

were set.

The Hearing took place as scheduled and due to the length of testimony continued through Friday, May 15, 2009. Those that testified included parents' Neuropsychologist, [REDACTED] Parent's Audiologist, [REDACTED] and the [REDACTED]

The District presented testimony from Student's General Education teacher – [REDACTED] the Case Worker – [REDACTED] his Special Education Teacher – [REDACTED] the District Audiologist – [REDACTED] the School Psychologist – [REDACTED] the School Social Worker – [REDACTED] the School Speech Language Pathologist [REDACTED] and the [REDACTED]

Prior to testimony, Hearing Officer advised the parties of their rights regarding hearings and provide a printed copy of Rights of Parties Related to Hearings [Hearing Officer Exhibit "1"]. In addition, Hearing Officer referenced the Administrative File held by Hearing Officer and provided each party a copy of this "Document Sheet". [Hearing Officer Exhibit "2"]. At the outset of testimony, the District submitted a Motion in Limine as to certain of Parents' document submissions [Hearing Officer Exhibit # 3]. Hearing Officer granted this Motion but did not remove them from the Record so that the Record might be complete of all documents submitted. Reference to them was excluded in the Hearing.

As the date that the decision was due in this matter fell on Memorial day, the parents and District attorney allowed Hearing Officer until May 27, 2009 to enter his decision.

Issues Presented

In the Parents' initial Due Process Complaint, the Parents' allege:

- 1) The District failed in its duty regarding child find;
- 2) The District failed to develop an appropriate IEP for student which was calculated to provide him meaningful educational benefit;
- 3) The District failed to conduct a functional behavior analysis and develop a behavior intervention plan for student.
- 4) The District failed to provide scientific, research based teaching methodologies
- 5) The District failed to adequately review and fully take into account the evaluations and recommendations of student's private evaluators and therapists
- 6) The District failed to recognize all of student's disabilities
- 7) The District failed to provide an appropriate placement for student.
- 8) The District failed to allow student's parents meaningful participation in student's educational plan.
- 9) The District failed to provide sufficient related services.
- 10) The District failed to provide a FAPE due to the substantive and procedural violations of IDEA described above.

Relief Sought:

The Parents seek placement in a Private Day School specializing in teaching children/students who have learning disabilities such as [REDACTED] and provide transportation to this placement. In addition, Parents seek re-imbursement for the private evaluations completed by their Neuropsychologist, Audiologist and personnel from [REDACTED]

FINDINGS OF FACT

Student's base school was [REDACTED] For certain reasons unimportant here, Student was placed at [REDACTED] at the start of the 2007 - 2008 school year.

[REDACTED]

Testimony: [REDACTED] Director [REDACTED] (since 10/08) was in contact with the parents about two (2) years ago relative to concerns about the student's then current base school - [REDACTED] did provide an inclusive delivery model which would have serviced the student but the parents did not feel it was a "good fit". She worked on alternative placement options and ultimately facilitated attendance at [REDACTED]. At or about that time, student had an Individualized Education Program in place. However, he was a non-attending student as he was attending [REDACTED] pre-school. As to services provided, she agreed that a speech teacher in the [REDACTED] could be trained in a specific methodology and/or program.

Audiological Evaluation (11-16-04)

Document: Student was administered the PLS-4 on September 23, 2004 which demonstrated delays in receptive and expressive language. He was referred for eligibility for SPL services with the suggestion that the Student would benefit from 30 minutes of direct speech and language services.

Individual Service Plan for a non-attending student (03-03-06)

Document: On March 3, 2006, a draft of an Individualized Service Plan was adopted with the student receiving 75 min/wk of speech services and 30 min/wk of OT services. This document also noted that the Student was making progress with speech and OT goals. At this time, student was placed outside of the [REDACTED]

[REDACTED]

- Speech/Language Pathology

Testimony: [REDACTED] was the Speech/Language pathologist for [REDACTED] at [REDACTED] as well as several other schools. In December 20, 2006, student was attending the [REDACTED]. As such, the [REDACTED] IEP team developed a Service Plan for student which included 30 minutes of Occupational Therapy and 75 minutes of Specialized Services.

As part of a Domain Meeting, they reviewed the current records available, the past records, the past evaluations, any information from the parents and any current evaluations/exams. As to speech/language, they did have available the report from the [REDACTED]. Her recommendations dealt with sentence construction, pragmatic language and visual supports.

On a Speech/Language Evaluation of November 5, 2007, she found the Student had a moderate difficulty in syntax construction, pragmatic judgment and mild difficulty with antonyms. His language was dis-organized and his sentence structure was awkward. He had difficulty responding to and processing information in a hypothetical social situation. She determined that Student had a communication disorder that adversely affects his educational performance [SD 124]. She had reviewed [REDACTED]. She agreed that her evaluation and its findings were comparable to the [REDACTED]. To address these concerns, she recommended work in sentence construction, pragmatic language and visual supports. As part of the services to be provided to the Student, it was necessary to tailor the goals with the classroom work, i.e. get the spelling word(s) and/or verbs that were used in the reading lesson in class. Based upon this report, he was to receive 60 minutes total per week of Speech/Language Therapy.

While at [REDACTED] she felt that student was making progress and meeting his goals. The classroom teacher also noted that student was expressing himself more clearly in the classroom. Progress was being made on articulating the "r" sound in therapy. With prompts and placement cues (tongue) that Student could make this sound. On expressive vocabulary, he was progressing to his goals - getting more and more sentences correct and accurate.

Student stopped attending [REDACTED] in March, 2008 which she understood was related to an ear infection.

As part of the September 10, 2008 Domain meeting, she had an updated request for evaluation. She did have [REDACTED] report/evaluation in her possession at that point and incorporated it in her recommendations. She also had the report from [REDACTED] relative to the Student.

Per the IEP of September 26, 2008, Student's goals were to demonstrate phonemic awareness with one word in a controlled environment and follow directions when given verbal and visual prompts. [SD 419 - 420]. Her opinions were that they were able to implement her recommendations and suggestions at [REDACTED] which would be the LRE with a combination of general education classroom, pull out and Special Education classroom. She felt that the benefit from the general education classroom of modeling from peers was important to the student.

She did not feel that his communication disorder was negatively affecting his math. Socially, he was able to be understood. He wasn't concise but he could get his point across. She did meet with the [REDACTED] representative. Based on this meeting, she incorporated some of their suggestions and system in phonics with student. She did agree that she was not familiar with the [REDACTED] program [REDACTED] and was not trained in it.

Student's speech/language minutes were reduced at one point from 75 minutes per week to 60 minutes per week when he enrolled at [REDACTED]. This was due to the fact that he was now a student at [REDACTED] was not receiving an outside service plan and therefore would actually get more services as this would be re-enforced throughout the day in both the General Education and Special Education classroom.

[REDACTED] holds a Bachelor of Science degree from [REDACTED] in Anthropology and a second Bachelor's degree from [REDACTED] in Health Sciences. She also holds a Master of Science degree from [REDACTED] in Health Sciences. She was a credible witness.

[REDACTED] (03-12-07)

Document: [REDACTED] initial saw student on March 12, 2007 for evaluation of concerns with central auditory processing. The Student was having difficulty in several areas including (a) academics, (b) reading, (c) auditory memory and sequencing, (d) written expression and (e) possible decoding and spelling problems. Based on the testing and evaluation done, signs of a auditory processing disorder were present. The evaluation confirmed the parents' report of (1) listening difficulties in presence of background noise, (2) impaired auditory attention, (3) delayed language processing and (4) phonological problems.

[REDACTED] Assessment (08-06-07)

Document: Student was tested (pre-test) on August 6, 2007 at the [REDACTED]. In general, student was below grade level and at or below age level on much of the testing.

Date	Test	Percentile	Mental Age	Grade Level
08-06-07	Peabody Picture Vocabulary - III-A	21	6-5	
03-03-08	Peabody Picture Vocabulary - IV-A	19	6-6	K.9
04-15-09*	Peabody Picture Vocabulary - IV-A	27	8-1	2.6
08-06-07	Detroit Tests of Learning Aptitude - Word Opposites	37	6-6	
03-03-08	Detroit Tests of Learning Aptitude - Word Opposites	16	6-6	
04-15-09*	Detroit Tests of Learning Aptitude - Word Opposites	9	7-0	

08-06-07	Woodcock Reading Mastery - NU - G	80	8-1	3.3
03-03-08	Woodcock Reading Mastery - NU - G	32	7-4	1.9
04-15-09*	Woodcock Reading Mastery - NU - G	50	9.1	4.4
08-06-07	Gray Oral Reading Test 4 - Form A - Fluency	9	6-0	1.0
03-03-08	Gray Oral Reading Test 4 - Form A - Fluency	5	6-0	1.0
04-15-09*	Gray Oral Reading Test 4 - Form A - Fluency	2	6-6	1.4
08-06-07	Gray Oral Reading Test 4 - Form A - Comprehension	9	6-0	<1.0
03-03-08	Gray Oral Reading Test 4 - Form A - Comprehension	5	6-0	<1.0
04-15-09*	Gray Oral Reading Test 4 - Form A - Comprehension	5	6-0	<1.0

[* District Objected to inclusion of this test data from April, 2009 as it was made during the pendency of the Due Process Complaint process and in anticipation of litigation. Hearing Officer took this objection under advisement and rules that this information can be used and is admissible]

As of March, 2008, student had considerable difficulty in reading and spelling as indicated by his low scores in work attack, word recognition, spelling and contextual reading. His sensory-cognitive weakness interfered with his ability to judge the order, number and identity of sounds and letters within words and is the basis for his poor performance in tests of decoding and spelling. His problems are in the sensory-cognitive area underlie basic language processing.

Testimony: As to his vocabulary, student has more vocabulary in mind than he is able to express. In [REDACTED] opinion, the student has poor reading fluency, is a couple of grade levels behind in reading comprehension due to his not understanding language and is behind in oral, expressive language.

The current director, [REDACTED] holds a Bachelor's degree in [REDACTED] and a Master's degree in Philosophy from [REDACTED]. There was no testimony that she actually administered the test and did not see the Student during the various test phases. She

denied any professional experience in the public school or as a Special Education teacher. There was no showing how her degrees in Philosophy had any bearing on any education function or how she was qualified to testify to any tests that were conducted or to any remediation that may be suggested. This negatively affected her credibility.

report (09-27-07)

Document: Student was evaluated at the [redacted] on September 27, 2008 [SD 126 - 128]. At that time, he was enrolled as a First Grader at [redacted]. He was receiving occupational therapy for 60 minutes/week at the [redacted]. Their findings included that his receptive language and articulation skills are slightly below average when compared to same age peers. His expressive language is below average range when compared to same age peers. He demonstrated difficulty with syntax and semantics and had trouble formulating language when related to hypothetical social situations. He also had trouble understanding phrases containing an increased amount of linguistic information.

They recommended initiation of direct speech-language therapy services for 60 min/week; consult with teachers and family to promote carryover of receptive, expressive and pragmatic (social) language skills and strategies and explore the possibility of a social group to improve student's pragmatic language skills.

Evaluation (10-29-07)

Document: Per his report which was introduced into evidence [SD 143 - 152], his evaluation was indicative of auditory processing disorder with significant signs for auditory processing disorder in integration coupled with de-coding and organization. He disagreed with the recent [redacted] CAPD evaluation which indicated only "minimal deficit" as to language difficulty. The student's auditory processing problem interferes with comprehension, production and use of language. He was also critical of the [redacted] recommendations as being too generic and general in addressing the problem(s). The evaluation findings corroborated the parental report of auditory problems including (1) language and listening comprehension (2) impaired auditory attention (3) delayed language processing and (4) phonological problems. To address these issues, the Student requires skilled intervention to promote his auditory and visual speech perception in the areas of speech and language with emphasis on (a) visual and auditory perception of speech, (b) language stimulation for vocabulary from both the affective and cognitive domains, (c) phonemic synthesis training or equivalent approach to address decoding and (d) language stimulation to promote self-knowledge.

Testimony: [redacted] has Masters degrees in both audiology and speech pathology and earned his doctorate degree from [redacted] with an emphasis in audiology and neuroscience. He is in private practice and was hired by the Parents to assist their son. He uses as part of his practice Bloom's Taxonomy of Learning. He uses a holistic approach and draws from psychology, audiology and speech pathology in treating students. As part of his practice, he uses the Response Training Initiative (RIT) which is an attempt to link speech/language

therapy goals for academic improvement to co-ordinate with the social. However, he conceded that not a lot of people use the model that he endorses.

The student is not hearing impaired. Rather, he has a Central Auditory Processing Deficit (CAPD). This leads to his difficulties in hearing and say sounds and words. For example, the letters "R" and "L" are difficult sounds for him. It is both a processing and motor issue. In his opinion, the Student needs more time to hear. The [REDACTED] used standardized tests/procedures for the Student re: processing works and numbers. However, these tests/procedures are not relevant to the problems that the Student is having. In addition, the goals and implementations of the goals are not tailored to the Student's problems. Rather, they are a cookie cutter approach.

The student has a tendency to act quickly and guess what the person is going to say which leads to his non-responsive answers. The student says things to attempt to connect with the group/conversation but when asked, has no idea what was said. It is important to the Student that he thinks about what he is saying. He endorses the "Buffalo" model to assist the Student.

From his point of view, the speech therapist needs to incorporate self-esteem issues in their training/goals, i.e. instead of external praise, need to present a statement to the child as to what is going on/doing (processing). There is an emotional component to his processing deficit which is tied up with his self-esteem, i.e. not wanting to try so as not to get something wrong. It is also important to reduce the noise level.

[REDACTED] testified via telephone. As the school did not have a land line conference phone, a cellular phone with speaker capabilities was used.

Although [REDACTED] is well qualified, he testified that "not a lot of people use the model that he endorses". In order for an expert's opinions to be given substantive weight, the methods and methodologies used by the expert must be generally accepted within the scientific community. Based on [REDACTED] testimony as to the particular scientific model that he uses as not being generally used in his field, less weight is given to his conclusions and opinions. However, this does not mean that no weight was given. The fact that the District personnel utilized and incorporated portions of his recommendations allows consideration of these opinions and conclusions - even where adverse to the IEP findings.

[REDACTED] - Audiologist - CPS (10-30-07)

Document: Student was referred for CAP assessment as part of a Full and Individual Evaluation (FIE). By past history, she understood that student had been diagnosed as to [REDACTED] ADHD as well as other problems prior to seeing her. She also understood that [REDACTED] had seen and evaluated student and that student had attended the [REDACTED]

An Audiological Evaluation performed on October 30, 2007 revealed essentially normal hearing. Other testing as to [REDACTED] noted below average performance on tests assessing auditory temporal processing, auditory integration, auditory closure and auditory figure-ground. These are

suggestive of a primary auditory integration deficit along with a secondary decoding deficit. These should be considered a minimal estimate of student's CAP ability, especially in light of his reported receptive and expressive language delays and articulation errors [See SD 61]. She suggested 4 ½ pages of accommodations for the classroom [See SD 61 - 65]

Testimony: [REDACTED] the [REDACTED] audiologist, has 23 years experience. She received her Masters degree in Audiology in 1985. Her position is District wide. She is called upon to conduct Audiological evaluations and [REDACTED] evaluations. She will work with the school staff relative to awareness and accommodations in the classroom. She will also keep staff updated as to assistive technology. Based upon the testing that she did with the Student, his primary problem was integration with a secondary diagnosis of auditory decoding problems. In terms of testing, she uses the Ferre- Bell model and understood that [REDACTED] used the Buffalo model. Regardless of model, both came up with the same problem with the student - integration and decoding. Utilizing her test data as well as [REDACTED] data/evaluations, she suggested strategies to the classroom teacher and the special education teacher as well as use of a pedestal audio device - a Sound Field Assistive Listening device to assist Student in hearing what the teacher says. Unfortunately, this assistive device caused as many problems as it attempted to correct and was ultimately discontinued. The teacher did though move the student closer to him in the classroom. These findings were shared with the IEP team and implemented through the IEP.

As part of her recommendations, she suggested a multi-sensory approach consistent with the outside reports and evaluations including the use of manipulatives, breaking down a task into smaller parts, Books on Tape, games, etc. She only is involved in the development of a/the goal. Others are charged with its implementation.

[REDACTED] is well qualified and experienced as an Audiologist. Although animated during her testimony, she was an excellent witness and assisted in understanding the tests and the conclusions from those tests.

[REDACTED] - Social Work Assessment (SD 133 - 136)

Testimony: [REDACTED] is the school Social Worker. Student and his parents met with her on October 10, 2007 and she observed Student in his classroom on two occasions - October 10, 2007 and November 5, 2007 (SD 133 - 136). During the interview with the student, she found him to be imaginative, cute, verbal and learned that he likes to read. She found that he wanted to be nice and did not like to fight. Based on the interviews and observations, she felt that the Student should be considered for Social Work services to help him with his peer relationships. In addition, Special Education services should be considered part of his staffing. She believed that his primary disability was Speech/Language. She agreed that student could be characterized as Emotional Disabled but this would not be his primary diagnosis.

Based on the IEP meeting, Student was to receive 30 minutes per week of social/emotional support and services in include a speech language services, Occupational therapy, psychological services and audiological services.

Subsequently, she understood that Student left [REDACTED] school due to medical issues/reasons. Student did receive home bound services for a period of time. She denied that there were emotional disturbances and/or issues seen in the classroom or school setting. Per the parents, these occurred mainly at home. She agreed that he will need some transitions back to school.

At the subsequent IEP meeting on June 3, 2008, as they had not seen him for a period of time (since March, 2007), she agreed that an extended school year of 6 weeks would be appropriate as they did not know what his skill level, etc. If the Student returned, she was to supply consultative services to the teacher and to the school psychologist.

Social work services have to impact the Student in school and address those behaviors. In Student's case, such behaviors as crying could impact his learning and needed to be addressed.

For his least restrictive environment, the team did not feel that a therapeutic day school was appropriate to meet the students needs. The team felt that the student should continue in the general education program with 1075 minutes of special education per week - a collaborative approach between the various special team members and the general education teacher. The team further felt that this program provided the student with the best opportunity to "model" the behaviors of his peers especially in the context of speech, socialization, feelings, play, peer interaction and self-esteem. They also felt that the psychologist would be in the best position to deliver service in lieu of the social worker.

[REDACTED] holds a Bachelor of Science degree from [REDACTED] and a Master of Arts from [REDACTED]. She has served as a High School English teacher, has additional training in Attention Deficit Hyperactivity Disorder and behavior. She deals with students on a daily basis. Her testimony was taken out of order and over several periods to allow others to testify at set times. She was a credible witness.

[REDACTED] report (04-14-08)

Document and Testimony: When seen by [REDACTED] on April 14 and 19, 2008, Student was 8 years old. At that time, the prior [REDACTED] evaluation indicated functional deficits as (a) forgetting or not retaining the most recent aspects of a message - phonemic decoding coupled with short term memory problems, (b) poor sound-symbol association which contributes to decoding problems, and (c) speech comprehension and recognition in the presence of background noise. A number of tests were performed (see SD 215 - 220) which indicated below average performance in all the "core language" subtests. It was [REDACTED] opinion that the Student's language skills were below a typical child his age. He recommended speech and language intervention to increase his receptive expressive language skills.

[REDACTED] - Neuropsychologist - Report (06-12-08)

Document: The parent's private Neuropsychologist, [REDACTED] conducted a neuropsychological evaluation of student on June 12, 2008 and June 13, 2008 (SD 355 - 380).

Student was referred for a neuropsychological re-evaluation, having previously been diagnosed with an Expressive/Receptive Language Disorder, Central Auditory Processing Disorder (CAPD), Attention Deficit Hyperactivity Disorder (ADHD), Post Traumatic Stress Disorder (PTSD) and Reactive Attachment Disorder (RAD). This testing was sought to aid in Student's treatment and educational planning. When student was four (4) years of age, previous testing showed language deficits specific to comprehension issues implicating CAPD. The current testing indicated areas of difficulty in measures of pragmatic, expressive and receptive language skills.

Testimony: In her testimony, [REDACTED] noted that the student does not always understand/comprehend when people speak to him. She felt that the root of the Student's problems were in speech and language and that Student was not being re-mediated appropriately given these speech and language deficits.

[REDACTED] opined that student evidences a Specific Learning Disability in Reading and Written Expression and that, as Student's learning disabilities are language based, that placement in a school that could address his learning needs is crucial. She felt that placement in a school setting with other emotionally disturbed children within a more therapeutic school placement would only exacerbate his difficulties. She was unable to support any claim of sexual exploitation.

She feels that student will do well in a mixed age class but would not do well in an older class - even one his age. He recommended placement in the [REDACTED] (or similar facility) which specializes in a Wilson based instruction program with small class size. [REDACTED] has also emotional support.

Although some of the IEP goals (SD 415) are not inconsistent with what she would recommend, she found many of the goals from the IEP to be vague or non-measurable. However, in terms of her recommendations, she found 43 items of overlap between her report/recommendations and the IEP of 06/02/08 and over 60 items of overlap on the September 28, 2006. She agreed that the [REDACTED] would be a most restrictive educational environment.

She denied knowing the training of the teachers and staff at [REDACTED] for the bases for the teaching methodologies.

[REDACTED] holds a Ph.D from the [REDACTED] and is a Board Certified Neuropsychologist. She was well qualified as an expert and her testimony was found to be credible.

[REDACTED] - [REDACTED] (09-10-08)

Testimony: [REDACTED], was in attendance at the 09-10-08 Domain meeting. This was considered a Special Meeting. Oftentimes, this is called for when the outside documents show signs of significant change or special circumstances. Even though the Student had been "pulled" from the school in March, 2008, she needed to be there in order to commit the School District to alternate placement. This meeting started with an outside

document review (reports of two neuro-psychologists [REDACTED] and [REDACTED] and the audiologist [REDACTED] and the determination that the team needed to re-evaluate the student for services. Although the parents were suggesting/requesting specialized placement for student, the IEP team could not pre-determine what the Least Restrictive Environment (LRE) was for student. Rather, they needed additional evaluations and assessments and then needed to conduct an IEP meeting to review and make determinations.

[REDACTED] attendance was necessary to establish that personnel from the District with authority to bind the District to a placement option were present as requested and necessary. Her testimony did not directly relate to the Student but rather the ability of the [REDACTED] to provide certain placement decisions for the Student.

IEP Meeting (09-26-08)

Document and Testimony On September 26, 2008, an additional IEP meeting was held. Reports reviewed in the social assessment context were done which relied upon the evaluations of Parent's neuropsychologist. This meeting lasted somewhere between 1 ½ hours and 2 hours.

As required, they went through the continuum of services starting with the Most Restrictive Environment. The parents suggested [REDACTED] as a facility which would help their student but the Team felt that the Student's needs could be met with the services developed in this IEP meeting. Based upon the outside reports and the Teams own evaluations [REDACTED] school was rejected as the team felt that the services that the Student needed could be addressed at any [REDACTED]. Working down the continuum, the team decided upon a Separate Instructional Classroom for a portion of the students class experience.

To address the updated concerns, the student should continue occupational therapy for 30 minutes per week. Student's goal on his social/emotional functional performance was increasing his self esteem by decreasing his social skills deficits. Out of the 1075 minutes per week of Special Education and related services, 700 of these minutes per week would be in a Special Education classroom and/or pull out services with 375 minutes in the General Education classroom.

Although the parents expressed concern as to "bullying" in the classroom and school, the team referenced only one (1) incident.

[REDACTED] Psychologist

Testimony: [REDACTED] the school psychologist was assigned [REDACTED] during the 2007 - 2008 school year. His first contact with student was in a Domain meeting on October 5, 2007. Throughout his testimony, he referred to student as [REDACTED] which is not his given or nick name. They reviewed the outside reports and the prior IEP's developed for student. He understood that student was diagnosed with Behavioral ADHD, Opposition Defiance Disorder, Anxiety, Systemic Disorder on the Depression scale. In his opinion, it was unlikely that student would manifest each and every one of these. Academically, student was 1 year older than his

peers in the First Grade. He was expecting difficulties with student based on the outside reports but found him to be a likeable child who put forth his best effort. He believed that student was eligible for Learning Disability services and modifications, i.e. shorter directions, etc.

At the IEP meeting of November 5, 2007, he discussed [REDACTED] outside report and his own testing. He accepted [REDACTED] data and findings as they were similar to his own. He was interested in seeing Student develop pragmatic social skills.

At various times, student felt that other students were laughing at him and teasing him. To address this, he wanted student to have role models and wanted to facilitate play activities. As he had a substantial case load, he wasn't able to see student enough prior to student being withdrawn - only from October, 2007 through March 8, 2008.

He did review the updated report of [REDACTED]. From what he understood, there were no classroom behaviors noted as per the report and he did not observe any dramatic changes in the classroom. The report that student was eating paper at school was a mistake on the parents' part. He understood that the classroom teacher was using a variety of behavioral incentives. Based on his reports and those of the outside experts, he felt that services with the social worker would be more beneficial than his services for student.

As to placement at a therapeutic day school, he opined that student needed a general education classroom and appropriate role models. Those role models at a therapeutic day school would be horrible as typically, the students there would be performing at a level lower than student. Academically, he was making progress, making "C's" in his classes and was passing his classes. He agreed that student was on a modified grading scale due to his disability.

He denied recollection of any issues with sexual exploitation as to student. If he would have been aware of this, he would have reported it to the administration for investigation. As to evidence of bullying, he did not see this in his classroom observations or interactions with student. The general education teacher did also not see any bullying to the level described by the parents.

At one IEP meeting, although he advised parents that [REDACTED] was the best option for student, he also suggested that they visit [REDACTED] and [REDACTED] so that they could see options in a more restrictive setting. Although there might be a secondary diagnosis of emotional disability, in his opinion, student did not belong in a school for emotionally disturbed students.

He felt that it was highly unlikely that student would return to [REDACTED] gain.

[REDACTED] holds a Bachelor degree from [REDACTED] (1995) and Master in Education from [REDACTED]. He holds a Specialist certificate as a School psychologist. Although his testimony seemed knowledgeable, he continued to call student by the wrong first name. As to this particular student, this detracted from his credibility.

[REDACTED] - Special Education Teacher

Testimony: [REDACTED] is the Special Education Teacher at [REDACTED]. She helped develop the goals in Math, Reading and Language including the accommodations and modifications. She chose the goals based upon the psychological reports (outside) and information from the IEP meetings. Student was to have 160 min/wk at 4 days for 40 minutes of assistance with math. She would use manipulatives, i.e. flash cards. As of February, 2008, he was meeting his goals. This was based on work samples and informal in-classroom assessments.

She agreed that the 09-08 IEP meeting relied upon the outside reports and that these helped in the formulation of the goals in various academic areas. At this IEP meeting, his special education minutes were increased. In her opinion, the goals she assisted in formulating were measurable and, in fact, some/many of the goals were taken directly from [REDACTED] report/evaluation.

She described student as a "sweet" boy, polite who worked well in small groups (2 - 3 students). Accommodations/Modifications suggested included preferential seating, speaking slowly and clearly, careful direction, use of manipulatives, etc. Although he needed more time to complete tasks, he was easily re-directed on task.

As to socialization skills, she would have him model from herself. She only observed him behave in an inappropriate manner on one instance. In her opinion, student received benefits from both the general education room and the Special Education room in this regard. She did not feel that a therapeutic day school was appropriate for his academic skills and social development.

She did communicate with the parents by both phone and in-person. She agreed that the parents did not observe her providing instruction to student.

[REDACTED] holds a Bachelor of Science degree from [REDACTED] and will complete her Master of Science degree this June, 2009. She was a credible witness.

[REDACTED] - School Counselor and Case Manager

Testimony: [REDACTED] is the School counselor and case manager for the student. His job as a case manager is to facilitate and co-ordinate the IEP meetings, to provide notice of the meetings and assemble the teachers for the meetings, to co-ordinate the assessments and to support and collaborate with the IEP team members. As part of his responsibilities, he visits the classrooms and collaborate with the teachers and parents - both Special and General Education teachers.

He first had contact with the student in September, 2007 when he was a 1st grade student in a General Education classroom. He recalls meeting with Student's father at the Fun Fair held at the school. Based on a conversation with the principal, he understood that Student may have special needs. He requested the records from his prior school(s) and believed that these were

received in late September, 2007. He did review the IEP from November 18, 2004 which showed a primary diagnosis of Speech and Language Disability and also a need for Occupational Therapy services. There was an Individualized Service Plan (for non-attending students) in March, 2006 as student was attending [REDACTED]. That plan called for 75 minutes of Speech/Language services and 30 minutes of Occupational Therapy.

He had an informal meeting with the parents, [REDACTED] (O/T), [REDACTED] (Sp/L), a [REDACTED] representative and a representative from [REDACTED]. Based on this, they held a domain meeting on October 15, 2007 to re-evaluate student and also to evaluate a new problem. Although they had 60 days to complete the suggested evaluations, the district was able to accomplish this within 30 days. There was an eligibility and IEP Conference on November 5, 2007. He conducted this meeting which included various teachers and specialists (See SD 164). The IEP team used both the in-house evaluations as well as those outside reports provided by the parents and/or specialist on behalf of the parents. The general education classroom teacher reported on the Student's strengths including the home environment, his abilities with regard to adding single and double numbers and his fluency in reading. The Parents were concerned about his ability to focus, his academic delays and particularly his speech and vocabulary difficulties. The various team members each contributed to the meeting. [REDACTED] noted that the team is required to look to a continuum of services starting with the More Restrictive Environment (MRE). As the team did not feel that [REDACTED] was the most appropriate setting for student, they ultimately determined that the Student could function in a general education classroom with certain accommodations and modifications. [See SD 182 - 187].

[REDACTED] did observe Student in the general education setting for reading and found that student participated in the class including reading aloud with the story. He did not observe any disturbances while there from the student. He also observed the general education teacher and the special education teacher working on lesson plans jointly regarding math. He would also correspondence with the mother on a regular basis.

In March, 2008, he did check with the school personnel to see why the student wasn't in school. He found that the student hadn't been in school since before the Spring break. It was his understanding that there was a note from the doctor about fluid in the student's ear. He understood that there was an issue with a possible conductive hearing loss and did send an e-mail to the parents regarding this. He was waiting for records relative to this conductive hearing loss.

At this point, [REDACTED] wanted to re-schedule an IEP meeting to discuss student's progress to his evaluation goals. The team was waiting for a report/evaluation from [REDACTED] while this was going on. At this point, he also sent a referral for home bound services. This was granted at the level of 1 hours service per day.

An IEP meeting was held on June 2, 2008. This meeting was delayed for several weeks as the team waited on [REDACTED] to provide his current evaluation. [REDACTED] was to be in attendance at the IEP meeting. [SD 293 & SD 234]. During this IEP meeting, the team discussed the outside reports and the school absences. He and the team members were "shocked" as to the parents then stated concerns of bullying and harassment as to Student. No one on the team or in

school held that opinion. The parent's description of the Student's behaviors were apparently seen at home but were not reported at school. Student was eligible for Extended School Year services (ESY) so as to attempt to avoid regression over the summer. Based on the parent's concerns, the team opened a new area under Social/Emotional to attempt to support student regarding these concerns.

Based on the information available from the outside reports and the parent's concerns and information brought to the meeting, the IEP team accepted removing Student from general education for 21 % to 60% of the school day to provide additional support to him in smaller group setting in order to address his expressive language/articulation, computation skills, problem solving skills, and auditory integration and decoding deficiencies which cause student to become frustrated, avoid tasks and assignments [SD249]

On September 26, 2008, Student had a Special IEP meeting to consider the school records and the outside reports of [REDACTED] and [REDACTED]. The main focus of this meeting seemed to be on the report of [REDACTED] particularly and the re-evaluation by the School Psychologist relative to issues with an emotional disability. Even though the team, with some dissent, determined that Student did not meet the eligibility criteria for Emotional Disability, they did review the student in light of the outside reports and made certain determinations as to additional services if the student should return to [REDACTED]. Certain psychological services and occupational therapy services were suggested based upon the reports of [REDACTED] and [REDACTED]. His Special Education minutes were increased to 1075 min/wk including 700 min/wk of removal from the classroom and 375 minutes in the General Education classroom. It was the team's opinion that [REDACTED] could accommodate student with his plan.

He holds a Bachelor of Science degree in Special Education (learning disability and behavioral disability) and a Masters of Education degree in Elementary School Counseling. He was a very interested witness and even willingly stayed until almost 7:00 PM to testify. He had a good recall of facts and events and was a very credible witness.

[REDACTED] - Classroom Teacher

Testimony: [REDACTED] was the Student's 1st grade teacher [The year student started at [REDACTED] was apparently his first year at [REDACTED] also]. His first impression of the Student was that he was good natured, versed in knowing appropriate behaviors, wanted to do his best and was excited about being in 1st grade. He did note that the Student needed extra help from the first day of school.

The students were grouped into mixed ability grouping of 4, i.e. students that needed support and students that didn't. In addition, he had a teacher's aide [REDACTED] to assist with those children who had IEP's. He used a center based curriculum - hands on materials such as pattern blocks, base 10 blocks, word wall, visual schedule, high frequency words. Progress was measured based on tests derived from the text books, teacher made tests and rubric's.

He understood that the Student had certain special education needs. He listened to the parent's concerns and discussed with [REDACTED] these concerns and how the Student was doing. In order to implement the IEP, he initially read through it to acquaint himself and then talked to his aide about this IEP. As part of his teaching instruction for Student, he changed his seating so that Student was as close to him as possible, attempted to use the Sound Field Listening device, made sure that directions are given and understood, used short, simple sentences, 1 - 2 steps for a task maximum, give directions backwards, allow short breaks, concentrate on high frequency words, use of words on the word wall and extending his time on tests. He also used a modified grading scale per the IEP team. In addition, he consulted with the Special Education teacher for other ways to accommodate and/or modify strategies as to Student, i.e. visual aids, personalized schedule for support, velcro strips on one section of his desk to stay on task (pull off and on when doing and completed),

Based on his observations and testing, student could formulate sentences, had mixed articulation, sometimes understood the question with appropriate answers but at time his sounds were nonsensical. Generally, the Student was tending toward the lower end of the spectrum as to other kids in his class with an IEP. He was not aware that the Student had undergone work with [REDACTED] when he first was dealing with Student but did learn this out later at one of the meetings. In the General Education Classroom, the student performed adequately, was friendly and generally got along with his peers. They did attempt to use the Stand Field Listening Device but this ended up causing too much distraction in the classroom as to the entire class and was ultimately returned. He attempt to use this device over 1 month. He also keep in almost constant contact with the parents via E-Mail to the mom. As to reading and fluency, he thought that Student needed extra work but still thought him on track with the rest of the class.

As to behavior issues, student's behavior was generally acceptable. He was friendly, had a great sense of humor and would befriended a student who was difficult to get along with. He did not perceive student as being explosive or difficult in school although his e-mails on at least one occasion used this terminology. He denied observing any odd behaviors. The only issues that he was aware of involved recess/lunch. Student would seek out older students for their attention. He understood that the student would refer to "bullying" when he observed someone else doing something wrong. Student was very sensitive to right/wrong; justice and morality. If he observed someone doing which he considered wrong, he would loudly accuse that student of bullying. He believes that either the psychologist or social worker met with him to work on this. A bully blocker Team/Program was initiated through the counselor's office. Modifications taken to attempt to deal with this included: (a) change of position in line so as not to be standing/sitting next to certain children; (b) communicating with the mother, (3) speaking to student about the behavior and why it isn't acceptable. He was appreciative of the information provided by the parents which was helpful in his work with the Student.

Although he did note that the Student had trouble organizing his work, would struggle at times in a minimal noise situation and did not always seem to know what he was saying, he felt that the Student was progressing in his class. He felt that his language skills were at grade level for a first grader but would concede that they were not at age level. His grades were "C's" which meet the school standard for passing. He was presented on cross examination with certain

samples of the student's journal/other matter but did not feel that it was indicative of the type of work that the student could do other than early on in the school year when he first started.

He did implement some of the suggestions [REDACTED] in dealing with the Student. However, he did not agree with [REDACTED] that Student has no social skills. Student, in fact, made friends with one of the most difficult boys in his class.

Even after Student was withdrawn, he continued to communicate with the parents via e-mail and sending work home. At that point, it was impossible to implement the IEP as the student was no longer in school.

[REDACTED] holds a Bachelor of Science degree [REDACTED] and a Master of Arts in teaching from [REDACTED]. He was extremely concerned about the student - communicating with the parents much more often than weekly. He had good recall of events. He willingly embraced the IEP team recommendations and sought out others to effectively attempt to implement these recommendations. He was open to varying methods of instruction with Student and readily accepted the use of the assistive listening device. He was a very credible witness.

CONCLUSIONS OF LAW

1) **The District Did Not Fail in its Duty Regarding Child Find**

Based on the District's Motion for Directed Finding at the end of the Parents' case, Hearing Officer directed this issue in the District's favor as the Parents did not produce evidence to support this issue. When considering the District's case in chief, it is clear that the District was involved early on in the assessment of the Student's disabilities. In November, 2004, when Student was 4 years of age, the District found that Student demonstrated delays in receptive and expressive language. He was referred for eligibility for SPL services with the suggestion that the Student would benefit from 30 minutes of direct speech and language services [SD 4]. This was followed with a revision of the IEP in December, 2005 and implementation in a March 3, 2006 IEP. As Student was not [REDACTED] an Individualized Service Plan was adopted in December, 2006 to address the Student's disabilities and specific recommendations for Speech/Language Therapy and Occupational Therapy were determined.

2) **The District Did Not Fail to Develop an Appropriate IEP for Student Which Was Calculated to Provide Him Meaningful Educational Benefit**

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). *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).”

Historically, [REDACTED] identified Student at 4 years of age and undertook to provide services for him from that time. By the time of Student's attendance at First Grade [REDACTED] he had already had an initial Eligibility meeting on or about November 18, 2004, a Service Plan Revision on March 3, 2006, and a Service Plan - Private School Students on December 20, 2006. Upon enrolling at [REDACTED] he underwent a 3 year Re-Evaluation on November 5, 2007, an Annual Review - IEP on June 2, 2008 and a Special Evaluation IEP on September 26, 2008. Under *Rowley*, were those IEP's reasonably calculated to provide meaningful benefit.

Testimony and documents submitted on behalf of the District show that the District employees spent considerable time and effort in evaluating and assessing the particular disabilities affecting Student. Although there may be issues between the private evaluators retained by the Parents and the District's evaluations as to implementation of the IEP goals and methods of meeting 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 Speech/Language. As to Speech/Language, [REDACTED] found the Student to have Central Auditory Processing Deficits particularly in the areas of (1) Decoding, (2) Integration, and (3) Tolerance Fading Memory. The District's evaluation found Central Auditory Processing [REDACTED] also with a primary auditory integration deficit and a secondary decoding deficit. [REDACTED] found that the Student exhibits a Specific Learning Disability in the area of Reading based upon his auditory deficits and language comprehension.

The District, at the November 5, 2007 IEP meeting - Re-Evaluation - had a team of nine (9) [REDACTED] employees including the General Education Teacher, Special Education Teacher, Social Worker (and social Work Intern), Occupational Therapist, Psychologist, Audiologist and Speech/Language pathologist in addition to the parents. Many of the specialists had conducted evaluations of the Student and shared their reports with the Team. In addition, they had at least one of the reports authored by [REDACTED]. They spent upwards to two (2) hours reviewing and discussing the Students needs. At that time, the team found Student eligible for a total of 320 min/wk in a separate classroom [SD 182]. The goals formulated [SD 175 - 181] were deemed quantifiable and measurable. The list of accommodations and modifications also were considered direct and meaningful.

Unfortunately, the Student was withdrawn from [REDACTED] on or about March 7, 2008. As such, it is difficult to determine how meaningful these goals were to the student as there was insufficient data and time to see how the student was progressing. Anecdotal notes of the General Education Teacher and the Special Education Teacher suggest that the student was making progress towards his goals.

Even with the withdrawal, the IEP team meet again on two (2) separate occasions to review the Student based upon updated outside reports. The June 2, 2008 IEP meeting was attended by [REDACTED]. The team reviewed the prior IEP and increased the amount of special education and related services to 562 min/wk based upon the new outside information.

At the September 26, 2008, the IEP meeting again discussed the needs of the Student including issues with Emotional Disability. Although declining to find the Student Emotional Disabled (at one point, the parents indicated that they did not want an E/D label placed on Student) this was discussed in light of [REDACTED] report and evaluation as well as the evaluation of [REDACTED]. As noted [SD 406], Student had been making progress on a number of his goals by the time that he was withdrawn. At this meeting, Students special education and related services was increased to 1075 min/wk including 240 min/mo in Speech/Language and 100 min/mo with the Social Worker dealing with Social/Emotional issues as well as 30 min/mo with the School Psychologist dealing with Social/Emotional Issues.

The education professionals are to be given deference as to education placement and methodologies *School Dist. Of Wisconsin v. Littlegeorge*, 295 F. 3d 671 (7th Cir., 2002) so long as those school professionals were not unreasonable in their determinations as to appropriate services and placement (See also *Hearther S. v. State of Wisconsin*, 125 F. 3d 1045 (7th Cir., 1997)). Here, based solely on the evidence suggested by the school personnel in conjunction with the various independent evaluations, the recommendations of the private physicians and evaluators could have, in fact, been implemented within the IEP's completed in 2008. For example, [REDACTED] noted that there were 43 items of overlap between her recommendations and the IEP developed for the Student in June of 2008 [SD 239 - 240]. As to the September, 2008 IEP, there were 60 items of overlap [SD 411 - 412]. In [REDACTED] opinion, these were beneficial to the Student. Additionally, the IEP incorporated some of the suggestions of [REDACTED]. Therefore, it cannot be said that the school professionals were unreasonable as to their determination of services and placement.

Hearing Office concludes that the Parents have failed to sustain their burden and enters a finding in favor of the School District on this issue.

3) The District Did Not Fail to Conduct a Functional Behavior Analysis and Develop a Behavior Intervention Plan for Student

Based on the District's Motion for Directed Finding at the end of the Parents' case, Hearing Officer directed this issue in the District's favor as the Parents did not produce evidence to support this issue. When considering the District's case in chief though, certain evidence was

adduced as to issues with behavior. Given the testimony on cross examination of certain District personnel, Hearing Officer now reverses this Finding directed in favor of the District.

The General Education teacher noted on at least one (1) occasion what he described as [REDACTED] tendency to deal with situations explosively” [SD310]. There were also brief references to talking loudly in class and slamming doors in conjunction with another student. From reading through the various e-mails introduced by parents in their cross - examinations and the testimony of the General Education teacher, almost all of the instances of mis-behavior were predicated upon choices that Student made in terms of who he is associating. Other than issues of low esteem, his described behavior (or misbehavior) seem almost solely dependent upon following others. It is important to note though that the parent’s private physicians and evaluator have also found certain behavioral issues to include a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD). In her report of June 12/13, 2008, [REDACTED] noted that [Student] “has a tendency to imitate his peers both as a means of being accepted, and also, given his language processing deficits, done as an adaptive means to better understand his environment”.

This concern about the Student’s emotional disability, if any, was also noted in the IEP meeting in September 26, 2008 in which two (2) of the team members dissented from the majority opinion based upon the reports and/or evaluations of [REDACTED] and [REDACTED] Licensed Psychologist by [REDACTED]

The Psychological Report dated September 16, 2008 of [REDACTED] noted, based upon parent report, that Student was being bullied, potentially sexually exploited, hiding under his desk on a regular basis, and eating paper [this last item was conceded by the parents as a mistake and should not have been listed]. However, in order to be actionable, this behavior must be observed in the school setting. The Student was noted as enjoying school, had participated in a behavior modification program and very little acting out behavior was reported by the teacher. On the seldom times when the student was observed crawling under his table, he was easily re-directed back to his chair. The teacher and assistant vehemently denied any sexually acting out or evidence of his being abused physically or sexually. Consistent with [REDACTED] report, the two peers with whom Student associated were the very ones whom he complained about teasing and bullying him. However, there is no record of suspensions, expulsions nor was there any report of student hitting, kicking or otherwise threatening other students or teachers. The District did address this issue in the most recent IEP by providing additional time with both the Social Worker and the Psychologist.

As noted in *Warren Township H. Sch. Dist. 121*, 20 IDELR 130 (SEA IL, 1993), “the case does not present a child who is performing well in school but who is out of control at home. In such a case, the emotional problems and need for greater structure outside of the school environment would be independent of the student’s educational needs”. Further, a psychiatric diagnosis alone is insufficient to show that a student has an emotional disturbance under the IDEA. It must be shown that the diagnosis adversely impacted the student’s educational performance. See *C.J. v. Indian River County Sch. Bd.*, 41 IDELR 120 (11th Cir., 2004), *John Doe, Jr. v Bd of Ed of the St of Connecticut*, 17 IDELR 37 (D. C. CN, 1990)

Here, the discrepancies between what is reported in school and what is reported about school outside of school and what goes on outside of the school setting are insufficient to support the Parent's assertions.

Hearing Office concludes that the Parents have failed to sustain their burden and enters a finding in favor of the School District on this issue.

4) The District Failed to Provide Scientific, Research Based Teaching Methodologies.

There was very little testimony adduced on this topic by either the Parent or School District. Parents' witnesses did not know the training of the school district personnel that worked with the Student and could not comment on the bases for their teaching methodology. The records note that the audiologist recommended Dichotic Listening Training per [REDACTED] et a. (2003 and 2005). Other than that, the record is silent as to this issue of methodologies. As the Parents have the Burden of Proof as to any issue presented (See *Shaefer vs Weast*, 546 US 40), they have failed to show that the District's teaching methodology is not scientific, research based teaching methodologies.

Hearing Office concludes that the Parents have failed to sustain their burden and enters a finding in favor of the School District on this issue.

5) The District Did Not Fail to Adequately Review and Fully Take into Account the Evaluations and Recommendations of Student's Private Evaluators and Therapists.

The testimony of the school personnel and the IEP's as well as the testimony of [REDACTED] all indicate that the IEP team members reviewed, considered and incorporated the suggestions of the outside providers, physicians and evaluators in the development of the IEP for the Student. This was highlighted most vividly in the cross examination of [REDACTED] wherein she indicated that there were 43 items of overlap between her recommendations and the IEP developed for the Student in June of 2008 [SD 239 - 240]. As to the September, 2008 IEP, there were 60 items of overlap [SD 411 - 412]

There was abundant testimony from the various team members including [REDACTED] and [REDACTED] as to their use of these outside reports in preparing not only the IEP's but also implementing them with the classroom setting - be it the General Education classroom or the Special Education classroom or one - on - one with a specialist.

Hearing Office concludes that the Parents have failed to sustain their burden and enters a finding in favor of the School District on this issue.

6) The District Did Not Fail to Recognize All of Student's Disabilities

Although there were various diagnoses made as to Student, the primary issue as to Student was the issue of Speech/Language deficits. There was substantial similarity between the outside

diagnosis of [REDACTED] and that of the [REDACTED] audiologist, [REDACTED]. Although they reversed the order of the primary and secondary diagnosis, both found the two major diagnoses to be integration deficit and decoding deficit. Through the IEP plans that were developed for the Student, this/these diagnosis/es has been in the forefront since back in 2004. The IEP in November, 2005 directly addressed this issue finding a need for specialized instruction and accommodations/modifications. Two goals were formulated based upon the outside research and the District's evaluations. These goals directly involved some of the most common problems that Student exhibited - producing the "r" and "th" sounds and inconsistent subject - verb agreement. The accommodations/modifications directly incorporated the suggestions of [REDACTED] and, to a lesser extent, the recommendations [REDACTED].

As to the Mixed Receptive - Expressive Language Disorder, this was addressed in both the outside report of the [REDACTED] and in the testimony of [REDACTED] speech/language pathologist. She believed that her findings were comparable to those of the [REDACTED]. She shared both her findings as well as those of the [REDACTED] with the IEP team. Based on this, the Student was to have 40 min/wk in the Special Education classroom and 20 min/wk in the General Education classroom. She would work on the goals with him and he made progress, in her opinion, with the sounds and in sentence construction. In her opinion, Student was progressing in getting the sounds identified of "r" and "th" between November, 2007 and March, 2008. She would use a variety of techniques with him relative to these such as prompts, placement cues, visual, etc. On his expressive goal, he was more accurate in his sentences, was feeling more comfortable in a small group setting and was exhibiting the behaviors of a typical 1st grader. Even given this improvement, in June, 2008, at the IEP meeting, he was provided with 60 min/wk of services in the Special Education classroom so as to benefit from a smaller group setting.

See above for a discussion of Attention Deficit Hyperactivity Disorder - Issue 3.

The Reactive Attachment Disorder was referenced in the context of his early childhood experiences [REDACTED] (Student was adopted from [REDACTED] at age 3 ½). This would be evidenced that "people would be coming to take him back" and feeling unsafe in certain settings. Although referenced through certain neuropsychological studies, there were no suggestions or treatment protocols suggested by the outside providers and there was no testimony from anyone as to this being a problem for Student in terms of his educational placement or advancement.

Even if the District had failed to appropriately identify a specific disability, i.e. ADHD, Emotional Disability, Reactive Attachment Disorder, etc., this is not, in and of itself, the crucial inquiry. As the Seventh Circuit noted in *Heather S. V State of Wisconsin*, 125 F. 3d 1045 (7th Cir., 1997), "[t]he IDEA concerns itself not with labels but with whether a student is receiving a free and appropriate education". This is further borne out that the critical inquiry is whether the developed IEP was adequate to address the student's disability. *Alex R. v. Forestville Valley CUSD*, 375 F. 3d 603 (7th Cir., 2004).

In this case, the IEP team on various occasions including the November, 2007 IEP, the June, 2008 IEP and the September, 2008 IEP considered the various diagnosis/es as determined by the

outside providers, evaluators and physicians as well as those determined by the [REDACTED] staff personnel (i.e. audiologist, psychologist, social worker, etc.) and addressed these in the various IEP's. Even though the Student was no longer attending [REDACTED] school after March, 2008, the IEP team continued to update and to provide for the concerns of the parents as evidenced by the outside reports and evaluations. The team spend several hours at each IEP meeting as well as substantial time prior to the meeting reviewing and re-evaluating the information concerning the Student based upon the parents information and the outside reports. Whether their efforts would ultimately have yielded progress for the student cannot be determined as he was withdrawn in March, 2008, just four (4) months after his initial IEP at [REDACTED] school was formulated. What is known, per the testimony adduced at the hearing, the Student was progressing in terms of his goals and the General Education Teacher as well as the Special Education teacher noted progress on his goals and a general improvement in his Speech/Language and Social/Emotional goals.

Hearing Office concludes that the Parents have failed to sustain their burden and enters a finding in favor of the School District on this issue.

7) The District Did Not Fail to Provide an Appropriate Placement for Student.

This is the crux of the Parent's case as to the District as their primary relief requested is that of placement in a More Restrictive Environment, specifically the [REDACTED]. The Parents assert that the Student's needs could not be met within the then current placement at [REDACTED]. Based upon the recommendations of [REDACTED] in her June, 2008 report that "[Student's] educational needs require a learning environment equipped to work with children with language-based learning disabilities, such as [REDACTED] [SD 359]". However, [REDACTED] report is structured as to suggestions, accommodations and modification so that these items can be implemented in the public school setting and, in fact, as she noted (above), the IEP team did incorporate a substantial number (43 and 60) of these recommendations within the various IEP's developed for Student.

Although it is possible that the District's IEP plans might not, over time, provide the anticipated improvement and that the Student might not progress adequately as to his goals, the District did not have adequate time in order to determine if the Student was progressing towards his goals as the Parents removed him in March, 2008, only four (4) months after the initial IEP was developed at [REDACTED]. By the end of the quarter for implementation of the first part of the goals, the District's testimony from [REDACTED] and [REDACTED] was that the student was making progress, that there definitely was grow and improvement.

In the instant case, the District has attempted to meet the educational needs of Student through a variety of IEP's. As he is out of school, the District has little way to independently measure the student's progress, or lack of progress, on his November, 2007 IEP. Even without these "in-house" measurements other than [REDACTED] specialist evaluations, the District has conducted additional IEP meetings based upon updated information brought forth by the Parents and/or outside reports and its own evaluations. Based on this additional outside information and in-house evaluations, the District has convened two (2) additional IEP meetings and has thoroughly discussed and evaluated the outside reports. Based upon the updated information, the IEP team has increased

the Student's services, his accommodations and his modifications and often times has incorporated treatment options and suggestions of those outside consultant and evaluators.

It is axiomatic that IDEA has shown a preference for placements in the least restrictive environment (LRE). 34 CFR, Section 300.114 (2006) states:

- “(2) Each public agency must ensure that
- (i) To the maximum extent appropriate, children with disabilities including children in public or private institutions or other care facilities are educated with children who are non-disabled; and
 - (ii) Special classes, separate schooling, or other removal of children with disabilities from regular educational environment occurs only if the nature of the severity of the disability is such that education in regular classes with the use of supplementary aids or services cannot be achieved satisfactorily.”

Typically, objective factors such as regular advancement through the grades, passing grades, etc. is one of the most common methods to show progress. See *Alex R. v. Forestville Valley CUSD*, 375 F. 3d 603 (7th Cir., 2004). More recently, with the recent legislative amendments, the case law has expanded the standards as to “meaningful educational benefit” to something more than merely “minimal progress”. See *Todd v. Duneland Sch Corp*, 299 F 3d 899 (7th Cir., 2002). Here, the testimony is that the Student was progressing (see above).

██████████ may or may not be an excellent choice for student at some point in the future. However, at this point in time, and based on this record, other than the brief description from ██████████ report and her in - person testimony wherein she noted only that ██████████ specializes in a language based program that is ██████████ based, that it has a small class size and can also deal with emotional issues, no other information was provided to this Hearing Officer as to how ██████████ would have provided any more educational benefit that shown by the District's IEP's, if implemented. She did not testify that the current educational plan and setting would not be able to provide this type of a program and, in fact, has provided numerous modifications and accommodations for the student within the current educational setting. The District has provided testimony and documents that Student can be educated in the current setting.

It is clear that the Student requires substantial services to meet his disabilities and needs. The District though has attempted to meet these needs and has identified, through its IEP's, goals, accommodations and modifications which it believes will allow the student to make significant progress. The outside reports and evaluations do not demonstrate that the current IEP's will not provide the Student with an appropriate and meaningful education experience which will address his needs and disabilities.

Hearing Office concludes that the Parents have failed to sustain their burden and enters a finding in favor of the School District on this issue.

8) The District Did Not Fail to Allow Student's Parents Meaningful Participation in Student's Educational Plan.

By not implementing Parents' request of placement at [REDACTED] the parents' claim that they did not have meaningful participation in the educational plan. However, this is belied by the documentary evidence in this matter. The parents, their advocate on one occasion and various of their outside experts were all heard in person or over the telephone at the various IEP meetings. Several of the dates for the IEP meetings were postponed so that the outside reports and evaluations could be received by the IEP team. In addition, the E-Mail submissions contained in both the Parents and District's submission evidence active involvement not only in the various Domain, Eligibility and IEP meetings but also the Student's day to day education [SD 276 - 355].

The parents are members of the IEP team. 20 U.S.C. section 1414 (d) (1)(B)(I). The parents, as well as any other member of the IEP team, has the right to disagreed with specific decisions of the team and even with the overall plan and/or ultimate decision. This, though, does not preclude the IEP team from determining eligibility, placement, services, etc. Parents' remedy is the ability to file a due process complaint as they have done here.

The parents very sincerely want what they believe is best for their Student. They have gone to great lengths to acquire multiple outside evaluations including that of [REDACTED] and [REDACTED]. On more than one occasion, they have provided for these outside experts, physician [REDACTED] and others to participate at the IEP meetings. In times past, based in part on various outside evaluations, they have provided for education in a private setting. They have been directly involved in their Students education on an almost daily basis at [REDACTED] either by their attendance or through correspondence. The District has not ignored their assistance and their input. The General Education teacher utilized their suggestions in his classroom and also provided suggestions, etc. in return. The case manager [REDACTED] also was actively involved with the parents. From the E-mails, it appears that all were striving for the same result - their Student's education. The parents generally agreed with the IEP's that were developed with their input. Their main source of disagreement in this hearing is with the Placement of their student as they feel, based on [REDACTED] recommendations, that the Student will show more progress at [REDACTED].

However, the District is required by the IDEA to provide placements in the least restrictive environment. [REDACTED] conceded that [REDACTED] is a more restrictive environment. The IEP team, as testified to by the Case Manager, [REDACTED] considered a continuum of placement for the Student which is reflected in the IEP's that were developed. The team considered the most restrictive environment first and only if they determined that this was the best option for the Student would they stop. If the team determined that this was not the best placement, given the law (IDEA) and the various evaluation, services available, etc., would they then move on to a less restrictive environment. This comports with the teachings of *Bd of Educ. of the Hendrick Hudson Sch. Dist. v. Rowley*, 458 U. S. 176 (1982) and its progeny. The educational professionals are entitled to deference in the decisions as long as those decisions are not

unreasonable. See *School Dist. Of Wisconsin v. Littlegeorge*, 295 F. 3d 671 (7th Cir., 2002) and *Hearther S. v. State of Wisconsin*, 125 F. 3d 1045 (7th Cir., 1997).

Here, the District was complying with the law. Despite his absence from school, the District's program as developed by the IEP meetings were designed to provide educational benefit to the Student. Not only did the District provide an IEP when the Student first enrolled at [REDACTED] school, they meet even after the Student was withdrawn from school. To the extent available, they utilized the outside reports and evaluations to tailor a program to the unique needs of the Student.

The case of *Fort Zumwalt Sch. Dist. v. Clynes*, 119 F. 3d 607 (8th Cir., 1997) is instructive. In that case, the parents had enrolled the student at the public school where he had an IEP. This plan put the student in a classroom for learning disabled students part of the school day for instruction in math and reading and the remainder of the day in the general education classroom. At some point, the parents disagreed with the IEP and their students progress and claimed the IEP's were inadequate. The parents withdrew the student from the public school. The U. S. Court of Appeals stated:

"Even though the 1991-92 IEP met IDEA's requirements, the school district offered to improve it in the fall of 1991, but the [REDACTED] removed [REDACTED] from [REDACTED] before the district had an opportunity to review the IEP and attempt to come to agreement with them. [REDACTED] testified that in May 1991 she told the school district that she did not agree with the 1991-92 IEP, would not sign it, and would like it to be reviewed in the fall of 1991 in light of [REDACTED] summer program at [REDACTED]. The 1991-92 IEP itself stated that it was to be reviewed in September 1991, but before that time came the [REDACTED] informed the school district in August that [REDACTED] had been enrolled in [REDACTED] for the year. The abrupt removal of [REDACTED] from [REDACTED] prevented the district from following through on the request made by the [REDACTED] for a review in the fall and from responding to their then current concerns. See *Evans v. District No. 17*, 841 F.2d 824, 831-32 (8th Cir. 1988) (no failure to provide free appropriate public education where the school district had not been given an opportunity to change the child's educational placement)."

Similarly here, the parents withdrew the Student from school only four (4) months after the development of the November, 2007 IEP. The teachers charged with implementing this IEP found that it provided benefit to the Student and that he was making progress to his goals. Even after the withdrawal, the District continued to re-formulate the IEP based upon additional reports and evaluations.

His elementary school progress record for the school year 2007 - 2008 revealed "A's", "B's" and "C's" [SD 447](admittedly on a modified scale). There were no failing marks. The more detailed Report of Student Achievement for the same academic year again noted acceptable grades but did note areas which needed improvement [SD 448 - 450]. The IEP team felt that the Student would benefit from instruction with a mix of Special Education and General Education classroom settings - particularly in terms of modeling of behavior. The team further felt that the

instructional program with the blend of General Education classroom and Special Education classroom instruction would provide an educational benefit to the student.

Hearing Office concludes that the Parents have failed to sustain their burden and enters a finding in favor of the School District on this issue.

9) The District Did Not Fail to Provide Sufficient Related Services.

The Student was first enrolled at [REDACTED] in the Fall of 2007. Prior to that, Student was not enrolled in the public school system for the 2006 - 2007 school year but rather at a private school as determined by the parents. When student was enrolled, the school appropriately identified student as one needing services and held a Domain meeting and an Eligibility meeting. The Student was evaluated by both outside experts and "in-house [REDACTED] personnel. The IEP team utilized the outside reports and evaluations in conjunction with the school evaluations and formulated a plan including related services. As the Student was withdrawn shortly after this plan was implemented, it is difficult to determine how much success the student had under this IEP but school personnel noted gains, improvement and that the student was making progress towards his goals. His report card also reflected this.

Based on new outside reports and evaluations, the IEP team continued to up-date the IEP plan and provided additional services, accommodations and modifications to his classroom experience. These updated IEP's reflected and incorporated many of the outside experts suggestions and accommodations.

At the last IEP meeting, this plan provided for 1075 minutes of services including various related services in the nature of Occupational Therapy, Speech/Language services, Social/Emotional services via the Social Work and Psychologist and Audiology services. As the Student was not in attendance at the time that this Plan was developed, there has been no determination that this Plan will not provide for the special needs of the Student. Conversely, there is no way to determine whether it will provide for the special needs of the Student. However, the Parents have the burden of proof and the outside reports are not addressed to this IEP even though various parts of the outside experts recommendations were incorporated into this last IEP.

Hearing Office concludes that the Parents have failed to sustain their burden and enters a finding in favor of the School District on this issue.

10) The District Did Not Fail to Provide a FAPE Due to the Substantive and Procedural Violations of IDEA described above.

For all of the reasons discussed above, Hearing Officer finds that the District did not fail to provide a FAPE to the student and has not violated either the procedural or substantive provisions of IDEA.

Hearing Office concludes that the Parents have failed to sustain their burden and enters a finding in favor of the School District on this issue.

ORDER

Placement in a Private Day School specializing in teaching children/students who have learning disabilities such as [REDACTED] is denied

Transportation to this placement is denied.

Re-imbusement for the private evaluation completed by their Neuropsychologist [REDACTED] for the June 12/13, 2008 evaluation is granted as this evaluation was useful to and incorporated by the school IEP team into their Individualized Education Program.

Re-imbusement for the private evaluation completed by their Audiologist [REDACTED] for his two evaluations (October 29, 2007 and April 18/19, 2008) is granted as these evaluations were useful to and incorporated by the school IEP team into their Individualized Education Program.

Re-imbusement for the private evaluations completed by personnel [REDACTED] is denied.

RIGHT TO REQUEST CLARIFICATION

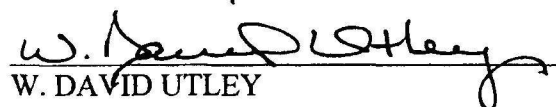
Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned Hearing Officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought 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.

Dated this 27th day of May, 2009


W. DAVID UTLEY
Impartial Hearing Officer

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 E-Mailing a copy to the following named parents and attorney(s) and also by mailing a copy certified to the above named parents and 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 [REDACTED] in May 27, 2009

[REDACTED]

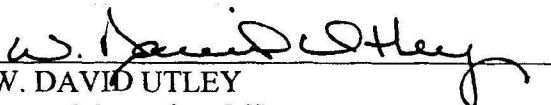
Via E-Mail to [REDACTED] and First Class Mail - Certified

[REDACTED]

Via E-Mail to [REDACTED] and First Class Mail - Certified

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

[REDACTED]