatory services per testimony and hearing officer determination.

Testimony and Findings of Fact

Hearing Officer was not provided the transcript in this case and had no access to it as it has not yet been transcribed. The recitation of the facts of this case was gleaned from a review of the documents and the Hearing Officer's notes as to the facts elicited or facts that could have been inferred from the testimony of the witnesses herein. References to documents labeled "PD" refer to the Parent Documents and "SD" refers to the School District Documents.

[redacted]

[redacted] **School Psychologist**

[redacted] has been employed as a school psychologist for [redacted] for 20 years and 4 years at [redacted] She has a B.A. in Social Work, a Master's degree in counseling and a Ph. D in school psychology. She has been a psychologist for 20 years. Her work experience includes being a therapist in mental health for 2 years and work as a medical and clinical social worker for 6 yrs.

She performed a psychological evaluation on January 23, 2007. As Student had been evaluated a year prior, she did not repeat some of tests. Normally, based upon test protocols, she doesn't repeat a test within 1 year. Written language was included in one of protocols but she did report this. She also didn't do a spelling/encoding assessment. Based upon the WIAT - II Listening Expression, the student struggles in receptive and expressive language. She repeated the KTEA-II test to see if the student made progress. She did not know on which he scored better. On her evaluation for 02-20-08 for the student, she did additional assessments. She attempted to complete an achievement test but the student was uncooperative so only sub tests were done. The only testing done was the Kaufman. As this point, for this evaluation, her report was mainly a record review.

She did observe the student in a classroom several times. He was disruptive - sitting on top of desk and not responding to directives to sit in chair. Although he was non-complaint, she did not observe him to be violent. Basically, he would do what he wanted to do.

In terms of her opinions, it is common for students with a cognitive deficit to have a lower sensory motor score. She found this to be true for the student. If cognitively impaired, one is impaired across the board. The importance is to look at how the student functions in other areas. The student did make some minor progress - especially since not attending school - is suggestive that he would make more progress.

She did meet with the student's mother at an IEP. As to bus pick up, the student's mother said she wasn't responsible and was not receptive to getting the Student on the bus. She was also not able to get him to follow a curfew.

[redacted] - Psychologist - [redacted]

[redacted] is a psychologist with [redacted] and with Dept of [redacted] She has been with [redacted] for 25 years.

She has little familiarity with the student. Her only involvement was to attend a meeting at [redacted] as rep of [redacted] to discuss the psychological report of [redacted]. She has never met the student or observed him. Prior to the IEP meeting, she did review the psychological report of [redacted] but no other records. She was asked to come as they needed someone to review this report, interpret it and participate regarding services. She did not make recommendations but did make comments.

[redacted] was also present at meeting. She discussed with [redacted] aspects of her report. She questioned whether the student was learning disabled vs cognitively delayed. She did agreed with [redacted] that the student was considered cognitively delayed instead of being learning disabled. She agreed that the testing performed by [redacted] was very comprehensive. She agreed that the full scale IQ for the student was 57 with suggestions of a mild cognitive deficit. The scores on the Woodcock-Johnson test indicated a mild cognitive deficit. She would not expect a student with mild cognitive deficit to be achieving at the same rate as "normal" student. The level of growth is slower due to issues with integration. She would agree that the student with cognitive deficit would have visual motor integration problems and may have expressive and receptive language deficits. She believed that the student was achieving at a level consistent with his IQ.

She did discuss the READ 180 program with [redacted] who was not familiar with this particular reading program. Based on their discussions, [redacted] thought that it sounded like a good program.

[redacted] - Audiologist - [redacted]

[redacted] has been employed as an audiologist with [redacted] for seventeen (17) years. Her responsibilities include assessment and diagnosis for suspected hearing loss; evaluation of the learning environment for assistive technology; assessment and to make recommendations regarding Central Auditory Processing; to consult with teachers and staff regarding hearing and hearing loss and its relatiion to an education loss; cochlear implants; and hearing aids, making sure that the device is working properly.

Her involvement with [redacted] was to review the outside report ([redacted] Report) and to discuss it with the IEP team. Per [redacted] report, the student has an auditory decoding deficit. In her opinion, since [redacted] did not find a global auditory deficit (some normal scores), this would be more consistent with cognitive delay. The student's speech/language receptive scores were in the 60's when he was 16. This would have been two (2) standard deviations below the normal. Since he was two (2) standard deviations below the norm, she would expect his vocabulary to be at a lower level

In discussing cognition and its affect, she explained that once a child has cognitive delay, test results are compromised as testing is normed on children with normal cognition and therefore, when dealing with a child with cognitive impairment, the norms will not be properly reflected, i.e. a 12 year old whose language ability is at the 7 year level will perform worse when using language above this.

Although [redacted] diagnosis for the student was a Central Auditory Processing Disorder (hereinafter CAPD), she felt that it was difficult to determine a central auditory processing deficit given the cognitive delays. She did discuss the modifications and accommodations and some software programs that may be beneficial to the student with the IEP team. She did remember talking about a reading software program that the school was using. [redacted] recommended Earobics and she did not disagree with that given the knowledge that she has. She did not recommend every suggestion contained in the [redacted] report.

As to [redacted] recommendations, she did not believe that they were able to implement them all in a school setting. As to interventions, she agreed that some of [redacted] suggestions could be addressed by a software program through the Special Education teacher. As to those that are more addressed to decoding skills, this could be addressed in the classroom with assistive technology. She agreed that a central auditory processing deficit could be addressed by Speech/Language Pathologist or Learning Disability teacher
and they will talk on phone from time to time. [redacted] is highly respected in field.

[redacted] Speech Pathologist

[redacted] is employed as a Speech Pathologist for [redacted] since 1991.

She does not know the student and only knows his name from an IEP. She was in attendance at IEP on 03-20-09 [PD 168]. She did review some records that week prior to the IEP and did review the outside speech language (hereinafter S/L) report of [redacted] [PD 358 - 366]. She reviewed this for purposes of highlighting the students strengths and/or deficits and to make recommendations as to services available to student. She did agree with the report that the student had significant deficits in receptive and expressive language skills. She felt that the student's CAPD deficits were pretty significant also. She thought A/T would be of benefit for the student's language and writing skills. She went over reports but did not give any recommendation as she was not asked.

In her opinion, if the student has a cognitive deficit, this will affect the recommendation for services. Dependent upon the cognitive scores, if they were at same low level as suggested in the report, the student might not benefit from services.

If she felt that S/L services were necessary, she would have recommended them but did not recommend them per IEP. For a student with a cognitive impairment, she has only recommended services when has an associated impairment other than language, i.e. severe articulation disorder, cleft palette. She has not recommended services when the impairment is vocabulary or language based.

[redacted] - [redacted] Coordinator for Assistive Technology

[redacted] s the Coordinator for Assistive Technology (hereinafter A/T). She has a Bachelor Degree in EMH and LBS - 1, a Certificate for A/T and a Master of Arts degree. She has been with the [redacted] in A/T since January, 2000. In addition, she has conducted A/T evaluations - approximately 100 per school year so well over 700 overall evaluations.

The A/T department will do training for both the staff and student. In this case, [redacted] would have provided the training. She was familiar with student as he had been referred for evaluation. She met

him on the date of the evaluation. She recalls student was at [redacted] (hereafter [redacted]). During the evaluation, the student was always looking around. He was attentive but also paying attention to outside sounds, distractions.

To her knowledge, the first attempt was made in Oct 2007 to evaluate the student. As to why it took from February 5, 2007 to October, 2007 to evaluate, she did not believe that there was a 60 days time limit for eligibility requirement - since not part of the Domain sheet. She believes that they would have received the referral near summer. No evaluations are done in summer and they start school year with delivery of equipment so that the first evaluations are done in October. The equipment was installed on March 20, 2009

On the date that the equipment was delivered to [redacted] the evaluator brought the equipment but the student was in a fight and not available for training. She went over with staff the materials but couldn't install due to password issue. As to [redacted] A/T devices were installed and training was provided.

[redacted] - Assistive Technology - [redacted]

[redacted] holds a Bachelor's degree in Occupational Therapy. Her training is in Assistive Technology and Occupational Therapy.

She is familiar with the referral form for A/T. The delay with this student was due to a number of reasons including that they did not receive it promptly although [PD 27] the fax cover sheet is dated 02-02-07. Once received. There was a back log of evaluations and they couldn't find the student. She had an initial visit scheduled for 10-29-07 and visited [redacted] However, the student had just been released on that date and was not there. She then attempted to set up an appointment through the mother. On 11-27-07, she attempted to call [redacted] but could not get in touch with her. She finally met the Student on February 5. 2008

Based on her testing, the Student does better when he hears the spoken work through a Talking Dictionary /Talking word processor which reads out loud to him to understand things better. She also used Write Out Loud. Based on her testing, she found that he has poor spelling, misses out on certain words, has problems with capital letters, cues for punctuation and grammar. She found that the Student was not interested in learning correct keyboarding skills and his writing was faster than his typing. She recommended receiving Write Out Loud, a talking work processor. She did consider Earobics but based on pattern of absences, she didn't feel it would be appropriate and that he would use it. She also considered Co-Writer but he wasn't interested in using key board.

As of 03-13-09, the equipment not yet sent. She did install the program(s) on the laptop which the school principal and trained her. She also noted that she would be back with additional software. When she came back, she was told that there was conflict with installation. She did train the teacher on programs that she installed on prior visit. On 05--01-09, she learned [redacted] was going to un-install it and that they did not want her to touch laptop anymore based on conflict with licensing agreement.

[redacted] - [redacted] Occupational Therapist

[redacted] is employed as an Occupational Therapist by the [redacted]. She has been there 10 years.

She does not know the student and did not observe him. She was there at invitation of [redacted] for alternative school assessment/placement, to review the report by [redacted] and determine if it was functional. In her opinion, the report was only semi-functional due to the student being in high school. She commented

on various sections that are utilized in school settings. When she looks at a report and tests, she wants to look at those that are functional. She did not know his attendance but understood that it was a problem.

[redacted] did describe the differences between a clinical setting and a school setting. In a clinical setting, the student may demonstrate with strength/weakness but in a school setting, a therapist looks how this would impact school performance. The clinical setting looks at deficit; in school, they look to see how the deficits adversely affect the student in a school setting. The deficit may be more severe at home than school.

She received the report of [redacted] a couple of days before the meeting. She noted that the some of the adult-adolescent score(s) were missing and did not include certain results or scores - particularly tactile, visual and auditory. She did mention these at the meeting. She did not speak with [redacted] about missing scores.

Although [redacted] did many of the tests that the [redacted] does, she did not feel that the tests performed were comprehensive. It did however provide good historical information [32 pages]. As to the sensory profile, she felt that the testing is incomplete. She felt that they don't know from this how this affects student in the school setting. She knew that he had CAPD..

As to text production (written skills) the school staff stated that his printing was functional to complete tasks. As to keyboard skills, he used a hunt-peck method. She agreed that if a student does not have functional print skills, then she would suggest computer - keyboarding skills.

As an Occupational Therapist, she would want to know if the student can manage money, drive, follow a schedule, transition between classes. These are things that are missing in the [redacted] report. She would also want to know how he is functioning in the high school setting so that she could look forward at post employment and post education goals. She was aware of his criminal background.

Based on all, she felt she had enough information to determine O/T services and did not feel O/T was warranted as he was considered independently performing and she felt that the school meeting his needs and provided a benefit to him. Her opinion/recommendations were appropriate to met [redacted] needs educationally. She did not feel that the student needed school based services but rather that he needed accommodations and modifications. She felt that the sensory deficits were addressed by visual and auditory processing recommendations.

She did recommend certain accommodations/modifications for the student: for Math, the use of a calculator; to limit word problems; presenting problems one at a time; extend time for homework assignment and tests; stress one concept at time, allow enlarged time for processing of auditory information. She did not make any recommendations for A/T would evaluate.

[redacted] - Special Education Administrator - [redacted]

[redacted] is a Special Education Administrator for [redacted]. In Feb, 2007, she was the residential coordinator. She was present for an IEP meeting to consider Residential Placement for the student. It was her responsibility to consider the documents presented, to listen as to the information as to student and then make a recommendation as to placement per Least Restrictive Environment (LRE). She would be the one to recommend placement but other team members could speak up if they disagreed. In discussion placement, Section 14 on the IEP is justification for residential placement in LRE. The process is to start with general education and determine an appropriate placement based on continuum of available services/placements. She understands that residential placement is for students with severe aggressive behavior; who are a danger to themselves or others; who bring weapons to school with intent

to use; who leave the school building and place themselves in danger or others in danger. She did agree that the student leaves designated school areas without permission. However, not attending school is not basis for residential placement. [redacted] has limited control over whether student comes to school. Residential placement is determined on case by case basis.

[redacted] - [redacted] Representative/case manager - [redacted]

[redacted] is the [redacted] district representative/case manager for [redacted]. By way of background, she was a classroom Special Education teacher for nine (9) yrs. In addition, she has a Type 75 and an E-D certificate.

She is employed with Specialized School and Services and is responsible for services as the district administrator for Therapeutic Day Schools. She serves as the liaison for [redacted] at non-public schools [redacted] is a non-public school). As liaison, she will review student records. She denied any responsibility for placement.

She is familiar with the student as he was on roster at [redacted]. She has met him and talked to him on two (2) occasions. She has not observed him in classroom setting. In her opinion, [redacted] could implement the current IEP. She would have been responsible for implementing the student's IEP's since October, 2007. She does receive updates on his goals and benchmarks. She did receive progress reports which she testified were his grade report/report card. These grade or report cards would list progress on the student's goals and benchmarks. She would also follow up on Assistive Technology materials to make sure it is there.

As district representative, she did attend IEP meeting(s) for the student. She would not review a file before an IEP meeting and did not recall the last time she reviewed the student's records. On June 14, 2006, for the 9th grade, the 4th quarter report does show how student is progressing on his IEP goals. Per that IEP, he was not making the expected progress in any areas but for math. Even though he was not progressing as expected, she would not take any action(s) even when the student was not making progress per the IEP plan and goals.

She does recall that the student's attendance was very poor as he hardly ever came to school. She did address absences with interventions and reinforcements for attendance. In his case, the interventions were not successful.

She was familiar with the IEP meeting of March 20, 2009 but did not specifically recall it. The purpose was the annual review and to consider outside evaluations. Her responsibilities for this meeting as case manager was to facilitate the meeting - make sure things go smoothly. She was not authorized to commit to services for the [redacted]. She does not know who makes decisions for district at this meeting.

The progress reports show that the student is not making progress. One the biggest reasons for his lack of progress was that he was not there. During time that he attended [redacted], records show that he did make some progress. She agreed that the school district cannot force student to come to school. She did not believe that anyone indicated a referral for O/T or CAP evaluation was necessary.

As the student had an E/D label, it is automatic to have a FBP (Functional Behavior Plan). This is required by the ISBE. This information is developed from experience but she was not involved in developing the goals.

As to the district policy on promotion, the student must adhere to [redacted] attendance policy which provides for a maximum of twenty (20) unexcused absences per school year. At the time, she did not recall if the

student had more than 20 unexcused absences. Currently, he has more than 20 unexcused days. After IEP, she would monitor attendance and implementation of IEP. His attendance was very poor. She though did not know the number of credits that the Student needed to graduation

In her opinion, [redacted] is a Therapeutic Day School [hereinafter [redacted] that deals with emotional disorders and well as cognitive issues. It has a very capable clinical staff and is really good school - one of the better ones. As part of the curriculum, incentives are provided for students to do what they should do. For example, a student can earn a paycheck at end of the month. If a student is referred or goes to the CIBS room, he/she will receive services while being stabilized. The CIBS or stabilization room is staffed with social worker. Transportation is provided for the student for Hillside.

One of the problems with the student is that he is, at various times, in custody of the penal system. He is incarcerated often and she would have to call to re-enroll him. If the student is enrolled at [redacted] (a school in the juvenile court facility) - he is dropped from her Impact Roster at [redacted] and added to [redacted] Once released, he is not guaranteed to return to the base school. In the student's case, he has been re-enrolled in [redacted]

Based on her review and knowledge, she believed that the current services were appropriate to meet the student's needs. When he is in attendance, he is progressing and improving. He needs to come to school on regular basis in order to improve.

[redacted] Personnel

[redacted] - Special Education Teacher and Case Manager - [redacted]

[redacted] was one of the case managers for the student at [redacted]. She was also a self-contained special education teacher at [redacted] for 5 years.

The student has been in and out of [redacted] 6 to 8 times but not always in her classroom. When he was in her self contained class, generally, the student was cooperative and followed directions and followed classroom rules. She felt she could manage the student's behaviors in the classroom. Most of time, he was helpful and interested.

He may have had behavior issues with a few little misconducts but mini-misconduct reports were common at [redacted] The kids in her class were typically diagnosed with an emotionally disability. The type of behavior the student exhibited was indicative of many students at [redacted]. Instances of behaviors included: (a) Pounding on his desk and refused to stop - this was a common occurrence for any student at [redacted] - dependent upon how they were feeling that day due to bad news from court or bad news from home, etc. (b) Walking out of class on occasion when he would get upset with her. This happened no more than any other student in her classroom and didn't did not happen often.

She believed that he was reading at a 3rd grade level. His functional ability in math was at a 2nd or 3rd grade level which she considered very low. The student had problems with receptive and expressive language. To work on this, she included a program called Safari Montage for the student to listen and repeat to her what he heard. She provided him with one on one instruction and he benefited from it when he wanted. The majority of days he was receptive to her. She believed that he made some small progress for the amount of time he was there.

For the 02-26-08 IEP, she was the Special Education teacher and wrote the academic goals. The goals on his IEP are written on deficits based on classroom observations (short attention span and was easily distractible) and on what students can work on and master. As to objectives on the IEP, The Student was

never there long enough to master any of these objectives. Accommodations included giving directions orally and visual, constant monitor and prompting to complete work. She agreed with targeted behaviors on his BIP. She was very aware of his poor attendance. In fact, the student told her that was that he wasn't in school often, was involved in gangs and likes to be out on street.

At one point, some A/T equipment was delivered including headphones and someone from A/T instructed her in its use. She also had a software disk to load on the computer but it was not installed as tech had to do this He did not use any of A/T equipment and didn't want to use it.

The last time that she was the student was on May 24 or so (2009). He said he had been hospitalized, been shot 20 times and had colostomy bag.

[redacted] **Social Worker -** [redacted]

[redacted], Ph.D is a [redacted] Social Worker and has been the school social worker at [redacted] for 5 years. [redacted] is a [redacted] school located inside of the [redacted]. Students are detained in [redacted] until their case is heard and a decision make. It is designed to be a temporary placement

He is familiar with the student and did provide social work services at [redacted] for him. He has known the student for a couple of years. He has observed the student in the classroom and has gone specifically to observe him in a classroom setting - to see how he functions in a classroom. His own observations of the student included issues with staying on task, difficulty grasping concepts, low frustration tolerance/ low motivation and limited academic skills. He observed that the student is "his own man", that he does what he wants to do. The student basically said, "I'll do what I want to do". Some teachers were successful with him and some were not. He thought that [redacted] was successful in motivating him (personal opinion). While at [redacted] he was aware that the student was making minimal progress on grades.

On the February 1, 2007 IEP, he was in attendance at this meeting - an annual review. He did update his goals and objectives which are contained in the IEP.. He shared that the student was distracted; was struggling in classroom; refused to participate in classroom activities; made inappropriate decision and had an on-going history of verbal and physical aggression in school.

As to BIP (Behavioral Intervention Plan), the parent did not participate in development of plan. Targeted behaviors include poor school attendance, lack of motivation and school frustration. He agreed that the targeted behaviors are not described in terms of intensity or frequency. BIP are to be implemented throughout school setting and particularly classroom. Normally, they are implemented by the Special Education teacher, the Social Worker, a counselor and the disciplinarian. As to portions of the plan, the parent was responsible. However, the mother never called him to see how the student was progressing. He only met her one time at an IEP meeting.

[redacted] has a behavior modification program based upon students achieving appropriate behavior on various levels, i.e. the better the behavior, the more rewards received. However, this level system of rewards was not a [redacted] program. Rather, the [redacted] is responsible for it. The teachers would keep anecdotal records and reports and these are then sent to the [redacted]. Staff would work with [redacted] - Disciplinarian and county staff. The student was part of this program and did participate but did not achieve the highest level.

He was aware that the student had surgeries. The last time was that he was shot in the back with the bullet exiting the front of body. He was in the medical unit and then regular living area.

Parent raised concerns about his poor attendance, that his grades had been "F's", and about his ability/inability to read and progress. The mother believed that progress would be better in residential placement. In his opinion, the mother presented on the outside as caring parent but personally, he felt that she was doing a very minimal job of supervision: allowing the student to stay out all hours, allowing poor school attendance, etc. He thought that there was more that she could do. As to transportation issues, the parent needs to intervene if the student doesn't get on the bus. "She has had him from birth - the teachers have a student for only short period of time."

Conclusions/Recommendations: Although he felt that the student was making a minimal effort to complete school work and was taking more of an active role, his conclusion was that the student did not apply himself and was not engaged in classroom activities. He believed that the student needed additional support services to address academic failings. He felt that the student needed a small structured environment to meet academic and social needs.

[redacted] - High School English Teacher - [redacted]

[redacted] is a High School English Teacher at [redacted]. She teaches general education classes. The student was in her class from 12-18-06 to 01-11-07. The student seemed to be moody, didn't like to learn, didn't want to be in school and always asked to go upstairs to go back to his room. In the Survey of Lit and Reading Workshop, he received a grade of D. His reading level was very low, around a 2nd grade level.

[redacted] Personnel

[redacted] Reading Diagnostician

[redacted] is employed with SES (Special Ed Services) at [redacted] and three (3) other sites. She is the Reading Diagnostician. This is her 4th year. She hold a Bachelor degree with an Elementary Certificate and has an LBS certificate. He has a Masters degree in Language and Literacy from Roosevelt University.

Her duties include working with teachers to train them in reading interventions and to analyze students to place in them in the correct tier. To assess students, [redacted] uses three (3) data points: (1) Reading inventory (2) Scholastic Reading Inventory and (3) AIMSWEB - fluency and curriculum based (this is also based on CBM (Curriculum Based Measurement - Winter benchmark).

She has taken course work was on reading theories and is familiar with the Wilson program. She attended a three (3) day training in summer, 2007 - Applied Methods course of WRS (Wilson Reading System). They do use the Wilson program at [redacted] and she is responsible for implementing it. She has also done research involving Wilson journals and reading reports and Illinois Reading Council reports. [redacted] use steps 1 and 2 with option to go up to level 12 if it best fits their needs but based on her experience, [redacted] only uses up through level 2. She finds that students find the Wilson program boring beyond Level 2 and therefore switches them to Read 180 as it is a much more motivating program. She thought that Wilson was not a good program for older students since it was drawn out and difficult to manipulate. If the student was reading around the 3rd grade level, she did not feel that Wilson was appropriate for students as students have word attack skills by that point. The students need to boost their comprehension which Wilson does not do. One does not have to be certified in the Wilson program to use the program. Certification in Wilson can takes years as one has to use it with students over a finite time frame. Her understanding is that very few are certified by Wilson.

She believes that READ 180 address similar reading skills to Wilson. READ180 has writing and reading comprehension which is greater than Wilson. She agreed that attendance would be issue in working in either program. READ 180 is a multi-modality approach that individualizes student programs. It assesses the student's needs in comprehension, decoding and encoding and provides instruction. All students would have a laptop for use with Read 180. The student would work on the computer for 20 minutes and then with the teacher for 20 minutes. Thereafter, they would do silent reading (listening to books on tape and conferences with the teacher). They would also have whole and small group instruction. This program is very motivating to them. It includes things that they like i.e. Blue Man Group, immigration and also takes classic books and dumbs them down. The program also includes a Spelling Zone Report and a Word Zone (decoding section). This is good for phonemic awareness. READ180 also works on phonemic awareness by breaking down to one sound at time and how to put them together and gives opportunity to help student hear back and self correct. Research shows that for children with disabilities it is highly effective. She learned this from outside sources via their website. She has worked with students at [redacted] with disabilities and READ 180 has been highly successful. They note an increase on all three data points. This is true with kids who may have cognitive disabilities.

She agreed that READ 180 did not have the ability to scan documents and read those to student and did not have a word prediction for writing paragraph. However, the program can help the student organize and write a paragraph. The student works with the teacher and READ 180 walks them through how to do it with strategies to assist. She would not want a word predictive program for writing as it takes away from the student's writing. She would want their thoughts and words. She has not seen any data showing that a word prediction will assist students.

The student is below average as to norms (norms are based only on students who attend [redacted]). Ms [redacted] reported that the student was bored with the Wilson program. If student has basic sounds, he would move up to READ 180. Per AIMS WEB date, the student was reading 95 words per minute so that indicates that he has basic sounds.

The student was at level 1 - lowest level. The reports told her that he is learning to spell words that he is studying and also showed that he already had some background in spelling that he was successful. This is all done on the computer. The computer would give a spelling test which the student has to physically type a word in and provides immediate feedback.

In her opinion, READ180 is an appropriate program for the student. She was aware of the student's interaction with Read 180. He worked hard and attentive and appeared happy to be in class. He liked using the computer. However, he was not using program consistently due to attendance issues. READ180 requires the student to be motivated. If attended on a regular basis, he would make progress. No difference between listening level and oral comprehension which is an indicator that he could make progress.

At IEP meeting, she was there as she is the person who worked with teachers and trained teachers on different interventions and she assists teachers dealing with students. [redacted] asked her to attend to interpret data and explain the program. She plus team of teachers ([redacted] and others) agreed to move him to READ180.

[redacted] was present at the 03-20-09 IEP and she had a conversation with her about Read180. As [redacted] was not very familiar with it, she was explaining it to her. Her impression was that [redacted] liked the program.

[redacted] - **Algebra and Science Teacher -** [redacted]

[redacted] was a teacher at [redacted] for Algebra and Sciences. He completed his 1st year in 2008. He has a Master's in Special Education degree from NIU in 2008 and a LBS - 1

The student was in Algebra, Earth Science and Life Science classes. He does not recall specifically what classes in 1st semester other than math and one science and in all three classes in the 2nd semester. The student had a computer available to him which he could use it for research/google/to assist him with information/look something up. He did not see the student use the computer and did not see him use the laptop for his regular classes. He understood that there were standard programs on computer including a literacy (reading) program. It was available both in the fall of 2008 and in the spring, 2009.

He did not recall the student's ability in math or reading level/ability other than he could do some math when he used the calculator. In math, he was on Level 1 [there are 6 levels - 1 is the lowest; to move to level 2, have to meet requirements to move up]. He could not evaluate the student's work based on attendance since it was so infrequent.

He was responsible for implementing his IEP goals in the subject areas that he taught. He did not believe that the student met the goals due to poor attendance. When he showed up, he liked to talk to his friends and rarely completed his class work.

He also wrote the goals for the 2008 - 2009 IEP for math and science. These were pretty close to the same goals as 2007-2008. The goal does not tell where the student is starting. Although he was not aware that the student had CAPD and did not even know what it was, he did understand that he had a disability in processing verbal directions, reading and communications. He was not aware of any difficulties for visual processing.

[redacted] - **Special Education teacher -** [redacted]

[redacted] was a Special Education teacher at [redacted] for 3 years. He had worked for 6 years for the Menta Group which runs [redacted] and [redacted]. He has been a special education teacher for 5 years. He is certified by Illinois as a special education teacher.

He is familiar with the student and knew him in the school year 2008 - 1009. He taught the student second semester 09, English. He did not remember if the student had a CAPD. He was not aware of any auditory problems or visual processing deficits.

When the student was there, he generally did follow the rules and worked well. He was not disrespectful or verbally aggressive with him. The student did not leave the classroom on his own. He did not have behavior problems with the student. In his classroom, he did not have need of a BIP as he was fine. [redacted] used positive attention, supports and let him know that he's there to help and cares. He would provide the student as much one on one as possible. The student would see him for about 90 min a day, 5 times a week.

As part of the curriculum at [redacted] the student will use the Scholastic Read 180 program. This is a tiered program - an intervention program working on comprehension and reading issues. Read 180 uses a multi-sensory approach - visual and verbal which is valuable to someone with deficits. Part of it is computer based including comprehension, spelling, vocabulary and fluency. There is also a book strategy component. Comprehension strategies are both oral and computer. Grammatical errors are also addressed in Read 180. READ 180 addresses the rules in sounding out words and there is a built in reading specialist. With Read 180, the class size is small so he would able to work with students one on

one. As part of the student's assistive technology plan, Read 180 offers this. [redacted] did go through Scholastic training for this which was provided by [redacted] also had Earobics and Co-Writer and he was trained on them.

The students IEP goals are addressed as to decoding, spelling, comprehension, phonemic awareness are all addressed within Read 180. The student moved from Level 3 (non-readers who need to learn reading skills - strategies) to Level 2.

As part of responsibilities, [redacted] implemented his current IEP. He would be looking at accommodations and modifications to be used in classroom and the IEP goals to focus in on. However, he did not know whether the student was able to identify a simple subject. He agreed that there was no indication on the IEP of where the student was starting. Overall his reading level was 3rd grade. Although the IEP indicated that the student will increase his writing skills, the third benchmark did not say what the reading starting level was. The goals also did not address site words, spelling or vocabulary (word power). As to the students goals, he felt that he was currently meeting all course requirements predicated upon a third grade level.

The student needed as accommodations (1) short breaks, (2) preferential seating and (3) proximity control - overall in classroom. There were various areas in his classroom including a computer area and a silent reading area which has specific books (high interest low reading level (addressing issues teenager interested in).

He agreed that he did not know if the student was making progress towards all of the goals. For science, the student did not meet the goals. This was based on observation; oral/written tests; and class participation. For Math, he met the goal at 60 %. He agreed that he does not know what level the student can do math. He also did not meet Social Science goal.

The students attendance was very sporadic, probably less than 2 weeks total. He would show up every couple of days. In his opinion, the student would make more progress when there. In the March IEP, the major issue was attendance.

[redacted] - Administrator - [redacted]

[redacted] has been an Administrator at [redacted] since August 2007. She is responsible for overseeing Program implementation.

She has observed the student, incidentally, in classroom and/or CIBS about 6 - 10 times. Typically, if there, she will assist in working with student.

Her observations of the student have revealed tattoos that seem to be gang related. He told her that he was in a gang when discussing tattoos'. There is a large 4 and 5 on arm which a police officer told her it's a gang. There were symbols were on top of hands which an off duty police officer told her that it belongs to 45th street gang.

She did discuss this with him/his office at time of shooting when they contacted school and stated that they believed it to be gang related.

[redacted] - Director of Clinical Operations -Special Education Services [redacted]

[redacted] is the Director of Clinical Operations for Special Education Services (division of [redacted]) at [redacted] She has a Masters in Psychology and a Doctorate in Clinical Psychology (cognitive management). Her training and background is in Behavioral management.

[redacted] uses a Clinical Service Model which is an integrative approach. The students are constantly receiving support throughout the day. There is clinical/clinician availability in the classroom and throughout the facility. This has been effective system. The focus is on behavior, i.e., stay on task, respecting environment, school, re-enforcement for attendance (paid to attend school) etc.

The Program at [redacted] has three (3) major areas: Academic/Vocational/Behavioral. The academic is an engaged learning model with hands on type of work. Behavioral Intervention programs at [redacted] has three (3) levels: Level 1 includes CIBS, Support; Level 2 - not responding to Level 1 method; and Level 3 - More intensive intervention plain (i.e. Self contained classroom).

The student had 22 referrals for CIBS out of 49 days. A number of factors go into the tiered system for behavior including the percentage of time in CIBS, physical management and safety issues. The threshold for CIBS is low. The purpose is to get them out of classroom for short period to take care of problems. CIBS referrals can be for short time - 5 minutes or so. [redacted] was in Tier One as he was responding to the CIBS program and responses to other interventions. Tier One is the least restrictive intervention program.

She believes that the student started at [redacted] in March, 2007 and then was re-enrolled in October, 2008. Typically, her interaction with some students is minimal. Her recollection is greeting him in morning, talking to him about lack of attendance, and working with him on issues with frustration or off track/task in classroom. She has observed the student not following staff directions, verbalize inappropriately and refusing to do his work. She has seen him swear and raise his voice. She has also observed him leaving the program. She was aware that he was not making expected progress as to his academic program,. She understands that the IEP had considered Residential Placement but decided it was not appropriate as the educational needs were being met at [redacted]

There are specific programs for reading deficits which looks at each individual student. Tier 3 in reading skills targets a group of students that would be non-reader. This is a Wilson based program. A student reading at a grade 3 level would not be placed Level 1. This student started in Tier I and made progress and was moved into the next program. They now have Read 180, Earobics and the other software from March, 2009, IEP for the student.

[redacted] has Low Tech tools & High Tech Tools (computer programs; interactive software; technology class). The student had a laptop computer and has had access to computers since enrolled. He was given special software recommended in IEP. She believes that part of it was in March, 20009. He had access to headphones and word processors. They were working with [redacted] as to specifics of these. They would have to go through the district rep - [redacted]. She understood that [redacted] was having trouble with [redacted] getting this. Once they [redacted] got more information, it was installed onto the computer. Ultimately, due to licensing issues, [redacted] purchased software and put it on laptop. She does not recall when programs installed. At one point, the [redacted] staff had come into [redacted] to install software.

She is familiar with the truancy interventions for the student. She believes that this was attempted in the school year -20 07- 2008. Other attendance interventions included contacting the house prior to the bus arriving to make sure he was up and awake. Unfortunately, these truancy visits have not been successful. Calls to [redacted] and conversations with the student as to what would motivated him to attend school have not been fruitful.

[redacted] - **Special Education teacher -** [redacted]

[redacted] was employed as Special Education teacher at [redacted] for 2 ½ years

The student was on her case load so she was responsible for his report card. As case manager, she had to evaluate him but all information was from his teachers. Personally, she did not evaluate the student for the grades. The teacher would give her grade and their evaluation. He was placed in one of her health classes - probably 1st semester. He was well behaved in her classroom - no issues with him. When he is there (rare), he was not a behavior issue and was able to complete assignments. She was concerned about his attendance. Typically, he would tell her that he didn't want to come to school. She was not aware how many times the student was present in class other than he was rarely there. She only saw him a few times as the student didn't come to school a lot. She didn't recall him being in CIBS that much.

[redacted] - **teacher's assistant -** [redacted]

[redacted] was a teacher's assistant at [redacted] for 6 years.

Between March, 2007 through March, 2008, he was not involved with the student and was not familiar with truancy/transportation plan. The administration would send him by houses where students weren't in school including the students. As to attendance issues, he would go by the student's house around 10:00 if he wasn't in school. This was in the 2007-2008 school year. He did meet the student's mother and did talk to her about getting the student to school. She didn't know how this would be done as she didn't know where he was.

Parent's Expert Witnesses

[redacted] - **Audiologist**

[redacted] is a self - employed audiologist in [redacted] Her curriculum vitae shows her expertise. He is an expert in area of Central Auditory Processing Disorder (CAPD).

She did various testing with the student which demonstrated that the student scored within normal limits on all dichotic tests, below normal on the more difficult degraded tests and that he has a Central Auditory Processing deficit/disability. A CAPD can affect reading in that a reader needs to hear sounds in their head to connect sounds with words. This is difficulty with decoding and secondary problems with comprehension.

As a basis for her diagnosis, she found that his reading scores are low, he has relatively poor visual and reading comprehension, he has processing deficits with short term auditory memory issues. All of the above would be indicators of CAPD. Having a problem with CAPD can adversely affect academics, communication and sense of self (secondary psycho-social issues).

She recommended services to improve his auditory decoding and related perceptual skills. These included (a) "Earobics" which is a home based program which he needs to do every day. As one gets better, the exercises get harder, (b) auditory closure exercises (fill in blank - in context), (c) Noise tolerance training and direct services for "drill". The student would need a speech/language pathologist to provide this training. Audiologist can do this but don't.

Accommodations/Modification are important to do these as well to have (1) remediation (teach, computer/training), (2) environmental situation (management skills) and (3) compensatory strategies (training skills). She did agree that the Accommodations/Modification in the IEP may be appropriate

based on her evaluations. The wording may be different but it does capture needs or her recommendations. Although not familiar with Reading180, it may be appropriate for addressing auditory skills and phonemic awareness.

Her recommendation is daily intervention - something should be going on every day. In 80% of kids where appropriate training is provided, the problem goes away. She found the student to be motivated She also agreed that interventions would not be effective or as effective if the student were not attending school on daily basis. If student lacks motivation, as student gets older, some of program needs to be changed for motivation. She would defer to Psychologist or Social Worker regarding motivation.

[redacted] - Clinical Psychologist

[redacted] is a clinical psychologist with sub-specialty in pediatric neuropsychology. She has been licensed in Illinois since 1977. See Curriculum Vitae for her qualifications [PD 414 - 425]. All her training has been in pediatric neurology.

She does psychological testing with a focus on how a disability impacts learning. Among the tests that she administered to the student were the following:

Universal Nonverbal Intelligence Test - This test noted his IQ as 57 which is below average. He was relatively stronger in problem solving when not having a spatial reference (words, picture) and has greater strengths in memory than reasoning. He does have functional visual skills and visual processing

Woodcock - Johnson - Tests of Cognitive Abilities - The student was significantly better on sub-tests where there were no visual components. He did have problems with vision - tracking, etc as his eyes not going back in way that they should. However, processing speed score might be an underestimate of his ability.

Comprehensive Test of Phonological Processing - Not all scores were below normal but there was a significant discrepancy in phonological memory. The sub-tests showed real strengths (memory for digits) and real weaknesses (non-word recognition).

Phonological Awareness Test - The student has not acquired letter sound association. i.e. long/short vowel sound. When work presented separated by syllable, he could do it but where separated by individual sounds, he couldn't do this. The student was trying to give each letter a separate sound and not blend them together. The student will not have success until he can do this. If the student is struggling at this age, he can still learn it but can't do it by traditional methods. The student does not know sounds that consistently go with letters - poor letter -sound association - at beginning of chain, having problems. This is the main obstacle for the student in learning to read and acquiring vocabulary. At this point, he needs a reading program with specific criterion.

WRAM L2 - This tests for whether issue is encoding correctly or where it's stored. In the student's case, the issue is where the information is - not stored properly so student cannot access it. He needs to store information more efficiently.

Weschler Ind Achievement Test - 2nd Ed - His decoding skills are very poor and decoding efficiency is very poor. He can't apply de-coding strategy to figure a word out. His reading comprehension was extremely poor

Gray Oral Reading Test - 4th Ed - His reading rate was borderline - not bad but other areas were very low. She was unable to even get him to 1st grade level.

Wilson Assessment of Decoding and Encoding - His errors are consistent with poor sound decoding and orthographic problems.

Test of Written Language - His responses were not comprehensible. She couldn't tell what he wanted to say. This again is related to the way things are stored and retrieved.

His math skills were poor. He used his fingers which suggest he was not able to retrieve information. On numbers from 0 to 9, he had little problem but he did have significant problems from 0 - 99.

Overall, the pattern of variability is consistent with issues in language, visual processing and retrieval. This/these are consistent with a CAPD. This is way that this disorder would manifest. Where scores are scattered (as here), it does not represent IQ but rather shows variability and problem areas. It is doubtful that scores are really representing his ability. Testing reflects where he is at this point in time but not a true estimate of his abilities.

Due to issues with phonological awareness, it does not necessarily indicate a mild cognitive deficit/impairment. His scores may be a consequence of decline over years as he hasn't been learning over the years. With no early scores, very ambiguous as to where he is. If this were a mild cognitive deficit, one would expect all scores to be low/consistent. Given what tests show, this is a more complex issue that what currently see.

Among her recommendations were the following: (1) functional visual exam to determine how his eyes work and if there is an issue there, (2) a reading program with both implicit (sight words, some phonics and develop phonics skills based on reading i.e. context, cues) and explicit instruction (a need for instruction in a sequential method), (3) a phonemic awareness program and decoding program involving both sense and non-sense words i.e. cat, hat, mip, hep, (4) Reading comprehension to acquire knowledge. She would defer to A/T person for appropriate method(s).

She did recall a discussion with the reading teacher at [redacted] about READ180 before an IEP meeting. She remembers talking about the lower level for READ 180 but did not say READ180 was a good program for the student. In fact, she said exactly opposite, that it was not a good program for the student. She did not have a specific description of the program but rather a general description of it. It is not an explicit program and does not meet the description that she put in her recommendations. She did read the research on it but it was done by Scholastic which publishes test. This is not independent research.

She did note the difference between a clinical and school based evaluation. Although the components are often same, the school based evaluation may talk more about what's going on at school. A school based evaluation is suppose to give overview of student in an academic setting. Her evaluation is composite of neuropsychological and school based.

[redacted] did opine as to placement over the objection of the school district which was taken under advisement by the Hearing Officer. As this was not contained in her report and not disclosed five (5) days prior to her testimony, the district's objection will stand and be sustained.

[redacted] - Occupational Therapist

[redacted] is an Occupational Therapist. She works part time 4 days/wk for [redacted] and provides direct, consultative and therapy sessions for students. She is also self-employed as Occupational Therapist in a web based business. She has been a licensed Occupational Therapist in Illinois for 10 years. She is getting a Ph.D from St. Augustine University. She has published a number of

articles, quite a few regarding school related/practice. She is a CE provider. She was retained by the parent (used interchangeably with the educational guardian/designee) to conduct an evaluation of the student.

She evaluated the student over two (2) periods - July 21, 2008 and February 28, 2009. In the initial evaluation, the student fatigued during the evaluation and had to stop as he couldn't go further. Among the deficits that she found were spatial relations on picture; following diagram; motor praxis (used right hand for all); visual - motor organization: map skills as he was not able to do this even with cues, and patterning and organization.

As part of her evaluation, she did review the student records and will do this before she saw the student. Among the material that she found valuable was that he had been exposed to domestic violence, his behaviors are causing him problems in school and that he has academic and emotional problems which his behavior and attendance may be aggravating. From her review of the February 1, 2007 IEP, no occupational therapist was invited to this meeting. As early on there was a discussion of visual processing problems, she would have expected that a school occupational therapist would have been involved.

She found the student to be very passive and felt that he needs to be taught how to self - advocate. She is not recommending a specific program. Occupational therapy could create a program for him - a very personalized program for him.

As to Assistive Technology issues, on a keyboard, he used hunt 'n peck method using only his right middle and index fingers. This is a motor concern as he is not coordinating both sides of his brain.

As to attendance issues, occupational therapy might be a way to service him. If the student is only coming ½ day, then she would question whether this is the right program for him. He may need a more structured program to get him there everyday. [redacted] has responsibility with parent to get him to school.

Transition plans addressing his independent living skills would be another area where his problems with visual integration, processing, etc. would all affect his ability to transition to a job. It would be good to have an occupational therapist for community mobility, money skills, etc. A job as an auto mechanic would be an inappropriate choice as he has no visual perceptual skills to support this. Additionally, in his profile, he told her that he didn't like getting his hands dirty. Spatial problems such as reversals, etc. all would be problematic for putting together an engine. Likewise, for carpentry and job corps, he would have the same issues. A very simple repetitive type of task might be more appropriate for him.

She did provide recommendations - things that an occupational therapist would do in school to support visual processing. Among the goals that she suggested were community mobility and money management. She did tailor her recommendations to the student (see report). He may need any or all of these. Anyone could implement her suggestions with the caveat that they should implement her recommendations sequentially. Initially, she did not see any implementation of these. In his later IEP's, she did see reference to some of these.

She would consider a residential program as a more structured plan for the student. Her basis for suggesting residential placement is that the student needs a structured program. He has multiple impairments both behavioral and learning and needs something comprehensive to address this. Residential placement may address both of his needs as to behavioral and learning. She did agree that [redacted] did have a structured program and potentially could address both behavior and leaning.

Occupational therapy may be able to develop a plan to keep the student on task. Typically, the class room teacher has class management skills but with deficits such as the student displays, the classroom teacher might not be able to handle this issue and therefore occupational therapy might be valuable as the therapist could give strategies to teachers to modify materials that they are using. She would recommend 60 mpm direct occupational therapy services and 60 mpm for consultative services.

[redacted] - Speech/Language and Assistive Technology

[redacted]'s background is in Speech Language although now she directs most of her time to Assistive Technology. She has a Bachelor's degree from Augustana College in Speech and Language Pathology (1983), a Master's in Speech and Language from Northwestern University (1984) and a Ph. D. From Northwestern University (1990) specializing in Augmentative Communication and Child Language. She teaches a graduate level course in assistive technology at University of Illinois - Chicago and co-teaches a course in alternative and augmentative communication. She also is in private practice specializing in the evaluations and treatment of children requiring assistive technology in areas of computer and alternative and augmentative communication.

She did an evaluation for the student on February 23, 2009. As part of that evaluation, she had received school records from [redacted] including testing and IEP's. A speech/language test suggested that he was significantly impaired. On expressive vocabulary, he scored at the 1st percentile. On the word memory test, he did score solidly in the average range on listening and saying words back. His auditory comprehension and reasoning (higher level language and highs level reasoning) was not quite as impaired as the other areas. She found that he didn't understand words even in context. She believed that her finds were consistent with [redacted] that the student had a CAPD - his processing skills are impaired. In addition, on occasion, he was hard to understand and mumbled.

She disagrees with the diagnosis of a mild cognitive impairment. Someone with this diagnosis should be scoring at a higher level that the student is. In her opinion, he is significantly impaired. As a caveat, she is not qualified to make statements as to his IQ. She also believes that it was inappropriate for the [redacted] speech/language report to do this.

She provided him with several programs including Simon Sounds It Out and Word Maker. Although these programs are considered more suitable for younger students, they are phonics based programs. She also had him look at and work with Earobics, an auditory processing program. He had never seen these type of programs before. He became successful as motivated. Once he got started, he was willingly engaged. She also gave him a chapter book. He tried to read the first page but couldn't. She then had the software read to him and he was very attentive to the story as read. Writing programs that would be good for he student would be Co-Writer and Write Out Loud. Kurzweill is another assistive device which is available at [redacted] schools which would be of value to the student. In fact, there are a number of programs referenced in her report that are currently available in [redacted] schools.

His key-boarding skills are adequate but not outstanding.

He would benefit from intensive intervention provided by certified speech language pathologist. He needs to learn vocabulary and higher level language. He didn't even have enough knowledge to write simple sentences. As part of writing, he had a word bank to assist him. He played with the system for quite a while and was successful. He told her that he was not familiar with these type of programs and not used to them before. She noted that this IEP required a talking computer but it appeared that there was none provided.

He should have direct language intensive one-on-one support for 90 mpw. He should have 90 mpw of speech/language and 60 mpw of assistive technology services. HE would also benefit from daily home work assignments. His mother told her that she would be willing to get it done.

She is familiar with writing, assistive technology and speech/language goals for IEP's and has done so on various occasions. As to the speech/language assessment of [redacted] she does not know how someone could write this. She strongly disagrees with this report. The Word R referenced is an out-dated test, and, in fact, the age ceiling is 11 years 9 months. This student was clearly older than that when tested. The report/evaluation gives an inadequate description of what tests he gave, lacked standardized scores and had a lack of sub-tests for the tests given. It was not appropriate testing and, in essence, doesn't mean anything.

She reviewed the Assistive Technology report of the school district. The student clearly needs assistive technology and this report does not go far enough. As to part 1, she does not know what the term "appropriate" means. In part 2, the student did not know how to proofread and correct his work. Under #3, the student has not seen a talking dictionary and thesaurus and has not used them. It also appears that he did not have a talking work processor as listed in #4.

CONCLUSION OF LAW

1. **Whether the School District Failed to Either Fund the Lee Request or Timely File for Due Process Within 5 Days per School Code.**

a) **Whether the District Filed a Request for Due Process within the Statutory 5 Days as Required by the School Code.**

On March 19, 2009, the Parent requested an Independent Education Evaluation (IEE). Contemporaneously with that request, Parent filed their Notice of Due Process Complaint. Within that Due Process Complaint, the Parent alleged that the District failed to fund the IEE or timely file for due process within the statutory five (5) days as required by the School Code. From the record before this Hearing Officer, the District did not respond directly to the Request of an IEE within five (5) days but did timely respond to the Due Process Complaint. Said response was dated March 25, 2009. In its Response, the District responded to the Request for an IEE that it had agreed to fund the three specific evaluations requested by the Parent. The District also defended its own evaluations as appropriate.

Sec. 300.502 provides for an Independent Educational Evaluation indicating that a parent has a right to an IEE at public expense and that "if the public agency must, without unnecessary delay, either (i) file a due process complaint to request a hearing to show that its evaluation is appropriate ..."

Parent is technically correct that the District did not timely respond to the current request for an IEE. In fact, the District did not respond at all to the specific request. However, the District did timely respond to the Due Process Complaint. As such, the District argues that any such request is subsumed within the Due Process Complaint filed contemporaneously with the Request for IEE and therefore, any such Due Process Complaint would be duplicitous.

Although the Parent is correct, practically speaking, the net effect would be the same. As the Requests for an IEE and Due Process involve the same student, these matters would be heard by the same Hearing Officer and presumably during the same hearing as is the case herein. Therefore, the School District did not fail to respond to the Request for an IEE as its Response to the Due Process Complaint stated that it would defend its own evaluations.

b) **Whether the School District Committed a Procedural Violation by Refusing to Fully Fund the Parent/Guardian's IEE Request and Withdrawing It's Hearing Request.**

Parent filed the instant Due Process Complaint on or about March 19, 2009. As part of that Due Process Complaint, the Parent has alleged that the District failed to timely provide a full and individualized evaluation in a timely manner in order to adequately identify the nature and extent of Student's disabilities from March 19, 2007 to the present and failed to either fund the IEE request or timely file for due process within 5 days per the school code. This was based, in part, on the Parent's allegations that the district committed a procedural violation by refusing to fully fund the parent/guardian's IEE request and withdrawing its hearing request relative to the Parent's request for an Independent Education Evaluation dated February 27, 2008. The parent further alleges that the Parent has never withdrawn the IEE request of February 27, 2008 and continues to disagree with the district's evaluations.

The Parent filed a Request for an Independent Education Evaluation with the District on February 27, 2008. That request, by the educational guardian, disputed the District's evaluation of the student, particularly as to his psychological evaluation, his assisted technology evaluation and his speech/language evaluation. The District thereafter filed it Request for Due Process on February 29, 2008. This matter proceeded before an different Hearing Officer. During its pendency, the Hearing Officer in her Summary of the Pre-Hearing Conference, noted the parent's requests for evaluations including not only the three delineated above but also a central auditory processing and an occupational therapy evaluation. On the date for the exchange of documents for the Hearing relative to this Due Process Request, the District withdrew its request for Due Process. Thereafter, the District noted that it was funding the evaluations for psychology, speech/language and assistive technology. Although parent and Hearing Officer requested clarification, the District merely indicated that the current Due Process Complaint was withdrawn.

Once the parent has filed a request for an IEE, the local educational agency has only two options: (a) file a due process complaint...; or (b) provide said request at public expense ... unless the evaluation obtained by the parent did not meet agency criteria. In the instant case, the District apparently timely filed a Due Process Complaint (this is disputed by the Parent). During the pendency of that Due Process Complaint, requested on February 27, 2008 and withdrawn by the District on March 18, 2009 - a period of over a year - various matters were addressed including in the Pre-Hearing Summary of Hearing Officer Schwarz the evaluations requested which included the additional requested evaluations. With its withdrawal, the inference was that the District would fund the evaluations as required by IDEA. Although not stated in its request for withdrawal, the District clarified its position in subsequent e-mails that it was approving and funding only evaluations for psychology, speech/language and assisted technology.

Based on the parties submissions, the District in it's request for withdrawal did not specify any qualifications or limitations to any IEE (See P exh. D-2 attached to Parent's Brief). On this record, a presumption from the withdrawal of the District's Due Process Complaint is that the District was agreeing to fund the IEEs - without exception or qualification as to cost or other issues. Hearing Officer holds that the District committed a procedural violation in failing to fund all of the IEE's and finds that the School District should fund the IEE's.

2. **Whether the School District Failed to Timely Provide a Full and Individualized Evaluation in a Timely Manner in Order to Adequately Identify the Nature and Extent of [redacted] Disabilities.**

Student has been failing for many years. His mother has advised the School District on more than one occasion of her concern for her student's educational needs as he was failing many of his subjects. The school district had evaluated student and had initially diagnosed him as emotional disturbed.

A psychological evaluation conducted by [redacted] from [redacted] found the Student who was in 8th grade was very instructive [PD - 001 - 004]. At that time, the student was initially referred for emotional and behavioral issues during the 2003 - 2004 school year. He was achieving grades of F's. He didn't show any interest in education didn't work hard and had a high absence rate. Testing on the Kaufman Test of Educational Awareness, second edition (KTEA - II) showed grade equivalencies of 1.11 in letter and word recognition, 2.2 in reading comprehension, 3.7 in math concepts and applications and 3.4 in math computation. [redacted] noted that the student's skills were well below age and grade level expectations. She found that he had identified deficits in associative thinking, expressive vocabulary, social judgment and awareness, abstract block pattern reproduction, visual characterization, visual fluid reasoning, short-term reordering and recall of letter and number sequences. Her summary and conclusions note that he was mild to moderately deficient in verbal comprehension and perceptual reasoning and within borderline in working memory. His academic skills are significantly below age and grade level expectations in reading and math. Significant emotional concerns are noted. She recommended special education services to address a severe emotional disturbance and noted that he would benefit from services addressing processing deficits. She also recommended outside counseling on an individual and family basis.

Per the social assessment in June, 2006 [PD 005 - 008], student had poor grades for the past 4 years and his then current grades were all F's. He repeated 6th grade. He struggled in math and English. He has no motivation and effort. He had been diagnosed with ADHD and Defiance Disorder. He had at least five (5) lock-ups in juvenile Department of Corrections. Family influence has been minimal and parental guidance is limited.

A psychological re-evaluation by [redacted] on January 23, 2007 noted that the student had significant processing deficits in processing speed, language development, verbal conceptualization, word knowledge, cognitive flexibility, listening comprehension (receptive and expressive language), sensorimotor and short term auditory and visual memory. He scored a grade equivalent of 2.0 in letter and word recognition, 3.2 in reading comprehension and 3.6 in math computation.

The Speech/Language Assessment of [redacted] of January, 2007 is clearly deficient. He finds that the Student does not need speech/language services as his abilities were consistent with his cognitive level. He also found that his receptive and expressive language skills were consistent with his cognitive level. This is clearly contrary to the psychological evaluations done showing significant deficits in receptive and expressive language.

The assistive technology evaluation was requested on February 5, 2007 and completed on February 5, 2008, a year later. There was a lag time with no reason provided as to why it took so long to provide the evaluation other than the Student was hard to find due to his incarceration. The recommendations themselves were vague in places. As [redacted] noted, the student clearly needs assistive technology and this report does not go far enough. The term "appropriate" is vague, the student did not know how to proofread and correct his work and therefore, this was not a reasonable recommendation.

The District did not provide for an Audiological or Central Auditory Processing evaluation even though the initial psychological report should have put them on notice of problems with processing. The District also did not provide for an Occupational Therapy evaluation even though the student had attendance and truancy problems and his transition plan/recommendations were outside of his abilities.

[redacted] Speech/Language suggested assessment and evaluation of the student via a Speech/Language pathologist should include assessment of basic vocabulary, language processing and related skills. i.e. Comprehensive Assessment of Spoken Language; Test of Word Find; Test of Problem-Solving.

[redacted] recommendations included a functional visual exam to determine how his eyes work and if there is an issue there relative to his visual processing and assistive technology services relative to a reading program with both implicit and explicit instruction, a phonemic awareness program and decoding program involving both sense and non-sense. She would defer to A/T person for appropriate materials.

[redacted] testified that an occupational therapist could be used to develop a plan to keep the student on task as the therapist could give strategies to teachers to modify materials that they are using, could assist with community mobility and money management and assist in transition services. Processing i.e. visual processing, rotations, distortions, etc., is an appropriate issue for an occupational therapist as this issue can affect his reading, i.e. "Sit" as " tis".

[redacted] testified that the student would benefit from intensive intervention provided by certified speech language pathologist as well as appropriate assistive technology intervention. She suggested several programs available to assist the student. She felt that the student would benefit from 90 mpw of speech/language and 60 mpw of assistive technology services.

The District had an affirmative obligation under IDEA to evaluate all students suspected of a disability. 20 U. S. C. Section 1412 (a) (2)(3)(A) and Ill. Admin. Code Section 226.100 The District also has an obligation once that student had been evaluated and determined to have a disability to have an annual review in terms of meeting the goals established (34 C.F.R 300.324 (b) (I). Here, the District has identified the Student with one or more disabilities who is in need of services and has been provided some special education services.

The student must be assessed in all areas related to a suspected disability. This was not done and even after the Parent requested and/or secured additional IEE's, the District still did not adopt the majority of the recommendations and only provided some modifications and accommodations to the student's IEP. The student was making only minimal progress towards his goals and, at times, was falling further behind. It is important to consider the context of the student's problems. The student, for years, has had a high absentee rate, has had little interest in education and has suffered from an emotional disorder. Even given the associated problems and aggravating factors of his home, street life and penal interaction, it cannot be said that the School District met it obligation to appropriately identify the nature and extent of the Student's disabilities.

The district from the initial psychological evaluation by [redacted] was aware of the significant academic and emotional problems that the Student had. She noted that the student's skills were well below age and grade level expectations. His academic skills were significantly below age and grade level expectations in reading and math. She recommended special education services to address a severe emotional disturbance and noted that he would benefit from services addressing processing deficits, the same thing that [redacted] and others above noted. However, rather than attempting to meet those needs, the District focused on the emotional component almost to the detriment of the academic component. The District has attempted to provide services based upon inadequate evaluations which focus more on the emotional aspect of the student rather than the academic aspects.

3. Whether the School District Failed to Provide an Appropriate Educational Program/placement (IEP) Based on Appropriate and Individualized Evaluation to Develop an IEP and Related Services with Sufficient Intensity to Meet [redacted] Educational Needs

The starting point for any analysis of whether an IEP is reasonably calculated to provide a meaningful educational benefit is the Supreme Court's decision in *Bd. Of Ed. V. Rowley*, 458 U. S. 176. Rowley presents a two prong test relative FAPE, the second of which implicates a meaningful educational benefit.

This substantive prong requires the District to provide an IEP that is calculated to allow the student to benefit from his education experience. It requires more that a nominal benefit for this instruction. *T. H. v Bd of Ed of Palatine Comm Consol. Sch.Dist.*, 55 F Supp 830 (N. D., ILL, 1999). An IEP needs to contain goals and objectives which are measurable. *Independent Sch. Dist. No. 701, Hibbing Pub. Sch. V. J. T.*, 45 IDELR 92 (Minn. 2006). As noted therein,

"The instruction and services must meet the state's educational standards, must approximate the grade levels used in the state's regular education, and must comport with the child's IEP. Id. The objective of the criteria set out in federal law is 'the achievement of effective results -- demonstrable improvement in the educational and personal skills identified as special needs -- as a consequence of implementing the proposed IEP.' *Town of Burlington v. Dept. of Educ. for Com. of Mass.*, 736 F.2d 773, 788 (1st Cir. 1984) (citations omitted). In addition, states must provide special education in the "least restrictive alternative." 20 U.S.C. 1412(5); 34 C.F.R. 300.552(d)."

At the **June 14, 2006 IEP** meeting [PD 44 - 072], he was determined to have disabilities for emotional disturbance and learning disability. An IEP was put in place which provided for 950 mpw of special education in a separate classroom. It noted that the student had severe deficits in fundamental concepts in reading, writing and math. He needed one-on-one teacher interaction. As to his goals, [redacted] testified that the goals were, in essence, the state goals. A review of these goals [PD 068 -072] a year later showed that he did not meet almost of the goals.

Thereafter, at the **01-30-07 and 02-01-07 IEP** meeting [PD 078 - 113], the student was diagnosed with a primary disability of mild cognitive impairment and maintained his eligibility for services for emotional disturbance. Although he was provided with 1500 mpw, only 30 minutes of these were with a social worker and the remainder was with a special education teacher. There was no referral to an audiologist, speech/language pathologist, etc. There was a referral for Assistive Technology. The IEP also provided for transportation [PD 102] as he was required to attend a school other than the attendance area school. As part of this transportation service, an aide on the bus was required. There were no yearly review of these goals provided to the Hearing Officer but it appears from the following IEP that the student did not meet these goals. A dissent was filed by the Parent to this IEP [PD 073 - 075] setting out in detail their disagreement with the IEP.

A **February 26, 2008 IEP** meeting [PD 129 - 156] regarding Least Restrictive Environment (LRE) was held for the student. He again was found eligible for special education services with the eligibility being mild cognitive impairment and emotional disturbance. On February 20, 2008, [redacted] conducted a psychological re-evaluation and found that the student now scored a grade equivalent of 3.0 in letter and word recognition and 2.4 in reading comprehension. She again found the student had significant processing deficits in processing speed, language development, verbal conceptualization, word knowledge, cognitive flexibility, listening comprehension (receptive and expressive language), sensorimotor and short term auditory and visual memory. She felt that he needed special education services to address a cognitive deficit. The goals developed for the Student again appear to be the State goals and not individual goals for the student. The plan again provided for 1500 mpw of special education services with a special education teacher with only 30 minutes of those being with a social worker. No other services were suggested or provided. As this was an LRE meeting, the team did recommend a therapeutic educational setting for the student and rejected a residential placement. A review of these goals [PD 157 - 162] a year later showed that he did not meet most of the goals. Again, a dissent was filed by the Parent and Educational Guardian setting out in detail their disagreement with the IEP [PD 123 - 127].

The last IEP meeting for the student was a **March 20, 2009 IEP** meeting [PD 168 - ccc] to consider the outside evaluations. The team considered the outside evaluations for occupational therapy, assistive

technology, psychology, occupational therapy and audiology/central auditory processing. After considering these outside evaluations, there was no change in the services provided the student. Accommodations and modifications were changed somewhat based on the outside evaluations. However, even though the outside evaluators presented cogent evaluations and recommendations as to the need for additional speech language services, audiological services in the nature of central auditory processing, assistive technology and occupational therapy, no such services were provided or suggested.

As to goals, several of the evaluators were critical of the goals developed for the student in the various IEP meetings.

[redacted] was critical of the goals established for the student. As to the 2006 IEP's, she did not feel that the present referenced levels were appropriately reflected as to his reading deficits. His goals in social science and science indicated that his reading skills are impacting areas across all content areas. The IEP goals merely recited the state standards and were not measurable. There was no present level of performance, what the student was working on or how it was to be measured. In the 007 IEP (01-30-07), she found problems with his non-academic goals. As to his academic goals, in science, context clues are not going to work with the student as he can't read enough words accurately to get context clues. His math goal of using decimals and fractions are not something he can do as he is at a basic level. His language arts goals and benchmarks are inappropriate as the student is unable to perform at this level. Overall, the IEP does not address the deficits identified in her report and will not remediate the student. As to the 01-30-07 BIP, it was very vague to her, i.e., what kind of rules, behavior, task completion, turned in on time, .etc. Praise will not address any issue with him. As to the Transition plan/vocational goal, she does not know how he can meet benchmarks when he can't read an application, can't fill out applications, etc. In the '08 IEP, typically there was no present level of performance given.

[redacted] also questioned some of goals in the IEP as the student did not have some of the foundational skills necessary to accomplish the goals. In her opinion, the goals did not recognize his disabilities. For example, the student was unable to identify a square/triangle, was unable to do pattern work and was very slow at producing text. He can produce text at fairly reasonable rate but the text doesn't make much sense. She found that he did not know the entire alphabet for writing. By M, he began substituting incorrect letters. She found that he was impaired with visual processing which is important prior to other skills

Although the School District is to be commended for its eventual recognition of some of the Student's needs, the IEP other than the most recent were not providing the Student with an appropriate education. The District personnel - both staff and teachers - noted the problems with getting the Student to school, his significant truancy issues and his disdain for education. Yet the IEP's starting with the 2006 and going through the 2008 IEP did not provide goals and benchmarks which were based on the student's unique needs. In many places, the IEP goals merely parroted the State goals. Although in certain situations, this may be appropriate, for student with the significant deficits noted as early as the initial psychological evaluation as this Student has, these type of goals do not meet his needs. As was pointed out by various of the independent evaluators, the student's deficits were such that he would not receive any education benefit from them. Further, the fact that he failed to achieve many to most of the goals and benchmarks further shows that the plan in place was not working for the Student.

As to the Assistive Technology goals, the goals are somewhat ambiguous as the terms "appropriate" and the failure to define what programs are being included. As one hearing officer noted in a case involving assistive technology, where ambiguity exists in an IEP, that ambiguity will be construed against the School that is responsible for its development and implementation. See *Monroe County Community School Corporation*, 50 IDELR 178 (May, 2008).

Education professionals are to be given deference as to education placement and methodologies. *School Dist. Of Wisconsin v. Littlegeorge*, 295 F. 3d 671 (7th Cir., 2002) so long as those school professionals were not unreasonable in their determinations as to appropriate services and placement (See also *Hearther S. v. State of Wisconsin*, 125 F. 3d 1045 (7th Cir., 1997). *Rowley*, supra, cannot be read to suggest that any improvement, no matter how small, would be appropriate. Rather, as noted in *Board of Education of Oak Park & River Grove v ISBE and Kelly E*, "Rowley does not mean that a *de minimis* benefit is sufficient. See *M. C. V. Cent. Regional Sch. Dist.*, 81 F.3d 389, 393 (3rd Cir.)... Kelly failed half of her classes at Oak Park and except for passing several pass/fail classes and making one B in Reading Strategies I, received D's in the remaining half. The record demonstrates that the educational benefit that Kelly was receiving was minimal."

Likewise, here, even conceding, the difficulties presented by the student based upon his frequent incarcerations, his lack of motivation and effort and his lack of attendance, the IEP's prepared for the Student have not provided him any educational benefit.

4. Whether the School District Failed to Identify in a Timely Manner and Then Provide Appropriate Assistive Technology in the Classroom Setting and for All School Work Including Staff, Student and Parent Training.

In the 2006 IEP, the Student was found eligible for "low tech" modifications although what these low tech modifications were not set out in the IEP. Thereafter, Student was found eligible for Assistive Technology services at the February , 2007 IEP meeting. A consent for this was signed and the documents forwarded to the Assistive Technology department. For whatever reason, the student was not evaluated for this service until a year later. Even after that, it was somewhat unclear from the testimony as to what services/equipment was provided. Whatever equipment/services that were provided were delivered on or about March 20, 2009 are almost two (2) years from the initial request for evaluation

[redacted] testified that the first attempt to evaluate the Student was made in October, 2007. She did not know why it took from February 5, 2007 to February, 2008 to evaluate other than she believed that they would have received the referral near summer. No evaluations are done in summer and they start school year with delivery of equipment so that the first evaluations are done in October. Ultimately, the equipment was installed in March, 2009.

[redacted] from the Assistive Technology department also testified and provided more detail. As noted above, she agreed that the fax cover sheet for the initial request was received on February 2, 2007 in the Assistive Technology department. Due to various difficulties in locating the student, she was not able to evaluate him until February, 2008. There were then problems in securing the equipment, installing and then there were licensing issues which negatively affected [redacted]. As such, the student had very limited to almost no access to the Assistive Technology that was to be provided pre his IEP. The only technology that he had available was the READ 180 program at Hillside.

[redacted] reviewed the Assistive Technology report of the school district and observed that the student clearly needs assistive technology and this report does not go far enough. As to part 1, she does not know what the term "appropriate" means. In part 2, the student did not know how to proofread and correct his work. Under #3, the student has not seen a talking dictionary and thesaurus and has not used them and it also appeared that he did not have a talking work processor as listed in #4.

The School District argues that Assistive Technology is not a related service and therefore, any time lines for implementation of delivery of any such materials is not appropriate.

34 C.F.R. 300.34 Section 300.34 defines Related Services as " transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational services....." Nowhere in this definition is Assistive Technology referenced. However, Assistive Technology is referenced in Other FAPE Requirement at 34 C.F.R. 300.34 Section 300.105, which notes that "each public agency must ensure that assistive technology devices or assistive technology services, or both ... are made available to a child with a disability if required as part of a child's (1) Special Education under Section 300. 36 or related services under Section 200.34 "[Related Services].

One could construe the above under 34 C. F. R. 200.34 to include Assistive Technology as a related service or to be provided as a related service. However, whether Assistive Technology is or is not a related service is not germane here. The issue is the length of time that it prior to the implementation of the Assistive Technology services required per the IEP. From the above testimony of [redacted] it does not appear that the student ever received the equipment, or, if he did, for only a brief time.

5. Hearing Officer Statute of Limitations Issue.

Hearing Officer requested the parties to Brief the issue of whether the appropriate Statutory period for this Due Process Complaint started to run from the filing of the instant Due Process Complaint or whether, by the Parent's allegation that the District withdrew its Due Process Complaint without fully funding the requested IEE's, the appropriate Statutory period would relate back to the Parent's original Request for an IEE in 2008. The District argues that this Hearing Officer has no authority to look back into another and separate Due Process Complaint which has been withdrawn and no longer pending. The Parent argues that the withdrawal of the Due Process Complaint without fully funding all of the requested IEE's constitutes a mis-representation which is an exception to the Statute of Limitations. Although Hearing Officer does not condone the procedure of the School District to withdraw the Due Process Complaint and agree to pay only for three evaluations when it was clear that the Parent was requesting additional IEE's per the Pre-Hearing Conference Summary of Hearing Officer Schwarz, Hearing Officer reluctantly agrees with the School District that he does not have the authority to, in essence, re-open that withdrawn complaint.

Denial of Free Appropriate Public Education

Substantively, there is substantial evidence in the record that this Student, even with all of his emotional issues, his motivation issues and his attendance issues has been denied a Free Appropriate Public Education. IDEA requires some academic progress. The student's skills during the period even pre-dating the March, 2007 through March, 2009 were limited. He was reading at a 1st or 2nd grade level, his math ability was essentially in the 3rd grade range and he had difficulty communicating in a written fashion. His behavior did not substantially change. The goals formulated to assist the Student were not appropriate for his needs and the student was not appropriately identified in terms of his deficits. He failed to meet the goals established under the IEP's.

Compensatory Educational Services

This Hearing Officer finds that the student is entitled to an award of compensatory educational services to compensate for the period of time that certain services were not provided. See *Sanford School Department*, 47 IDELR 176 (Maine State Educational Agency, October 31, 2006)

Reimbursement for Independent Educational Evaluations

Although the District's initial psychological evaluation in 2006 may have been adequate as it put the School District on notice of the substantial and severe deficits that the Student had, the following evaluations did little more than repeat that assessment and did not provide any meaningful strategies for the Student to cope with his deficits - both academic and emotional or recommend additional needed evaluations. Here, the focus remained on the emotional aspects of the Students deficits with only limited efforts to assist his academic shortcomings. The evaluations of [redacted] and [redacted] provided the needed overview of the student and his problems and deficits and the recommendations to provide him an free appropriate public education - whether he avails himself of it or not. Therefore, the School District should pay for any evaluations which remain unpaid including the Occupational Therapy evaluation of [redacted] and the Audiological - Central Auditory Processing evaluation of [redacted]. If the neuropsychological/psychological evaluation of [redacted] and Assistive Technology evaluation of [redacted] remain unpaid, these are to be paid also.

Residential Placement

As one of the requested relief, Parent has sought appropriate placement for the Student without delineating this further. Although there was certain testimony (and even if the Hearing Officer considered the testimony of [redacted] to which he sustained an objection), there was insufficient testimony adduced at the hearing that residential placement would offer little more than confinement for this student. There was insufficient testimony as to how or in what fashion a residential placement would accomplish any more than what the Student was receiving at [redacted]. Even when the Student was in a structured setting ([redacted]), he failed to attend classes and receive services. Therefore, Hearing Officer declines to Order a Residential placement for this student. To the extent a different therapeutic day school may be more appropriate for the student, Hearing Officer will Order the School District to convene an IEP meeting to address this as well as other issues.

DECISION and ORDER

1. Residential Placement is Denied.

2. The School District is Ordered convene to an IEP meeting within the next 30 days to reflect this Decision and the recommendations of the Independent Evaluators so as:

a) To determine if [redacted] is the best placement for the Student in light of the independent evaluations;
b) To implement the independent evaluation of [redacted] as to the student's need for Occupational Therapy especially in the area of transition;
c) To implement the independent evaluation of [redacted] as to the Student's academic and emotional issues;
d) To implement the independent evaluation of [redacted] that the student has a Central Auditory Processing Disorder and that his IEP be revised to reflect that disorder;
e) To implement the independent evaluation of [redacted] as to Assistive Technology including acquisition of the assistive technology as noted in the evaluation and instruction of those that are using it with the student; and
f) Implement the proposed bus plan to address his truancy issues

3. School District will pay for any Independent Educational Evaluations which remain unpaid including the Occupational Therapy evaluation of [redacted] and the Audiological - Central Auditory Processing evaluation of [redacted] If the Neuropsychological/Psychological evaluation of [redacted], and

Speech/Language – Assistive Technology evaluation of [redacted] remain unpaid, these are to be paid also.

4. Compensatory services to be provided to the student for a period of two (2) years, or until graduation or until the Student withdraws from school, whichever comes earlier to include:

a) one-on-one Speech/Language services for 60 mpw, one (1) time a week;
c) one-on-one Occupational Therapy services for 30 minutes, one (1) time a week.

5. District to provide proof of compliance with this Order to the Illinois Board of Education, Compliance Division, 100 N. First Street, Springfield, IL 62777-0001 within forty-five (45) days or on or before October 10, 2009.

RIGHT TO REQUEST CLARIFICATION

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned Hearing Officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought and a copy fo the request shall be mailed to the party and to the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, Illinois 62777. The right to request such a clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

RIGHT TO FILE A CIVIL ACTION

This decision shall be binding upon the parties unless a civil action is commenced. Any party to this hearing aggrieved by this decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14.8.01 (I), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision was mailed to a party.

THE EFFECTIVE DATE OF THIS DECISION IS THE DATE OF RECEIPT OF ANY CLARIFICATION OF THIS DECISION.

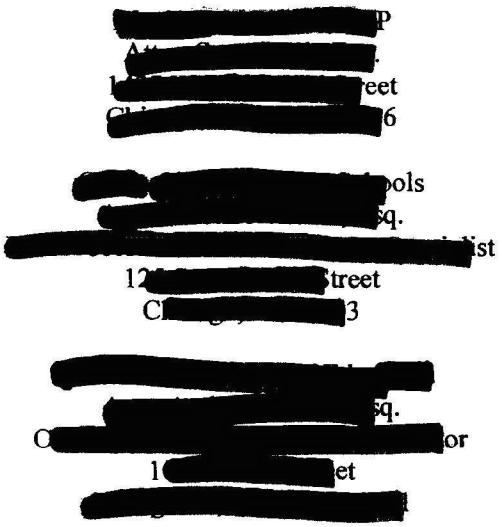
W. DAVID UTLEY
Impartial Hearing Officer

Dated this 27th day of August, 2009

Post Office Box 681487
Schaumburg, IL 60168
(847) 321-1044

CERTIFICATE AND AFFIDAVIT OF DELIVERY BY MAIL

Under penalties as provided by law, pursuant to 735 ILCS 5/1-109, the undersigned certifies that he/she served the foregoing document by mailing a copy certified to the above named attorney(s) at the address(es) indicated above and to the Illinois State Board of Education, 100 N. First Street, Springfield, IL 62777-0001 by depositing the same in the U.S. Mail at the United States Postal facility at Schaumburg, IL on August 27, 2009



Via First Class Mail – Certified Only

W. DAVID UTLEY
Impartial Hearing Officer

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