

ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING

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SPECIAL EDUCATION  
SERVICES

[REDACTED]

Student

vs.

[REDACTED]

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Case No. 2009-0058

Alfred A. Spitzzeri, Hearing Officer

**HEARING DECISION AND ORDER**

This matter comes before the Hearing Officer pursuant to the due process hearing request of the student's parents, [REDACTED]. The parents are represented by attorney [REDACTED]. The district is represented by CPS attorney [REDACTED]. The Hearing Officer has jurisdiction to hear and decide this matter pursuant to 105 ILCS 5/14-08.02(a) et seq., and 23 Ill. Admin. Code Sec. 226.600 et seq. The court reporter was [REDACTED]. Their phone number is (312) 263-2881. The court reporter on the first day was [REDACTED] and on the second day was [REDACTED].

**Procedural History**

The parents filed a request for a due process hearing on August 19, 2008. The parties engaged in resolution but were unable to resolve the dispute. Multiple joint requests for continuances were made as the parties attempted to explore resolution of this matter, but upon reaching an impasse, the decision was made to go forward with the due process hearing.

A prehearing conference was held on December 8, 2008 via a conference call between the Hearing Officer and the attorneys for the parties. At the prehearing conference, witnesses and exhibits were identified and the issues presented for the hearing were delineated. The case was continued on multiple occasions based on the mutual request of the parties in an attempt at resolving the matter short of going to hearing. The hearing was subsequently held on Friday, April 17 and Monday, April 20, 2009 at the [REDACTED].

**Issues**

1. Whether the IEP drafted for [REDACTED] on July 24, 2008 is reasonably calculated to provide a free and appropriate public education (FAPE); and
2. Whether [REDACTED] is an appropriate placement for [REDACTED] for the 2008-09 school year.

At the hearing, the attorney for the school district stipulated that the [REDACTED] was an appropriate placement for [REDACTED] for the 2008-09 school year, though not necessarily one that would provide [REDACTED] with the Least Restrictive Environment (LRE). The school district maintained its position that it could provide [REDACTED] with FAPE in the public school setting with appropriate special education and related services as described in his July 24, 2008 IEP.

### Remedies

The parents sought the following remedies:

1. An Order requiring [REDACTED] to provide retroactive reimbursement, including costs related to related services and transportation, for [REDACTED] placement at the [REDACTED] for the 2008-09 school year;
2. An Order requiring prospective placement at the [REDACTED] for the remainder of the 2008-09 school year;
3. In addition, a finding that the [REDACTED] is the "current educational placement" for stay put purposes pursuant to both State and Federal law.

The district requests that the Hearing Officer deny the relief sought by the parents and make a finding that said IEP provides [REDACTED] with FAPE.

### Findings of Fact

[REDACTED] is an eighth grade student at [REDACTED] a private school for students with learning disabilities. He began attending [REDACTED] during the 2006-07 school year. His parents unilaterally placed him there because they believed [REDACTED] had failed to provide him with an appropriate education during the previous school year. They also believed that the IEP drafted on July 24, 2008 failed to provide [REDACTED] with FAPE. A summary of the pertinent facts developed at the due process hearing is provided below.

At the hearing, the parties submitted separate binders of exhibits. Parents' Group Exhibit 1 consisted of a spiral bound notebook listing 38 separate exhibits totaling 348 pages. During the hearing, the parents called 12 witnesses:

1. [REDACTED] the mother;
2. [REDACTED] a private neuropsychologist employed by [REDACTED];
3. [REDACTED] private educational consultant employed by [REDACTED];
4. [REDACTED] the principal of [REDACTED];
5. [REDACTED] the Local Educational Agency (LEA) representative for [REDACTED];
6. [REDACTED] a special education teacher for [REDACTED];
7. [REDACTED] a regular education teacher for [REDACTED];
8. [REDACTED] a school social worker;
9. [REDACTED], a school speech-language pathologist;

10. [REDACTED], a [REDACTED] occupational therapist; and
11. [REDACTED], a [REDACTED] school nurse;

[REDACTED], a [REDACTED] school psychologist who attended the July IEP meeting in question was identified on the parents' witness list, but failed to testify at the hearing for unexplained reasons.

The district's binder was marked as School District Group Exhibit 1 for identification. It consisted of 39 separate exhibits totaling 120 pages. The district's witness list was marked as School District Exhibit 2 for identification. It consisted of 11 witnesses, 9 of whom also appeared on the parents' witness list. Due to witnesses' availability and expediency, witnesses were sometimes taken out of order, and the Hearing Officer permitted each witness to be questioned by the other party as if in their own case in chief without the need to bring back the witness at a later time. [REDACTED] the [REDACTED] school psychologist who evaluated [REDACTED] prior to the IEP meeting, and [REDACTED] the case manager at [REDACTED] school, [REDACTED] neighborhood school, were the only two witnesses listed on the district's witness list that did not appear on the parents' witness list. In fact, [REDACTED] inadvertently was omitted from the district's witness list that was produced to the parents' attorneys prior to the five-day disclosure deadline. Instead, the district had listed [REDACTED] a [REDACTED] school social worker as witness number 10 on the witness list supplied to the parents prior to the hearing. The parents' attorney objected to allowing [REDACTED] to testify at the hearing since she had not been disclosed prior thereto. However, since she was the case manager at the time of the IEP in question and had met with [REDACTED] in the preparation of [REDACTED] educational programming, the Hearing Officer overruled the parents' objection, finding no prejudice or surprise in her anticipated testimony.

### Chronology of Events

[REDACTED] was initially evaluated and identified as a student eligible for special education services in 2002. He has Klinefelter's Syndrome, a chromosomal disorder which in and of itself makes him eligible under the category "Other Health Impaired" (OHI). In addition, [REDACTED] has a history of epilepsy, asthma, and has been diagnosed with Attention Deficit Disorder (ADD). [REDACTED] last attended a CPS school at [REDACTED] during the 2005-06 school year. Dissatisfied with the progress he was making there, the parents enrolled him for a period of time at the [REDACTED]. [REDACTED] Reportedly, the staff at the [REDACTED] was unable to attend to all of [REDACTED] needs and so the parents unilaterally placed him at the [REDACTED] for the 2006-07 school year. [REDACTED] has continued to attend [REDACTED] up until the present time.

In May, 2008, the parents enrolled [REDACTED] at [REDACTED] for purposes of this three year reevaluation. A domain meeting was held on May 20, 2008 to determine what areas should be evaluated. On May 29, 2008, [REDACTED] provided [REDACTED] with her signed consent to the tri-annual evaluation. P's Group Ex. 1, Tab 4, p. 56. Over the next few weeks [REDACTED] underwent a Full and Individual Evaluation (FIE). The FIE was not completed until the morning of July 24, 2008, the same date the IEP conference was scheduled to be conducted. The IEP meeting was delayed by approximately an hour-and-a-half so that the speech and language pathologist could complete her evaluation.

Dissatisfied with the results of the IEP meeting, contending that it did not provide [REDACTED] with FAPE, the parents filed this request for due process on August 19, 2008. P's Group Ex. 1, Ex. 19, pp. 135-141.

### July 24, 2008 IEP Meeting

The IEP team met at [REDACTED] to discuss [REDACTED] tri-annual reevaluation on July 24, 2008. P's Group Ex. 1, Tab 5, pp. 58-85. In attendance at that meeting were the following individuals:

1. Case Manager [REDACTED]
2. District Representative, [REDACTED]
3. Special Education Teacher, [REDACTED]
4. Regular Education Teacher, [REDACTED]
5. School Psychologist, [REDACTED]
6. [REDACTED]
7. School Nurse [REDACTED]
8. Occupational Therapist, [REDACTED]
9. School Social Worker, [REDACTED]
10. Speech and Language Pathologist [REDACTED]
11. Parents' Educational Consultant, [REDACTED]

Most of the [REDACTED] personnel who attended this IEP conference had no first-hand knowledge of [REDACTED]. This was because the IEP conference was held over the summer when most [REDACTED] personnel were not obligated to work. Instead, [REDACTED] assembled this "summer assessment team". With the exception of [REDACTED], each of the individuals above testified during the course of the two-day due process hearing.

At the time of the IEP conference [REDACTED] had just completed 7<sup>th</sup> grade and was about to enter eighth grade. Based upon achievement tests administered by the [REDACTED] school psychologist, he scored at the following levels: Basis Skills – 5.1 grade level equivalent; Reading – 6.2 grade level equivalent; Writing – 3.0 grade level equivalent; Mathematics – 6.9 grade level equivalent; and Factual Knowledge – 4.4 grade level equivalent. Psychological testing for the three-year reevaluation was consistent with prior psychological testing by [REDACTED] indicating that [REDACTED] had at least average overall intelligence, but that he performed significantly better when presented with non-verbal versus verbal language testing. This is a well recognized trait for children diagnosed with Klinefelter's Syndrome. This syndrome, which only affects boys, because it involves an extra "x" chromosome, often leads to children having language processing difficulties. Personality wise, students with Klinefelter's Syndrome [REDACTED] included, are typically described as passive and shy. [REDACTED] was described at the IEP meeting as having a "great sense of humor", a "sweet nature" and one "who likes to operate alone." P's Group Ex. 1, Tab 5, p. 63.

The IEP team determined that [REDACTED] needed an extended school year (ESY) for at least four to six weeks "To avoid regression in English/Language Arts and math skills". P's Group Ex. 1, Tab 5, p. 65. The team further determined that [REDACTED] required specialized instruction and/or related services in Language Arts, English/Reading, mathematics, biological and physical sciences, social sciences, independent functioning, social emotional, speech/language and health/medical. P's Group Ex. 1,

Tab 5, p. 65. The team felt that assistive technology was required for [REDACTED] to access portions of his curriculum and referred him for an AT Evaluation to be conducted in September, 2008. P's Group Ex. 1, Tab 5, p. 66; SD Group Ex. 1, pp. 110-103.

At the IEP meeting, the parents and their educational consultant were provided with an opportunity to contribute input. Among the parents' concerns were that [REDACTED] be provided with a small class size, social support, development of methods to address his deficits, and academic/social skills, among other things. P's Ex. 1, Tab 5, p. 63.

At the IEP Conference, the team identified [REDACTED] disabilities as both learning disability and OHI. P's Ex. 1, Tab 5, p. 64.

Modification/accommodations included consultative nursing services, OT consult, speech and language therapy, use of a word processor for extended writing assignments, preferential seating to promote increased attention and referral for an assistive technology evaluation in September, 2008. P's Ex. 1, Tab 5, p. 67. Due to the IEP conference starting late, and staffs' schedules, the IEP team meeting was adjourned prematurely before [REDACTED] individual goals and objectives could be determined. Instead, [REDACTED] on, the district representative, and [REDACTED] a special education teacher, met later to draft the goals and objectives. The six goals they identified were as follows:

1. Social/Emotional: [REDACTED] will improve his social skills. He will respond to social interaction with minimal assistance once a week during the school year;
2. English/Language Arts: [REDACTED] will learn to understand messages spoken by others, using specific techniques to clarify what he has heard with 85% accuracy;
3. English/Language Arts (oral expression): [REDACTED] will learn to ask and respond to questions related to oral presentations and messages in small and large group settings with 85% accuracy;
4. English/Language (reading): [REDACTED] will learn to apply reading strategies to improve understanding and fluency with 85% accuracy;
5. Mathematics: [REDACTED] will learn to complete and estimate problems using comparison of quantities, ratios, proportions and percents with 85% accuracy;
6. Speech/Language: [REDACTED] will retell information from designated listening/reading activities and include at least three facts; make inferences, compare/contrast same topic information, prompts, cues 80%. P's Ex. 1, Tab 5, pp. 68-73

For each of these annual goals, general statements of present levels of academic achievement and functional performance were presented, for example, under the Social/Emotional area it was stated that [REDACTED] was described as being very shy in social situations. He has difficulty expressing his ideas in front of his peers in the school setting." In the area of English/Language Arts (listening skills) the IEP states [REDACTED] is beginning to understand and interpret messages spoken by others by carefully listening and using specific techniques to clarify what he heard." P's Ex. 1, Tab 5, pp. 68-69. None of the present levels of academic achievement and functional performance included any objective, measurable data. Rather, each was provided for in general terms, as stated in the examples above.

No goal was provided for [REDACTED] writing skills which appear to be his greatest area of deficit, as shown on the academic testing completed by the [REDACTED] school psychologist and as stated by others who work with [REDACTED]

The quarterly benchmarks written for [REDACTED] generally stated that he would achieve competence with 55%, 65%, 75% and eventually 85% accuracy. P's Ex. 1, Tab 5, pp. 70, 71 and 72, for example.

### Witness Testimony

The first witness in the case was [REDACTED], a special education teacher whose certification was in the area of the physically handicapped and traumatically brain injured and other health impaired. She holds a Bachelor's Degree in Elementary Education and Special Education and a Master's Degree in Curriculum and Instruction. She holds multiple certifications including K-8 for elementary education and K-21 for special education as well as an LD, PH and MR endorsement. [REDACTED] attended [REDACTED]'s July 24, 2008 IEP meeting. She did not participate in any of the assessments. She had never met [REDACTED] before nor observed him in his class. She never spoke to [REDACTED] teachers at [REDACTED] or any of the related service personnel there. [REDACTED] attended the IEP meeting as part of the summer assessment program. She testified that [REDACTED] drafted the goals for [REDACTED] after the meeting was over, but that she collaborated with her on his goals. [REDACTED] parents were not present when the goals were drafted. She further testified that the present levels of performance and goals drafted for [REDACTED] were in accordance with the Illinois State Board of Education (ISBE) standards for curriculum. She deferred to Carolyn in drafting [REDACTED] goals since [REDACTED] was more versed with upper grades than she was.

[REDACTED] has never worked with a student with Klinefelter's Syndrome. She recognized that students with this disorder can have speech and language difficulties and learning disabilities. She was not aware whether [REDACTED] used any assistive technology devices at [REDACTED]. She testified that [REDACTED] was referred for an AT evaluation to be done in the fall. In her opinion, he could physically access his learning environment. She agreed with the team's placement recommendation for placement in a learning disabilities classroom with pull out for math, social studies, reading, speech and language and social work. The benefits of a special education classroom included smaller class sizes and more individualized attention. In her opinion, it was alright for [REDACTED] to start the year without an AT device. She felt he needed to be evaluated first.

[REDACTED] visual and fine motor skills are significantly impaired. He requires use of a keyboard/laptop for all assignments. SD Group Ex. 1, p. 21 (student referral).

[REDACTED] overall performance is limited without direct support services. Attention and organization are two areas that impair performance. Processing speed and word retrieval issues hinder his overall performance and progress. SD Group Ex. 1, p. 21.

The next witness in the case was [REDACTED], RN. She has been a [REDACTED] nurse for 37 years. She was part of the summer assessment team and attended [REDACTED] IEP conference. She did not complete the nursing assessment of [REDACTED]. The nursing assessment was completed by school nurse [REDACTED]

██████████, the resident nurse at ██████████. P's Ex. 1, Tab 10, pp. 112-116. ██████████ read ██████████'s typewritten report at the IEP conference.

The next witness in the case was ██████████. She was the district representative and is the manager for the ██████████. ██████████ is not one of those schools. She was not familiar with the number of self-contained classes at ██████████ nor the number of students in the eighth grade special education classroom there. She was familiar with the type of program there in general terms, but did not know any of the specifics. She identified it as a cross-categorical program. She had never met ██████████ before or spoke to any of his prior teachers. She testified that she drafted ██████████ annual goals after the meeting, based upon state standards, and that ██████████ collaborated with her on those goals and objectives.

██████████ wrote the speech and language goals for the IEP. P's Ex. 1, Tab 5, p. 73. She established his present levels of performance from her testing, but no measurable baseline was provided. She testified that ██████████ had difficulty retaining information and also in word retrieval. She was not familiar with Klinefelter's Syndrome. She has been a speech and language therapist for 40 years for ██████████. She has worked with many different types of students and testified that ██████████ did not seem that different from other students his age. She could not explain why her test scores were not listed in her report summary. She recommended that ██████████ receive 45 minutes per week of speech and language therapy. P's Ex. 1, Tab 5, p. 73.

The next witness was ██████████ who was part of the summer assessment team as a CPS general education teacher. She does not teach at ██████████. She taught 6<sup>th</sup> grade students last year, and teaches 5<sup>th</sup> grade students this year. ██████████ (██████████ is in eighth grade). She was not familiar with the eighth grade classes at ██████████. She has taught eighth grade before and was generally familiar with its curriculum. She had never met ██████████ before and never talked to any of his teachers or related service providers. She recalled nothing about the IEP meeting. She knew nothing about Klinefelter's Syndrome or how it would impact a child's education. Her certification and endorsements are in science and social studies. Her testimony was very short as she testified that she could recall nothing at all about the meeting. Her general demeanor at the hearing was that she clearly did not want to be there. She avoided any eye contact with the parents or their attorney. Her answers were short and curt.

The next witness was ██████████. She and her husband own a small cabinet-making business and have three children. She described ██████████ as a sweet, lovable child, who worked hard and tends to be passive and quiet. She testified that she observed early on that his developmental milestones were delayed, as she has two other older children. As a child ██████████ had Rolandic Epilepsy (which causes seizures in his sleep). He was given medication for this. He also had asthma and immune system deficiencies. He was identified as having Klinefelter's Syndrome, a genetic disorder which affects boys in that they have an extra "x" chromosome. ██████████ attended preschool, kindergarten and first grade at a Montessori school. This was an unstructured setting and basically he wandered around the room. He attended second through fourth grade at ██████████. As time progressed, he had increasing difficulty and fell farther behind each school year. His parents took him to ██████████ for summer reading programs. Although ██████████ tried hard, "Nothing grabbed hold". In fourth grade, ██████████ served as a classroom volunteer. She observed that he basically stood to the back of the group, wandered about, looked out the window, and was not

engaged. By the end of fourth grade, she decided to transfer him to a parochial school, the [REDACTED]. He spent half his fourth grade and all of his fifth grade at [REDACTED]. They had weekly meetings with the teachers but they felt they could not help him enough, even with resource help and special education. She had a neighbor who taught at HPDS and after learning about the program there, decided to enroll [REDACTED] at [REDACTED] for sixth grade. She saw an immediate difference in [REDACTED]. She felt the work was more appropriate for him and even at home he would sit down and read a book [REDACTED] remained at [REDACTED] for seventh grade. She saw the progress that he made there, especially with AT devices, such as use of a computer. She has also seen an improvement in his reading and in his attitude in that he gets up in the morning and gets himself ready for school by himself. She contacted [REDACTED] in the spring of 2008 since [REDACTED] was eligible for his three-year reevaluation. She was also concerned about planning for his future since [REDACTED] only goes up to eighth grade. [REDACTED] testified that no one at the IEP team was from [REDACTED] and only one person present had ever heard of Klinefelter's. She further testified that at the IEP meeting they never discussed [REDACTED] programming or any of his goals. The IEP meeting was scheduled for 8:00 or 9:00 a.m., according to her recollection, but did not start on time because they were still completing his testing. The case manager or district representative recommended that [REDACTED] be placed at [REDACTED]. The parents rejected that recommendation stating that they wanted a multisensory program for [REDACTED] with a lot of structure.

[REDACTED] testified that although [REDACTED] is in eighth grade at [REDACTED] it has a "bridge year" option for students who are not yet ready to go to high school. [REDACTED] designed for students with at least average intelligence but who have severe learning disabilities. The mission at [REDACTED] is to get the students back to their neighborhood school as soon as practicable.

As to the [REDACTED] reevaluation conducted on April 28, 2008, when [REDACTED] was in seventh grade, his academic grade levels were listed as follows: Reading – 4.3, spelling – 3.5, math – 3.4, language – 3.5, and his core total – 3.9. See P's Ex. 1, Psychologist's Report, Tab 6, pp. 89.

The next witness was [REDACTED] the pediatric neuropsychologist from [REDACTED]. She has been a licensed clinical psychologist for seven years. The [REDACTED] is an affiliate of [REDACTED]. They specialize in students with social-emotional learning disorders. They treat children with an age range of anywhere from 2 to 25. She often collaborates with school districts. Dr. Tall has conducted hundreds of neuropsychological evaluations. At [REDACTED] she sees two or three students a week, in addition to her therapy caseload. She has treated children with autism, pervasive developmental disorder, ADHD, LD, complex medical histories, traumatic brain injury, and those with psychological issues such as depression, anxiety, school refusal, etc. She generally attends IEP meetings. She has frequently consulted with school districts. Most of the time she finds the school's program provides the child with FAPE. Rarely has she ever recommended a private option for a student. She estimates she has done so less than 3% of the time.

[REDACTED] evaluated [REDACTED] on September 6, 2006. P's Ex. 1, Tab 1, p. 3. She administered various intellectual and academic achievement tests. She found a significant discrepancy in his verbal skills (lower) than his non-verbal skills (higher). Academically, she found that [REDACTED] had significant deficits in language, reading and writing. Math was a relative strength. [REDACTED] found that [REDACTED] was easily distracted and that his attention was a concern. While he was not hyperactive, she found that he had difficulty inhibiting his impulsivity and staying focused. She also found that

his executive functioning ability was impaired. This includes skills that monitor all of our behavior and involved planning, organizing, developing hypotheses, testing them out and problem solving skills.

██████████ found that ██████████ diagnosis was consistent with Klinefelter's. These children often have better developed non-verbal than verbal language skills, suffer from attention deficits and have impaired social judgment. They are often shy, passive and have difficulty reading social cues. There is no cure for the disorder. The goal is to try to remediate the language problems.

██████████ concluded that ██████████ cannot learn through conventional methods. He needs a multisensory approach which would target all of his senses.

██████████ also reviewed the evaluation completed more recently by the school psychologist in June, 2008. P's Ex. 1, Tab 6, p. 86. While the results were mainly consistent with her own testing, she was critical in that the school psychologist had administered an academic test (Woodcock-McGrew) which was more typically a screening device and not a comprehensive evaluation instrument. ██████████

██████████ opined that such a mini battery was not appropriate for ██████████ who has a complicated academic profile. She also criticized the IEP in that it did not address all of ██████████ needs or how complex a child he is. She had concerns about his social emotional support that were not addressed in the IEP. She criticized the IEP for only having one goal in the social emotional area. She also criticized the IEP in the recommendation to provide ██████████ with 60 minutes of social work support per month. P's Ex. 1, Tab 5, p. 68 and 74. She opined that ██████████ needs 60 minutes of social work services per week.

██████████ also criticized the English/Language Arts goals set forth in ██████████ IEP. P's Ex. 1, Tab 5, p. 70. Her criticism of this goal centered on the difficulties that ██████████ has in speaking in front of an audience or a group of his peers, given his personality and Klinefelter's diagnosis.

██████████ was an impressive, knowledgeable witness. The Hearing Officer gives great weight to her testimony given her training, education and personal involvement in ██████████ case. In her opinion, the cross categorical program proposed by ██████████ for ██████████ was not appropriate. She testified that ██████████ provided ██████████ with FAPE. Her rationale included the fact that they offered a multisensory program, a program focusing on his language needs, with other students of average or above average intelligence with other children with significant learning disabilities or multiple, complex language needs. She is a published author and has written a chapter in a book entitled ██████████

The next witness was ██████████ a, the ██████████ school social worker. As was the case of most of the ██████████ staff who comprised the summer assessment team, ██████████ a attendee ██████████ IEP but was not the school social worker who completed his assessment. Prior to the IEP meeting, she had never met with ██████████ or his parents and had not spoken to his social worker at ██████████ The social work assessment completed by ██████████ contained no formal evaluation instruments. P's Ex. 1, Tab 7, pp. 100-103. ██████████ first received a copy of ██████████ social assessment the same day of the IEP meeting. She wrote the IEP goal. She admitted that it was difficult to write an annual goal for ██████████ based upon his present levels of performance since she did not know what his current social emotional levels were. She had not seen the ██████████ student referral which referred to

some of his social emotional concerns. SD Ex. 1, p. SD 21. She was excused to leave the meeting before it concluded because she had another meeting to attend. She drafted [redacted] social goals after the meeting, but after getting input from his parents. She has been a [redacted] school social worker since 1986. Her recommendation for [redacted] included 60 minutes per month of social work services, or 15 minutes per week.

The next witness was [redacted] the [redacted] school psychologist. She was born in Europe, received her Bachelor's Degree in [redacted] and her Master's Degree at [redacted] in 2004. She has been with [redacted] since 2006. She conducted [redacted] three-year reevaluation but was not part of the summer assessment team and was not at his IEP meeting. Her report was read to the IEP attendees by her fellow school psychologist [redacted] P's Ex. 1, Tab 6, pp. 86-98. She emphasized that they were in a "time crunch" because the referral came late in the year and they wanted to complete the evaluation before the end of the school year. This was her explanation in part for administering some screening test to [redacted] instead of more comprehensive tests, in addition to the fact that he had already been given some of these other tests before. She found the same pattern as [redacted] s non-verbal skills were above average, while his verbal skills were below average. He also showed deficits in writing skills and expressive language. In fact, in the area of expressive language, his score fell below the fifth percentile rank, with an age equivalent of 8 years and 7 months [redacted] was 13 years, 1 month on the date of the evaluation). She opined that notwithstanding these deficits, that [redacted] could be educated at [redacted] smaller classes with a variety of staff to work with him. She administered some behavior rating scales to [redacted] parents, but she did not do so with his teachers because they were coming up at the end of the year and there was no time for that. Once she completed her psychological evaluation, she left the report with [redacted] case manager in his folder. She had no input in [redacted] educational planning. It appeared to the Hearing Officer that the [redacted] psychological evaluation was dictated more by time constraints than by [redacted] individual needs. She testified that [redacted] had a cross-categorical program that would be appropriate for [redacted]. The teacher for this program never appeared to testify at the hearing.

The next witness was [redacted] the [redacted] case manager for [redacted]. She has been the case manager for six years. Prior to that she was a special education teacher for one year. She is certified as LBS 1, Type 10. [redacted] first met [redacted] in the spring of 2008 when the mother approached her about [redacted] reevaluation. At that time, [redacted] was a non-attending [redacted] student whose neighborhood school was [redacted]. They set up an appointment for a domain meeting and determined what areas should be evaluated. The domain meeting was held in May, 2008. She testified that it would have been preferable for the IEP team to have included members of the diagnostic team but because it was over the summer, they were not available.

The next witness was [redacted]. She was the parents' educational consultant. She works as an educational specialist at [redacted]. She has been so employed for six years. Prior to that, she worked as a special education teacher for over 20 years. She has been published and is a frequent presenter. She had never testified before. She appeared to be very knowledgeable.

[redacted] began working with [redacted] in February, 2008. He had been seeing a child psychiatrist at the time who monitored his medication. His parents had approached her about future placement and transitioning to high school. She observed [redacted] in his classroom at [redacted]. She also attended his IEP meeting in July, 2008. She testified that the meeting started an hour-and-a-half late. She

also reported that there was a lengthy discussion as to [REDACTED] eligibility determination and what was his primary and secondary disability. The nurse thought he should be classified as OHI and the special education teacher and school psychologist thought his primary classification should be LD. She testified that there was confusion among the [REDACTED] staff as to what a multisensory program was and whether any were available at [REDACTED]. She reported that the case manager left the meeting to get the special education supervisor in the building to address some of these questions. She further testified that the special education supervisor (unnamed) made clear that a multisensory class was not to be listed as part of [REDACTED] IEP, and that he had to go to the class at [REDACTED] first to see whether or not he would make progress there before they would consider another placement for him.

[REDACTED] IEP provides nothing by way of a multisensory instructional program. [REDACTED] testified that she had been at other [REDACTED] IEP meetings where they had agreed to give the student multisensory instruction and documented same in the IEP, example the [REDACTED]

[REDACTED] explained that she had no opportunity to provide any input into the writing of [REDACTED] IEP goals since they were drafted after the meeting ended. She said that the goals were not drafted at the meeting because they ran out of time. They ran out of time because the meeting started late to begin with, and it took so long for the staff to read and discuss the other staff members' reports. Only the speech and language pathologist spoke as to her own test results and findings. [REDACTED] criticized the IEP annual goals drafted for [REDACTED] since they do not refer to his instructional level or where they would begin working with him. Additionally, she was critical because there were no writing goals for [REDACTED] and written expression is his most significant area of weakness. Further, the goals do not refer to what type of instructional method would be used with [REDACTED] e.g., multisensory. P's Ex. 1, pp. 68-73. Another weakness of the goals written for [REDACTED] was a limited reference to use of AT, e.g., use of a computer "when needed." [REDACTED] accommodations and modifications were also drafted after the meeting was over.

Another criticism of the IEP was that it contained no organizational goals [REDACTED] has significant difficulty with executive functioning and it should have been a goal for him to improve his organizational skills.

Another criticism of the IEP was that there was no goal relating to his attention deficits, and the only modification provided was to provide him with preferential seating. In her opinion [REDACTED] needs additional accommodations.

Another criticism was that [REDACTED] would be mainstreamed for subjects such as social studies and science. Her concern was that he would not be able to read those texts and there should have been, at a minimum, an accommodation in providing him with a note taker since he cannot take notes himself. [REDACTED] would need additional support at any general education class he took, such as an aid. He would not be able to access the general education science or social studies curriculum without the provision for multisensory instruction.

[REDACTED] testified that this was the first time in her career that the staff that appeared at the IEP meeting was different than the staff who completed the student's evaluations. She also testified that it was common practice to draft the goals and benchmarks at the meeting, not afterward.

The final witness was [REDACTED] the principal of [REDACTED]. He testified that [REDACTED] was a non-public day school for children with average or above-average intelligence and severe learning disabilities. Their goal is to remediate learning disability and return the student to his regular school within three years. Their tuition is \$32,400.00 a year. He is familiar with [REDACTED] program at [REDACTED] which includes multisensory instruction and integrative related services. He testified that he has observed [REDACTED] in class and that he cannot succeed in a school that does not offer a multisensory instructional program. He also testified that [REDACTED] could return to [REDACTED] next year because they offer a "bridge year" for eighth graders who are not yet ready to go on to high school.

### Conclusions of Law

Under state and federal law, students with exceptional needs have a right to a "free appropriate public education". 20 USC, Sec. 1400(d). The term "free appropriate public education" (FAPE) means "special education" and "related services" that are available to the student at no charge to the parent, and that meet the state's educational standards, and that conform with the student's individual education plan (IEP). 20 USC, Sec, 1401(8).

The parameters for adequacy of a student's IEP were set forth in *Bd of Educ. of the Hendrick Hudson Sch. Dist. v. Rowley*, 458 US 176 (1982). The United States Supreme Court determined that the student's IEP must be reasonably calculated to provide the student with some educational benefit. The court in *Rowley* concluded that the Individuals with Disabilities Education Act (IDEA) did not require school districts to provide special education students with the best education available or to provide instruction or services that maximize the student's abilities. Instead, the Court stated that school districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instruction and related services which are individually designed to provide some educational benefit to the student. *Rowley*, at 207-208.

[REDACTED] IEP was not reasonably calculated to provide him with FAPE. The IEP drafted by CPS on July 24, 2008 was fundamentally flawed, in one or more of the following ways: It is clear from [REDACTED] own test results and the student referral for AT that [REDACTED] required the use of a keyboard/laptop for his daily school work. This IEP it failed to list any modification/accommodation which provided for a laptop/keyboard from day one. The [REDACTED] team decision to refer him for an AT evaluation, would have resulted in [REDACTED] not being able to meaningfully access his educational environment while waiting to undergo such an evaluation.

The July 24, 2008 IEP was also not reasonably calculated to provide [REDACTED] with FAPE in failing to provide any annual goal for his writing skills, his largest deficit area. Further, the goals which were written, were not measurable, the baseline was not quantifiable, the benchmarks were not understandable and reflected generalized, State of Illinois learning standards as opposed to [REDACTED] individualized needs. The present levels of performance identified in the IEP were not based on any objective data or evaluations. The annual goals, modifications and accommodations were drafted by two staff members, [REDACTED] and [REDACTED], after the IEP meeting was over. [REDACTED] the parents' educational consultant, testified that this was very rare. It was also unusual in that most of the staff of attended the IEP meeting had no personal knowledge or experience with [REDACTED] since they were meeting over the summer, and did not participate in his FIE

At least 2 of the [REDACTED] witness, [REDACTED] and [REDACTED] barely recalled anything which was even discussed at the IEP meeting.

In *Reg. Sch. Dist. No. 9 BGd of Ed v. Mr. and Mrs. P*, 51 IDELR 241 (D. Conn 2009), the court found that the school district was responsible for paying tuition reimbursement to the parents of a teenager in a private placement where the court identified half a dozen flaws in the student's IEP.

In *Board of Educ. Of Murphysboro Community Unit School Dist. No. 186 v. Illinois State Board of Education*, 41 F3d 1162 (7<sup>th</sup> Cir. 1994) the parents rejected the placement offered by the school district and unilaterally placed the student in an out-of-state residential facility. In that case, as here, the school district argued that the court was required to give deference to the educators. However, the court noted that requiring a court to defer to the educator's decisions would make it very difficult for parents to prevail in situations where they disagreed with the educator's IEP, a result contemplated by IDEA. The hearing officer finds that he cannot defer to the educational decisions made here for the reasons that the IEP was fundamentally flawed in the first place, as outlined above.

The Hearing Officer concludes that the [REDACTED] offers [REDACTED] FAPE and is within the LRE. The Hearing Officer also finds that [REDACTED] is not yet ready for high school and would benefit from a "bridge" or transition year before going on to high school.

4. Finally, the Hearing Officer makes a finding that the [REDACTED] is the "current educational placement" for stay put purposes pursuant to both State and Federal law.

### ORDER

Pursuant to the above findings of fact and conclusions of law, the Hearing Officer hereby orders that:

1. The parents' request for tuition reimbursement for [REDACTED] at the [REDACTED] for the 2008-09 school year is granted.
2. The parents' request for transportation reimbursement for [REDACTED] attendance at the [REDACTED] for the 2008-09 school year is granted.
3. The parents request that [REDACTED] be placed at [REDACTED] for the 2009-2010 school year, as a "bridge year" or transition before high school is granted, tuition and transportation expenses to be borne by the [REDACTED]

The school district shall submit proof of compliance with this Order to the Illinois State Board of Education, Program Compliance Division, 100 N. First Street, Springfield, Illinois 62777 within 30 days of the receipt of this Order.

**RIGHT TO REQUEST CLARIFICATION**

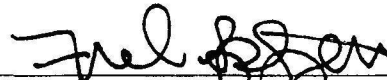
Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned Hearing Officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought 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. **THE EFFECTIVE DATE OF THIS DECISION IS THE DATE OF RECEIPT OF ANY CLARIFICATION OF THIS DECISION.**

**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.

It is so Ordered.

Dated this May 5, 2009



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ALFRED A. SPITZERI

Impartial Due Process Hearing Officer

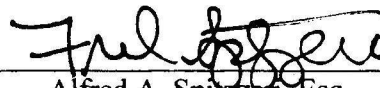
**CERTIFICATE AND AFFIDAVIT OF DELIVERY VIA FACSIMILE**

The undersigned hereby certifies that a copy of this Order was sent by Certified Mail, postage prepaid, by 4:30 p.m. on May 5, 2009 from the U.S. Post Office in Naperville, Il, to:

Mr. Andy Eulass  
Due Process Coordinator  
Illinois State Board of Education  
100 North First Street  
Springfield, IL 62777-0001

[REDACTED]

[REDACTED]



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