

ILLINOIS STATE BOARD OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)  
) ISBE CASE NO. 2008-0496  
)  
) Sheana Hermann  
) Impartial Due Process  
) Hearing Officer

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**HEARING DECISION AND ORDER**

This matter comes before this hearing officer on the Impartial Due Process Hearing Request of [REDACTED] "Parent" on behalf on her son ("Student") against City of [REDACTED] "District". The Parent is represented by her attorney [REDACTED] LLP. The District is represented [REDACTED]. This Hearing Officer has jurisdiction to hear and decide this matter under 105 ILCS 5/14-8.02(a) et seq., 23 Illinois Administrative Code 226.600 et. seq., The Individuals with Disabilities Improvement Act of 2004 (IDEA) 20 U.S.C. 1415, and 300 C.F.R. 507 et. seq. The parties were informed of their rights according to 105 ILCS 5/14-8.02(a), 23 Ill. Admin. Code 226, subpart G, 300 C.F.R. 300.512.

**Procedural History**

The Parent filed a due process hearing on May 5, 2008. It was received by the Illinois State Board of Education (ISBE) on May 14, 2008 This hearing officer received the assignment on May 15, 2008 and immediately contacted the parties. This hearing officer disclosed to the parties her prior employment with the District and offer of recusal if either party was uncomfortable with her prior employment. On August 14, 2008, the Parent her attorney filed an amended request. The parties did not engage in a resolutions session. A pre-hearing conference was conducted on September 24, 2008 by telephone conference. The hearing date was extended by agreement of the parties to accommodate the schedule of the attorneys and their witnesses. The Hearing was conducted on January 4 and 5, 2009 at [REDACTED] and on January 7 and 8, 2009 [REDACTED] and on February 6, 2009 at [REDACTED]. Prior to hearing the District filed its Motion to Exclude Documents and Witnesses. The Motion was partially granted on the record and certain documents were excluded and testimony of certain witnesses was limited to the scope of IDEA. The Parent's and District's documents were admitted into evidence. The parties received their rights and verbally acknowledged on the record receiving them. The parties also acknowledged that this hearing officer previously worked for the District in its [REDACTED] and agreed to allow the hearing officer to remain. The following witnesses testified: [REDACTED] Behavior Intenerate Specialist for the District; [REDACTED] speech and language paraprofessional for the

District, [REDACTED] school nurse for the District; [REDACTED] lead trainer for [REDACTED], case manager at [REDACTED], Student's therapist [REDACTED] speech pathologist for the District; [REDACTED] case manager for the District, [REDACTED] school psychologist for the District; [REDACTED] speech pathologist for the District; [REDACTED] special education teacher for the District; [REDACTED] District social worker; [REDACTED] program manager at [REDACTED], principal at [REDACTED] teacher's aide at [REDACTED] multisensory coach at the office of specialized services for the District; [REDACTED] neuropsychologist for the Student; [REDACTED] Student's special education teacher at [REDACTED] social worker at [REDACTED] child protection investigator for DCFS; [REDACTED] director of special education at [REDACTED] speech and language pathologist servicing the Student at [REDACTED] occupational therapist at [REDACTED] District's school psychologist who performed evaluation during the summer assessment [REDACTED] District's social worker and part of the summer assessment team; [REDACTED] District's case manager who performed summer assessment; the Student, [REDACTED] occupational therapist for the summer assessment team; [REDACTED] case manager at District; [REDACTED] aide at [REDACTED] District art teacher at [REDACTED] District's regular education teacher, student's teacher during 2006-2007 school year; [REDACTED] substitute teacher at [REDACTED] during 2006-2007 school year; [REDACTED] District's case manager during the summer assessment; and the Parent.

### Issues Presented

The Parent believes the following are at issue:

- a) [REDACTED] did not provide a free and appropriate education during the period from May 5, 2006 through the present time based on:
  - i. Failure to conduct adequate assessments of all areas of potential disabilities, with the result that the student's educational program for this period did not address, or addressed inadequately, his learning impediments and emotional difficulties; specific areas that have not been adequately addressed include:
    - a. Cognitive skills;
    - b. Academic skills;
    - c. Speech/language skills;
    - d. Screening for central auditory processing disorder;
    - e. Assistive technology needs;
    - f. Social/emotional assessment;
    - g. Occupational therapy needs, including fine motor, upper extremity strength, sensory processing difficulties, and organizational needs;
  - ii. Failure to provide essential related services in areas of assistive technology, occupational therapy, psychological and social work services;

- iii. Failure to offer speech language therapy with sufficient intensity to address severe articulation problems;
  - iv. Failure to develop an effective functional behavior analysis and behavior intervention plan for the student, with adequate support from the [REDACTED] unit;
  - v. Failure to identify and utilize effective teaching methodologies at a sufficiently intensive level that would enable the student to make progress commensurate with his cognitive skills;
  - vi. Failure to comply, during the period May 6, 2006 through July 1, 2008, with ISBE policies and procedures regarding use of restraints, including use of inappropriate restraints and failure to properly report use of physical restraints on the student;
  - vii. Failure to offer extended school year services despite substantial evidence of the student's severe academic delays.
- b) [REDACTED] has denied the student a free and appropriate education by failing to respond in a timely manner to his doctor's recommendation for home/hospital services.
- c) The Student's IEP of 7/15/08 fails to offer a free and appropriate public education for the following reasons:
- i. The psychological report relied upon by the IEP team, by [REDACTED] Ed.S. NCSP, was seriously flawed in several respects.
    - a. The cognitive assessment by [REDACTED] psychologist is not valid – verbal standard score of 57; non-verbal of 73 – grossly inconsistent with prior reported IQ scores, which were in the average range.
    - b. Teacher rating scales for the Behavior Assessment System for Children (BASC-2) were not obtained from either teachers at his prior school, [REDACTED] or his current school, [REDACTED].
  - ii. Information from various evaluators suggests that the student has a central auditory processing disorder (CAPD); this assessment should have been completed as part of the special evaluation. In addition, presence of CAPD, combined with widely disparate cognitive test scores suggest need for non-verbal IQ battery such as Leiter or CTONI;
  - iii. No methodology is listed in the IEP for remediation of phonological deficits; Placement is at [REDACTED], where none of the staff have training or experience in any of the [REDACTED] instruction methods: multi-sensory, systematic instruction program in phonics.
  - iv. Speech/language evaluation did not include adequate assessment of expressive and receptive language skills. The evaluator noted apparent fatigue on the part of the student, as the speech language assessment was conducted at the end of a day, preceded by psychological testing, occupational therapy assessment, and social assessment. The Speech language test should have been rescheduled if the evaluator questioned the results, based on fatigue.
  - v. OT evaluation was not complete in that a sensory processing profile was not provided to the student's teacher at [REDACTED] although he was attending summer school at the time the evaluation was completed

(Parent's attorney indicated that this issue may be resolved and that he would double check).

- vi. Direct service and consultative minutes listed for the occupational therapist (15 mpw) are not adequate given the degree of severity of visual motor integration skills (VMI), and presence of sensory processing difficulties and organization/attention deficits.
  - vii. Behavior Intervention Plan (BIP) should include 2 hours per month consultative service from [REDACTED] specialist to assist staff in implementation.
  - viii. Based on the student's severely depressed academic skills, the evaluation by summer assessment team should have included an assistive technology (AT) assessment.
  - ix. Copies of evaluation reports marked "draft: were distributed at the IEP meeting, but to date the parent and her representative have not received final evaluation reports and protocols for psychological, speech, OT, and health assessments.
  - x. Student was severely traumatized by school staff at [REDACTED] and missed nearly four months of school because of an assault by a [REDACTED] teacher. The IEP should have offered compensatory education services to remedy the loss of educational opportunities (District's objection to relevance of the issue has been noted and as stated during the pre-hearing conference, this hearing officer will entertain the issue to the extent that it pertains to IDEA).
- d) [REDACTED] has failed to provide all school records, including protocols produced by the summer assessment team on July 11, 2008; incident reports and investigative reports of allegations of assault involving the student have not been produced (District's objection is noted to the relevance and scope of this hearing officer's authority, this hearing officer will entertain this issue to the extent that it relates to IDEA).

### Relief Sought

The Parent seeks the following relief:

- a. Direct that [REDACTED] produce all school records concerning the student;
- b. Direct that [REDACTED] pay for independent educational evaluations in areas of identified need, including cognitive functioning, academic skills, sensory processing and organizational skills and speech language skills and assistive technology;
- c. Direct [REDACTED] offer related services in sufficient intensity to allow student access to educational opportunity, including
  - i. 90 mpw speech language services;
  - ii. 60 mpw occupational therapy services; and
  - iii. 90 mpw social work services.
- d. Direct that [REDACTED] provide reading remediation through a systematic, multi-sensory reading instruction program using adequately trained staff, by either
  - i. Providing training leading to certification for at least two of [REDACTED] teachers;
  - ii. Assign a teacher to [REDACTED] who is certified to provide reading instruction in a recognized multi-sensory reading program

(District's objection stating that this remedy is outside the scope of this hearing officer's authority is noted for the record).

- e. Direct [REDACTED] to provide compensatory education services for loss of FAPE during the past two years, including:
  - i. Tutoring by a certified special education teacher who is also certified in whatever reading instruction program is used by [REDACTED] for reading remediation, for 200 hours over the next two years, at a schedule and location designated by the parent;
  - ii. Speech language services for one hour per week for two years;
  - iii. Provide a 1:1 aide throughout the school day for one year; and
  - iv. Three hours per week counseling and mentoring support after school hours from a male counselor holding an LSCW or LCPS license, for two years;
- f. Direct [REDACTED] to convene an IEP meeting that will consider results of evaluations and implement the foregoing relief; and
- g. Other relief that may be determined appropriate by evidence introduced at the hearing.

### **Finding of Fact**

Through evidence derived through testimony and documentation over the period of a five day hearing, the following comprise the findings of fact by this hearing officer:

The Student is a male 9 year old with a birth date of September 3, 1999 and is presently in the 3<sup>rd</sup> grade. His qualifies for services under the Individuals with Disability Act as Amended in 2004 (IDEA) as having a learning disability and an emotional disability. He is currently attending [REDACTED]

The Student was initially eligible for IDEA services under speech and language where he was to receive 30 minutes a week in speech on March 31, 2006. (PD. Ex. 108, 113). The record indicates that as early as September 2005, the Parent had expressed her concerns regarding the Student's speech. (P Ex 219).

### **2006-2007 School Year**

Another IEP meeting was held on December 13, 2006 in which the team determined that it would attempt school based problem solving first reasoning that the Student was young and lacked primary skills and that the District would attempt reading first intervention. (PD. Ex. 92).

During this time period, the Student's teacher was [REDACTED] who left on maternity leave during February to return the very last week of school. Her substitute teacher was [REDACTED] testified that she remembers the Student as having a speech impediment and difficulty in school. [REDACTED] testified that she was concerned with the student and does recall discussing with the parent seeking additional services with the student.

On March 28, 2007, the Parent signed a consent to evaluate the Student. (SD Ex 29).

Parent made a written request for special education services on April 30, 2007. (SD Ex. 32).

As a result of the evaluation, a health evaluation was given by the school nurse, a social assessment was made by the social worker, a speech and language assessment and a psychological evaluation was given. It appears that the District also had a copy of an independent evaluation conducted by U of I at Chicago where he was found to have ADHD and Oppositional Defiant Disorder (SD Ex. 45-49).

██████████ psychological evaluation conducted on June 11, 2007 noted that the Student's academic scores in word reading, reading comprehension and spelling are all significantly below estimated ability level. He has difficulty correctly identifying the phonetic sounds of several letters; he has difficulty blending sounds together to form a word. He was also found to have scores in Aggression and Conduct Problems in the At-Risk range which may identify a significant problem that may not be severe enough to require treatment or may identify the potential of developing a problem that may need careful monitoring. He was noted as often calling other students names, hits other children, disobeys and cheats in school. His attention score falls in the At-Risk range. He almost always has a short attention span and is easily distracted. His score in Learning Problems falls in the Clinically Significant classification range which suggests a high level of maladjustment. His classroom teacher reports that he almost always has reading, spelling and math problems and trouble keeping up in class. His scores in Functional Communication falls in the Clinically Significant classification range. He has difficulty communicating clearly and rarely responds appropriately when asked a question (SD Ex. 51). In summary his present evaluation reveals overall cognitive ability in the low average range of functions with verbal and nonverbal reasoning abilities being relatively equally developed. Scores in reading and spelling are significantly below estimated ability level. Visual motor integration is in the average range. The Behavior Assessment System completed by his teacher reveals significant concerns in the areas of Learning Problems and Functional Communication. Scores in Attention-Problems, Aggression, and Conduct Problems are in the At-Risk range. He would benefit from remedial services which would address processing deficits. (SD. Ex. 52) During her testimony she stated she had concerns regarding the Student's functional communication skills.

In his June 11, 2007 IEP, his services were increased to 200 minutes per week for language arts, 200 minutes for math and 45 minutes with speech pathologist as direct services in a separate class. (SD 68). He was found eligible for special education services for learning disability and speech (SD Ex. 74). In this IEP, the Student's Language Arts goal was to practice number writing, although the area of need was stated that he struggles to retain reading skills. (SD Ex. 67). His speech and language goal was to produce the target sound in the final word position with 70% accuracy (SD Ex. 65). He would receive his services through resource (SD Ex 74).

██████████ the District speech and language pathologist evaluated the student. Said that the report was not complete as it did not include the protocols. (P Ex. 131) She stated that her memory was hazy as to the time period in which she provided services for the Student during the 07-08 school year. Her testimony was unreliable, she said she made progress but could not state why he had made progress.

[REDACTED] was the District's case manager when the Student initially received services. Her recollection was very poor.

### 2007-2008 School Year

[REDACTED] the case manager, indicated that the District did not have the Student's IEP at the beginning of the 2007-2008 school year. Her testimony is taken with caution as she stated she did not recall many things when questioned by the Parent's attorney.

[REDACTED] the Student's special education teacher, testified did not receive IEP until around Christmas time

In the Student's progress report of October 8, 2007 it was noted that he did not meet his math or his language arts benchmark (P Ex 282). In his second marking period of January 28, 2008, it was noted that the Student again did not meet his math or language arts goals. (P Ex 280).

On March 5, 2008 an altercation between the Student and the art teacher [REDACTED] happened. The Student and his mother insist that the [REDACTED] hit the Student. However, no compelling evidence was given that this in fact was the case.

Of this testimony the most compelling came from [REDACTED] one of the treating therapist of the Student during a hospital stay. She stated that she could not tell with certainty that the Student was not making the incident up as she had observed him accusing other students of hitting him when in fact that was not the situation.

Feeling that her child was not safe in [REDACTED] the Parent did not send him back.

The District offered to transfer the Student to another school, which the Parent rejected.

The Student was hospitalized in April 2008. After an escalation of aggressive behavior while attending a pediatric day hospital program in which he threatened to kill someone and attempted to attack peers. He has experienced visual hallucinations as evidenced by his report of seeing a doctor stick a patient in the back with a needle and seeing light blue figures walking in his home (SD. 76). He was diagnosed as having a Psychotic Disorder, NOS. (SD 78).

After hospitalization, the District conducted a special review of the Student's placement. The team agreed to add emotional disturbance to the student's placement. (SD Ex. 88, 90). His placement was changed to a therapeutic program (SD. Ex. 105).

The Student was also seeing a private therapist, [REDACTED]. She testified that the student started stating he was hearing voices. Sent home bound hospital report to school to initiate home bound services She testified that the Student presents difficulty with truth and minimalizing his responsibility in a situation.

Parent had requested home hospital shortly after March 31, 2008, The District stated it did not receive the request but provide the Student with compensatory services in a therapeutic placement for the summer of 2008. (SD. Ex. 108).

The Student was hospitalized at [REDACTED] from April 22, 2008 until April 30, 2008 after being in a partial hospital day program after an escalation of aggressive behavior while attending pediatric day hospital program. (PD Ex 238-244). He was in the day program from April 10, 2008 until April 22, 2008 (PD Ex. 245). He was diagnosed with psychosis disorder NOS (PD Ex. 242).

Interim IEP created 6/12/08 (PD 038-065). Placement changed to an alternative setting.

### **2008 Summer Assessment**

His sensory profile reveals a child who is sensitive to environmental sounds which may interfere with his ability to attend to teacher's voice during times of instruction (SD Ex. 126).

IEP created after initial due process hearing request 7/15/08 (PD 001-032)

The Parent supplied a dissent dated July 15, 2008 through her attorney. (SD Ex. 397-399).

[REDACTED] behavior specialist with the District presented as a very credible witness. He was part of the summer assessment team for the Student. After reviewing the Student's records, he concluded that the Student has significant phonological concerns. Of great concern was his testimony was that through 3<sup>rd</sup> grade students learn to read, 4<sup>th</sup> grade and beyond, students read to learn. He made his conclusions regarding the Student based on all document review as he had not seen the Student. He wrote the educational goals because the team was short staffed. He indicated that being able to pronounce words was an important aspect of reading. In the IEP drafted in July 15, 2008 goals for reading comprehension note very limited phonemic awareness throughout (SD 203, 205, 208, 209).

[REDACTED] conducted the speech and language evaluation, of concern with her evaluation is the fact that she noted that the Student was tired. She refused to answer whether the Student was a non-reader. She stated that she did not have the bases to know what a second grader in general education should know.

[REDACTED] is the District's school psychologist who administered the test to the Student in the summer assessment. His scores for verbal were 57 and non-verbal 73. This is a significant discrepancy. The areas ideally would be even. There could be a multitude of reasons for the discrepancy such as his verbal expression could be depressed, behavior or emotional disorder, central auditory processing disorder ( although the witness was not familiar with this) A non-verbal test would have given more

information about the Student. Team determined that psychological services were unnecessary since the Student was receiving social work services. There was a discrepancy in the records when the teachers submitted for the report (PD. Ex. 118-124 ) and when the parents received them. She did not administer to the teachers until after summer assessment. However , she was in agreement with the placement at South Central. There was concern with what was given to Parent and later provided after the teachers. It appears that pages were added to her report after IEP meeting (SD. Ex.134-136). [REDACTED] testified that she should know about educational methodology but it was not an area of her expertise.

[REDACTED] provided the occupational therapy evaluation for the summer assessment. She noted that the scoring from her report was not in the parent report. The scoring results would be included in the profile. She stated that the Student had a sensory processing disorder and gave the Parent a sheet to show her what to expect. It is also necessary for the teachers to be aware of the disorder to place the Student on a sensory "diet." The Student would receive activities and have classroom placement which would reflect this. He may need environmental modifications. Postural-Ocular Disorder. For example if he stands up with his eyes closed he may not be able to stand up. The Student wears special glasses and without them he may need to tilt his head to understand material. A short profile is given during the summer. If more is needed, then the providing OT may go back and reevaluate.

The team concurred that a therapeutic placement was warranted. The summer assessment team accepted the evaluation from [REDACTED] in making their placement decision.

#### [REDACTED] Placement

[REDACTED] is the aide in the Student's room. At [REDACTED] the Student is well behaved but does have a "mouth." She identified him as having a problem with his speech.

[REDACTED] the Student's parent testified. [REDACTED] presented as a very credible witness and left quite an impression on this hearing officer as a very concerned parent. She also seemed unsophisticated as to the knowledge of her rights during the initial time when she sought special education services for the student. [REDACTED] was of very ill health most of this hearing and in general but was very composed. She was also composed during times when District witnesses were quite insulting. She described

The Student testified. He was very polite and cooperative. He seems to be happy at school. However, it was noticeable difficult to understand him with his speech impediment.

[REDACTED] is the multisensory coach for the District. She is in the process of completing her [REDACTED] training and will be done in June of 2009. She attended the workshop with teachers at [REDACTED] She also provides ongoing support with the South Central in establishing and reviewing its [REDACTED]

██████████ a neuropsychologist hired by the parent licensed clinical psychologist. She reviewed his records. She made an observation at ██████████ in December. She was impressed with the program. She testified to concern with the Student's diagnosis of psychosis stating it is very rare in children of his age. She stated that the Student was too old to be a non-reader. She recommended additional testing first to see if he has any verbal deficits and second if there are verbal deficits, then to do a non-verbal IQ test such as a C-TONI. Scores indicate a significant concern.

██████████ is the Student's teacher at ██████████. Her testimony was most compelling and her enthusiasm was very evident. She testified that her classroom has 5 children age range from 10-12 with learning disabilities. Student had behavior issues at the beginning he was constantly off target and needed constant re-directing he had trouble with other students and was verbally aggressive and tried to be physically aggressive. He has made tremendous improvement in behavior. He has made jumps in reading. He has difficulty with flashcards. He moves his head visually. It is important for him to use tactile reinforcement. He has no recent incidences. She has noticed issues with his speech. He is difficult to understand sometimes his speech is dependent on how well focused he is and behaved. She needs to repeat directions. On a good day repeat one to two times on a bad day, often. He is managing very well in his classroom with the existing staff. She attended a two day seminar on ██████████ training and is using it with the student. Has been meeting with District ██████████ twice a week, Ms. ██████████ will make suggestions. Conducts ██████████ two to three times a week but has issues with behavior and they need to stop. She also stated that she found the mother cooperative during the occasions in which they talked. She has called the mom with her concerns regarding the Student's homework, behavior and her concern with his eyeglasses. Feels comfortable with the ██████████ program and she can reach out to Ms. ██████████ if she has any questions. The Student is doing well in math.

██████████ Student's social worker at ██████████ sees the Student weekly for 60 minutes. She stated that it was an easy process getting to know the student. She noted that she was not aware of any behavior concerns when he first arrived, He has had some conflicts with peers not with adults. She stated that 60 minutes was sufficient and if he had more, he would lose focus. He has a short attention span.

██████████ The Director of ██████████ testified. She has found that the Student is doing well at ██████████. She has only had to talk with the Student once. She found the Parent to be very cooperative and supportive. She said that the program is working on having a psychiatric consultant on staff.

██████████ testified. He presented as a very credible and knowledgeable witness who would be a good influence on the Student. He is a speech and language pathologist who is providing the Student with services at ██████████. He has noticed the Student has significant difficulty in visual attention and visual memory. Speech disfluency has persistent significant difficulty recalling visual stimuli, letter word, scenes. Difficulty describing. He still has a significant speech sound disorder characterized by motor speech, movement articulation are inaccurate. He has poor tongue movement which is a form of dysarthria, motor weakness, and muscle rigidity in articulation. He has moderate disfluency, disfluent more than 7 utterances per 100. He found the speech and language

goal on (PD Ex 23) inappropriate. The goal does not accurately state the problem, it is too general. The Student does not have a "TH" error. He needs to learn self formulation, therefore mere articulation (imitation) would be inappropriate since this is a goal that a 2-4 year old would try to master. On (PD Ex 26), the minutes per week for speech should be 120 minutes considering the severity of the Student's speech and language disability. He stated that the CTONI should be administered in light of his possible verbal comprehension issues. His visual deficits are in the clinically significant range. There are formal tests for disfluency.

Evidence has been inconclusive as to the Student's behavior. For the most part, all the school personnel including those at [REDACTED] have indicated that behavior has not been a major concern for this Student.

### **Conclusions of law**

The U.S. Supreme court case places the burden of persuasion in a due process hearing on the party challenging the IEP *Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005) On review of the testimony and written evidence, the Parent has met her burden in part but has also failed in part. While the placement at [REDACTED] is an appropriate placement for the Student, the District has not provided the Student with appropriate evaluations or services in the realm of his speech and language disability, the Student's sensory processing disorder, or his reading deficiency. However, the Parent's has failed to sustain her burden of persuasion in showing that the District improperly restrained the Student thus denying him FAPE, that the incident with the Student and [REDACTED] impacted his ability to receive a free and appropriate education, that the [REDACTED] reading program as implemented at [REDACTED] is failing to provide the Student with educational benefit, or that his emotional or behavior requires the services of a psychiatrist or a one on one aide in addition to the social work services that he already receiving.

### **Appropriate Education**

The landmark case of *Board of Education of the Hendrick Hudson Central School District, Westchester County vs. Rowley*, 458 US 176, (1981) outlines a two part analysis to determine whether FAPE was provided: first, has the District complied with the procedures set forth in IDEA and second: is the IEP reasonably calculated to enable the child to receive educational benefit?

The record reflects that both the Parent and his teachers in his first grade class for the 2006-2007 school year had expressed concerns with the Student's performance. The evidence supports that after the Parent expressed her concerns during the start of the 2006-2007 school year, the District quickly took action and met to consider evaluating the Student in December of 2006. The Parent had expressed concerns with the teacher and that the District was first attempting school based problem solving which would be appropriate given the Student's age at the time. In the Spring of 2007, after the Student

did not fair much better, the District agreed to conduct an evaluation of the Student. Shortly after the District developed an IEP which added learning disability.

Courts have not looked favorably upon school district's which plead ignorance. A district's unawareness of a student's possible disability and need for special education and related services will not relieve the district of its child find obligation if it should have suspected that a student might have a disability. Failing to meet child find requirements is a matter of serious concern that can deprive FAPE to a student who should have been identified, possibly entitling him to compensatory education or tuition reimbursement accruing from the time the district first should have suspected the disability. *Robertson County Sch. Sys. v. King*, 24 IDELR 1036 (6th Cir. 1996); *Department of Educ. v. Cari Rae S.*, 35 IDELR 90 (D. Haw. 2001); *Lakin ex rel. Lakin v. Birmingham Pub. Schs.*, 39 IDELR 152 (6th Cir. 2003); *N.G. v. District of Columbia* 50 IDELR 7 (D.D.C. 2008).

However other issues raise significant concerns. The District failed to have an IEP in place at the beginning of the 2007-2008 school year pursuant to 34 CFR 300.323(a). While the District witnesses testified to knowing that the Student was eligible for special education services, they stated the IEP was unavailable at the beginning of the school year and they could not testify as to when they first saw the IEP, although his special education teacher stated that she saw it around winter break.

Furthermore, the IEP as drafted provided very little services in the way of language arts or speech and language to specifically address the Student's particular needs. The speech and language pathologist testified that the evaluation should have had the protocols attached as part of the evaluation, but it was missing. The District must ensure that it recognizes a student's needs and completes a full and individualized evaluation. *Kevin T. v. Elmhurst Comm. Sch. Dist. No. 2005*, 36 IDELR 153 (N.D. Ill.2002). The failure to fully evaluate a student leads to inadequate programming. *Bd. Of Educ. Of Oak Park and River Forest High Sch. Dist. No. 200 v. Kelly E.*, 21 F. Supp 2d 862, 875(N.D.Ill.1998). Once the IEP was in place, the Student was not even meeting the basic goals during the 2007-2008 school year. At a minimal, the District should have reconvened another IEP meeting to address this failure.

The District appears to have gone to great lengths in securing the [REDACTED] program for the Student. In fact it has purchased the [REDACTED] "kit" and provided training for two teachers at its school. A staff at the District office has almost completed the training program, when in fact the [REDACTED] specialist Ms. Gillingham testified that the Wilson program in deed does not have any requirement for certification to administer its tests. Regardless, the Student's teacher also testified that the Student is a tactile learner that along with the Wilson program, she is implementing other methods in addition to the [REDACTED] program. It is clear from testimony that the Student is a non reader and has significant phonological concerns along with significant verbal concerns which all may be interrelated. He needs an approach such as [REDACTED] which is systematic in its approach. Further testing will be needed to determine better coordination of speech and language services which can be implemented to assist the Student in his phonological deficits. The Parent raised concern with the intensity and how the [REDACTED] Program was being used, however, the evidence is not persuasive that the Student's teacher is using the

program incorrectly. Furthermore, courts do not support the contention that parents have a right to force a school to use a specific program. In fact parents, no matter how well motivated, do not have a right under IDEA to compel a school district to provide a specific program or employ a specific methodology in providing for the education of their handicapped child, *cert. Denied Rowley*, 488 U.S. 925, 109 S.Ct. 308, 102 L.Ed.2d 327 (1988). Generally educational methodology is left to each school system to determine, however in certain instances this issue of methodology and appropriateness are indistinguishable *Board of Educ. Of Downers Grove Grade Sch. Dist. No58 v. Steven L.*, 23IDELR 36 (N.D. Ill. 1995). The 2006 Part B regulations at 34 CFR 300.320 (a)(4) incorporate the language in 20 USC 1414 (d)(1)(A)(i)(IV), which requires that special education and related services and supplementary aids and services be based on peer-reviewed research "to the extent practicable." However, in this case, it is clear that the Student needs a systematic approach to his language based learning disability.

When considering the appropriateness of an individualized educational program, the Seventh Circuit has found that an IEP must "respond to all significant facets of the student's disability." *Alex R., ex. Rel. Beth R. v. Forestville Vally Community Unit School District. #221*, 375 F. 3d 603, 613 (7th Cir. 2004)(citing *CJN v. Minneapolis Pub. Sch.*, 323 F.3d 630, 642 (8th Cir. 2003).

Evaluations result in a denial of FAPE where 1) numeric test scores were neither explained or self explanatory; 2) an extensive evaluation report was summarized but not attached or identified; 3) descriptions of performance levels in nonacademic areas that could be described with numeric test scores such as social and behavioral skills were vague, subjective and not suitable for use as a baseline to measure future progress. *Pocatello School District*, 18 IDELR 83 (SEA ID 1991). A student must be assessed in all areas related to the suspected disability including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities 34 CFR 300.304(c)(4). Assessments are selected and administered as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure) 34 CFR 300.304(c)(3).

The District's own summer assessment team stated the Student was tired after a day of testing and pretty much shrugged it off. He had a wide variant of scores between his verbal and non-verbal IQ, however, no one suggested conducting a test.

The District is required to confer more than a de minimus benefit in order to provide FAPE. The court in *Polk v. Central Susquehanna Intermediate Unit 16*, 441 IDELR 130 (3d Cir. 1988) interpreting *Rowley's* "some educational benefit" determined that IDEA "calls for more than trivial educational benefit" and requires an IEP to provide "significant learning" and confer "meaningful benefit." (*Polk*, 853 F.2d at 182). "[w]hen students display considerable intellectual potential, IDEA requires 'a great deal more than a negligible benefit.'" *Id.* The Student's current teacher has stated at present the Student

is a non-reader. His speech and language provider has stated that the minutes that he is receiving need to be doubled to confer a benefit.

According to the Supreme Court, an evaluation of the student's circumstances as a whole is still required. See, e.g., *Hall v. Vance County Board of Education*, 557 IDELR 155 (4th Cir. 1985). In this case, the Student has significant phonological deficits which seem to be also paired with his speech and language impairment, the District has failed to serve the Student as a whole.

In this case, the IEP which the District prepared over the summer of 2007 and misplaced a good portion of the start of the school year, did not adequately address the Student's needs. The IEP which currently is in place is based on faulty evaluations and do not address the Student's language based deficits or possible sensory processing disorder.

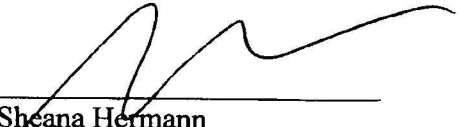
### **Conclusion**

The Student needs to be assessed in a manner that truly reflects his disability. He is currently a non-reader and in the very own words of the District's witness [REDACTED], to a certain point, children learn to read, after that point, children read to learn. The Student is at a very crucial point in his educational development and to allow evaluations which are incomplete, based on faulty material and not addressing the Student's disability would be a serious error.

**IT IS HEREBY ORDERED:**

1. The District shall pay for independent evaluations of the Student in non-verbal cognitive functioning tests (such as the CTONI) and speech and language skills:
  - a. The District shall provide the Parent with a written list of three qualified evaluators one of which shall be [REDACTED];
  - b. The written list shall be provided to the Parent on or before February 27, 2009;
  - c. The Parent shall choose the evaluator within 7 days of receiving the list from the District and provide such notice in writing to the District;
  - d. The evaluation shall be conducted within 30 days after the Parent's selection;
2. The District shall conduct an assistive technology evaluation of the Student and the evaluation shall be conducted within 30 days;
3. The District shall pay for an independent evaluation to assess the Student's sensory processing and organizational skills within 30 days;
  - a. The District shall provide the Parent with a written list of three qualified evaluators;
  - b. The written list shall be provided to the Parent on or before February 27, 2009;
  - c. The Parent shall choose the evaluator within 7 days of receiving the list from the District and provide such notice in writing to the District;
  - d. The evaluation shall be conducted within 30 days after the Parent's selection;
4. The District shall provide the Student with 120 minutes of speech and language services commencing immediately at the Student's current placement for one calendar year from the date of this order;
5. The District shall provide the Student with tutoring by a special education teacher for one hour a week for a total of 52 weeks;
6. The District shall provide compensatory services to the Parent in the form of extended school year for the 2008-2009 school year at [REDACTED] or in the event [REDACTED] is unable to serve the Student, then the District shall provide a similar summer program;
7. An IEP meeting shall be convened within 14 days of the completion of evaluations as stated above to review the results of the evaluations and implement the recommendations of the team; and
8. The District shall provide a compliance report to ISBE no later than April 6, 2009.

ENTERED THIS 17<sup>th</sup> DAY OF FEBRUARY, 2009



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Sheana Hermann  
Impartial Due Process Hearing Officer

**Finality of Decision:**

This decision shall be binding upon all parties.

**Right to File Civil Action:**

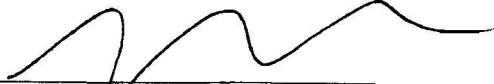
Any party to this hearing aggrieved by the final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 ILCS 5/14-8.02(i) that civil action shall be brought in any court of competent jurisdiction within 120 days after this decision was mailed.

**Right To-Request Clarification**

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party(ies) and to the Illinois State Board of Education. **The right to request such a clarification does not permit a party to request reconsideration of the decision itself, and the hearing officer is not authorized to entertain a request for reconsideration.**

**CERTIFICATE OF SERVICE**

The undersigned hearing officer certifies that she served copies of the aforesaid Decision and Order upon Parent's counsel, District's counsel, and the Illinois State Board of Education at their respective addresses by depositing same with the United States Postal Service in Lake Forest, Illinois with proper certified postage paid before 5:00 p.m. on February 17, 2009.



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Sheana Hermann  
Impartial Due Process Hearing Officer