

ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING

In the Matter of: )  
)  
[REDACTED] by his parent, [REDACTED] )  
Student, )  
)  
and )  
)  
[REDACTED] )  
Local School District.)

OCT 08 2009  
Special Education Services

ISBE Case No.: 2009 – 0035

W. David Utley  
Impartial Hearing Officer

**Decision and Order**

The Hearing in the above captioned matter took place on consecutive dates including Tuesday, September 22, 2009 and Wednesday, September 23, 2009 at [REDACTED] and Thursday, September 24, 2009 at the [REDACTED]. The parties were advised of their rights under Section 14.08.02 (a) of the School Code, 34 CFR 300.512 and 23 Illinois Administrative Code 226.625. The undersigned Hearing Officer has jurisdiction to hear and decide this case under 105 ILCS 5/14-8.02 (a) of Illinois School Code, 23 Illinois Administrative Code 226.600 et seq., and the Individuals with Disabilities Education Act 20 USC 1415. The Student was represented by [REDACTED], Esq. of the firm of [REDACTED] and the School District was represented by [REDACTED] Esq. of the [REDACTED].

**Procedural Background**

The Parent's Request for an Impartial Due Process Hearing was dated July 28, 2008 and was submitted on the Student's behalf by [REDACTED] of the firm of [REDACTED]. The District responded on August 11, 2008. A Resolution Session was scheduled and held on September 9, 2008 but there was no resolution of all of the issues. This matter was bifurcated on the Request of the Parent's attorney and a Pre-Hearing Conference was held on the issue of Independent Educational Evaluation on September 26, 2008. A Hearing was scheduled for October 24, 2008. All other issues were held in abeyance pending the decision on the Independent Educational Evaluation. On October 22, 2008, the School District agreed to fund the Independent Educational Evaluation with the caveat that the amount funded did not exceed \$3,000.00. Thereafter, this matter was continued on the joint motions of the parties to allow for the completion of the Independent Educational Evaluation and subsequent IEP meeting. Pre-Hearing Conferences on the remaining issues were scheduled for January 31, 2009, February 23, 2009, April 14, 2009 and April 29, 2009 and continued on the Joint Motion of the Attorneys to allow for an IEP based upon the Independent Educational Evaluation. Ultimately, the School District determined the placement issue in the Least Restrictive Environment to be a Therapeutic Day School for the Student. This determination as to placement removed the majority of the issues in the Parent's Due Process Complaint. Given the summer and difficulty to secure witness attendance, the parties jointly requested continuance of the Hearing until the

commencement of the school year 2009 - 2010 and this matter was set for Hearing starting on September 22, 2009.

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

The parent called the following witnesses: Student, the Student's mother, [REDACTED]

[REDACTED]  
[REDACTED] The School District called the following witnesses: [REDACTED]

### **Issues Presented**

1. Failure to conduct adequate assessments of all areas of potential disabilities;
2. Failure to provide essential related services in the areas of assistive technology;
3. Failure to provide adequate intensity of social work services;
4. Failure to develop an effective functional behavior analysis and behavior intervention plan;
5. Failure to identify and utilize effective teaching methodologies to enable student to make progress;  
Failure to develop an adequate transition plan;
7. Failure to offer a complete curriculum in areas of reading, language arts, math, social studies and science;
8. Failure to provide parent with accurate and objective progress reports addressing respective goals; and
9. Student's IEPs have been deficient;

### **Relief Requested**

- a. Pay for an IEE
- b. Offer related services as to assistive technology services
- c. Develop an effective functional behavior analysis and behavior intervention plan
- d. Compensatory education
  1. 2 hours per week after school for 09-10 and 10-11 school years by certified Special Education teacher with training in reading mediation methodology
  2. Additional 2 hours per week tutoring support services through the 2011 - 2012 school year if student is enrolled in college or vocational training
  3. 90 minutes per week of social work services
  4. Payment for night/summer classes to make up for failed courses
  5. 60 minutes per week instruction in assistive technology for 2 years and personal laptop computer with software used in classroom
- e. Convene an IEP meeting to consider results of evaluations and implement foregoing relief

## Findings of Fact - Testimony

The Student's mother provided information about the Student. She and the Student live together. His strengths include a strong sense of himself, an unearned ego, being a survivor (pushes through things) and has good outlook on life. The challenges for him are his academic deficits and self-esteem. He does a lot of masking.

She has been concerned about academic progress since an infant. At an early age, she couldn't engage him in books, colors, etc. Even in Kindergarten and 1<sup>st</sup> grade, he had a terrible time - not keeping up and not experiencing success. She would work with him daily through drilling as she wanted him to be acclimated to a ritual. He didn't do well in 1<sup>st</sup> grade and she asked for extra help. She let the teachers know and they seem to be reasonably concerned. She also took her concerns to the principal. Although she was told that the Student would be observed by the social worker to see if he needed something else, she never received any feedback.

His first IEP was when he was going into 4<sup>th</sup> grade. She was not satisfied with IEP and told school staff about her concerns and tried to get more individualized help available to him.

The June 3, 2008 IEP (PD007) did not express her concerns correctly. It was a matter of getting the right kind of support and help as to emotional issues. She wrote a couple of letters after the IEP. She did not receive any response to these letters and ultimately attempted to contact [REDACTED]. She was told that they would get back to her but never did.

During his sophomore year at [REDACTED] things got worse. There was more frustration, more automated calls re: attendance; calls from the disciplinarian, suspensions and his grades were not good. As to the issues about attendance, she did counsel the Student to go to school everyday. His response was initially good but would then taper off.

She took the Student to see [REDACTED]. It was a rewarding experience for him as he found out things about himself. He likes to be tested as it gives him feedback as to what he can/can't do.

He started at [REDACTED] on June 19, 2009. Her impression was that the student felt comfortable here with himself. She is satisfied and pleased with [REDACTED] for the Student.

The Student attended [REDACTED] from kindergarten through 8 grade. In 6<sup>th</sup> grade - someone came out to talk to him about A/T. He received a dictionary thing (presumed Franklin), had it for a month and he lost it. He did tell them it was lost.

At [REDACTED] things went fine but he had to get used to school. He did have problems with skipping classes - some days he did not feel like coming to school. He felt that he shouldn't be there. He felt that the work was hard. He denied talking to the staff about his problems and kept everything to himself.

He did use computers at [REDACTED] and [REDACTED]. He would use it for writing until he finished the assignment - might be a day or two.

He does feel that extra help would be better for him.

██████████ is employed with the ██████████ as an administrator. She has been there since July 2009. She is responsible for the first line of contact with all schools. Her responsibilities include confirming appropriate practices in buildings, placement issues, case manager at meetings and in-service for schools.

As the administrator involved with placement issues especially in light of LRE issues, as the school support manager, she had to review his file and a 3 page worksheet. The worksheet is a "snapshot" of the student for placement purposes i.e. recent hospitalizations, disability, past IEP plans, class visit reports.

As part of the process, the IEP team was open to parent input and suggestions during the domain meeting. As to the outside neuropsych report (SD111), it would go to the team member(s) with same area of expertise. In addition, she believes that all team members would have looked at it. As to the outside neuropsychological report, she told the team that they could accept the entire document or only part of it. If they only opted to accept part of it, they would then need to conduct additional assessments. As part of the outside placement, the IEP team suggests what they feel is the appropriate placement and the Student's IEP was written for placement at a separate day school. The SSA team then deals with placement. In fact, it is not appropriate for the IEP team to name a specific school. As the District representative, she approved the placement after all was presented.

She felt that the Student was well served by the District and as the school had exhausted its resources and the recommendation for placement at a separate private day school was the student's Least Restrictive Environment and appropriate.

██████████ has been an Educational Audiologist for the past 23 years for ██████████ schools. Her duties include responsibility for evaluating kids for eligibility for hearing services, Central Auditory Processing disorder exams, attend conferences for placement and services and maintaining and dispensing hearing technology devices.

The Student was referred in March 2009 for a Central Auditory Processing evaluation. She did evaluate him - one 90 minute session for testing. She was aware that he was experiencing some auditory difficulties. He indicated that he did not have problems at school with small number of student when it's quiet. He indicated that he would rather be in general education class.

Based on her evaluation, the Student's pattern of response demonstrated a Central Auditory Processing disorder in auditory decoding. Students with this disorder do not accurately and quickly process what they hear. They will take longer and often mishear what is said. This will affect the Student with phonics and reading, i.e. difference between "h" and "p".

She did attend the IEP meeting of (SD169) on April 23, 2009. She specifically participated in accommodations and modifications. She felt that the IEP team had a good knowledge of what

had been done and could be done. The team felt the Student needed further intervention. She did note that it was not unusual to get a high school kid that has been having problems.

She agreed that a program to work on this disorder includes Earobrics (remediation software).

[REDACTED] has been a school social worker for the past five years with the [REDACTED] Public Schools. She knows the Student from his time at [REDACTED]. During 8<sup>th</sup> grade (06-07 school year), the Student had issues controlling his anger in class. She found him to be cooperative and showed insight into his behaviors. By Feb, 2007, (PD 187) he was showing maturity, self-control and handling himself well.

She would work on his social emotional goal which was shared between the social worker and the Special Education teacher. Their efforts enhance each other and interventions would occur across all settings.

[REDACTED] is the Director of Student Services. She knows the Student from being in her American Literature class for 1 month in 08-09 - an instructional class - about 2 students for awhile. In this scenario, overall, he did well. He read really well compared to other students. The book they were reading was at the 5<sup>th</sup> grade reading level. He was able to answer questions with 100% accuracy in small setting.

She found it easy to keep his attention. However, his response to intervention depended upon his mood. Behaviorally, the Student could react in a negative manner and be more difficult to re-direct dependent upon the method used. Academically, he was easier to re-direct if a soft and kind method was used. The Student had positive work habits, took pride in his work, was very neat and tidy about work and completed something all the way. He had pride in doing well and getting an "A". He liked to read out loud in small group.

She was present for the April 23, 2009 IEP meeting. It was very thorough - looking at how best to meet the Student's needs based on thorough information. There was a change in his Least Restrictive Environment although not all team members necessarily agreed with it. They did come to a consensus on the need for a more structured therapeutic school. She thought that he could do well at [REDACTED] but since he did well in small setting with her, she felt that a therapeutic day school would be helpful.

In CPS, only an IEP team can ask for Assistive Technology (A/T) referral. If a parent or teacher wanted an A/T, it would be necessary to convene an IEP meeting.

[REDACTED] has been a general education art teacher with the [REDACTED] for 8 years and 3 years at [REDACTED]. She holds licenses in Art and Psychology.

She first met the Student in September, 2008 in her art class. There were 33 students at beginning of year with students from the 9<sup>th</sup> through 12<sup>th</sup> grade. It is a studio environment with the students required to produce work. The Student was in her class the majority of the year. She did have a copy of his IEP.

When the Student was present, he was able to do work. She found him to be very polite. She agreed that in certain skills, the Student was the strongest one in class in terms of spatial understanding and facial feature recognition. He would do in one class period what others did over 3 or 4 periods.

Initially, he had some emotional/anger issues. She described the class as a tough class - students being involved in things outside of school which were not productive. Primarily in first semester, there were altercations. The Student wouldn't start something but he would respond. His behavior improved considerably in second semester but his attendance was sporadic. She felt that she could talk to him and re-direct him on task

She agreed that she would have simplified instructions for the Student. These were provided pursuant to his accommodations and modifications. At the end of the 3<sup>rd</sup> quarter, he was seeing the counselor and case manager and had improved but for attendance. He improved his effort but still had other issues with student outside of school.

When the Student failed to turn in assignments, she would call the mom who was responsive. She would send home work and she would contact mom to make sure that it was brought back.

For the 1<sup>st</sup> quarter progress report, his projected grade would be an "F" due to absences. The same was true of the 2nd quarter due to excessive absences. By the end of 1<sup>st</sup> semester, he was not attending class very much and had a total of 27 absences and 29 tardies. As to the tardies, the Student would come in 10 or 20 minutes late by which time the instruction would be over and students would be working independently. When he arrived 20 minutes late, he lost crucial information. It was not feasible to re-teach the entire lesson.

██████████ has been employed as a social worker since 1990 for ██████████. In 2007, the Student was assigned to her case load. She described the Student as having an engaging personality, great sense of humor, sensitive, kind, good person, resilient, outstanding sense of humor and generally a terrific person.

She agreed that she would look at the Student's prior records when conducting an assessment. The Student's transition to high school was a little difficult. He initially had been assigned to inclusion classes but was then switched to instructional classes. She understood that he was angry about it. She believes that the case manager and teachers made the decision to switch him. The student told her that he was angry about this, felt bad and was frustrated as he didn't think it should have occurred as he didn't feel that this was an appropriate placement - it was too easy. In 2007, there was a lot of resistance to social work services.

Her impression was that he had problems that needed to be worked through. Unfortunately, he was very uncooperative during this time. Her observations of the Student were that he had a short attention span, seemed guarded and appeared to be frustrated with school. She believed that the frustration manifest itself as poor attendance.

As the student was making some progress, she did not recommend services. In fact, the Student refused social work services. She would go to the classroom but he didn't want to see her. As part of his current IEP, she noted his present level of performance included difficulty paying attention. She recommended 120 minutes per week.

During his second year, he continued to be resistant and didn't want social work services most of the time. She did discuss this with the case manager [REDACTED] who told her to continue to provide services. The refusal of services started in April, 2008. As a result, she had a conference with the parent in May 20, 2008. They had a conference with parent and then performed a social assessment in May, 2008 and participated in an IEP regarding this. As the Student (SD86) continued to have social - emotional issues, she recommended 120 mpw of social work services. She did not provide any social work services after April, 2009.

She did look at the outside evaluation. She did review [REDACTED] report and felt that it was an outstanding report.

[REDACTED] has been employed by [REDACTED] as an assistant principal at [REDACTED] the past two years

She met the Student relative to a discipline issue. He had arrived at class late and the teacher was asking him to get on task. He indicated that he was frustrated by this. Dependent upon how a teacher asked him, he could react negatively. In discussing his behavior, he didn't like being in a room that everyone knew was a Special Education room. He continually would go to class late so others would not know that he was in a Special Education class. Based primarily on attendance and behaviors, the Student had 4 to 6 in-school suspensions and 4 out-of-school suspensions.

The teachers would come to her to see how to deal with the Student. She would talk to the teachers about strategies and interventions for the Student to include his triggers, i.e. direct commands weren't always accepted. Rather, it was important to talk calmly and softly so as not to bring attention to him in classroom. One strategy was to tell the class something and then go over to the Student and softly tell him to get on task, etc.

She did observe the Student in the classroom. He would keep to himself in the classroom. The classes that he was in were relatively small so she could see what everyone was doing. She observed that he would do his work when he felt like it. They did consider having an aide which was a way that they would be able to insure he was in class but it would also bring attention to him which was a problem. As a team, they didn't feel that this was the best option as it would add to his frustration. She did note that every time that there was a contact, his behavior would improve for a period of time.

She was present at the last IEP meeting in April, 2009. In her opinion, everyone was being very professional in determining what services would benefit the student. She felt that the meeting was productive. The parent attorney suggested additional tests to be given and the team agreed to consider such tests. The teachers were trying to utilize strategies that were in place.

The 04-23-09 IEP was a very collaborative approach. They were responsive to what the tests and outside evaluation stated that he needed. As they didn't feel that the school could provide him with sufficient programs, a placement change was recommended. This was based upon their opinion that (a) the school district had exhausted what they could do - both behaviorally and academically and (b) the Student needed additional services. As they didn't want to have to pull him out of class for all these services (given his emotional reaction to this), they felt that a separate therapeutic day school would be more appropriate where he would feel more comfortable.

██████████ felt that the services provided at ██████████ were exhaustive and they did everything that they could for the student. She feels that they were successful in trying to implement strategies that assist the Student at every turn.

██████████ works with the ██████████. Her duties involve working with the CPS students at the therapeutic day schools including writing their IEPs, classroom observation of instruction to make sure that it is up to ██████████ levels and to serve as the liaison with schools and CPS.

She is assigned to ██████████ in ██████████ which is a private therapeutic day school. She is assigned the Student's file but is not familiar with the Student and has not met him. She did not know if the Student attended during the summer and has not talked to ██████████ about how the Student is doing. She will be setting up an IEP meeting for the Student in around 30 days.

She believes that the A/T evaluation is most appropriate place to conduct evaluation is in new school.

██████████ has been a Speech Pathologist for 9 years. She was directed to review the outside evaluation of ██████████. She agreed that (PD 401) the Comprehensive Assessment of Spoken Language (CASL) was well below average with the student scoring below 1 percentile. The scores suggest that the student has difficulty putting words together to make a sentence and problems with grammar. She believed that he was in the Moderate to Severe range. This would manifest itself in the day to day class room, i.e., speaking to teachers, answering questions and difficulty expressing himself clearly.

She did agree that it is not common to have initial evaluations for speech/language in high school - normally this would have this prior to high school. Speech/Language therapy is often included within those services.

She undertook an evaluation (PD363-365) which showed that the Student exhibited expressive and receptive language delays in specific tests. His deficit was considered to be at the low end of moderate but he was more than 3 Standard Deviations below on one test.

(PD364) In her opinion, it was difficult to determine if the student's speech/language issues were impacting his academic issues. Since his teachers indicated that he was communicating well in

class, it was difficult to determine if speech/language issues/ability was impacting his academic performance.

In looking at [REDACTED]'s report, one can distinguish between the clinical and educational model of Speech/Language. The educational model looks at the academic performance, functional communication and vocational communication where the clinical model looks at the skills impacting negatively that performance. The clinical model looks at specific impairment without reference to academics. As such, speech/language deficits do not automatically mean a need for speech/language services in an academic setting.

Accommodations/Modifications for the student included to be seated near the teacher; have teacher modeling; break down the work into small chunks of information; provide further explanation; check on understanding; allow additional assistance with feedback; allow 1 - 2 days extra to turn in assignment; have review sheets available, have directions read to him and allow extended time on task. In her opinion, these are all reasonable to address the Student's problem. She did agree that accommodations/modifications were no substitute for speech/language services (SD 94).

[REDACTED] has been a school psychologist for [REDACTED] for the past nine (9) years. Her job responsibilities at the high school level involve evaluation/re-evaluation of students, counseling, direct service with teachers, parents and student, crisis intervention and attendance at IEP meetings. She acknowledged that she had an incredible load, i.e., 120 meetings at [REDACTED] (504 plans, IEP's, etc) alone in a school year.

As part of conducting a tri-annual re-evaluation of a student, the team will study the past evaluations in light of the student's progress and the potential need for a new evaluation, will consult with the parent(s) and teachers; look to re-establish the student's eligibility and, if appropriate, determine a change in eligibility. She approximates that it takes up to 6 + hours to do all of this.

In terms of intelligence, in theory, an intelligence quotient (IQ) remains stable over a person's lifetime. If there is an existing IQ score, absent trauma, etc., it shouldn't change. She did acknowledge that it can vary up to 10 - 15 points based on confidence level. Although IQ is a relevant domain, it isn't necessary to do a formal assessment each time. It is acceptable practice to use a previous assessment as measure of potential.

She only vaguely remembers her evaluation. Her general impression of the Student was surprise as he was well behaved and very personable contrary to the reports that she had read. As part of her evaluation, she administered only selected sub-tests of the Wechsler Individual Achievement Test Second Edition (WIAT - II) - Word Reading and Numerical Operations. She did not feel that it was warranted to do total Wechsler test for re-evaluation. If requested, she would have addressed more but since there was no concern raised by the teachers and/or team, she saw no reason to administer other sub-tests.

On the Word Reading, the Student had a standard score of 72 (3rd percentile) and a 63 on the Numerical Operations (1<sup>st</sup> percentile). She also administered the Reynolds Intellectual Screening Test (RIST) which is a brief/quick test for a student with attention problems (she was aware that the Student had this problem). The RIST score was an 88 which is considered in the low average range. She agreed that the RIST does not give scores for processing speed, working memory, verbal and non-verbal reasoning skills.

She did receive the report from [REDACTED] and reviewed it. She accepted the conclusions and diagnoses of Reading Disorder (Developmental Dyslexia), Disorder of Written Expression, Mathematics Disorder, Mixed Expressive - Receptive Language Disorder and Attention-Deficit Hyperactivity Disorder - Predominately Inattentive Type.

[REDACTED] was the Student's counselor and case manager from sixth grade through ninth grade at [REDACTED]

He agreed that for a 3 year re-evaluation, it would be normal to have a psychological evaluation/re-evaluation. From the record, he was unable to determine if a psychologist was present or not although references throughout suggest a psychologist was there or at least presented a report. [REDACTED] psychologist, was probably at IEP meeting

Assistive Technology was also checked. Under modifications and accommodations, an A/T word processor when appropriate was noted. He does not know if it ever came in or not. Per documents, he believes that the A/T equipment might have come in about 6 months after A/T report came in. As to the Student's academic abilities, he agreed that a rating in the (see PD59) 3<sup>rd</sup> percentile would be pretty low and would cause him concern. He did not know what was done to increase reading skills.

The A/T equipment goes to him, he takes reports, gives the report to the right people and takes the equipment to special education teacher. The fact that he did not note equipment in a later IEP does not mean he didn't give it to the special education teacher.

His recollection of the Student was that he was well liked by staff. He would respond to interventions. His self-esteem was not very high and he shut down a lot especially when he got in trouble.

[REDACTED] has been a Special Education teacher at [REDACTED] for the past three years. He teaches an inclusion class with 20 students (5 IEP's). He also has a larger class with 31 students (12 IEP's). His self contained classroom contained about 7 or 8 students.

About one-half way through the year 2007 - 2008, the Student transferred from another class. He was a little withdrawn at first - quiet and would do work when prompted. In his math/Algebra 1 class, the Student was working on higher level things. If shown examples and explained to him, he was able to perform the work. Once he got more comfortable, he did a good job. He kept organized notes, volunteered answers and took his work serious. He would work past the bell to finish work. When he came in, he took out notebook and was ready to

work. As to comprehension, when he was involved with a new concept, he might have had a problem understanding it.

His biggest problem was refusing to do work. His outbursts became less frequent as the year went on. As the Student got more comfortable around him and established a relationship, he responded better. He believes the Student got a passing grade for Algebra class. He does not recall if he had any in-school suspensions.

He also had the Student in the school year 2008-2009. The Student responded well but failed the marking period due to attendance. He did well in class with academics. Per the quarterly report, his disruptive behaviors were under control and the Student was willing to accept help. He was still a little hyper but if patient and calm, he was able to re-direct him back onto task. The Student responded well to being patient with him and not too confrontational.

He agreed that the Student would benefit from a review of materials. He was able to do the work when reminded of how to do it, i.e. multi-step problems. Communication abilities were good. He believed that he had a good relation with the Student. The Student liked to talk about sports - basketball and football.

[REDACTED] has been a Special Education teacher at [REDACTED] since 1985 and has been at [REDACTED] for 9 years. She teaches 4 self contained (instructional) classrooms and one inclusion (only 1/3 of class as Sp Ed) class.

The Student was in her class for the first couple of weeks. In September 2007, he was the only student in her class as a freshman for a short period. He did wonderful/great. She did not feel a need to review his IEP goals to see if they were appropriate as it looked as if he were properly placed in her class. He was then changed to an instructional algebra class - self contained. To her knowledge, he asked for a program change and transferred out of her class to another class.

In addition, he was also on her case load for 2007-2008 and she would write his IEP. She was involved in his IEP (PD213). She agreed that his goals are more general but felt that they are acceptable to be used with the Student.

At times, the Student's demeanor towards her was very sweet and well behaved and at other times, he was nasty, didn't want to listen or do what she say, etc. As to his social skills, he didn't get along well with other students. For example, he would chase another student around class and kick him when down. If corrected on behavior, he would merely shrug. He did seem to have friends and seemed to know everyone.

In 2008-2009, he was in her class for the entire school year. His performance was good when he wanted to be there. His strengths when focused were that he could pick up things quickly and was the first to turn in his class work. If he completed his assignment, the work would be done and he would answer all questions quickly and correctly. In her opinion, he could read pretty fluently (compared to other special education students]. He spoke pretty well and could speak in complete sentences. His content was good. His handwriting was very good. He was able to put

together one or two sentence to answer a question. As to his organizational skills, he never brought supplies to class so she couldn't tell.

██████████ was the Student's special education teacher in 7 and 8<sup>th</sup> grade (school year 2006-2007 and 2007-2008).

She noted that he had problems in auditory association, auditory discrimination and visual sequential memory. They did work on phonemic awareness via a program that she brought in once a week - like "Words Your Way" but for upper grades. "Words Your Way" was a method of bringing words from the real world into class i.e. "slim jim".

Per the 6<sup>th</sup> grade Iowa Scores, the Student ranked in the 3<sup>rd</sup> percentile in reading and math which means he was working better than 3 kids and 97 were performing better than him.

As to his academic skills, he was doing algebra by end of 8<sup>th</sup> grade. She saw lot of progress. He could do basic algebra and geometry. He was reading novels by the end of year and he was able to show comprehension.

She feels that he made progress during the school years at ██████████ They worked on a number of skills and he tested well in terms of his reading comprehension and phonemic awareness. She used various methodologies as to phonic skills - rhyme words, use of beginning, middle and end of words to work on this, etc.. He was working very well per the curriculum based scores and making progress.

She agreed that the IEP goal(s) translate or transfer into classroom instruction. This drives the instruction. She would want to make sure that he was working on the goal in all areas of reading, social studies, speech. She would work with him in basic sounds in context of what was doing in reading. She would do this by selecting words from books ("Monster") and then putting those words on the board and breaking them down. She would also address phonemic awareness in class. She would use what is called "Four Blocks" to break down material so that they are working on a socially valid curriculum but bringing it to the student's level. She would also make sure that goals are associated with a state goal. She did not feel that it was unusual to be addressing phonic skills in high school - based on her experience as special education teacher.

During the 8<sup>th</sup> grade, she saw lot of improvement in his behavior during the year. She gave him strategies for calming himself when he got angry. He was never disrespectful with her as he knew his boundaries.

██████████ is a clinical neuropsychologist with a specialty in pediatrics. She holds a Ph.D. in Clinical Psychology from Loyola U - IL, did an internship at UNC - Chapel Hill and a post doctoral fellowship for one (1) year at Northwestern University in Neuropsychology. Her practice is limited to neuropsychological assessment. She does not provide any treatment or counseling. As part of her practice, she does attend IEP meetings in 50 % of her cases.

She conducted a full neuropsychological evaluation of the Student (See PD 386 - 401). This included speaking with the parent for back ground information, assessing all domains of cognitive functioning, reviewing the test results and then preparing her report and educational plan for student going forward. She reviewed his academic history and prior evaluations as it was important to her to know the Student's cognitive and academic history. She also met with the Student on 2 occasions, approximately 4 to 5 hours each time. She found the Student to be an exceptionally polite young man - very refined. He was dressed and groomed impeccably. He was very measured in speaking, choosing his words carefully. He worked very hard during their sessions.

She utilized the following tests

Wechsler Adult Intelligence Scale She found vast discrepancies between his visual processing (average range) and verbal comprehension (considerably lower than when initially tested). His working memory also was poor. Verbal comprehension, if unremediated, will drop over time.

Woodcock-Johnson III This is a test of academic functioning in various subject areas. The student performed very far below grade level - about 5 grade levels below. The trends shown were typical of student with average intelligence but with a learning disability. His work attack skills were at the 2nd grade level. He was almost a non-reader in ability to sound out words. Instead of reading the words, he was using cues and context of sentence to fill in the word(s). When looking back through his IEP's, this was consistent with the strategies suggested - to compensate instead of learning to read.

Gray Oral This is a test of his oral reading ability. He was still many grade levels behind scoring a grade equivalency of 4.2 on reading rate, 4.7 on reading accuracy, 4.7 on Comprehension and less than 1 % on Oral Reading Quotient.

Conners Continuous Performance (CPT) This test deals with neuropsychological functions. Although he sustained attention on the computer - sitting very still and looking at the computer screen which suggested/looked like he was responding, the test data showed he was off task much of the time.

Wisconsin Card Sorting Test (WCST) This test measures executive dimension. His scores were depressed to low average as he failed to maintain attention. He would lose track of the task.

Comprehensive Assessment of Spoken Language (CASL) He performed below the 1<sup>st</sup> percentile on both sub-tests.

Beck Youth Inventory This is a self report test where the student answers questions on 5 index scales. It showed that he had low self - esteem, suffered from anxiety and depression. However, his anger and disruption ability were within normal limits.

Her diagnostic impressions were as follows:

1) The Student "has significant and unremediated learning disabilities in reading and written expression as well as math. His learning disability in reading has been unsuccessfully treated for many years and he is now six grade levels delayed in reading, eight grade levels behind in written expression, and five grade levels behind in math." She believed that the "root of [Student's] learning disabilities in reading and written expression was a Mixed Expressive-Receptive Language Disorder".

2) As to his inattentive behavior, he needs to be taught to sustain concentration which most likely would require a more tailored approach than currently provided.

3) His self-esteem has dropped significantly and he is very embarrassed about his deficits. He tends to pull back when his deficits are exposed. His acting out behaviors can be related to anxiety, depression and low self-esteem, i.e. working for a number of years without experiencing progress.

Her prognosis for remediation for the Student is good. With an average IQ, he can learn to read fluently. He may be able to do it in a two year span but there is a lot of ground to cover in reading. It is important to focus his intervention on reading and written expression. The Wilson program would be an excellent choice to accomplish this. He will benefit from a one-on-one approach with daily additional reading and two (2) days of writing.

She recommends remediating his learning disability. Her recommendations include needing to make it very basic. Due to the intensity of work to make up for this disability which needs to be covered in two years of schooling, he needs a specialized school placement (already provided) and additional remediation. She also recommended speech/language testing as she felt that this was at the root of what was going on with him. In order to create a speech/language plan, he needs more elaborate testing.

She is critical of the district's evaluation(s). Even though retained in 1<sup>st</sup> grade, no evaluation was done which might have picked up these early language issues. Based on her review, the Student was not evaluated until the 4<sup>th</sup> grade.

His initial evaluation in 2002 during the 4<sup>th</sup> grade (PD163) noted his phonemic awareness deficits and difficulties. A [REDACTED] or [REDACTED] phonological based program with manipulative hands on approach with specific types of task and repetition would have been excellent for him. There was no evidence such program was provide.

She does not feel that the RIST is an appropriate test since the Student only had one IQ screening prior. There was none done in 2005 and amount of assessment is exceptionally limited - only 2 sub-test for WAIT. Even on those sub-tests, he performed low on word reading. She does not believe that he is able to decode words based on this test. In terms of his math, language processing is important as to reasoning. The RIST sub tests that the District psychologist selected gave only a limited view of student. Even the overall RIST would not have provided sufficient information. Written expression is also important to further review the Student's

deficits. Writing a paragraph is not sufficient as it is only qualitative and there is no normative data to refer.

Given his language processing disorder, she felt that it is imperative that the Student return to the very basics of reading instruction. She did agree that the following (SD121) [REDACTED] modifications, accommodations and additional academic recommendations (although generic) were appropriate for the Student: visual cues and aids appropriate; charts and graphs for homework; (SD 94 - part of June, 2008 IEP) sit near teacher and away from distractions; understanding of directions should be checked - the teacher should regularly check to see if the student understand directions; assistance with approach new tasks/longer assignment & presenting information in small chunks and larger projects and essay should be broken down into smaller tasks; providing a rubric will help in breaking down longer assignments. A gentle manner and positive encouragement works well with the student and should be used as appropriate.

She is familiar with [REDACTED], has observed it and consulted with staff about students. She believes that it is an appropriate school for the student and excellent at providing remediation. It has the tools that will work with his learning disability for remediating the Student's written and oral language.

[REDACTED] is employed as Director of Education at the [REDACTED]. She found the Student to be very enthusiastic and truly wants to learn. He appears motivated.

During the next two years, she can't say what the future holds but from the progress seen so far and the Student's motivation, he would benefit from additional help. It is her opinion that the Student will benefit from additional after school services due to discrepancies in grade level and ability and his motivation and desire to learn.

## **Findings of Fact - Documents**

### **Historical References**

1. Student attended [REDACTED] from Kindergarten through Eighth Grade. [Student's testimony]
2. Student's mother was concerned early on about the Student's academic progress. [See mother's testimony]
3. The Student did not do well in First Grade and the mother requested assistance. [PD180]
4. He was retained in First Grade. [PD180]
5. His July 10, 2002 Eligibility Determination noted that the Student's test scores were at the floor of the below average range. He continued to experience failure due to apparent phonemic awareness deficits. [PD 138]

6. The Student was found eligible for Special Education services based upon a Learning Disability. [PD138 & PD 151]
7. The K-TEA/NU Brief form indicated overall academic capabilities at the floor of the below average range. He is processing information slowly. [PD 139]
8. On the ITBS, in 2001 (second grade), he scored a grade equivalency of 1.2; in 2000 (first grade), he scored a grade equivalency of 1.5 and in 1999 (first grade), he scored a grade equivalency of 1.0. [PD153]
9. On intellectual functioning (Intelligence Quotient), as assessed by the WASI - 4, the Student achieved a 96 IQ at the 39 percentile on the Verbal Scale, a 97 IQ at the 42 percentile on the Performance Scale and a 97 Full Scale IQ at the 42 percentile. [PD 166]
10. His discrepant scores on the K-TEA/NU battery versus the WASI-4 suggests deficits will only increase without significant assistance. [PD 167]
11. The Student evidenced phonemic awareness deficits. The Student might benefit from an intensive multi-sensorial instructional approach such as the [REDACTED]. [PD 167]
12. The Student also had stress related reactions to his academic difficulties. [PD 183]
13. An IEP annual review dated May 25, 2004 (Grade 5 at [REDACTED]) again noted Language/English and Reading as the areas of need with 450 mpw in a separate (SE) class.
14. Per the 2002 ITBS, the Student scored at the 4<sup>th</sup> percentile in Reading and 7<sup>th</sup> percentile in Math. [PD114]
15. By the June 8, 2005 IEP meeting (6<sup>th</sup> grade) - 3 year review - per the WIAT test given on May 27, 2005, his grade equivalency for word reading was 3.6, reading comprehension was 4.5; math/ numerical operations was 4.6 and math reasoning was 4.6.
16. At this IEP, the Student continued to exhibit deficits in auditory association, auditory discrimination and visual sequential memory. [PD 084]
17. An assistive technology evaluation was done on June 16, 2005. The evaluator recommended (1) a speaking dictionary; (2) a reading program to help with sound blends and overall phonics skills; (3) a math program to go over multiplication and division problems; (4) an auditory processing program; and (5) a word prediction program. [PD 212-213]
18. The October 24, 2005 Functional Analysis and Behavior Intervention Plan noted his frustration with his poor academic progress. [PD -76]

**May 21, 2006 IEP**

19. At the May 21, 2006 IEP - annual review (Grade 7) and based on the sixth grade IOWA test, the Student was at the 3<sup>rd</sup> percentile in reading comprehension and math problem solving. [PS 059]
20. His goals for this period note that he becomes frustrated reading orally because his decoding skills are weak and he has a difficult time sounding out unfamiliar words. [PD 065]

**June 12, 2007 IEP**

21. For the June 12, 2007 IEP Annual Review, the Student was in the 8<sup>th</sup> grade and going into high school. [PD034]
22. The Student was not eligible for extended school services. [PD 037]
23. The modifications and accommodations on this IEP were considered appropriate but generic [PD039; Testimony of ██████████]
24. The Student was reading at a 5<sup>th</sup> grade level.
25. His Special Education and Related Service Minutes were increased to 783 mpw including 450 mpw in Language Arts/English/Reading, 225 mpw in mathematics in a separate class, 100 mpw in social/emotional services and 8 mpw in a separate class. [PD048]

**June 3, 2008 IEP**

26. The June 3, 2008 IEP meeting was a 3-year re-evaluation. [PD002]
27. His score on the WIAT - II on word reading was better or the same as 3 percent of the same age peers (conversely, 97 percent less than his same age peers) and on numerical operations was in the 1 per cent range. [PS 003]
28. A range of modifications and accommodations were recommended. [PD 012]
29. His Special Education and Related Service Minutes were increased to 1,180 minutes. His minutes were as follows: 230 minutes in Language Arts/English/Reading in a separate class, 230 minutes in Mathematics in a regular class, 230 minutes in Biological & Phy. Sciences in a separate class, 230 minutes in Social Sciences in a separate class, 230 minutes in World Language in a separate class and 120 minutes per month in Social/Emotional consult in a separate class. [PD020]
30. The Psychological Re-Evaluation of April 22, 2008 showed that the Student on the Word Reading sub-test scored at the same or better than only 3 percent of his same age peers

and that he scored only better than one percent of his same age peers on the Numerical Operations. [PD159; testimony of ██████████]

#### **April 23, 2009 IEP**

31. His April 23, 2009 IEP was a Special Evaluation. [PD294]
32. The IEP team reviewed and accepted the Report of ██████████ as to the following: on the Woodcock Johnson test, he had a grade equivalency of 3.1 on letter word identification, 2.1 on work attack, 4.5 on passage comprehension, 4.2 on reading fluency, 4.1 on math calculation, 5.7 on applied problems, 4.4 on math fluency, 5.4 on spelling, 2.6 on writing samples and 3.3 on understanding directions. The Student showed low average to deficient reading comprehension. He had difficulty decoding, had trouble with sight word memory and contextual clues. His ability to decode single familiar words was in the deficient range and he demonstrated no ability to decode any unfamiliar words. [PD306]
33. His Special Education and Related Service Minutes were increased to 1,500 minutes. His minutes were as follows: 500 minutes in Language Arts/English/Reading in a separate class, 270 minutes in Mathematics in a separate class, 230 minutes in Biological & Phy. Sciences in a separate class, 230 minutes in Social Sciences in a separate class and 270 minutes per month in Social/Emotional per a variety of providers. [PD329]

#### **Central Auditory Processing Evaluation**

34. A Central Auditory Processing Evaluation of April 1, 2009 showed that the Student had average to low average performance in the areas of auditory word recognition, auditory binaural integration, temporal patterning, pitch perception and auditory sequencing. He had below average performance in the areas of auditory closure, auditory figure-ground, time compressed speech, auditory synthesis and binaural separation. This is consistent with an Auditory Decoding Deficit. Academic and communication skills may be affected by this disorder. [PD377]

#### **Independent Educational Evaluation - Neuropsychological Evaluation**

35. An Independent Educational Evaluation was performed by ██████████ [PD 385 - 397]
36. Her diagnostic impressions were as follows [PD 395 -396]:
  - 1) The Student “has significant and unremediated learning disabilities in reading and written expression as well as math. His learning disability in reading has been unsuccessfully treated for many years and he is now six grade levels delayed in reading, eight grade levels behind in written expression, and five grade levels behind in math.” She believed that the “root of [Student’s] learning disabilities in

reading and written expression is a Mixed Expressive-Receptive Language Disorder”.

- 2) As to his inattentive behavior, he needs to be taught to sustain concentration which most likely would require a more tailored approach than currently provided.
- 3) His self-esteem has dropped significantly and he is very embarrassed about his deficits. He tends to pull back when his deficits are exposed. His acting out behaviors can be related to anxiety, depression and low self-esteem, i.e. working for number of years without experiencing progress.
- 4) Data from the evaluation strongly suggests the presence of a Mixed Expressive - Receptive Language Disorder that has gone un-assessed and un-treated and likely underlies his learning difficulties in reading and written expression.

## **Conclusions of Law**

### **1. Failure to conduct adequate assessments of all areas of potential disabilities**

Historically, the District was aware that the Student had difficulties in a broad range of areas including specifically reading and math. Although the District was aware of these difficulties, the District did little historically to evaluate these difficulties. In the relevant time period, although the District continued to be aware of the Student's difficulties in the various subjects and addressed these in terms of services, the District failed to conduct sufficient evaluations to provide appropriate assessments of the Student. Admittedly, various evaluations were performed relative to various IEP's and modifications and accommodations were suggested to address the Student's deficiencies. However, as noted by [REDACTED] and re-inforced by the Central Auditory Processing Evaluation performed, the Student abilities were substantially deficient. Per [REDACTED] report and testimony, the Student likely suffered from a Mixed Expressive-Receptive Language Disorder that had gone un-assessed and un-remediated. Based upon [REDACTED] report and the subsequent evaluations conducted as suggested in [REDACTED] report, the District decided to place the Student in a private therapeutic day school to address his difficulties and deficiencies. From the testimony of the parent, the Student appears to be doing well at this school.

Although the District failed to address all areas of potential disabilities, by funding the Independent Educational Evaluation and then evaluating the Student in the various areas suggested, the District has now provided appropriate assessments for the Student. But for the issue of compensatory education to address the period of deficiency as addressed by the Due Process Complaint, this issue is therefore found in favor of the School District.

## **2. Failure to provide essential related services in the areas of assistive technology**

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

One could construe the above under 34 C. F. R. 200.34 to include Assistive Technology as a related service or to be provided as a related service. However, whether Assistive Technology is or is not a related service is not germane here. The issue is whether the District appropriately implemented the Assistive Technology services as required per the IEP.

As noted in *Kevin T v. Elmhurst Community School Dist. No. 205*, 36 IDELR 153, “‘AT services’ include ‘evaluation of the AT needs of the child, obtaining, designing, and selecting appropriate AT devices, training personnel to provide AT services’ 34 C.F. R. Section 300.5 and 300.6.

The District first performed an evaluation for assistive technology in 2005. Although several recommendations were made [see PD 212], it does not appear that the recommendations were implemented in their totality. The Student referenced only that he may have received a talking dictionary but even that testimony was equivocal. The IEPs in the relevant time period have not addressed his need for assistive technology even though the School District is obligated to review prior IEPs when revising an IEP. Based on the report of [REDACTED] and the 2005 Assistive Technology Evaluation, various assistive technology devices and programs would assist to address the Student’s deficits and deficiencies. As the Student has now been placed in a therapeutic day school, this would be the appropriate place to address the Student’s need for Assistive Technology.

Therefore, this issue is found in favor of the Parent/Student and will be considered in the context of both Compensatory Services and Additional Evaluation(s).

## **3. Failure to provide adequate intensity of social work services**

Throughout his tenure at [REDACTED] the Student has had social and emotional issues. From the testimony and evaluations, some of these issues maybe outside of the school environment but the majority appear to be related to his embarrassment at being assigned to a special education classroom. Per [REDACTED] the Student was embarrassed to be seen going into a special education classroom and was therefore late. In addition to being late, he also had numerous absences.

██████████ found that he was receiving benefit from Social Work Services and was addressing his anger issues.

The School District was aware of this/these issues with the student. In fact, the various IEPs developed in the relevant time period specifically addressed this concern. Although the IEP team at various times felt that a separate inclusion classroom would be best for the Student's academic progress, the emotional issue associated with this had the team try to find ways in which to provide services without impinging on this social/emotional issue. During the high school setting, the IEP team attempted to deal with this issue by increasing his social work minutes and having not only the social worker see him but also other appropriate professionals, i.e. psychologist.

This issue is found in favor of the District.

**4. Failure to develop an effective functional behavior analysis and behavior intervention plan**

The case of *Alex R v Forrestville Valley Community Unit School District # 221*, 375 F. 3d 603 is instructive relative to the development of a functional behavior analysis and behavior intervention plan. In that case, the court noted two (2) instances in which a behavioral intervention plan could be warranted. The first scenario is inapposite to this matter but the second situation is germane. That situation in which a "behavior intervention plan could be warranted occurs when the disabled student exhibits behavior that impedes the learning of himself or others ... 20 U. S. C. Section 1414 (d)(3)(B)(I) requires a school district's IEP team ... 'to consider, when appropriate, strategies, including positive behavioral interventions, strategies and supports to address that behavior'"

Here, some of the student's emotional and social issues are a direct result of his disability. The relevant testimony was that the Student was embarrassed to be in a Special Education classroom and therefore would arrive late to class or would not even attend school. In response to those issues as noted in 3 above, the IEP team did attempt to address this/these issues. A Functional Analysis/Behavior Intervention Plan (FA/BIP) was developed for the student on June 12, 2007 which correctly identified the student's behaviors and addressed ways in which to respond to them. Further the teachers were aware of the "triggers" for the Student and strategies were developed to respond to these "triggers". Although the interventions were not always successful, the District was cognizant of the behaviors and had attempted to deal with them.

Further, as the Student is now in a therapeutic day school and apparently not having any such difficulties, the parent, per a September 18, 2009 letter, has withdrawn this claim subsequent to the April 2009 IEP.

This issue is found in favor of the School District.

**5. Failure to identify and utilize effective teaching methodologies to enable student to make progress**

As noted above, the School District failed to appropriately evaluate the Student for all areas of his disability. Without being aware of his various disabilities and deficiencies, the School District did not appropriately address the teaching methodologies for the Student and therefore failed to properly provide instruction to address this/these disabilities. Historically, the School District did identify several appropriate teaching methodologies to assist the student [See Findings of Fact - Documents 11], however, it does not appear that these were implemented for the Student. Coming forward in time, the District was aware from test scores and from their own evaluations that the student was having difficulties. Although the School District recognized the areas of difficulty and attempted to provide for this with increased Special Education minutes, no teaching methodology was identified in the Hearing in this matter which would have been of benefit to the student. As noted by [REDACTED] in her testimony, it appeared that the District's plan substituted use of context cues, etc. for actual reading instruction and basic reading skills.

Although the District did not identify appropriate teaching methodologies, by funding the Independent Educational Evaluation, evaluating the Student in the various areas suggested and placing the Student at a private therapeutic day school, the District has now provided an appropriate teaching methodology for the Student. But for the issue of compensatory education to address the period of deficiency as addressed by the Due Process Complaint, this issue is therefore found in favor of the School District.

#### **6. Failure to develop an adequate transition plan**

This issue was not addressed either through testimony or documents at the Hearing. However, in reviewing the current and last IEP, the June 3, 2008 IEP addressed his post secondary transition and provided for consultative services relative to this. His April 23, 2009 IEP addressed both a vocational plan and a transition plan.

Therefore, this issue is found in favor of the School District.

#### **7 & 9. (7) Failure to offer a complete curriculum in areas of reading, language arts, math, social studies and science and (9) Student's IEPs have been deficient**

The Parent contends that IEPs during the relevant times were deficient and that the goals developed in the IEPs during the relevant time period were vague and failed to meet the needs of the Student.

The starting point for any analysis of whether an IEP is reasonably calculated to provide a meaningful educational benefit is the Supreme Court's decision in *Bd. of Ed. v. Rowley*, 458 U.S. 176. *Rowley* presents a two prong test relative to F.A.P.E., the second of which implicates a meaningful educational benefit. This substantive prong requires the District to provide an IEP that is calculated to allow the student to benefit from his educational experience. It requires more than a nominal benefit for this instruction. *T. H. v. Bd of Ed of Palatine Comm Consol. Sch. Dist.* 55 F Supp. 830 (N.D., Ill. 1999). An IEP needs to contain goals and objectives which are

measurable *Independent Sch. Dist. No. 701, Hibbing Pub. Sch. v. J. T.*, 45 IDELR 92 (Minn., 2006). As noted therein,

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

Here, the District did look at the Student's deficiencies in light of his disability. Although the District may not have appropriately identified the basis of the Student's difficulties, they still addressed his problems in the various academic disciplines. The IEP's did identify the areas of his weaknesses even if they did not understand the underlying issues giving rise to those difficulties. Each of the relevant IEP's did attempt to provide services to address his perceived deficiencies.

Testimony and documents submitted on behalf of the District show that the District employees spent considerable time and effort to address the particular disabilities affecting the Student. Although there may be issues between the private evaluator as to underlying nature of the disability, there does not appear to be any significant difference as to the areas that need to be addressed as to the Student. All seemingly are in agreement that Student suffers from a number of problems but those most affecting his education involve Reading, Math and Speech/Language. The District attempted to deal with these difficulties/deficiencies in a number of ways over time. Further, ██████████ noted, the accommodations and modifications identified, though generic, were reasonable.

The District initially attempted to provide services to the Student in a combination of the general education classroom and that of a Special Education classroom. As the Student's problems including the social/emotional issue became more pronounced, the IEP team addressed this with additional Special Education Services basically full time in a Special Education classroom (but for non-academic subjects). Ultimately, the IEP team felt that a private therapeutic day school would be the best placement to assist the Student.

Education professionals are to be given deference as to education placement and methodologies *School Dist. Of Wisconsin v. Littlegeorge*, 295 F. 3d 671 (7<sup>th</sup> Cir., 2002) so long as those school professionals were not unreasonable in their determinations as to appropriate services and placement (See also *Hearther S. v. State of Wisconsin*, 125 F. 3d 1045 (7<sup>th</sup> Cir., 1997). *Rowley*, supra, cannot be read to suggest that any improvement, no matter how small, would be appropriate. Rather, as noted in *Board of Education of Oak Park & River Grove v ISBE and Kelly E*,

“Rowley does not mean that a *de minimis* benefit is sufficient. See *M. C. V. Cent. Regional Sch. Dist.*, 81 F.3d 389, 393 (3<sup>rd</sup> Cir.)... Kelly failed half of her classes at Oak Park and except for passing several pass/fail classes and making one B in Reading Strategies I, received D’s in the remaining half. The record demonstrates that the educational benefit that Kelly was receiving was minimal.”

Likewise, here, [REDACTED] one of the Student’s teacher at [REDACTED] testified that the Student responded well and did well in class with academics. He failed the marking period due to attendance not academics. He was making progress. His grade reports also show a mixed response - passing some courses and failing others. Again, attendance seemed to be a major factor in his grades.

The School District has progressed through a continuum of placements in an attempt to address the Student’s disability. As [REDACTED] noted, the Student was well served by the District. As the school had exhausted its internal resources, the recommendation for placement at a separate private day school was the student’s Least Restrictive Environment and appropriate. [REDACTED] testified that the District was responsive to what the tests and outside evaluation stated that he needed and beyond that. As the IEP team didn’t feel that the school could provide him with sufficient programs, a placement change was recommended. This was based upon their opinion that (a) the school district had exhausted what they could do - both behaviorally and academically and (b) the Student needed additional services. As they didn’t want to have to pull him out of class for all these services (given his emotional reaction to this), they felt that a separate therapeutic day school would be more appropriate where he would feel more comfortable. Here the goal throughout by the School District was to provide benefit to the Student.

This issue is found in favor of the School District.

**8. Failure to provide parent with accurate and objective progress reports addressing respective goals**

This issue was not addressed either through testimony or documents at the Hearing. Even if the School District failed to provide these reports, as noted in *Knable v. Bexley City School District*, 238 F. 3d 755, and this failure would constitute a procedural violation, it would be necessary to find that this procedural violation resulted in a substantive harm and constituted a denial of FAPE.

However, from a review of the various submissions and IEPs, it appears that the Parent has been substantially involved in the Student’s education. She noted in her testimony that she had brought her concerns about her son’s lack of academic progress and the difficulties that he was having to the attention of the School District as early as 1<sup>st</sup> grade. She was an active participant at the various IEPs as noted in the records. There is only limited information from the Parent’s testimony that she did not receive information about the Student’s progress and/or goals. However, given the efforts of the IEP team and the recent placement, even if this failure was a procedural violation, which this Hearing Officer does not believe that it is, it did not result in any substantive harm.

Therefore, this issue is found in favor of the School District.

### **Compensatory Education**

The purpose of compensatory education is to place a student in the position he would have obtained but for the School District's failure to provide FAPE. *Friendship Edison Public Charter School Collegiate Campus v Nesbitt*, 532 F. Supp. 2d 121. Here, the Student was mis-diagnosed in terms of his reading difficulties which gave rise to his lack of progress in various subjects and particularly in reading, written expression and math. Even though the School District has placed the Student at a private therapeutic day school, as Dr. Scalzo noted, it will be difficult for the Student to make up all of the ground lost in the next two (2) years.

In the case of *Draper v Atlanta Independent School System*, 518 F. 3d 1275, the Court of Appeals found private placement to be an appropriate award of compensatory education. In that case, the court noted, citing to *Todd D. Ex rel. Robert D v Andrews*, 933 F. 2d 1576, 1584 that a District Court may award "appropriate compensatory relief 20 U. S. C. Section 1415 (i)(2)(C)(iii)". "Although 'ordinary [educational programs] need only provide 'some benefit,' compensatory awards most do more - they must compensate." *Reid ex rel Reid v Dist of Columbia*, 401 F. 3d 516, 525. Compensatory awards should place children in the position they would have been in but for the violation of the Act, Id. At 518".

In the instant case, as noted above, the District has mis-diagnosed the underlying difficulties that the student has. Per [REDACTED] report and testimony, the Student likely suffered from a Mixed Expressive-Receptive Language Disorder that had gone un-assessed and un-remediated. [REDACTED] testified that the student may see additional benefit from additional reading services being provided.

In order to remedy this deficiency, an award of compensatory education in addition to the placement already provided by the School District is appropriate. Therefore, the Student is entitled to an award of Compensatory Education in the area of Reading and Language as set out below.

### **DECISION and ORDER**

1. Compensatory services to be provided to the student for a period of two (2) years, or until graduation or until the Student withdraws from school, whichever comes earlier to include:
  - a) 2 hours per week (120 minutes) after school for the 09-10 school year by a certified Special Education teacher with training in reading mediation methodology
  - b) 1 hour per week (60 minutes) after school for the 09-10 school year by a certified Special Education teacher with training in reading mediation methodology
2. Schedule an Assistive Technology evaluation within the next twenty - one (21) days and implement that evaluation with forty-five (45) days.

3. Convene an IEP meeting at [REDACTED] to review all the existing evaluations and appropriate services within thirty (30) days.
4. District to provide proof of compliance with this Order to the Illinois Board of Education, Compliance Division, 100 N. First Street, Springfield, IL 62777-0001 within forty-five (45) days or on or before November 19, 2009.

  
W. DAVID UTLEY  
Impartial Hearing Officer

Dated this 5<sup>th</sup> day of October, 2009

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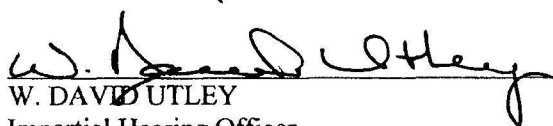
### **RIGHT TO REQUEST CLARIFICATION**

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

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

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

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

  
W. DAVID UTLEY  
Impartial Hearing Officer

Dated this 5<sup>th</sup> day of October, 2009

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

**CERTIFICATE AND AFFIDAVIT OF DELIVERY BY MAIL**

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

[REDACTED]

Illinois State Board of Education  
Attn: Andrew Eulass, Esq.  
Office of the Due Process Coordinator  
100 N. First Street  
Springfield, IL 62777-0001

Via First Class Mail – Certified Only

  
W. DAVID UTLEY  
Impartial Hearing Officer

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