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SPECIAL EDUCATION  
SERVICES

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

[Redacted]

Student )

vs. )

Case No. 2009-0013 )

[Redacted]

Local School District )

KRISTINE L. ANDERSON, Hearing Officer

**HEARING DECISION AND ORDER**

This matter comes before me pursuant to the due process hearing request of the Student's parents, [Redacted], on behalf of their daughter, [Redacted]. The family is represented by [Redacted]. The District is represented by [Redacted] and [Redacted]. I have jurisdiction to hear and decide this matter pursuant to 105 ILCS 5/14-8.02(a) et. seq., and 23 Illinois Administrative Code §§226.600 et. seq.

**PROCEDURAL HISTORY**

The [Redacted]s filed a request for a due process hearing on July 15, 2008. I was appointed as the Hearing Officer in this matter on July 22, 2008. The parties held a resolution session on August 21, 2008, but were unable to resolve the issues that are in dispute. As a result, we proceeded to a pre-hearing conference on September 2. By agreement of the parties, the hearing began on September 29, 2008 and continued on October 1, 2, 8 and 23.

**ISSUES**

The Parents assert that [Redacted] did not provide a free and appropriate public education during the period from July 15, 2006 through the present based on:

- 1) 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, her learning and language processing difficulties;
- 2) Failure to provide essential related services with adequate levels of intensity, in areas of speech language, occupational therapy, assistive technology and social work services;
- 3) Failure to identify and utilize effective teaching methodologies at a sufficiently intensive level that would enable the Student to make progress commensurate with her cognitive skills;

- 4) Failure to offer an appropriately modified curricula, which takes into account the Student's language processing deficits, in the areas of reading, language arts, math, social studies and science, with the result that the Student did not make academic progress;
- 5) The Parents contend that the Student's IEP's for the past two years:
  - i) Include statements of present levels of performance that do not accurately and objectively state the Student's skills and functional levels;
  - ii) Provide goal statements that are vague and not measurable, and where the goals set an increase in skill level, the goal is not commensurate with the student's potential for development;
  - iii) Fail to address attentional and organizational limitations of the student;
  - iv) Fail to remediate language processing and auditory processing deficits of the Student;
  - v) Fail to identify what methodology will be used to remediate the Student's reading and math skills;
  - vi) Provide for an inadequate level of related services as follows:
    - (a) Speech language services are authorized at 15 minutes per week, but should be at least 60-90 minutes per week for a child with significantly depressed expressive and receptive language skills;
    - (b) Offers only 15 mpw of social work services, despite substantial evidence that language processing deficits limit social interaction by the Student and have led to inappropriate coping skills and withdrawal;
    - (c) Fails to offer occupational therapy despite substantial evidence of deficits in executive functioning and organizational skills;
    - (d) Offers only "low tech" assistive technology, despite substantial evidence of severe deficits in reading, math and written expression that could be remediated in part through special software programs.
  - vii) Fail to authorize extended school year services, despite substantial evidence that the student has experienced a significant lack of educational progress over the past two years.

**RELIEF REQUESTED:**

The Parents request the following relief:

- 1) Private therapeutic day school placement at public expense;
- 2) Direct that [REDACTED] pay for independent educational evaluations in areas of identified need, including:
  - i) neuropsychological assessment of cognitive skills and academic functioning;
  - ii) speech/language;
  - iii) social assessment;
  - iv) assistive technology;
  - v) occupational therapy assessment for organizational concerns and to rule out sensory processing disorder
  - vi) audiologist screening for central processing disorder
- 3) Direct that the Student receive related services in sufficient intensity to allow her access to educational opportunity, including;

- i) Direct speech/language services 90 minutes per week and consultative services of 60 minutes per week;
  - ii) Occupational therapy and assistive technology services as recommended by independent evaluators;
  - iii) Social work services for 60 minutes per week
- 4) Direct [REDACTED] to provide compensatory education services as follows:
- i) Tutoring by a certified special education teacher with training in the reading instruction methodology used at the school the student attends for two hours per week outside of school hours, for two years;
  - ii) Direct speech/language therapy for 60 minutes per week for two years, outside of the regular school day, by a provider selected by the Parents;
  - iii) Social work services for 60 minutes per week for two years, outside of the regular school day, by a provider selected by the Parents
- 5) Direct [REDACTED] to convene an IEP meeting that will consider results of evaluations and implement the foregoing relief;
- 6) Other relief that will be determined after the receipt of additional school records; and
- 7) Other additional or alternative relief as the Hearing Officer deems necessary to reflect the evidence adduced at the Hearing.

### FINDINGS OF FACT

[REDACTED] is a thirteen year old eighth grader who attends [REDACTED] in [REDACTED]. She began attending [REDACTED] in January of 2000, when she was 5 years old. At that time, her parents had just recently adopted [REDACTED] and her sister from Russia and [REDACTED] did not speak any English when she started school. In addition to the language barrier, her mother, [REDACTED] testified that [REDACTED] suffered from a hearing loss in one ear. Despite surgery in 2004, (which was successful for a time) the problem has persisted, [REDACTED] began wearing a hearing aid.

In late 2001, [REDACTED] evaluated [REDACTED] and determined that she was eligible for specialized services to address her learning deficits. The Parents sought a private evaluation in 2004 because they were concerned that [REDACTED] academic progress had continued to lag despite the fact that she was receiving support. (1/15/04 Neuropsychological Evaluation, PD 202, HX 13) According to the private examiner, [REDACTED] exhibited a mixed expressive/receptive language disability, and a learning disability in reading. (*Id.* at PD 202) [REDACTED] has continued to exhibit deficits in those areas, and for the period at issue (Fall 2006 to the present), she has received special education instruction in language arts and math, as well as speech and language therapy. Recently [REDACTED] began receiving social work services, too. The Parents believe that the District's efforts, particularly in reading instruction, speech and language, and in addressing [REDACTED] social and emotional needs, have fallen far short and have denied [REDACTED] the free and appropriate education to which she is entitled. The relevant evidence concerning the Parents' claims is considered below.

#### [REDACTED] 6th GRADE YEAR

- **Relevant Diagnostic Information**

As noted, the first year at issue in this case is the 2006-07 school year -- [REDACTED] 6th grade year. [REDACTED] received specialized services during that year, as she had since 2001. At that time, the most

recent assessment data upon which the IEP team relied was [REDACTED] 2005 triennial evaluation. The evaluation included a Wechsler Intelligence Scale for Children (WISC) to measure cognitive abilities, an achievement test and a speech and language assessment.<sup>1</sup> (3/1/05 Report of Psychological Evaluation, PD 135, HX 24) The WISC results were as follows:

	Standard Score	Percentile
Perceptual Reasoning	84	14
Verbal Comprehension	71	3
Processing Speed	103	58
Full Scale IQ:	79 (IQ)	8

Based on her performance on the WISC, [REDACTED] concluded that [REDACTED] expressive and receptive language skills were "significantly discrepant and impaired," indicating a mixed receptive/expressive language disorder. (HX 24 at PD 135) The significant scatter among the index scores suggested the full scale IQ was a poor estimate of [REDACTED] intellectual ability.<sup>2</sup> (*Id.*)

[REDACTED] administered the Wechsler Individual Achievement Test (WIAT), to determine achievement levels in reading, math and writing. (*Id.* at PD 137) [REDACTED] WIAT scores were as follows:

	Standard Score	Grade Equivalent
Basic Reading	77	1.9
Reading Comprehension	78	2.0
Reading Composite	75	1.9
Math Reasoning	99	4.0
Numerical Operations	89	3.6
Math Composite	93	3.9
Writing	79	2.7

According to [REDACTED] scores indicated that she was functioning 1.5 to 2 years below grade level expectancy range in reading and writing.<sup>3</sup> (*Id.* at PD 137) [REDACTED] concluded that there was a "significant discrepancy" between [REDACTED] intellectual potential and her achievement in language arts. She recommended that [REDACTED] continue to receive educational support to remediate

<sup>1</sup> Because [REDACTED] had undergone a comprehensive private psychological evaluation a year earlier, which included a WISC, [REDACTED] the [REDACTED] psychologist, did not readminister that test but relied upon the results obtained by the private examiner. (See 1/15/04 Neuropsychological Evaluation, PD 202, HX 13)

<sup>2</sup> With respect to the WISC scores, the [REDACTED] psychologist reached the same conclusions as the private examiner.

<sup>3</sup> [REDACTED] conclusions are somewhat misleading since [REDACTED] scores indicate that she actually was functioning 2-3 years below grade level in reading and writing, and less than a year below grade level in math. A careful reading of her conclusion suggests that [REDACTED] may have taken into account [REDACTED] low verbal scores on the WISC in determining [REDACTED] "expectancy range."

processing deficits in auditory short term memory, language, inductive reasoning, reading, comprehension and writing. (*Id.*)

In March 2006, [REDACTED] special education teacher, administered the Kaufman Test of Educational Achievement (KTEA) to update [REDACTED] academic progress in reading and math. The results showed that [REDACTED] continued to function more than two years below grade level in reading comprehension and letter/ word recognition. (March 2006 KTEA Scoring Form, SD 264, HX 42) [REDACTED] specific scores were:

	Standard Score	Grade Equivalent
Reading Comprehension	82	3.1
Letter/Word Recognition	88	3.5
Math Concepts & Application	94	4.5
Math Computation	89	4.6

- **The March 7, 2006 IEP**

In March 2006, the IEP team met and wrote an IEP for [REDACTED] (3/7/06 IEP, PD47, HX 26) This IEP was in effect for most of [REDACTED] 6th grade year. Unfortunately, all but two pages of this IEP for [REDACTED] 6th grade year have been lost. The only relevant information that remains is the Summary of Special Education and Related Services, which shows that [REDACTED] received instructional support in Language arts and math (The amount of time for each was 120 minutes per week in the regular classroom, and 80 minutes per week of instruction in a separate class) Thus the IEP appears to have addressed each of [REDACTED] identified areas of deficit. Whether the goals appropriately targeted those deficits cannot, however, be determined.

- **[REDACTED] Academic Progress During 6th Grade**

Though [REDACTED] incomplete IEP provides limited information, the testimony of some of her 6th grade teachers provides insight into her academic performance during the 2006-07 school year. First, [REDACTED] is a special education teacher who began working with [REDACTED] when she was in 6th grade. [REDACTED] provided [REDACTED] with language arts instruction during the first semester, and math during the second semester. [REDACTED] who has continued to work with [REDACTED] to the present, describes [REDACTED] as being a very hardworking and motivated student who is friendly and outgoing with her peers.

[REDACTED] testified that, with respect to [REDACTED] her teaching responsibilities included consulting with all of [REDACTED] general education teachers at least weekly, and often daily. The teachers would discuss upcoming assignments and classroom projects, and what modifications, if any that [REDACTED] would need to complete these assignments. In addition, [REDACTED] testified that in both language arts and math she "pushed in" to the regular class for 120 minutes per week, and provided [REDACTED] with specialized instruction for 80 minutes a week outside of the regular classroom.

With respect to language arts, [REDACTED] stressed that [REDACTED] followed the same curriculum as the other students with some modifications. [REDACTED] could read 6th grade material, but with difficulty.

During her individualized instructional time with [REDACTED] used multisensory teaching methods, like the Fernald approach, to teach vocabulary and spelling. [REDACTED] used the SQ3R method, which emphasizes scanning and questioning techniques, to improve [REDACTED] reading comprehension. Though she primarily focused on reading comprehension, Parsa devoted some time to improving [REDACTED] decoding skills by reading orally with [REDACTED] and by working on some high level phonics books.

[REDACTED] shared teaching responsibilities with [REDACTED] during the 2006-07 school year. [REDACTED] provided [REDACTED] with math instruction during the first semester and language arts instruction during the second semester. Her general teaching responsibilities for [REDACTED] were the same as Ms. Parsa's.

In math, [REDACTED] testified that [REDACTED] generally understood the concepts and needed only minimal help with basic computation.<sup>4</sup> Her primary area of challenge was with word problems, particularly those that required multi-step solutions. [REDACTED] assisted [REDACTED] by helping her to break problems down into more clearly stated steps.

Language arts posed a greater challenge to [REDACTED]. According to [REDACTED] struggled with reading materials at the 6th grade level. [REDACTED] helped [REDACTED] to compensate for her reading deficits by using context clues and referring to dictionaries. [REDACTED] also listened attentively to lectures and took excellent notes. [REDACTED] believes that these skills enabled [REDACTED] to successfully access 6th grade materials. As an example [REDACTED] noted that [REDACTED] participated with the class as it read *Julius Caesar*.

Despite the fact that [REDACTED] could not read on the 6th grade level, [REDACTED] admitted that she did not provide [REDACTED] instruction to improve her decoding skills. [REDACTED] testified that she stopped working on this skill when [REDACTED] was in 5th grade primarily because students at that age -- [REDACTED] included -- become resistant to learning and using their phonics skills. [REDACTED] limited her instruction in this area to reminding [REDACTED] to apply the skills they had talked about in the past. Moreover, [REDACTED] stressed her belief that reading on grade level is less important than being able to gain meaning from text, which she believed [REDACTED] could do.

[REDACTED] was [REDACTED] 6th grade regular education language arts teacher. His testimony about [REDACTED] performance in his classroom was consistent with [REDACTED] and [REDACTED] testimony. Specifically, [REDACTED] testified that he collaborated with both special education teachers to provide [REDACTED] with an appropriate education in his classroom. This included implementing modifications specified in [REDACTED] IEP, such as preferential seating, providing study guides for tests, and reducing [REDACTED] workload as needed. Sometimes tests were modified for [REDACTED] either by reducing the number of questions, or by altering the content in some way. [REDACTED] stressed that [REDACTED] was given the same work as the other students to the extent possible, and modifications were implemented only on an as needed basis. He recalled that [REDACTED] consistently required

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<sup>4</sup> By all accounts, math is a relative strength for [REDACTED] and it became apparent at the hearing that the Parents do not consider [REDACTED] math instruction to be inadequate.

modifications when the primary task involved grammar or when she was required to complete a written report.

described as a typical 6th grade student who earned B's and C's in his class. Though he conceded that read below 6th grade level, her special education support enabled her to successfully handle 6th grade materials and was able to acquire the requisite 6th grade skills and concepts. 's testimony is supported by 6th grade report card, which shows that earned B's and C's in all of her academic subjects. (CPS 2006-07 Report of Student Progress, SD 118, HX 40) Additionally, 6th grade ISAT scores indicate that she met standards in both reading and math. (ISAT Spring 2007 Individual Student Report, SD 105, HX 45)

Each of the three teachers recalled that had some difficulty with her speech, but they did not believe it hindered her in the classroom. for example, testified that the difficulty with her speech did not affect willingness to participate in class, nor did it impact her classroom performance.

- **The March 8, 2007 IEP**

In March of her 6th grade year, the IEP team met to write IEP for the next year. (See 3/8/07 IEP, PD 31, HX 10) participated in the meeting, as did Ms. Parsa, Ms. Kurzydlo and others. As a baseline for goals, the team listed latest KTEA achievement test scores, obtained by in February 2007. (*Id.* at PD 32) The scores showed to be approximately 3 years below grade level in reading, and 2 years below in math. Specifically, grade level scores were:

Letter and Word Recognition: 3.9

Reading Comprehension: 3.4

Math Concepts Application: 4.9

Math Computation: 4.9<sup>5</sup>

When compared to her KTEA scores from the previous year, it is evident that made limited gains in reading and math --approximately 3-4 months -- in both subjects.<sup>6</sup>

The IEP team decided that should continue to receive academic support in language arts and math for 120 mpw in the regular classroom and 80 mpw in a separate classroom. (*Id.* at PD 40) The team also agreed that would continue to receive speech and language therapy, but they reduced her time from 120 minutes per month to 90 mpm. (*Id.*)

<sup>5</sup> Though testing from most recent psychological evaluation showed TW to be significantly below grade level in written expression (See HX 24 at 137), conceded that she did not seek to measure achievement in written expression when she administered the KTEA in 2006 or 2007.

<sup>6</sup> When questioned about low scores and limited gains in 6th grade, conceded that the scores were below grade level, but insisted that they did not accurately reflect classroom performance. Like emphasized her belief that was able to access the 6th grade curriculum.

██████████ testified that she wrote the academic IEP goals for ██████ (one for language arts and one for math), with ██████ input. Both the math and language arts goals specify ██████ level of performance as being below 6th grade level, and set as a target that ██████ will improve her skills to the 6th grade level.

The language arts goal targeted ██████ reading comprehension, and appears to adopt one of the state's recommended goals in that area. Both the goal and the benchmarks are stated in clear and measurable terms. The IEP indicates that ██████ met each of the stated benchmarks. Notably, there is no goal that expressly addresses ██████ poor word recognition and decoding skills, nor is there a goal for written expression.<sup>7</sup>

The math goal is likewise adopted from one of the state's goals. It focused on helping ██████ to apply her knowledge of basic operations using whole numbers, decimals and fractions. This goal and accompanying benchmarks are also clearly stated and measurable, and require ██████ to achieve at the 6th grade level. According to the IEP, ██████ met each of the benchmarks in math. (*Id.* at PD 38)

The speech and language goal focused on improving ██████ acquisition and comprehension of higher level vocabulary words. It is written in measurable terms, and the IEP indicates that ██████ met each of the three benchmarks for this goal.

The IEP also specified a number of modifications and accommodations that were to be implemented to help ██████ participate in the general curriculum. (HX 10 at PD 36) Most notable was the requirement that ██████ workload be reduced by as much as fifty percent when necessary. In addition, the IEP provided that the content of assignments and tests would be "modified or adapted" by special and general education teachers. ██████ also was given more time to take tests, and in a quiet setting. Finally, the IEP also specified that ██████ should be given preferential seating, provided with graphic organizers, and that multitask assignments should be presented to ██████ step-by-step. (*Id.*)

Though she did not file a formal dissent, ██████ testified that during the IEP meeting she expressed her worry that ██████ was more than 2 years below grade level in reading, and that the services she had been receiving were not helping ██████ to close that gap. She also objected to the team's decision to reduce the amount of time that ██████ would receive speech and language therapy. ██████ believed that ██████ language deficits directly hindered her academic performance. According to ██████ the team was very nice, but they did not agree with her concerns. The March 2007 IEP was implemented as written, and was in effect for the remainder of ██████ 6th grade year as well as most of her 7th grade year.

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<sup>7</sup> Evidence at the hearing suggested that ██████ may need support in the area of written expression. However, the evidence was inconclusive. At the next IEP meeting the team should consider whether ██████ written language skills require remediation.

**7th GRADE YEAR (2007-08)**

• **s Testimony**

As 7th grade year got under way, s concerns about her daughter's academic achievement and her emotional well-being increased. As put it, seemed to be struggling more than ever, both academically and socially. According to for example, peers teased her about being different. talked more about conflicts with her peers and appeared more anxious. spoke with the school social worker, about her concerns, and asked if could begin receiving social work services right away, or whether she would have to wait until the spring when the team met to write next IEP. According to said she would look into it, but never reported back to her.<sup>8</sup>

In addition to speaking with also sought advice from a therapist who had been seeing for issues related to her adoption for a number of years. Ms. Rubin testified that in their weekly sessions, had begun talking more and more about peer issues. According to Rubin, resented receiving special education support because it made her feel very different from her peers. testified that she saw signs of depression and anxiety in and recommended to the Parents that they consult a psychiatrist.

The Parents followed advice and consulted a child psychiatrist, in November 2007. testified that initially had difficulty determining whether was manifesting symptoms of depression or hyperactivity. After several sessions with and receiving input from her teachers, Barrios diagnosed as having a depressive disorder in February 2008. He prescribed medication for depression with good results.<sup>9</sup>

• **s Testimony**

continued as special education teacher during 7th grade. She provided with math and language arts instruction outside the regular classroom, and provided support in the regular classroom, as well. called discussing s concerns about interpersonal relationships on the first report card pick-up day. testified that she shared some of the Parents' concerns about how interacted with her peers. She stressed, however, that she did not see symptoms of depression in

Academically, testified that made progress during her 7th grade year, and continued to be successful accessing the curriculum in the regular classroom. For example, the 7th grade language arts curriculum required the students to read several novels. helped meet this

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<sup>8</sup> s recollection here is somewhat at odds with other evidence that is discussed in detail below. In fact, the team did authorize a social assessment in September and conducted a parent interview of in November. however, didn't complete the assessment until March.

<sup>9</sup> In March of 2008, when was conducting three year psychological reevaluation, administered the Behavioral Assessment Scale for Children (the BASC) and participated in an IEP meeting for findings and input will be discussed in more detail below.

requirement, by providing study guides and word banks. [REDACTED] also helped [REDACTED] to prepare for the Constitution test, which [REDACTED] passed on the first try.

[REDACTED]'s testimony about [REDACTED] progress is supported by her quarterly reports of [REDACTED] achievement. (See 11/6/07 Report of Student Achievement & Effort, SD 127-31, HX 41) [REDACTED] comments indicate that [REDACTED] made steady progress on her IEP goals and that Parsa regularly integrated content from the 7th grade curriculum, i.e., social studies materials, novels and book projects, into her lessons with [REDACTED]. Notably, though [REDACTED] IEP did not include a goal for written expression, [REDACTED] report reveals that she regularly worked on writing with [REDACTED] grades in her regular education classes also showed progress. With modifications, she earned B's for the year in each academic subject. (2007-08 Report of Student Achievement, SD 123, HX 18) When asked, [REDACTED] conceded that [REDACTED] still exhibited deficits in reading, but she did not believe that [REDACTED] deficits diminished her ability master the curriculum as she has progressed to higher grades.

• [REDACTED] Testimony

[REDACTED] teaches science to 6th-8th graders at [REDACTED] [REDACTED] has been her student since 6th grade and now attends [REDACTED] 8th grade science class. [REDACTED] described [REDACTED] as an "average kid" about whom [REDACTED] has had no major concerns. According to [REDACTED] [REDACTED] has regularly participated in class and worked well with others. [REDACTED] has not exhibited any social or emotional issues of concern. [REDACTED] is aware that she has difficulties with her speech, and conceded that [REDACTED] is hesitant to read aloud for that reason. She stressed, however, that she and [REDACTED] classmates can readily understand [REDACTED]

[REDACTED] employs a hands-on approach to teaching science. She does some lecturing to prepare students for the next project or experiment. The students work on these experiments in small groups or teams of two. Each student, however, must individually complete the written assignments that accompany these experiments or projects. According to [REDACTED] [REDACTED] generally has performed adequately on these assignments.

For each of the years that [REDACTED] has been her student, [REDACTED] has implemented the modifications and accommodations called for on [REDACTED] IEP's. These modification are implemented only on an as needed basis. For the most part, [REDACTED] does not need them for day-to-day classwork. [REDACTED] does receive modifications and accommodations for tests, and test preparation. For example, [REDACTED] receives study guides for each unit of study. Unlike her peers who may be tested on additional information, [REDACTED] test questions are taken directly from the study guide. She also receives fewer essay questions than her peers. In addition to test modifications, [REDACTED] testified that writing assignments and other longer assignments are often reduced for [REDACTED]. Significantly, however, [REDACTED] testified stated that [REDACTED] workload has increased and her need for modifications has decreased as she has progressed to higher grades.<sup>10</sup>

<sup>10</sup> [REDACTED] testimony is consistent with [REDACTED] IEP's which show that [REDACTED] received a 50% reduced work load in 7th grade, but only a 25% reduced work load in 8th grade. (See HX 10 at PD 36; HX 6 at PD 12)

report cards for 6th grade and 7th grades show that she received a final grade of B+ and B, respectively. (See HX 40, HX 18) noted, however, that although worked on grade level, the curriculum was modified for her, and her grades must be interpreted in that light. did not receive the same types modifications on the ISAT (other than extended time and a quiet room to take the test) and she did not meet standards on the science portion of the test. (Grade 7 ISAT Student Report, SD 109, HX 49) Indeed, science score fell with the "academic warning" range. believed that poor performance was not entirely due to her learning deficits. Apparently, the ISAT includes questions about science concepts that Sauganash students have not yet been taught. For that reason, does not believe that the ISAT score accurately depicts performance in science.

- **Three Year Re-evaluation**

In the spring of 2008 completed a triennial review of which consisted of a psychological assessment, a speech and language assessment, and a social-emotional assessment. The results of those evaluations are discussed below.

The Psychological Assessment

As she had three years earlier, school psychologist, administered a psychological evaluation as part of triennial review. (2/25/08 Report of Psychological Evaluation, PD 131, HX 8) Her evaluation included the Wechsler Abbreviated Scale of Intelligence (WASI) and the Wechsler Individual Achievement Test (WIAT).<sup>11</sup> As its name suggests, the WASI includes some, but not all of the subtests that are included on the WISC. The verbal portion of the WASI, for example, consists of the Vocabulary and Similarities subtests. It omits the Comprehension, Information and Word Reasoning subtests included on the full WISC. believed it was appropriate to administer the WASI because had been administered the full Wechsler twice before, and thought there was no reason to suspect change.

The results of the WASI showed that received a verbal standard score of 85, which placed in the 16th percentile, or low average range of ability. Though she omitted subtest scores, did observe that could not define words adequately on the Vocabulary subtest, and scored in the low end of average when asked to explain similarities between concepts or objects. (HX 8 at 132) also received a Performance IQ score of 101, which placed her in the 53rd percentile, or average range of ability.

WASI scores are significantly higher than her WISC scores of 2004. Her Verbal Comprehension Index on the WISC, for example, was 71 -- and in the borderline range, as compared to the WASI, which was 85 and in the low average range. Likewise, her Perceptual

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<sup>11</sup> It must be noted that in her triennial evaluation of 2005, chose to rely on a cognitive scale (the WISC) that had been administered in 2004 by an outside evaluator. Thus, by the time she administered the Wechsler Abbreviated Scale in 2008, more than four years had passed since had been administered a cognitive measure.

Reasoning Index on the WISC was 84 and in the low average range, as compared to a solidly average score of 101 on the WASI. This sizable difference in scores certainly raises the question of whether the WASI provided an accurate picture of [REDACTED] cognitive skills. [REDACTED] focus, however, was not on the individual scores. Instead, she stressed that the WASI scores followed the same pattern as past WISC scores in that there was a significant discrepancy between [REDACTED] verbal and performance skills, in favor of the latter. In addition, [REDACTED] continued to exhibit weaknesses in verbal skills and memory functions. (HX 8 at 133)

On the WIAT, [REDACTED] obtained the following scores:

	Standard Score	% Rank	Grade Equivalent
Word Reading	71	03	3.1
Reading	58	-1	2.9
Comp.			
Written	93	32	6.2
Expression			
Numerical	74	04	4.4
Operations			
Math	93	32	6.2
Reasoning			

In interpreting these scores, [REDACTED] noted that while [REDACTED] had shown improvement in some areas, she continued to lag behind in reading. She had difficulty decoding multi-syllabic words. Significantly, [REDACTED] observed that [REDACTED] decoding deficits and lack of fluency hindered her ability to comprehend what she had read. Contrary to [REDACTED] and [REDACTED] testimony, [REDACTED] found that [REDACTED] had not learned to use context clues effectively. (*Id.*) [REDACTED] also concluded that [REDACTED] was doing well with written expression, though sentence structure and grammatical errors were still areas of concern. Likewise, [REDACTED] showed improvement in math reasoning skills, but continued to show a mild deficit in math, particularly in the area of math computation. (*Id.*) Based on [REDACTED] WASI and WIAT scores, [REDACTED] concluded that [REDACTED] continued to require special education support and remediation. (*Id.* at PD 133)

Notably, [REDACTED] observed that [REDACTED] appeared to be "somewhat fragile" socio-emotionally, and that teachers had reported that [REDACTED] had difficulties with interpersonal skills and relating to her peers. (*Id.* at PD 55) [REDACTED] also stated that [REDACTED] showed suppressed anger and aggression, and that she may have been struggling to solve unresolved issues in her life. [REDACTED] concluded, however, that these socio-emotional factors were not interfering with [REDACTED] learning.<sup>12</sup> She did, however, recommend that [REDACTED] participate in a school based social-skills training group.

<sup>12</sup> [REDACTED] appeared to reach inconsistent conclusions about whether [REDACTED] emotional issues were interfering with her ability to learn. In the body of her report she states that socio-emotional factors "are interfering with [REDACTED] learning..." (HX 8 at 133) In [REDACTED] conclusion, however, she states, "Emotional factors are not felt to be impacting [REDACTED] learning at this time..." (*Id.*) When questioned about this inconsistency, she testified (Continued...)

Speech and Language Assessment

■■■■ triennial review included a speech-language assessment administered by ■■■■ speech pathologist, ■■■■ (See 3/6/08 Speech-Language Assessment Summary, SD 61, HX 20) ■■■■ first began working with ■■■■ in the spring of 2007 when she was a student teacher at ■■■■ ■■■■ subsequently hired ■■■■ and she began working as a speech pathologist at Sauganash -- and with ■■■■ in the fall of 2007. As will be discussed, the Parents' disagreement with ■■■■'s assessment and recommendations was a focal point of the hearing. Though there is no question that ■■■■ is relatively inexperienced, I found her to be a very credible and frank witness.

Consistent with ■■■■ IEP, ■■■■ provided ■■■■ with 90 minutes per month of speech and language therapy during her 7th grade year. (HX 10 at PD 39) Her therapy focused on helping ■■■■ increase her acquisition of higher level vocabulary words. (Id.) ■■■■ testified that she believed this goal adequately addressed ■■■■ needs. She stressed that ■■■■ did have some mild articulation errors, but that they didn't require her attention. Moreover, ■■■■ could not recall a single instance of a teacher sharing concerns about ■■■■ intelligibility in the classroom.

■■■■ testified that ■■■■ was resistant to receiving speech and language services. She resented being pulled out of class and singled out among her peers as needing special help.<sup>13</sup> Nevertheless, ■■■■ cooperated in their sessions, and ■■■■ felt that they had a good rapport. When it came time for the speech-language assessment, ■■■■ made it clear to ■■■■ that she did not want to continue coming to speech. ■■■■ testified that she did not tell ■■■■ that speech would be discontinued, but said something like, "We'll see how you do [on the assessment]." ■■■■ believes that ■■■■ was highly motivated to do her best on the tests to show that she no longer needed speech services.

■■■■ testified that in conducting her assessment, she wanted to focus on ■■■■ expressive and receptive language, articulation and pragmatics. Thus, she chose to administer the Peabody Picture Vocabulary Test, (PPVT), the Expressive Vocabulary Test, (EVT) the Oral and Written Language Scales (OWLS). She also administered a the Sounds-in-Words subtest of the Goldman Fristoe Test of Articulation.

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that there was a typographical error in the first sentence, and that she intended to say "emotional issues were *not* interfering..." I accepted ■■■■ explanation, particularly since her conclusion makes clear her opinion that emotional factors were not impacting ■■■■ learning.

<sup>13</sup> ■■■■'s testimony about ■■■■ resisting special help was echoed by ■■■■ and ■■■■. Both special education teachers testified that not only does ■■■■ resent being pulled from class, but she also dislikes it when they "push in" to the regular classroom to provide her with academic support. Like ■■■■ however, ■■■■ and ■■■■ stressed that after her initial displeasure, ■■■■ cooperates with them and applies herself.

█ scores were as follows:

	Raw Score	Standard Score	Percentile
EVT	104	90	25
PPVT	180	126	96
OWLS:			
Listening Comprehension	77	94	34
Oral Expression	72	94	34
Oral Composite	188	93	32
Goldman Fristoe	3	93	

With the exception of the PPVT score, which indicates that █ receptive language is in the moderately high range, █ test scores indicate that █ expressive and receptive language skills are in the low average range. In testifying about these scores, █ stated that she believed the PPVT score to be higher than what she observed in her sessions with █. She stressed, however, that the EVT and OWLS low average scores were consistent with her observations of █.<sup>14</sup> Accordingly, when the team met to review the results of █ triennial review, █ recommended that █ speech and language therapy be discontinued.

█ was questioned about March 6, 2008 document that she completed titled "Determination of Adverse Effect Worksheet." (SD 63, HX 30) The document seems to contradict her testimony that she believed █ no longer needed speech and language therapy. It includes the observation that █ "does demonstrate a communications disorder," and that there is an academic impact caused by poor phonemic awareness, poor language comprehension and poor syntax. (*Id.*) █ did not have a clear memory of completing this document and conceded that it was at odds with her testimony. She believes that the document reflected the concerns of █, the Parents' outside language therapist. █ believes she added these concerns after the Parent shared █ report at █ IEP meeting.

#### Social Assessment

█ was █ school social worker in 2007-08. She testified about her contacts with █ and about the results of the Social Assessment that she completed for █ triennial review. (3/4/08 Social Assessment, PD 144, HX 16) Though █ completed the Social Assessment Report in March 2008 at the time the triennial review was due,

<sup>14</sup> In response to questioning from the Parents' counsel, █ testified that she had reviewed the test results from █ previous triennial assessment, which showed █ OWLS scores to be significantly lower (5th percentile) than the current results. █ conceded that █ improvement was unusual, but stressed that the change did not cause her to question the validity of her results since they were consistent with her observations of █.

she actually began the assessment months earlier when she interviewed ██████ in November 2007.

In recounting her November 5th interview with the Parent, ██████ reported that ██████ was concerned that social emotional factors “are beginning to impede ██████ ability to achieve success in school.” (HX 16 at 144) ██████’s primary concern, according to ██████, was ██████’s limited relational skills and ability to maintain friendships. ██████ also told ██████ that ██████ was depressed, and that she met with a therapist once a week to address issues related to her depression. In mentioning ██████ therapist, ██████ apparently was referring to ██████, not ██████. (It’s unclear whether ██████ had begun seeing ██████ this point.) Indeed, even after ██████ had diagnosed ██████, ██████ testified that the Parents did not inform ██████ that ██████ had prescribed medication to treat ██████ depression.

In any event, ██████ interviewed ██████. ██████ reported her opinion that emotional factors seriously affected ██████ learning. In particular, ██████ reported that ██████ was embarrassed by the special help that she was receiving in the classroom. ██████ also stated that ██████ refused to ask for help in class because she didn’t want other students to know she needed interventions. ██████ recommended that ██████ receive school social work services aimed at helping ██████ ask for help when she needed it. (*Id.* at PD 145)

In addition to the Parents’ and therapist’s concerns, ██████’s report noted that ██████ teachers had concerns too. They saw her as a “social outsider” and believed ██████ could benefit from social work services. In testifying about the teachers’ concerns, ██████ was careful to point out that the teachers did not believe that ██████ social emotional needs were impacting her performance in the classroom. (*Id.* at PD 146) This is significant, according to ██████, because school social work services are intended to address a student’s social emotional issues to the extent that they are impeding a student’s academic performance. (*Id.*) Nevertheless, she concludes her report by recommending that ██████ receive social work services to “address/improve interpersonal skills.” (*Id.* at 146)

████████ presented her assessment and recommendations at ██████ March 10, 2008 IEP meeting. The team decided that ██████ should receive 60 minutes per month of social work services to help her seek support in the classroom. (*See* 3/10/08 IEP, PD 6 & 18, HX 6) ██████ testified that she met with ██████ about five times in an individual and group setting in the spring of 2008. She believes ██████ was able to incorporate the skills that they covered, e.g., listening and responding appropriately, into her daily interactions. ██████’s not assigned to ██████ for this school year.

- **THE PARENTS’ EXPERTS**

████████

As noted above, the Parents consulted ██████ a child psychiatrist, in the fall of 2007. ██████ testified at the hearing about his diagnosis of ██████ and presented the results of the Behavior Assessment Scale for Children that he administered. (PD 424, HX 2).

According to [REDACTED] exhibited symptoms of isolation and anxiety when he first began meeting with her in the fall of 2007 and early 2008,. She felt inadequate and had many worries about social acceptance. She also had trouble sleeping, and entertained vague thoughts of suicide. [REDACTED] diagnosed [REDACTED] with major depressive disorder and prescribed prozac. The medication initially worked well. Since then, he has increased the [REDACTED] dosage once. [REDACTED] testified he believes the Parents should have informed school staff that [REDACTED] was taking medication for depression.

In the spring of 2008, when [REDACTED] was conducting its triennial evaluation of [REDACTED] administered the Behavior Assessment System for Children. (3/14/08 BASC, PD 424, HX 2) A behavior rating scale, the BASC actually was completed by [REDACTED] and some of [REDACTED] teachers. [REDACTED] scored their responses. The results of the BASC showed that [REDACTED] and [REDACTED] teachers were concerned about essentially the same behaviors, though to a different degree. Specifically, according to [REDACTED] [REDACTED]'s responses indicated that [REDACTED] showed *significant* symptoms, i.e., symptoms requiring clinical intervention, of depression, internalizing problems, atypicality, withdrawal and behavioral symptoms. (*Id.*)

[REDACTED] social studies teacher at the time, also indicated that [REDACTED] showed significant symptoms of depression. No other scores were in the significant range, but [REDACTED] did find [REDACTED] to be "at risk" in the areas of anxiety, internalizing problems, attention problems, withdrawal and behavioral symptoms. (*Id.* at PD 435) [REDACTED] also completed a rating scale. Her findings were almost the same as [REDACTED], though [REDACTED] believed [REDACTED] to be "at risk" for depression, not in the significant range. (*Id.* at PD 445)

[REDACTED] testified that he participated by telephone in an IEP meeting on March 10, 2008. He shared the results of the BASC, as well as his diagnosis of [REDACTED]. He stressed that he believed that the team's recommendation of 15 minutes per week of social work services was seriously inadequate. [REDACTED] recommended that TW receive [REDACTED] minutes per week of group and individual services. He believed that group therapy was necessary to help [REDACTED] improve her socialization skills, and that individual intervention was needed to help [REDACTED] understand and accept her learning issues and challenges.

[REDACTED] is a licensed clinical social worker who specializes in therapy for children who are adopted. [REDACTED] has known [REDACTED] and her family since 2004, and has provided [REDACTED] with individual therapy since 2006. [REDACTED] testified about [REDACTED] social-emotional issues and needs. Her testimony was credible and, though she hasn't observed [REDACTED] in a classroom, she clearly knows her well.

[REDACTED] testified that [REDACTED] feels really different from her peers. This is in part due to the fact that she was adopted. It also is largely attributable to her special education needs, which [REDACTED] says make her feel "dumb and different." As a result, [REDACTED] resents being pulled out of class to receive special services, because it calls attention to her perceived differences from her peers. [REDACTED] believes that [REDACTED] also resists asking for help in class for the same reason. In addition, [REDACTED] stressed that [REDACTED] has trouble reading peer situations. She often misreads what her peers

are saying and the cues they are sending. As previously noted, in the fall of 2007, [REDACTED] saw signs of depression in [REDACTED] and referred her to [REDACTED]

[REDACTED] shared this information with [REDACTED], the school social worker, as [REDACTED] was preparing her social assessment of [REDACTED] (See HX at 144-45). [REDACTED] stressed her opinion that [REDACTED] social emotional issues were interfering with her ability to learn. As [REDACTED] put it, [REDACTED] anxiety about not being like her peers impeded her ability to focus on academics and "be present in class." [REDACTED] recalled that [REDACTED] was quite surprised by her opinions about [REDACTED]. [REDACTED] wasn't aware that social emotional issues were hindering [REDACTED] in the classroom. [REDACTED] responded by telling [REDACTED] that [REDACTED] is a child who doesn't present as having problems -- she is not an externalizer. Thus, it was not surprising to [REDACTED] that the school had not picked up on these issues.

[REDACTED] recommended that [REDACTED] receive between 30-60 minutes per week of group social work services at [REDACTED] to help [REDACTED] work on social skills. In addition, [REDACTED] testified that [REDACTED] would benefit from some one-on-one feedback from the social worker about what was happening in the group. Finally, [REDACTED] stressed that it's important that [REDACTED] have an ongoing relationship with someone in the building whom she can "hop in" and see when she has an issue.

[REDACTED] is a private speech and language therapist who provided [REDACTED] with therapy from the summer of 2004 to the summer of 2008. She testified by telephone at the hearing about her therapy with [REDACTED] and about the results of assessments that she conducted with [REDACTED]. [REDACTED] also offered her opinion about the results of [REDACTED] speech and language assessment of [REDACTED].

[REDACTED] testified that she presented an abbreviated evaluation report concerning [REDACTED] at an IEP meeting on April 1, 2008.<sup>15</sup> (March 2008 [REDACTED] Report, PD 198, HX 19) [REDACTED] had just learned that [REDACTED] intended to discharge [REDACTED] from speech and language services, and she disagreed with [REDACTED] position. She asked [REDACTED] to evaluate [REDACTED] and present the results when the IEP meeting was reconvened. [REDACTED] complied with the Parent's request, but testified that time constraints precluded her from completing her evaluation of [REDACTED]. She prepared an abbreviated report and presented it to the IEP team. She subsequently completed her evaluation of [REDACTED] and prepared a second report in July 2008. (July 2008 [REDACTED] Report, PD 369, HX 23) This report was provided to [REDACTED] in August. [REDACTED] evaluation of [REDACTED] was quite thorough and the March and July reports provided helpful insights into [REDACTED] speech and language needs.

Like the Parents, [REDACTED] did not agree with [REDACTED] recommendation that [REDACTED] language therapy be discontinued. She does not believe [REDACTED] speech and language assessment accurately reflects [REDACTED] abilities. In particular, [REDACTED] believes that the EVT and PPVT results are too high and don't correlate with her observations and test results for [REDACTED]. Likewise, [REDACTED]

<sup>15</sup> The IEP meeting initially was convened on March 10, 2008 but was postponed at the Parent's request to allow Ms. Murphy to participate.

believes that the OWLS is too easy and it doesn't measure syntax or grammar -- issues of concern for [REDACTED]. Finally, [REDACTED] expressed surprise and doubt at the significant jump in [REDACTED] scores from her 2005 to 2008 [REDACTED] assessment.

In addition to opining about [REDACTED] assessment of [REDACTED], [REDACTED] described the results of her assessments. First, [REDACTED] March 2008 report describes several gains that [REDACTED] had made. In particular, [REDACTED] writing skills have improved to the point where she is able to write 2-3 paragraphs about a topic of interest and can self-correct 60-70% of her errors with no support. (HX 19 at 198) [REDACTED] has observed improvements in [REDACTED] language processing, too. At the time of the report, [REDACTED] was able to follow three step directions and, after listening to a chunk of auditory information, answer questions, make predictions and deduce the main idea. (*Id.* at PD 198) Finally, with respect to [REDACTED] articulation, [REDACTED] noted that [REDACTED] intelligibility has improved when she is focused on her speech production. [REDACTED] still struggles with the sounds /sh/, /r/ and /th/. (*Id.* at PD 199)

While [REDACTED] believes that [REDACTED] has made gains, she stressed that [REDACTED] continues to exhibit significant impairments "across the board." Specifically, [REDACTED] phonological processing skills, which are critical to understanding language and learning to read, are significantly below average. Indeed, [REDACTED] scores on the Test of Auditory Processing Skills ranged from 1-3 standard deviations below the mean. (*Id.* at PD 199-200) [REDACTED] also administered the Clinical Evaluation of Language Fundamentals (CELF), a comprehensive language assessment designed to determine an individual's language strengths and weaknesses in order to make "educationally relevant recommendations." (HX 23 at PD 370-74) [REDACTED] received a receptive language score of 80 on the CELF, which was one standard deviation below the mean. Though below average, receptive language is a relative strength for [REDACTED] when compared to her Expressive Language score, which was a 59 (two standard deviations below the mean). (*Id.*)

The results of the assessments led [REDACTED] to conclude that [REDACTED] could benefit from intensive, daily one-on-one speech and language therapy. In addition, [REDACTED] generally concluded that [REDACTED] would benefit from an educational environment that could support her language needs throughout the day and provide multi-sensory support and programming. More specifically, Murphy recommended that [REDACTED] speech and language services be designed in consultation with [REDACTED] core curriculum to help carry over new information and maximize performance. (HX 23 at PD 380) She also recommended previewing and repetition of new material, especially when it's language based. [REDACTED] also noted that [REDACTED] could benefit from assistive technology including, Earobics for phonological and language processing and the Vital Links therapeutic listening program. (*Id.*)

[REDACTED]

[REDACTED] is a clinical psychologist who administered a complete psychological evaluation of [REDACTED] at the Parents' request. (See 5/08 Psychological Evaluation, PD 382, HX 12) Her evaluation was quite comprehensive and included assessments of [REDACTED] overall cognitive/intellectual functioning, executive functioning, academic functioning, and emotional functioning. [REDACTED] testified about the results of her evaluation of [REDACTED] and about her recommendations for educational and psychological services for [REDACTED]. Though I found [REDACTED] testimony and report to be credible and informative, I only briefly summarize it

here for two reasons. First, [REDACTED]'s diagnoses and recommendations are quite consistent with the results of other cognitive, academic and language evaluations that are discussed in detail in this opinion. Second, [REDACTED] testified that she completed her evaluation of [REDACTED] and provided her report to the Parents in June 2008. She expected -- indeed, she recommended in her report -- that her findings would be shared with school personnel "in order to augment and revise the current individualized education plan." (*Id.* at PD 401) For some reason, the Parents chose not to share [REDACTED] report with the District until five days before the hearing. This precluded the District from adequately considering the report and revising [REDACTED] IEP accordingly.

As noted, [REDACTED]'s findings are generally consistent with other evaluations of [REDACTED]. In administering the WISC, [REDACTED] found that there was a significant discrepancy between [REDACTED] verbal skills, which were in the borderline range, and [REDACTED] perceptual reasoning skills, which were in the average range. (HX 12 at 399) Academically, [REDACTED] concluded that [REDACTED] reading is significantly impaired in the areas of phonological awareness, phonological memory, fluency and comprehension. (*Id.*) Notably, [REDACTED] administered a thorough assessment of [REDACTED] written language skills. She found [REDACTED] to have significant weaknesses in word usage, grammar and sentence structure. In addition, [REDACTED] struggled with writing organization and idea development. These results caused [REDACTED] to diagnose [REDACTED] with a writing disability in addition to her previously diagnosed reading disability.

With respect to [REDACTED] emotional functioning, [REDACTED] findings echoed those of [REDACTED] and [REDACTED]. She believes that [REDACTED] meets the criteria for major depressive disorder and an anxiety disorder. (*Id.* at PD 400) Her explanation of why [REDACTED] feels anger, frustration and anxiety in the classroom and in social situations is illuminating.

[REDACTED] recommended that an alternative school setting be considered. She believed that TW would "most benefit" from an environment that could integrate language-based accommodations within all academic subject areas throughout the day. (HX 12 at PD 400-01) [REDACTED] also included several recommendations to address [REDACTED] deficits in written expression. She also recommended that [REDACTED] continue to receive speech and language therapy, and that [REDACTED] receive tutoring in reading using a multi-sensory approach. (*Id.* at PD 404) Finally, [REDACTED] stressed that [REDACTED] should continue to receive individual therapy as well as participate in a social skills group to address her emotional and social needs. (*Id.*)

#### • The March 10 and April 1st IEP Meetings

On March 10, 2008, [REDACTED] IEP team met to consider the results of [REDACTED] triennial review and to write an IEP for [REDACTED]. Among those in attendance were [REDACTED] and [REDACTED], one of [REDACTED] regular education teachers. (3/10 - 4/1/08 IEP, PD 6, HX 6) The results of the triennial review apparently were presented at this meeting. (See Discussion of triennial review results, *Supra* pp. 11-15) According to witnesses who attended, when [REDACTED] learned [REDACTED] was recommending that speech and language services be discontinued, she asked that the meeting be continued to allow her to seek input from [REDACTED].

private language therapist, [REDACTED]. The meeting, therefore, was not completed on the 10th, but reconvened on April 1.<sup>16</sup> [REDACTED] attended, as did [REDACTED] a CPS speech and language pathologist who is one of [REDACTED]'s supervisors. Additionally, [REDACTED] audiologist, attended on April 1, and presented the results of an audiogram conducted by Children's Memorial Hospital. [REDACTED] testified about these results, and about the IEP meeting at the hearing.

Specifically, [REDACTED] testified that the audiogram indicated that [REDACTED] had a moderate but fluctuating hearing loss in her right ear. (Children's Memorial Audiogram, PD 181, HX 4) According to [REDACTED] hearing loss made her eligible for consultative services from an audiologist. That service was added to [REDACTED] IEP. In response to [REDACTED] presentation at the IEP meeting, [REDACTED] requested that [REDACTED] receive a central auditory processing evaluation.<sup>17</sup> Since the IEP meeting neither the school nor parent has requested additional support from Kwiecinski. In any event, [REDACTED] has since begun wearing a hearing aid. [REDACTED] briefly testified at the hearing noting, among other things, that the hearing aid has noticeably improved her ability to hear.

The team also decided which services [REDACTED] would receive and wrote IEP goals at the April 1 meeting. Specifically, the team determined that [REDACTED] would receive special education services in the areas of language arts, math, speech and language, and social work services. Specifically, in language arts, [REDACTED] was to receive 220 minutes per week of direct and consultative services in the regular classroom, and 80 minutes of services in a separate class. This was a significant increase of push-in time (100 mpw) in the regular class from the previous IEP. (HX 6 at PD 19)

Where there had been only one language arts goal in [REDACTED] previous IEP, this IEP includes two goals -- one to improve [REDACTED] reading comprehension, and a new goal that focuses on improving [REDACTED] word analysis skills. Both goals and their accompanying benchmarks are fairly clear. They specify the [REDACTED] will be expected to perform and the required degree of accuracy. (*Id.* at PD 13-14) The goals are not measurable, however, because they fail to specify [REDACTED] present level of functioning. In describing [REDACTED] present level of functioning, the word analysis goal, for example, states, "blending sounds into multi-syllabic words is difficult for [REDACTED]" (*Id.*) Nor does the annual goal specify the grade-level at which she will be expected to achieve. Omitting this information makes it impossible to measure whether [REDACTED] has made progress on the word analysis goal. The reading comprehension suffers from the same flaw.

The math goal focuses on improving [REDACTED] computation skills in specified areas and establishes that [REDACTED] is to receive 120 minutes per week of instruction in the regular class, and 60 mpw of

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<sup>16</sup> The evidence is somewhat unclear concerning the sequence of events during the two meetings. It appears that the parties considered the results of the triennial evaluation on March 10, and discussed [REDACTED] report and wrote IEP goals on April 1.

<sup>17</sup> Both [REDACTED] and a private audiologist conducted the evaluation and concluded that [REDACTED] does not have a central auditory processing disorder. (9/5/08 Central Auditory Processing Eval., PD 417, HX 11; 4/7/08 [REDACTED] Central Auditory Case Review, SD 92, HX 48)

instruction in a separate class. (Id. at PD 15) As with language arts, the goal is appropriate in every respect except for the fact that it fails to specify [REDACTED] present level of functioning.

Consistent with [REDACTED]'s recommendation, the team agreed to begin providing [REDACTED] with social work services for 60 minutes per month. [REDACTED] testified that the goal is intended to address [REDACTED] social emotional needs as they affect her classroom functioning by requiring her to seek support or accept help in the classroom. (Id. at PD 18) Though it can be more difficult to objectively measure a student's social emotional progress, the goal clearly establishes a baseline for [REDACTED] and sets benchmarks for progress.

With respect to speech and language, both [REDACTED] and [REDACTED] testified that they believed that [REDACTED] no longer needed therapy. [REDACTED] and [REDACTED] were opposed to this position, and the team ultimately decided to continue providing [REDACTED] with speech and language services at a reduced level -- [REDACTED] was to receive 60 minutes per month of direct therapy instead of the 90 mpm that she had been receiving. She also was to receive 15 minutes per month of consultative services from [REDACTED]. The IEP includes two goals aimed at improving [REDACTED] articulatory precision and syntax, which are appropriately written.

[REDACTED] testified that she was not satisfied with the proposed IEP and that she made her views known. Specifically, though [REDACTED] was to continue receiving speech and language, [REDACTED] still felt that the time allotted was inadequate to meet [REDACTED] needs. Second, [REDACTED] stressed her concern that, overall, [REDACTED] special education services had not been effective in closing the achievement gap between [REDACTED] and her peers. [REDACTED] believed that little effort was made to ensure that [REDACTED] consistently used the skills that she gained from her special education instruction. Finally, [REDACTED] testified that she expressed her desire that [REDACTED] speech therapy and learning disabilities remediation be more effectively targeted to [REDACTED] unique needs.

#### • The June 4 and June 11 Meetings

[REDACTED]'s dissatisfaction with the outcome of [REDACTED] IEP meeting led her to seek a meeting with senior [REDACTED] administrators. On June 4, she met with [REDACTED] and [REDACTED] speech and language manager for the [REDACTED]. Also in attendance were [REDACTED] case manager, [REDACTED] and [REDACTED].

The meeting was not an IEP meeting, but simply a discussion about [REDACTED] needs and ideas for addressing them. ( See 6/4/08 Meeting Notes, PD 04-05, HX 27) [REDACTED] kicked off the discussion by stating her belief that there was little or no integration between [REDACTED] special education services and her performance in the regular classroom. In other words, [REDACTED] was concerned that [REDACTED] was not transferring what she was learning in the special education setting to her regular classes. [REDACTED] also voiced her belief that pulling [REDACTED] out of class to receive services was not effective. She felt that [REDACTED] was always pulled out of class as part of a group and, consequently, did not receive remediation specifically targeted to her needs.

[REDACTED] was a witness at the hearing, too. Her testimony about the meeting is consistent with [REDACTED]'s, though more focused on their discussion of [REDACTED] speech and language needs. Kukler recalled that the group discussed increasing the number of minutes of direct speech and language services for [REDACTED] but that [REDACTED] was not convinced that this would solve the problem.

█████ testified that she and █████ favored adding consultation time for █████ and the special education teacher rather than increasing direct therapy. █████ believed that additional consultation time would enable █████ and █████ to ensure that █████ speech and language needs would be addressed in a more integrated and collaborative way. Equally important, by engaging in regular consultation, strategies for improving █████ language would permeate into all areas of instruction. █████ testified that a focus on consultation instead of direct service is particularly effective with older students, especially since older students like █████ are quite resistant to receiving speech and language therapy at school. Finally, █████ testified that she explained to █████ that if the recommended change in service was implemented, the team would continue to gather data and reconvene an IEP meeting in the fall to assess █████ progress. If the services proved to be inadequate, █████ IEP could be amended.

█████ did not immediately reject the plan because a week later, she met with a few members of the IEP team █████ and amended █████ IEP to include consultation time for the special education teacher in both language arts and math. (6/11/08 IEP, PD 1, HX 9) They also included other revisions to address the Parent's concerns including: limiting accommodations and modifications in the regular classroom in order to challenge █████ and, to the extent possible, requiring that █████ complete the same amount of homework as general education students were assigned. (*Id.* at PD 2) Apparently, these revisions ultimately did not assuage the Parents' concerns about their daughter's education because they requested this due process hearing on July 15, 2008.

### CONCLUSIONS OF LAW

This is a case in which the Parents' claims assert that the District failed to provide █████ with FAPE in virtually every aspect of her education. At the hearing, however, several of the Parents' allegations were only fleetingly addressed -- if addressed at all -- and it became clear that the real issues in dispute were fewer. Nevertheless, each of the Parents' claims is addressed below. As a threshold matter, however, it is necessary to discuss the legal framework underpinning my analysis.

First, the Parents are seeking relief in this case and, therefore, bear the burden of proof. *Schaeffer V. Weast*, 546 U.S. 49, 62 (2005) Put another way, it is the Parents' burden to present sufficient evidence to support their allegations that the District failed in its obligations to provide █████ with a free and appropriate education.

Second, the starting point to any inquiry concerning the adequacy of educational services is *Board of Educ. v. Rowley*, 458 U.S. 176, 188-89 (1982). That case established that a free appropriate public education is an education "specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction." In *Rowley*, the United States Supreme Court set forth a two pronged test to determine whether a school district has offered a student FAPE. The first inquiry to be made is whether the school district has complied with the statutory procedures required by IDEA. (20 U.S.C. 1401 et seq.) Parents are entitled to relief for procedural violations only if the alleged violations resulted in substantial harm to the student. *W.G. v Board of Trustees*, 960 F.2d 1479, 1484 (9<sup>th</sup> Cir. 1992) The second prong of the *Rowley* test is whether the district has developed an

IEP reasonably calculated to enable the child to receive an educational benefit. *Rowley* at 206-07.

While there is no bright line test to define what constitutes FAPE, *Rowley* requires a school district to provide a "basic floor of opportunity" in the form of specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child. *Id.* at 201. An individualized education plan is acceptable "when it is likely to produce progress, not regression or trivial educational advancement." *Alex R., ex. Rel. Beth R. v. Forestville Valley Community Unit School Dist. # 221*, 375 F.3d 603, 615 (7th Cir. 2004)(quoting *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 248 (5th Cir. 1997)). The purpose of IDEA, however, is to "open the door of public education to handicapped children, not to educate a child to her highest potential." *Board of Education of Murphrysboro Comm. Unit. Sch. Dist. No. 186 v. Illinois State Board of Educ.*, 41 F.3d 1162, 1166 (7th Cir. 1994) Finally, IDEA creates a strong preference in favor of mainstreaming, or educating a child in the least restrictive environment. See *Beth B. v. Mark Van Clay*, 282 F.3d 493, 496 (7th Cir. 2002). The LRE is one that allows the disabled child to be educated with his or her nondisabled peers to the greatest extent appropriate. *Id.* at 498

In applying the law to the facts of this case, I conclude that on the whole, the District has provided [REDACTED] with FAPE. Documentary and testimonial evidence demonstrated that [REDACTED] staff conscientiously attempted to meet [REDACTED] educational needs by providing her with an IEP that addressed her reading comprehension, math, and speech and language deficits. The evidence also shows that [REDACTED] made adequate progress on those goals. By providing "push-in" instruction, modifications and accommodations, the team also ensured that [REDACTED] was educated in the least restrictive environment with her peers, and was exposed to the same curriculum to the extent possible. Indeed, the teachers who testified were unanimous in their view that [REDACTED] had been successful in the regular classroom with special education support and the appropriate modifications and accommodations.

While [REDACTED] has largely succeeded in providing [REDACTED] with FAPE, the evidence demonstrates that it failed in two ways: First, though [REDACTED] has targeted [REDACTED] reading comprehension deficits, it has failed to address her decoding and word recognition deficits. These skills are the foundation of reading, and [REDACTED] failure to address these deficits was a denial of FAPE. Second, [REDACTED] has inadequately addressed [REDACTED] need for social work services. Specifically, [REDACTED] failure to respond to the Parents' referral in a timely way was a procedural violation of FAPE. Moreover, when [REDACTED] finally determined that [REDACTED] was eligible to receive services, the services it provided were so inadequate as to preclude [REDACTED] from receiving any meaningful benefit. This was a substantive violation of FAPE.

**1. Whether the District denied [REDACTED] FAPE by failing to conduct adequate or timely assessments of all areas of potential disabilities**

The Parents' first contention is that the District failed to conduct adequate assessments of all areas of potential disability, with the result that [REDACTED] educational program failed to address, or inadequately addressed, her learning and language processing difficulties. The responsibility to conduct evaluations is mandated by the Individuals with Disabilities Education Act, which makes clear that a school district must conduct full evaluations to determine whether a child needs or continues to need special education and related services. 34 C.F.R. §§ 300.301(a), 300.303(a). The District must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child. The assessments must be in a form most likely to yield accurate information on the child's abilities in all areas related to the suspected disability, including general intelligence, communicative status, social emotional status and motor abilities. *Id.* at §§ 300.304(b)(1), 300.304(c)(1) and (c)(4). Here, the Parents' claim fails to specify how [REDACTED] allegedly failed in its duty to adequately assess [REDACTED] and the presentation of evidence at the hearing did little to clarify their assertion. In analyzing all of the relevant testimonial and documentary evidence concerning assessments that were administered, or allegedly should have been administered, I conclude that [REDACTED] met its duty to conduct adequate assessments of [REDACTED].

• **The Psychological Evaluations**

There are two [REDACTED] psychological evaluations that are relevant to this case: the 2005 and the 2008 evaluations. Both were conducted by [REDACTED] psychologist, [REDACTED] and consisted of a cognitive measure and an achievement test. (See HX 24) With respect to the 2005 evaluation, it would be hard to credibly argue that the cognitive measure was inadequate. That test, a WISC, was actually administered by a private evaluator who had been hired by the Parents. (See HX 13) [REDACTED] chose to rely on the findings because the private evaluation was still fairly current at the time of the 2005 triennial evaluation.

As part of her 2005 evaluation, [REDACTED] also administered the Wechsler Individual Achievement Test to determine [REDACTED] academic levels in reading, math and writing. Based on those tests, [REDACTED] found that [REDACTED] was 1.5- 2 years below grade level expectancy in reading, comprehension and writing. (HX 24 at 137) [REDACTED] relied upon the results of the WISC and the WIAT to conclude that [REDACTED] exhibited a significant discrepancy between intellectual potential and achievement in the language arts area. She recommended that [REDACTED] receive continued educational support in the areas of identified weakness. (*Id.*) Significantly, [REDACTED] findings and recommendations for [REDACTED] closely track the private examiner's findings and recommendations.<sup>18</sup>

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<sup>18</sup> Both [REDACTED] and the private examiner also found that [REDACTED] written language skills were deficient and needed attention. It is unclear whether [REDACTED] 2006-07 IEP included a goal for writing, though, since the main portion of that IEP is missing. [REDACTED] subsequent IEP's do not target [REDACTED] written expression. While this is of concern, it does not lead me to conclude that [REDACTED] denied [REDACTED] FAPE. As previously noted, the evidence concerning [REDACTED] writing skills was mixed, and the Parents did not make writing a focal point of their case.

March 2008 psychological evaluation included the same types of assessments -- a cognitive measure and an achievement test. Though [redacted] decision to administer the Wechsler Abbreviated Scale of Intelligence instead of a full WISC is of concern, she ultimately concluded that the WASI revealed an unchanged profile -- [redacted] still exhibited deficits in receptive and expressive language, and auditory memory. [redacted] also demonstrated a significant discrepancy between her verbal and performance scores. Likewise, [redacted] found that [redacted] had the same academic deficits -- reading and writing -- that she had diagnosed in 2005. She recommended that [redacted] continue to receive special education support to address her deficits.

There is no question that [redacted] psychological evaluations are not as comprehensive as the Parents' private evaluations. That does not automatically render them inadequate. Indeed, the [redacted] evaluations reach essentially the same conclusions as the private evaluations. Moreover, [redacted] reports provide insightful observations that offered guidance in fashioning [redacted] IEP's. For example, [redacted] observation in her 2008 report that [redacted] decoding deficits hindered her ability to comprehend, prompted the team to write an additional IEP goal to address [redacted] word analysis and decoding skills.

- **The Speech and Language Assessment**

Based on the proof at hearing, the 2008 speech and language assessment appears to be the focal point of the Parents' assertion that [redacted] failed to adequately assess [redacted]. Specifically, the Parents maintain that [redacted] administered tests that were not sufficiently comprehensive to show the severity of [redacted] language deficits.<sup>19</sup> The Parents' proof, however, fails to support a finding that speech and language assessment was so inadequate that it denied [redacted] FAPE.

First, in assessing [redacted]'s language skills, the examiner administered three tests intended to measure [redacted] expressive and receptive language: the PPVT, EVT, and OWLS. She also administered the Sounds-in Words subtest of the Goldman Fristoe to assess [redacted] articulation abilities. Each of these tests is a standardized measure and routinely used by CPS and other school districts to measure students' language abilities.

The test results indicated that [redacted] and receptive language abilities were in the average to low average range, and prompted [redacted] to recommend that speech and language therapy be discontinued for [redacted]. [redacted] stressed, however, that she did not simply rely on the tests scores to make her recommendation. She stated that the scores placing [redacted] in the low average range of ability were consistent with her observations of [redacted] (Schanowitz agreed that the PPVT, which placed [redacted] in the solidly average range of ability, was too high.)

[redacted] scores were a significant improvement from her previous speech assessment. Skeptical of these results, [redacted] sought a second opinion from [redacted] private speech and language therapist, [redacted]. Like the [redacted] report, [redacted] evaluation report makes clear that [redacted] had shown

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<sup>19</sup> The Parents initially argued that the examiner made errors in administering the tests that may have produced inflated tests scores. Testimony from their own expert demonstrated that this was not the case.

improvement in several areas including, writing, language processing, and intelligibility of speech. (HX 19) Unlike the [redacted] report, [redacted] also found significant weaknesses in [redacted] phonological abilities. In addition, [redacted] administration of the CELF indicated that [redacted] continued to display significant deficits in both expressive and receptive language. (HX 23 at PD 370-74)

[redacted] findings are the primary basis of the Parents' assertion that CPS' assessment is inadequate. While [redacted] evaluation undoubtedly is more comprehensive, that does not automatically lead to the conclusion that [redacted] failed to conduct adequate assessments of [redacted]. Indeed, the evidence indicates that [redacted] assessments have identified the same deficits found by [redacted] i.e. receptive and expressive language deficits, and phonological weaknesses. That some of [redacted] deficits were identified in assessments other than the speech and language assessment is irrelevant.

More importantly, [redacted] has addressed these deficits by providing [redacted] with direct speech and language therapy and through remediation provided by the special education teacher. [redacted] current reading goals, for example, target her phonological weaknesses by seeking to improve her decoding skills. Likewise, the comprehension goal addresses [redacted] receptive language deficits by focusing on improving her understanding of words and phrases. Finally, creating 45 minutes per month of consultation time enables [redacted] teachers to collaborate more closely and, as [redacted] recommended, provide [redacted] with an environment that supports her language needs throughout the day. (See HX 23 at PD 378)

Admittedly the current plan includes a reduction of direct speech and language therapy for [redacted]. This reduced level of therapy may prove to be inadequate. I conclude, however, that the plan is likely to produce progress, and that is all that the law requires. (See *Alex R.*, 375 F.3d at 615) In short, I find that the Parents have failed to meet their burden of proof with respect to their claim that [redacted] inadequately assessed TW's speech and language needs. Moreover, the Parents have failed to show that [redacted] speech and language services to [redacted] have been inadequate.

- **Assistive Technology**

The Parents' claim asserts that [redacted] denied [redacted] FAPE by failing to conduct an assistive technology evaluation and provide [redacted] with AT services. Parents' proof on this point, however, was limited to noting that [redacted] IEP's called for "low-tech" assistive technology, and Ms. [redacted] recommendation that [redacted] use certain software programs. The Parents failed to present any evidence to indicate that [redacted] requires AT in order to make progress on her IEP goals. Accordingly, on this issue, the Parents failed to meet her burden of proof.

- **Occupational Therapy**

Though included among their claims, occupational therapy was not an issue at the hearing. The Parents presented no evidence to indicate that [redacted] should be given an OT assessment or receive OT services. The Parents have failed to meet their burden of proof on this issue.

**2. Whether the District Failed to provide essential related services with adequate levels of intensity**

The Parent contends that the District failed to provide [REDACTED] with related services, i.e., speech and language and social work services with sufficient intensity to satisfy the requirements of FAPE. As will be discussed below, the evidence indicates that the District satisfied the requirements of FAPE in providing [REDACTED] speech and language services. With respect to social work services, however, [REDACTED] failed to provide [REDACTED] with FAPE.

• **Adequacy of Speech and Language Services**

According to her testimony, [REDACTED] first began to believe that [REDACTED] speech and language services were inadequate during the March 8, 2007 IEP meeting. At that meeting, the team reduced [REDACTED] therapy time to 90 minutes per month from 120 mpm. [REDACTED] testified that she made the team aware that she disagreed with the decision. Though I do not question the Parent's testimony, she failed to offer any evidence to show that [REDACTED] failed to make progress or receive educational benefit from her speech and language services during her 7th grade year. The District did not directly address this time period either, but according to [REDACTED] speech and language report card for 7th grade, [REDACTED] worked hard on her IEP benchmarks and made consistent progress. (2007-08 Report of Student Achievement and Effort, SD 125, HX 18)

The more serious dispute about [REDACTED] speech and language services began in March 2008, when CPS recommended that her services be discontinued altogether. My findings about this dispute are discussed in Section 1 above and in the Findings of Fact.

• **Social Work Services**

With respect to the provision of social work services, the evidence reveals that there are two issues of concern: The timeliness of the social work assessment, and the District's decision to limit [REDACTED] services to 60 minutes per month. In considering the timeliness issue, Illinois law establishes that when a child is referred and a District agrees to conduct an evaluation, the evaluation and the IEP meeting must be completed within 60 days of the referral. 23 Ill. Admin. Code §226.110<sup>20</sup> A violation of this provision would constitute a procedural violation which can only be a denial of FAPE if it resulted in substantial harm to [REDACTED] (See *W.G.*, 960 F.2d at 1484)

Here, there is no dispute that more than five months elapsed between the date that [REDACTED] referred her daughter for social work services and the date that the IEP team met and considered the social work assessment. Indeed, the assessment itself took nearly as long to complete. Given that the team ultimately agreed that her need was serious enough to provide [REDACTED] with social work services, this five month delay precluded [REDACTED] from receiving social work services for more

<sup>20</sup> IDEA requires an evaluation to be conducted within 60 days of receiving consent for the evaluation. 34 C.F.R. §300.301(c)(1). IDEA expressly defers to timetables set by state law on this issue. (*Id.*)

than half the school year. A failure to provide necessary services for that long amounts to substantial harm.

When [redacted] finally did agree to provide [redacted] with social work services, it provided her with 60 minutes per month. The Parents contend that this minimal amount was inadequate to meet [redacted] needs. The Parents supported their position through [redacted]'s testimony and through the testimony and report of private therapists, [redacted] and [redacted].<sup>21</sup> Both stressed that [redacted] was depressed, and that her depression and anxiety were directly related to [redacted] frustration that her learning deficits made her different from her peers. Both noted that [redacted] feelings of inadequacy caused her to resist receiving the special help that she needs, or to seek assistance in her regular classes. Both concluded that 60 minutes per month was grossly inadequate to meet [redacted] needs.

[redacted] disagrees with the Parents' contention and argues that 60 mpm is the appropriate amount of time for [redacted] to receive social work services. In support, [redacted] presented several teachers who testified that [redacted] displayed relatively minor social emotional issues, or none at all. Significantly, however, the teachers voiced more serious concerns about [redacted] when they provided contemporaneous responses to the BASC, and to [redacted] and [redacted]'s inquiries. On the BASC, for example, [redacted] reported that [redacted] demonstrated significant symptoms of depression. [redacted] reported that the teachers saw [redacted] as a social "outsider" who had poor social skills and few friends. Similarly, [redacted] stated that [redacted] appeared to be "somewhat fragile" socio-emotionally, and that teachers reported that [redacted] had difficulties with interpersonal skills and relating to her peers. (*Id.* at SD 55) Moreover, though [redacted] stressed that neither she nor [redacted] teachers believed that [redacted] social emotional issues were negatively affecting her learning, she wrote an IEP goal specifically that specifically targeted [redacted] academic performance.

After weighing these competing positions, I find that the evidence favors the Parents. [redacted] and [redacted] provided credible testimony. [redacted] supported his observations with BASC results completed by teachers. [redacted] opinion was based on years of therapy with [redacted]. In contrast, the teachers' testimony suggesting that [redacted] presented, at most, minor issues, was contradicted by their contemporaneous responses to inquiries about [redacted].

For these reasons, I find that [redacted] failed to provide [redacted] with timely and adequate social work services, thereby denying her FAPE.

<sup>21</sup> Ms. Rubin testified about her impressions of [redacted] but did not provide a report. [redacted] testified and provided results of a BASC that he had administered last March.

**3. Whether the District failed to utilize effective teaching methodologies at a sufficiently intensive level to enable the student to make progress commensurate with her cognitive skills**

The Parent next asserts that the District failed to utilize effective teaching methodologies at a sufficiently intensive level to enable [REDACTED] to make adequate progress. Once again the claim fails to specify how the District allegedly failed in its responsibilities. Presumably the Parents are referring to reading instruction, since they consistently asserted at the hearing that the District failed to address [REDACTED] reading deficits. In support, the Parents pointed to [REDACTED] achievement tests scores which indicate that [REDACTED] word recognition and reading comprehension skills were several years below her peers throughout the relevant time period. Moreover, that gap has continued to widen as [REDACTED] has progressed to higher grades. Indeed, according to [REDACTED] WIAT and KTEA scores, [REDACTED] word recognition and reading comprehension skills have remained at a 3rd grade level for the entire period at issue.

Despite her poor progress, [REDACTED] efforts to address [REDACTED] deficits have been limited. [REDACTED] March 2007 IEP, for example, includes just one goal for reading comprehension.<sup>22</sup> In addition, [REDACTED] witnesses testified that their priority with [REDACTED] has been helping her to compensate for her reading deficits by teaching her strategies to gain meaning from materials. These strategies include the use of context clues, referring to dictionaries and asking questions.

Until recently, [REDACTED] has not tried to teach [REDACTED] word recognition or decoding skills in any systematic way. There are no goals in her 2007 IEP specifically aimed at improving this deficit. Indeed, [REDACTED] readily admitted that she stopped teaching [REDACTED] phonics skills when [REDACTED] was in the 5th grade. [REDACTED] has made some effort to teach word attack skills, but she does not employ a specific methodology or consistent approach. Instead, she testified that she uses various high level phonics workbooks with [REDACTED]

[REDACTED] argues that its approach has enabled [REDACTED] to make educational progress as evidenced by her ability to participate successfully in the regular classroom. Though there is some merit to this claim, it overlooks the fact that much of [REDACTED] progress is due to the modifications and accommodations that enable her to succeed despite her limited reading skills. Study guides for, example, help [REDACTED] to learn key concepts, and she is tested on only those concepts that are included on the study guides.

While modifications and accommodations are an important tool, they cannot be a substitute for teaching a student to read. Nowhere is this point evidenced more clearly than in [REDACTED] own 2008 triennial evaluation, which confirms that [REDACTED] poor decoding skills have a direct and negative impact on her ability to comprehend. [REDACTED] observed in her report:

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<sup>22</sup> Since the 2006 IEP is missing, I cannot say for certain how it addressed [REDACTED] reading needs. Given Ms. [REDACTED] testimony that she stopped teaching phonics to [REDACTED] when she was in 5th grade, I presume that the 2006 IEP failed to address word recognition skills, too.

“ [redacted] continues to have problems blending sounds into meaningful words...As reading/decoding is not always easy, [redacted] is confused when reading passages (comprehension) to answer questions. She may miss out or misread key words and is unable to grasp main ideas in comprehension passages.

HX 8 at PD 133

To [redacted] credit, [redacted] observation did not go unheeded. [redacted] current IEP includes a goal to address her word attack skills. While that is a step in the right direction, CPS still has not provided [redacted] with any clear method of reading instruction. Phonics workbooks can be of some value, but providing [redacted] with a likely opportunity to make progress requires CPS to offer a systematic, multisensory approach to teaching [redacted] reading. Indeed, several witnesses, including [redacted], testified that a multisensory approach is beneficial to [redacted]

Accordingly, I find that the District has denied [redacted] FAPE by failing to make appropriate efforts to remediate her reading deficits. In particular, the District has denied [redacted] FAPE by failing to provide her with an IEP goal that addressed her deficient decoding skills, and by failing to provide her with an appropriate instructional methodology likely to produce progress in reading.

**4. Whether [redacted] failed to offer a complete curricula in areas of reading, language arts, math, social studies and science, with the result that [redacted] did not make academic progress**

The Parents next argue that [redacted] failed to offer [redacted] a complete curricula in the areas of reading, language arts, math, social studies and science, which prohibited her from making academic progress. This assertion is overwhelmingly contradicted by the evidence, which indicates that [redacted] teachers have worked hard to ensure that to the extent possible, [redacted] is exposed to the same curricula and concepts to which her peers are exposed. For example, though [redacted] does require modifications like study guides and modified tests, [redacted] science teacher since 6th grade, testified that [redacted] participates in the same classroom activities as her peers: [redacted] listens to [redacted] lectures, completes the hands-on experiments and projects, and completes the written assignments that accompany the experiments. [redacted] 6th grade language arts teacher, also testified that, with some modifications, [redacted] was exposed to the same curriculum as her peers. Finally, both [redacted] and [redacted] testified about their extensive efforts collaborating with her regular classroom teachers, in order to ensure that [redacted] is educated to the greatest extent possible with her peers. In short, the Parents have failed to demonstrate that [redacted] has failed to offer [redacted] a complete curriculum.

**5. Whether numerous deficiencies in [redacted] IEP denied her FAPE**

Finally, the Parents present a number of alleged deficiencies in [redacted] IEP's -- both procedural and substantive -- that they contend resulted in a denial of FAPE. A number of these allegations, particularly those that deal with the adequacy of related services, are repetitive and already have been addressed. With respect to the remaining assertions, there are two issues that must be addressed: 1) The District's failure to include [redacted] levels of performance on her 2008 IEP; and 2) The Parents' assertion that the District improperly denied [redacted] extended school year services. In neither instance do I find a denial of FAPE.

First, as noted above, *Board of Educ. v. Rowley*, 458 U.S. 176, 188-89 (1982) sets forth a two pronged test to determine whether a school district has offered a student FAPE. The first inquiry to be made is whether the school district has complied with the statutory procedures required by IDEA. (20 U.S.C. 1401 et seq.) Parents are entitled to relief for procedural violations only if the alleged violations resulted in substantial harm to the student. *W.G. v Board of Trustees*, 960 F.2d 1479, 1484 (9<sup>th</sup> Cir. 1992) The second prong of the *Rowley* test concerns substantive denials of FAPE. That prong of the test is explained in detail above, and will not be repeated here.

On the issue of alleged IEP deficiencies, there are a number of IEP's (including revisions) that were implemented during the relevant time period. There are slight omissions and small mistakes in several places, though only one is significant enough that it bears mentioning. Specifically, on [REDACTED] March 10, 2008 IEP the goals fail to include [REDACTED] present levels of performance. Omitting this information will make it impossible to determine whether she has made adequate progress on her goals. At this point, I do not believe that the District's omission constitutes a denial of FAPE. It is relatively early in the year, and data concerning [REDACTED] level of functioning is readily available, i.e., data [REDACTED] recent triennial evaluation. To ensure that this does not become a denial of FAPE, however, the District should convene an IEP meeting and amend [REDACTED] current IEP to include her present levels of performance.

Next, the Parents contend that [REDACTED] denied [REDACTED] APE by failing to offer her esy services. While the Parents did establish that the District did not offer [REDACTED] esy services, they failed to offer any evidence to show that [REDACTED] was entitled to esy services. Accordingly, the Parents have failed to meet their burden of proof on the issue of extended school year services.

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

1. The Parents' request that the Student be allowed to attend a private therapeutic day school at public expense is denied. The evidence overwhelmingly demonstrated that [REDACTED] is the least restrictive environment for [REDACTED]
2. The Parents' request that [REDACTED] pay for independent educational evaluations that were completed in the areas of occupational therapy, social/emotional, speech and language and assistive technology is denied.
3. The Parents' request that [REDACTED] be directed to pay for additional independent evaluations in areas of demonstrated need such as OT, is denied.
4. The Parents' request that [REDACTED] be directed to provide related services with sufficient intensity is granted with respect to social work services. The District is ordered to provide [REDACTED] with at least thirty minutes per week (total) of individual and group social work services.
5. Parents' request that [REDACTED] be directed to provide the Student with compensatory services is granted in the following ways:
  - [REDACTED] shall provide the Student with no less than two hours a week of reading instruction utilizing a multisensory approach that focuses on improving [REDACTED]

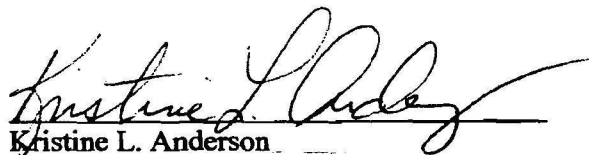
word recognition and decoding skills. The team shall decide which multisensory method of instruction is the most appropriate for [REDACTED]. For purposes of this decision, in addition to the Parent and members of the [REDACTED] team, the team must also include a [REDACTED] reading specialist who will provide guidance in selecting the appropriate multisensory methodology for [REDACTED] and support in implementing the instruction. The reading instruction must be provided by an instructor who is trained and experienced in teaching that multisensory method of instruction. The instruction is to take place either before or after school, and must commence by the time the students return from their holiday break in January 2009. [REDACTED] is to provide this reading instruction to [REDACTED] for the remainder of this school year, and for the 2009-10 school year, as well.

- Because of [REDACTED] significant delay in identifying [REDACTED] as a student in need of social work services, CPS shall provide [REDACTED] with 30 minutes of social work services for the remainder of this school year and for the 2009-10 school year, as well.

6. The Parties shall convene an IEP meeting no later than two weeks from the date of this decision to draft a new IEP for [REDACTED] that takes this decision and order into account.

7. The District shall provide proof of compliance with the aforesaid orders to the Illinois State Board of Education, Compliance Division, 100 no. First St., Springfield, Il. 62777-001, on or before January 12, 2009.

DATED: November 6, 2008



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

### **RIGHT TO REQUEST CLARIFICATION**


Either party may request clarification of this decision by submitting it in writing to the undersigned Hearing Officer within five days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party and to the Illinois State Board of Education. The right to request such a clarification does not permit a party to request reconsideration of the decision itself, and the Hearing Officer is not authorized to entertain a request for reconsideration.

### **RIGHT TO FILE A CIVIL ACTION**

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

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the aforesaid Decision and Order was transmitted to the parties by email on November 6, 2008 and by U.S. Mail on November 12, 2008 with first class postage prepaid and directed to the Parent's counsel and District's Counsel at their respective addresses.

  
Kristine L. Anderson

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

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