

Case Number: 2009-0206

[Redacted] vs. [Redacted]

Hearing Officer: Kristine Anderson

Illinois State Board of Education
Special Education Services
100 North First Street
Springfield, Illinois 62777

Impartial Due Process Hearing Decision Cover Page

Instructions: Complete this form and return it along with the decision. The information collected on this form will be used for the purpose of indexing the decision by subject matter as required by 23 Illinois Administrative Code 226-695

District Name [Redacted]

Phone [Redacted]

Superintendent Address [Redacted]
Represented by [Redacted]

Parent Name [Redacted]

Phone: [Redacted]

Address [Redacted]
Represented by [Redacted]

Date and Timelines

Date of Written Request: 11/21/2008
Date of Pre-hearing Conf: 06/04/2009

Date of Hearing: 08/03/2009 to 8/5/2009 12:00:00 AM
Date of Decision: 8/26/09

Summary of Decision

The parent filed a due process complaint asserting that the District had failed to provide her daughter with appropriate educational services in the areas of math and written language. In addition, the Parent asserted the District committed a number of procedural violations that resulted in a denial of FAPE for the Student. Finally, the parent argued that the District failed to conduct appropriate evaluations to determine whether her daughter had a non-verbal learning disability, and whether she needed AT services. On the issue of evaluations, the parent had provided the District with a written request for an IEE, to which the District responded by filing a due process complaint.

The Hearing officer found in favor of the District on all issues except for the issue of assistive technology services. The Hearing Officer ruled that the District failed to meet its burden of proof that it had conducted an appropriate AT assessment of the Student. The Hearing Officer also held that the parent had presented convincing evidence that the student should be provided with AT services. Finally, the Hearing Officer did not agree that any of the procedural issues raised by the parent amounted to a denial of FAPE. Evidence presented at the hearing, however, caused the Hearing Officer to rule that counsel for the District had failed to respond to Parent's repeated requests to convene an IEP meeting, which was a denial of FAPE.

-
-
-

ILLINOIS STATE [REDACTED] OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

-)
-) **ISBE CASE NO. 2009-0206**
-)
-) **Kristine Anderson**
-) Impartial Due Process
-) Hearing Officer

ILLINOIS STATE [REDACTED] OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

[REDACTED])	
)	
Student)	
vs.)	Case No. 2009-206
)	
[REDACTED])	
)	
Local School District)	

KRISTINE L. ANDERSON, Hearing Officer

DECISION AND ORDER

A due process hearing was held in this matter on August 3-5, 2009. The Parent, [REDACTED], and her daughter, [REDACTED], were represented by [REDACTED] of [REDACTED] and [REDACTED]. [REDACTED] represented the District.

Procedural History

The Parent filed a due process complaint on November 14, 2008. It was received by the District on November 21, 2008. After other Hearing Officers had recused themselves, I was assigned as the Hearing Officer in this matter on March 16, 2009. Prior to my assignment, the parties held a resolution conference on January 27, 2009. The meeting failed to result in resolution of the dispute. On January 28, 2009, the Parent requested an independent educational evaluation at public expense. The District responded to the Parent's request by filing a due process complaint on February 6, 2009. The Parent filed a Motion for an Interim Order to obtain a classroom observation on April 4, 2009. The motion specifically requested that I order that Parent's independent evaluators be allowed to conduct classroom observations as part of a psychological learning disability evaluation, and an assistive technology assessment. On April 17, 2009, I granted the Parent's motion for a classroom observation as part of the psychological evaluation, but denied the request for an observation as part of the assistive technology evaluation. The parties held a pre-hearing conference on June 4, 2009. August 3 was the first available date that the parties and Hearing Officer were available to hold the hearing. Because of a prior commitment that interfered with my ability to render a decision in 10 days, the parties agreed to allow me additional time to complete this decision.

Issues Presented

• Parent's Issues

The Parent contends that for the period beginning in April, 2007 and extending to the present, the District violated the Student's right to a free and appropriate public education in the following ways:

- 1) District did not complete an appropriate evaluation for learning disability.
- 2) District denied parent access to the IEP and failed to provide a copy of the IEP document on 11/6/08, 11/10/08.
- 3) District denied access to student records on 11/10/08.
- 4) Parent did not receive a conference notification for IEP meeting. 9/24/08.
- 5) District violated parent's rights at IEP meeting. (See No. 3)
- 6) District failed to provide the appropriate services due to inadequate evaluation. Student did not

receive needed educational services.

- 7) District failed to timely provide an assistive technology evaluation and services and appropriate address all areas of need.

- **District's Issues**

The District maintains that it has at all times provided the Student with FAPE. Moreover, with respect to its due process complaint concerning an independent educational evaluation, the District asserts that an IEE is not warranted because it has appropriately assessed all relevant areas of the Student's cognitive and academic functioning.

Relief Requested

- **Parent's Request**

The Parent requests the following relief:

- 1) Reimbursement of the IEEs completed by [REDACTED] and [REDACTED] and [REDACTED]. The district suggested inappropriate assessments at the 11/21/08 IEP meeting and would not complete other assessment that would have been appropriate. The district AT 2/4/09 assessment did not address all areas as the parent requested AT for writing and math deficiencies.
- 2) Order that all IEP meetings failed to follow proper procedure impeding the parent's ability to participate and failed to offer appropriate IEPs for student violating the student's right to FAPE.
- 3) Order that all IEPs are inappropriate and that the district convene an IEP meeting to implement the findings of the IEEs and recommendations including, but not limited to; multi sensory math program, visual accommodations/modifications: eligibility for math learning disability and to provide 200 mpw in math in the general education room with a special education teacher and 200 mpw in a resource room (1:1 or in a very small group-distraction free area); order IEP that includes organization goals (OHI) per IEE.
- 4) Order district provide 30 mpw of AT support with additional time for training of staff and parent.
- 5) Compensatory services in the form of 1:1 tutoring 60 mpw beyond the school day with a certified special education teacher to address math: 40 sessions.
- 6) All other hearing officer relief as deemed necessary to provide FAPE

- **District's Request for Relief**

The District requests an order from the Hearing Officer affirming that it has provided the Student with FAPE. The District further requests that all relief sought by the Parent be denied.

Findings of Fact

[REDACTED] is an 9 year old girl who will be a 4th grader at [REDACTED] this fall. She has been a student at [REDACTED] since the beginning of first grade. [REDACTED] has been diagnosed with fetal alcohol syndrome and receives special education services for attention deficit hyperactivity disorder pursuant to a disability classification on her IEP of "other health impaired." She has received these services at least since she began attending kindergarten. (See 4/27/06 IEP, PD 1, (Ex 53); 4/16/07 IEP, PD-16 (Ex 11); 1/8/08 IEP, PD-35 (Ex 28); 4/9/08 IEP, PD-42 (EX 30); 11/6/08 IEP, PD-80 (Ex 22); 11/21/08 IEP, PD-103 (Ex 9))

mother, is a teacher herself. She clearly wants her daughter to receive the best education possible. To that end, is actively involved in addressing her daughter's educational needs. From her testimony and the testimony of others, it was evident that spends a significant amount of time researching educational ideas and teaching strategies for her daughter, which she then shares with teachers. Staff agreed that some of suggestions have been effective. There was also testimony, however, that the Parent's high level of involvement has not always been helpful to the teachers or to

In addition to overseeing instruction at school, sees to it that receives ongoing, private math tutoring. She testified, for example, that during the 2008-09 school year, she hired a math tutor to meet with three to five times a week after school for an hour per session. This summer, enrolled in a six week math class at the that met for three hours daily. The students were taught math using the Everyday Math curriculum, which is the curriculum used at Besides the class, also hired a special education teacher, to provide additional math tutoring for Ms. Randel testified that she worked with for about six weeks in weekly sessions of about 90 minutes each. (See 7/24/09 Letter, PD-377, Ex. 31) Notably, stressed that experiences a great deal of anxiety and frustration concerning math, and that her anxiety is a significant barrier to learning. (*Id.*) testimony echoed the testimony teachers, who also stressed that frustration and anxiety with math hinders her progress. When asked whether intensive math tutoring might add to her anxiety, rejected the notion. Though testimony suggested otherwise, believes that finds the private instruction to be non-stressful and fun. She insists that any anxiety is experiencing is attributable to the school's failures.

The events that led the Parent to request a due process hearing began during second grade year. According to who was her second grade teacher, had difficulty staying on task, and also seemed to lack confidence in trying new tasks, particularly in math. At times was so overwhelmed by the tasks presented in the math book that she would physically turn away and refuse even to look at the page. testified that she shared her concerns with the Parent by report card pick-up day for the first quarter. She also provided with one-on-one attention, and used various manipulatives to help grasp math concepts. At the Parent's suggestion, moved desk away from other children, and introduced a cardboard study carrel to minimize distractibility.

Despite these efforts, continued to struggle in math. Thus, in January, 2008, the team agreed to revise IEP to add 150 minutes per week -- 30 minutes a day -- of direct pull-out instruction in math. (Ex 28 at PD 36-38) According to the special education teacher presented the math lesson to each day. would then return to the regular classroom for the remainder of math time, which was devoted to independent or group activities in which the students applied the skills presented in the lesson. By all accounts this system worked well. The Parent, for example, testified that the pull-out services worked very well, and that talked about how much she enjoyed going to the resource room. also testified that confidence in the classroom improved significantly and that her math grade went from a C to a B.

The team was cognizant progress when they met to write IEP for third grade. was case manager at the time and attended the meeting. She testified that assessment data indicated was performing at or above grade level in math, and that she also had met her IEP goals in math. stated that the team viewed progress as a "really positive thing," and a "big turn around." The team decided that would continue to receive pull-out help in math until the end of the school year. In third grade, however, was to receive math instruction in the regular classroom with no direct special education services. She was to receive consultative support, instead. (Ex 30 at 49-50)

Everyone on the team, including agreed to the change. however, testified that she had

mixed feelings about the decision. Though she was happy with her daughter's progress, she worried that [REDACTED] would begin to struggle again once the direct pull-out instruction ended. Her concern was heightened by the fact that third grade was a "benchmark year," in which the students would take the ISAT for the first time. [REDACTED] stressed that she agreed to the IEP change with the understanding that direct services would be added if [REDACTED] began to falter.

Just days after the start of the [REDACTED] 3rd grade year (2008-09), [REDACTED] requested an IEP meeting to reinstate her daughter's math services. (See 9/17/08 Parent Letter to [REDACTED] PD-57, Ex 21) [REDACTED] testified that she made this request shortly after learning from [REDACTED] 3rd grade teacher, that [REDACTED] hadn't mastered a number of 2nd grade math concepts. [REDACTED] the case manager who received [REDACTED] request, convened a meeting a week later. Besides [REDACTED] and the Parent, [REDACTED] and [REDACTED] a special education teacher, also attended. Though it was not a formal IEP meeting, contemporaneous notes of the meeting indicate that the participants discussed concerns about [REDACTED] performance in math, as well as strategies to address her needs. Significantly, the notes confirm that [REDACTED] was concerned by [REDACTED] lack of mastery of certain concepts. (See 9/24/08 Meeting Notes, PD-52, Ex 32) [REDACTED] testified, however, that she didn't advocate reinstating direct math services at this point, because [REDACTED] was doing fine and was not exhibiting frustration in the classroom.

The Parent didn't agree with the outcome of the September 24th meeting and continued to seek reinstatement [REDACTED] direct math services. Though the precise details are unclear, [REDACTED] staff apparently asked [REDACTED] to help resolve the impasse. At the time, [REDACTED] was a [REDACTED] school support manager for 84 schools, including [REDACTED] [REDACTED] is no longer employed by [REDACTED], but she testified at the hearing and I found her testimony to be credible and quite helpful.

[REDACTED] testified that sometime after the September 24th meeting, she spoke with [REDACTED] by phone. [REDACTED] believed that [REDACTED] expressed "genuine" and "valid" concerns for her daughter's success. She suggested that they schedule a meeting at [REDACTED] to further discuss the Parent's concerns, and [REDACTED] agreed. [REDACTED] testified that she was not aware at the time that the Parent had previously requested an IEP meeting, or that [REDACTED] staff had already met with the Parent. In any event, the meeting took place on October 27, 2009. In addition to the Parent and [REDACTED] attendees included the substitute case manager, [REDACTED] [REDACTED] as well as [REDACTED] the principal, and [REDACTED] the assistant principal.

Once again, the meeting was not a formal IEP meeting, but was designated as a student planning conference. (See 10/27/08 Conference Sign-in Sheet, PD 59, Ex 1) [REDACTED] asked that [REDACTED] direct math services be reinstated. [REDACTED] however, advised that the team should gather more information concerning [REDACTED] before amending her IEP. In particular, [REDACTED] believed that the team needed to determine whether [REDACTED] problems were caused by her attention deficits, or by a math learning disability. The team agreed, therefore, to conduct observations and gather additional data concerning [REDACTED] and reconvene on November 6. (10/27/08 Notes of Meeting, PD-60, Ex 2) As part of this effort, [REDACTED] provided [REDACTED] with a "Back and Forth Book" intended to help [REDACTED] improve her attention in math class, and improve communications between the school and the Parent. (See Back and Forth Book, SD 233, Ex 18) [REDACTED] believed that the book would be a helpful resource to the teacher and Student, while providing additional insight to the team about the reasons for [REDACTED] struggles.

A few days after that meeting, [REDACTED] sent [REDACTED] an email in which she agreed to allow observations of [REDACTED] on the express condition that the school psychologist conduct two forty minute observations of [REDACTED] in her math class, and administer a math achievement test. The Parent also requested that a "BASQ observation be done by two teachers." (10/31/08 Parent Email to [REDACTED] PD-282, Ex 55) Evidence presented at the hearing demonstrated that the District psychologist conducted at least one observation of the Student and administered math portions of the KTEA II. (See Ex 22 at PD-82)

The team held an IEP meeting on November 6, 2008 as planned. [REDACTED], the school psychologist, presented results of the KTEA, which indicated that [REDACTED] had received a grade equivalent of 2.2 in math concepts and 3.0 in math computation, with standard scores of 84 and 97, respectively. At the hearing, [REDACTED] conceded that [REDACTED] math concepts score had dropped from the previous year and that her decrease in score was nearly (statistically) significant. Nevertheless, the team decided that [REDACTED] should continue to receive math instruction in the regular classroom with special education consultation. In addition, the team added more modifications and accommodations to [REDACTED] IEP, including a modified grading system. (See Ex. 22 at PD-88, 92) They also created a behavior modification plan for [REDACTED]

[REDACTED] was unhappy with the team's decisions and submitted a letter of dissent that same day. (11/6/08 Parent Letter to [REDACTED], PD-97, Ex 4). In it, she repeated her request that [REDACTED] receive 150 mpw of pull-out instruction in math. She also requested that [REDACTED] be graded using the standard -- not modified -- grading criteria. The next day, [REDACTED] sent an email to the case manager amending her dissent to request that [REDACTED] be provided with 150 mpw of inclusion math services, rather than pull-out instruction. In the email, she also informed the case manager that she was requesting a due process hearing. (11/7/09 Parent Email to [REDACTED], PD-099, Ex 57) Finally, in addition to her letters of dissent, the Parent provided the case manager with a separate written request for school records. (11/06/08 Letter to [REDACTED] PD-96, Ex 3)

Significantly, [REDACTED] classroom teacher, [REDACTED], also submitted a written dissent to [REDACTED] November 6th IEP. (11/6/08 [REDACTED], PD-98, Ex 5) [REDACTED] testified about the reasons for her dissent, as well as her general classroom observations [REDACTED] I found her to be a credible and informative witness. Specifically, [REDACTED] testified that [REDACTED] had not mastered some second grade math concepts when she arrived in her third grade class. In particular, [REDACTED] stated that [REDACTED] struggled with spatial tasks such as geometry, measurement, and lining problems up on a page. [REDACTED] also had trouble staying on task. By the time the team met on November 6, [REDACTED] struggles were significant enough that [REDACTED] believed [REDACTED] needed to receive direct pull-out services in math. When the team did not provide this service, [REDACTED] dissented. She also disagreed with the team's decision to modify [REDACTED] grades without providing her with direct services. (*Id.*)

[REDACTED] and [REDACTED] dissents apparently caused the team to reconsider its decision. The team reconvened on November 21, 2008 to write an interim IEP for [REDACTED] (See 11/21/08 IEP, Ex 9). As [REDACTED] had advised them, an interim IEP would allow staff to initiate services on a trial basis. Thus, the team agreed to amend [REDACTED] IEP to provide [REDACTED] with exactly what the Parent was requesting -- 150 mpw of direct math instruction that was to be provided in the classroom. They agreed to meet again on December 17 to assess [REDACTED] progress.

Even though the team had agreed to provide [REDACTED] with the math services [REDACTED] wanted, this did not end the dispute over [REDACTED] IEP. The Parent presented several additional requests at the November 21st meeting that she had not raised in the previous meetings. Specifically, [REDACTED] had become concerned that [REDACTED] might have a non-verbal learning disability. She requested that [REDACTED] be evaluated for this possibility, and identified specific tests (the NEPSY, the BRIEF and the CAS) that she thought should be used. Besides the testing, she asked that [REDACTED] be provided with 200 minutes per week of special education instruction in writing. (See 11/25/08 Email to [REDACTED] PD-109, Ex 58) Finally, she requested that [REDACTED] be given an assistive technology assessment.

With respect to assessing a potential non-verbal learning disability, [REDACTED] testified that he didn't agree [REDACTED] needed additional testing. He believed that the Wechsler Intelligence Scale for Children (the WISC) that he had administered in early 2007 was sufficient, and it didn't indicate that [REDACTED] had a non-verbal learning disability. Moreover, [REDACTED] [REDACTED] supervisor who also attended the meeting), explained to [REDACTED] that [REDACTED] was not able to administer the tests she wanted. Notes of the IEP meeting make clear that the team nevertheless tried to accommodate the Parent's demands by offering to look into

other non-verbal measures such as the CTONI or the LEITER. (Ex 9 at PD-104) The Parent agreed to consider the offer. (*Id.*)

With respect to the Parent's other requests, the team agreed to refer [REDACTED] for an assistive technology evaluation. It did not agree to provide [REDACTED] with special education instruction in written language. (*See Id.*) Notably, when she testified at the hearing, [REDACTED] left no doubt that she supported math services for [REDACTED]. She did not make the same assertion when asked about [REDACTED] written language skills. Though she noted that [REDACTED] does require some assistance in written language, she stressed that [REDACTED] writing is not significantly below grade level.

When the team failed to agree to all of her requests, [REDACTED] submitted another letter of dissent to the case manager on November 24, 2008. (11/24/08 Parent Email to [REDACTED] SD-170, Ex 16) In the letter, the Parent reasserted her request that [REDACTED] assess her daughter for a non-verbal learning disability using the tests she prescribed. She also reiterated her request for 200 mpw of written language instruction. (*Id.*)

The team was prepared to meet on December 17, 2008 to assess [REDACTED] progress just as they had planned. Unfortunately, however, the meeting did not take place. The Parent had filed a formal due process complaint by that time, and [REDACTED] of [REDACTED] Due Process and Mediation Department had been appointed to the case. He instructed school staff to cancel the meeting since he couldn't be present. (*See* 12/12/08 [REDACTED] Email to Parent, SD 173, Ex 11) According to testimony of team members and [REDACTED] the meeting was never rescheduled. This was despite a direct plea from [REDACTED] to [REDACTED]. As [REDACTED] put it:

The cancellation of the December 17, [2008] meeting will put us further behind in meeting as a team.... I am asking you to do everything you can to schedule a meeting before the holiday break... [REDACTED]'s math deficiencies are well documented and require actions by the parties with the power to make required changes. *At this point in time that person would be you.*

(12/12/08 Parent Email to [REDACTED] (emphasis added) ^(b))

Though [REDACTED] precluded the team from reconvening, staff did provide [REDACTED] with the direct math instruction required by the November 21st IEP. [REDACTED] testified that the arrangement worked well. Each day, [REDACTED] participated in the math lesson that [REDACTED] taught to the class. After the group instruction, [REDACTED] (and later, [REDACTED]) pushed-in to the class and provided [REDACTED] with one-on-one help to apply the concepts that [REDACTED] had presented. [REDACTED] testified that [REDACTED] benefited from this instruction, and made educational progress. She also stated that [REDACTED] ability to attend improved with the help of the special education teachers. She believes [REDACTED] would continue to benefit from direct math services.

The Parent's Consultants

As noted above, the Parent submitted a request for an independent educational evaluation on January 28, 2009. The basis for the request, according to the letter, was the Parent's disagreement with [REDACTED] April 16, 2007 triennial evaluation. When the District did not agree to fund independent evaluations, the Parent retained [REDACTED] and [REDACTED] to conduct a private psychological evaluation. [REDACTED] retained [REDACTED] to conduct an assistive technology evaluation for her daughter, which was not included in [REDACTED] triennial evaluation. Their findings are summarized below.

In addition, the Parent also called [REDACTED] therapist of several years [REDACTED] to testify about her diagnosis and treatment [REDACTED]. Her testimony is summarized below, as well.

• [REDACTED] and [REDACTED]

[REDACTED] and [REDACTED] work collaboratively to assess children's learning needs. They have extensive experience in identifying children with learning disabilities, and in recommending effective teaching strategies for such students. [REDACTED] retained the pair to determine why math is more difficult for [REDACTED] than reading, and to recommend appropriate goals and accommodations for her. ([REDACTED] Report of Consultation, PD-190, Ex 44) To answer these questions, [REDACTED] and [REDACTED] administered a variety of tests to measure [REDACTED] cognitive abilities, attention, memory, spatial skills and visual motor skills. They administered achievement tests to assess [REDACTED] level of performance in math. [REDACTED] also conducted a classroom observation of [REDACTED] for approximately 60 minutes during a math lesson.

In assessing [REDACTED] cognitive skills, the report makes clear that the consultants did not administer a broad cognitive evaluation. Instead, they relied on the results of the WISC given by [REDACTED] in the spring of 2007, in which [REDACTED] "obtained a solidly average Full IQ score as well as average Index scores." (*Id.* at PD-192) [REDACTED] did administer the CAS, the NEPSY II and the BRIEF, which are the three assessments that the Parent asserts [REDACTED] should have given to [REDACTED]. In describing the results of those tests, [REDACTED] first stressed that she was hesitant to even use the term because a non-verbal learning disability is not a recognized disability. Setting that issue aside for purposes of this case, however, [REDACTED] like [REDACTED] of [REDACTED] concluded that she did not find any indication that [REDACTED] has a non-verbal learning disability.

[REDACTED] and [REDACTED] other results were consistent with [REDACTED] findings, too. In particular [REDACTED] testified that, in her opinion, [REDACTED] exhibits ADHD and a mild math disability. Her overall math skills were in the low average range, approximately one year below grade level. (Ex 44 at PD-197, 199, 205) Consistent with her teachers' observations, [REDACTED] and [REDACTED] found that [REDACTED] particularly struggled on subtests that presented spatial tasks, like geometry and measurement. Some subtests, such as Multiplication and Division and Math Fluency, were found to be in the high average range. (*Id.*)

The consultants recommended that [REDACTED] "continue to receive services under OHI and LD in math within the mainstream setting." (*Id.*) They provided a number of other relevant recommendations, as well. In particular, the report concludes that in light [REDACTED] math disability, a program that emphasizes her strengths, (language arts and humanities) would be a "much better fit" for [REDACTED] than [REDACTED], which emphasizes her area of disability. [REDACTED] and [REDACTED] also recommended that [REDACTED] be taught math using a multisensory approach, with liberal use of manipulatives. (During her observation, [REDACTED] was particularly concerned by the special education teacher's minimal use of manipulatives in teaching [REDACTED])

They also suggested that visual information be presented clearly on uncrowded pages, one or two problems at a time. (*Id.*)

• [REDACTED]

[REDACTED] runs a private practice that specializes in the evaluation and treatment of children and adolescents who require assistive technology support. (See [REDACTED] CV, PD-244, Ex 24) She also is an instructor at the [REDACTED] teaching classes in the area of assistive technology. I found her to be knowledgeable and credible.

[REDACTED] asked [REDACTED] to conduct an assistive technology evaluation of [REDACTED]. In speaking with mother and daughter before the evaluation, [REDACTED] revealed that she doesn't like writing at school and finds it very hard. [REDACTED] shared that [REDACTED] also struggles in math. The focus of the evaluation, however, was on writing. (5/8/09 Assistive Technology Evaluation, PD-211, Ex 25)

[REDACTED] administered the Test of Written Language -3 (TOWL-3), which assesses a student's written expression in a variety of contexts. Significantly, [REDACTED] performed in the average to low-average

range of ability on the test. Despite her average scores, [REDACTED] testified that she was struck by the extreme level of anxiety that [REDACTED] exhibited when faced with a writing exercise. She noted that [REDACTED] wrote slowly and laboriously and needed ongoing support to keep going. [REDACTED] also worried that her efforts were not "good enough." (*Id.*)

[REDACTED] introduced a variety of computer programs, including Earobics Step 1 and Co:Writer and Write:Outloud, to assess whether assistive technology might help [REDACTED] to improve the quality of her writing. [REDACTED] testified that [REDACTED] attitude changed immediately when she realized she had finished the traditional writing tasks. She was happier and less stressed to use the computer. Though her keyboarding skills are somewhat slow, [REDACTED] concluded that the quality [REDACTED] writing improved significantly with AT support. She used words that she would not have attempted to spell otherwise, and she was able to correct errors in punctuation and capitalization. (*Id.* at PD-214) Moreover, because she was less anxious when using assistive technology, [REDACTED] testified that [REDACTED] wrote more than when she used just pencil and paper.

[REDACTED] recommended that [REDACTED] be provided with an AT product that will help her to improve her keyboarding skills, such as Type to Learn 3. She also recommended a program or programs that offer flexible spelling, word banks and a talking work processor, such as Co:Writer and Write:Outloud. [REDACTED] also recommended that [REDACTED] be provided with 30 minutes per week of AT training and support, with additional consult time for training of staff and Parent. (*Id.* at PD-215-16) Significantly, even though it bears the burden of proof on the issue of the appropriateness of its AT evaluation, [REDACTED] failed to offer any evidence to counter [REDACTED] findings and recommendations.

[REDACTED] is a licensed clinical psychologist who has been affiliated with [REDACTED] for 25 years. [REDACTED] testified that she has provided treatment to [REDACTED] off-and-on for several years. Most recently, [REDACTED] sought treatment for [REDACTED] in October, 2008. At the Parent's request, [REDACTED] wrote a letter summarizing her contacts with [REDACTED] from last fall to the present. She also shared her diagnoses and recommendations for [REDACTED] (7/17/0 [REDACTED] Letter to Parent, PD-234, Ex 47)

According to Dr. [REDACTED] [REDACTED] brought [REDACTED] to see her in October, 2008 because she was concerned that [REDACTED] non-compliance and explosive behaviors were increasing. [REDACTED] identified school as the primary stressor contributing to her inability to control her anger. Over the next couple of months, [REDACTED] helped [REDACTED] to learn techniques of anger control, and tried to help the Parent identify supports in school that would facilitate [REDACTED] success. By December, the Parent reported that [REDACTED] was doing much better. [REDACTED] and [REDACTED] agreed that [REDACTED] should continue to work on self-control issues in a group setting and, for a time, [REDACTED] stopped seeing [REDACTED]

[REDACTED] testified that [REDACTED] contacted her again last May because she was concerned that [REDACTED] was picking at herself until she bled. In [REDACTED] experience, kids often show more stress in the second half of a school year when demands are greater. In any event, [REDACTED] met with [REDACTED] and she reported that she picked at herself mostly in school, specifically during math class. Though [REDACTED] had always been somewhat anxious, [REDACTED] believed that she had begun to manifest clinical levels of anxiety and self-destructive behavior. She therefore diagnosed [REDACTED] with Anxiety Disorder Not Otherwise Specified. (*Id.* at PD-235) [REDACTED] testified that [REDACTED] anxiety and self-destructive behavior remitted immediately with the end of the school year. [REDACTED] stressed that [REDACTED] anxiety did not return even after she began attending a summer math program at the [REDACTED]

To address her anxiety at school, [REDACTED] recommended that [REDACTED] be provided with appropriate supports such as social-work services, appropriate accommodations in math and written language, and an appropriate reinforcement-based behavioral program. (*Id.* at PD 236) Notably, like [REDACTED]

██████ believes that ██████ would thrive in a program that emphasizes her verbal strengths.

CONCLUSIONS OF LAW

The Individuals with Disabilities Education Act (IDEA) establishes that all students between the ages of 3 and 21 are entitled to a free appropriate public education. (FAPE) (34 C.F.R. § 300.301) The primary components of FAPE are the requirements that a school district locate and identify students who are in need of special education, and provide them with an individualized education program in the least restrictive environment. (*Id.* at §§ 300.111, 300.112, 300.114)

In analyzing whether a school district has provided FAPE, the starting point must be *Board of Educ. v. Rowley*, 458 U.S. 176, 188-89 (1982). That case established that a free appropriate public education is an education “specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction.” In *Rowley*, the United States Supreme Court set forth a two pronged test to determine whether a school district has offered a student FAPE. The first inquiry is whether the school district has complied with the statutory procedures required by IDEA. (20 U.S.C. 1401 et seq.) IDEA establishes that procedural violations cannot be deemed a violation of FAPE unless they have impeded a child’s right to a free appropriate public education, significantly impeded the parents’ right to participate in the decision making process, or caused a deprivation of educational benefits. *Id.* at § 1415(f)(3)(E)(2007)

The second prong of the *Rowley* test is whether the district has developed an IEP reasonably calculated to enable the child to receive an educational benefit. *Rowley* at 206-07. To meet this requirement, *Rowley* establishes that a school district must provide a “basic floor of opportunity” in the form of specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child. *Id.* at 201. In addition, FAPE requires a school district to “open the door of public education to handicapped children, not to educate a child to her highest potential.” *Board of Education of Murphrysboro Comm. Unit. Sch. Dist. No. 186 v. Illinois State Board of Educ.*, 41 F.3d 1162, 1166 (7th Cir. 1994) An individualized education plan is acceptable “when it is ‘likely to produce progress, not regression or trivial educational advancement.’” *Alex R., ex. Rel. Beth R. v. Forestville Valley Community Unit School Dist. # 221*, 375 F.3d 603, 615 (7th Cir. 2004)(quoting *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 248 (5th Cir. 1997)). Moreover, whether an IEP confers meaningful benefit to a child must be gauged in relation to the potential of the child at issue. *Deal v. Hamilton County Bd. of Ed.*, 392 F.3e 840 (6th Cir. 2004) Finally, in considering whether the District has met the requirements of FAPE, it is important to note that the burden of proof rests with the party seeking relief. *Schaeffer V. Weast*, 546 U.S. 49, 62 (2005) Here, the Parent bears the burden of proof on the issues relating to the appropriateness ██████ IEP, and the District’s alleged procedural violations. The District bears the burden of proof on the issue concerning the adequacy of its evaluations of ██████

- **Whether the District Provided ██████ with Appropriate Educational Services**

The Parent asserts that the District failed to provide ██████ with appropriate educational services due to its

allegedly inadequate evaluation [REDACTED] (See Parent Issue No. 6) In particular, the Parent presented evidence at the hearing intended to show that the District failed to provide [REDACTED] with appropriate instruction in math and written language, and assistive technology support. [REDACTED] also asserted that the District hindered [REDACTED] academic progress by failing to identify that she has a non-verbal learning disability.

Contrary to the Parent's assertions, the evidence demonstrated that the District appropriately addressed [REDACTED] math deficits. As described above, well before the period at issue in this case, [REDACTED] had identified [REDACTED] as a student with ADHD, and had provided her with an IEP and services pursuant to a disability classification of OHI. As a second grader, [REDACTED] initially received math services on a consultative basis. (See 4/16/07 IEP, Ex 11 at PD-027) When [REDACTED] recognized that [REDACTED] was falling behind in math, however, the team amended her IEP and provided [REDACTED] with 150 minutes per week of direct special education instruction in math. By all accounts, this intervention was successful. Thus, it was not unreasonable when the team (including the Parent) agreed to reduce [REDACTED] special education math for third grade to consultative services.

As [REDACTED] third grade year got under way, [REDACTED] immediately began requesting that [REDACTED] direct math services be reinstated. Though [REDACTED] did not initially agree with the Parent's request, the evidence demonstrated that [REDACTED] promptly and thoroughly responded to the Parent's concerns. Specifically, [REDACTED] and [REDACTED] cluster support staff met with the Parent 4 times in approximately 8 weeks. [REDACTED] testified that the team initially was unsure whether [REDACTED] struggles in math were due to her attention deficits, or difficulty understanding math concepts. Thus, they agreed to conduct observations, assessments and intervention strategies, in an effort to answer that question. At the November 6, 2008 IEP meeting, the team decided against reinstating [REDACTED] direct math services, but sought to address [REDACTED] needs in other ways. When both the Parent and [REDACTED] dissented, however, the team reconvened two weeks later and added 150 mpw of direct, push-in math instruction. These services were exactly what the Parent had requested. More importantly, [REDACTED] testified that [REDACTED] benefited from the instruction and made educational progress. Results [REDACTED] benchmark testing confirmed this. [REDACTED] ISAT scores also showed that she met standards in math. (See [REDACTED] Student Overview, SD 242-44, Ex 40)

The Parent's claim that the District failed to identify that [REDACTED] has a non-verbal learning disability is equally unsupported. [REDACTED], the school psychologist, conducted a triennial review of [REDACTED] in the spring of 2007. As part of that evaluation, he administered the Wechsler Intelligence Scale for Children. [REDACTED] testified that the WISC is an appropriate measure to identify a possible non-verbal learning disability, but that there was no such indication for [REDACTED]. [REDACTED] opinion was confirmed by [REDACTED] own consultant, [REDACTED] who, after administering the precise tests that the Parent wanted, also concluded that [REDACTED] does not have a non-verbal learning disability.

With respect to [REDACTED] writing skills, the Parent failed to show that [REDACTED] should receive direct special education instruction in writing. [REDACTED] testified that [REDACTED] was only slightly below grade level in writing, and results on the Test of Written Language given by [REDACTED] confirmed that [REDACTED] functions in the average to low average range. The Parent did, however, provide convincing and credible evidence to support her contention that the District should have provided [REDACTED] with assistive technology services in writing. [REDACTED] description of how [REDACTED] struggled, and her level of anxiety when faced with a writing task was particularly compelling. Equally persuasive was [REDACTED] description of the change in [REDACTED] performance and attitude when provided with assistive technology. In contrast to the Parent's strong proof, [REDACTED] failed to offer any evidence that it had met [REDACTED] needs in this area, even though it had the burden of proof to show that its assistive technology evaluation was appropriate. This is analyzed more fully below in my discussion of the Parent's request for an independent evaluation.

- **Whether the District Committed Procedural Violations that Denied the Student FAPE**

The Parent asserts that the District committed a number of procedural violations that resulted in a denial of FAPE for [REDACTED]. As specified in the Issues section above, the Parent contends that the District failed to provide her with appropriate notice to a meeting on September 24, 2008. (Issue 4) The Parent also asserts that the District failed to provide her with a copy of the IEP that was created in the 11/6/08 IEP meeting, and then denied her access to that IEP when she came to the school to pick it up on November 10, 2008. (Issue 2) The Parent maintains that the District also denied her access to student records on November 10th, as well. (Issue 3) In addition to the issues raised by the Parent in her complaint, the District's subsequent failure to convene an IEP meeting despite the Parent's requests for a meeting, must also be considered as a possible denial of FAPE.

I find that the evidence does not support the Parent's assertions that the District's procedural violations denied [REDACTED] FAPE. Specifically, with respect to the September 24, 2008 meeting, the evidence showed that [REDACTED] requested an IEP meeting on September 17, 2004 to discuss her daughter's progress in math. Despite the fact that the school year was barely underway, and it arguably was premature to consider reinstating services, the case manager nevertheless promptly scheduled a meeting that took place one week later. While the meeting apparently wasn't a formal IEP meeting (and there was no conference notification sent out), there is no question that [REDACTED] was notified of the meeting. Indeed, notes of the meeting make clear that [REDACTED] attended and actively participated in the discussion about her daughter's math progress. In addition, though the meeting did not include a full IEP team, the case manager made sure to include the individuals who were responsible for addressing [REDACTED] math needs -- her classroom teacher and the special education teacher. In short, though the case manager apparently failed to send out a conference notice, the facts confirm that the District appropriately responded to the Parent's request for a meeting and appropriately addressed her concerns. The fact that the teachers disagreed with the Parent and did not yet see a need to change [REDACTED] IEP is neither unreasonable nor was it a denial of FAPE.

Second, with respect to the November 6, 2008 IEP and [REDACTED] request for school records, there was no dispute that the IEP had not been completed by the end of the meeting, and that [REDACTED] was not given a finalized version on November 6. But the IEP makes clear that the Parent agreed to allow the school to finalize the document and send her a copy at a later date. (See Ex. 22 at PD-93). Indeed, [REDACTED] confirmed as much when she testified at the hearing. Likewise, there is no dispute that [REDACTED] went to the school on November 10 to pick up the IEP and to get a copy of her daughter's school records. [REDACTED] apparently believed that she had an appointment to pick up those materials. The principal was unaware of any such arrangement, however. He asked her to leave the building and return on a later date to allow the records to be copied. That he didn't allow her to take the completed IEP with her on the 10th is unfortunate, and it should not have happened. I cannot conclude, however, that it was a denial of FAPE because the evidence clearly established that the school provided [REDACTED] with a copy of the IEP and [REDACTED] school records just a few days later.

None of the alleged procedural violations raised by the Parent in her due process complaint resulted in a denial of FAPE for [REDACTED]. At the hearing, however, evidence offered by both the Parent and school staff demonstrated that after [REDACTED] had filed her complaint, the District ignored her requests to hold an IEP meeting. In addressing this issue, it's important to note that [REDACTED] staff and cluster support staff [REDACTED] and [REDACTED] were extremely responsive to [REDACTED]. They met several times and conducted observations, assessments and interventions in an effort to understand [REDACTED] needs and accommodate the Parent's wishes. When it became evident that [REDACTED] needed additional math support to succeed, the team held an IEP meeting on November 21 and amended [REDACTED] IEP to provide her with 150 mpw of direct math services provided. The team also agreed to meet again on December 17 to review [REDACTED] progress.

[REDACTED] filed her due process complaint around the time of the November 21st meeting and [REDACTED] assigned legal counsel to the case shortly thereafter. It is an unfortunate irony that [REDACTED] stopped responding to the

Parent once its legal counsel got involved. Specifically, [REDACTED] canceled the December 17 meeting because he could not attend and, thereafter, failed to respond to the Parent's plea to reschedule the IEP meeting. The parties did participate in an unsuccessful resolution conference on January 27, 2009. The record indicates, however, that counsel for the Parent made additional requests to hold an IEP meeting after the resolution conference, but [REDACTED] again failed to schedule a meeting. Indeed, from the evidence presented at the hearing it appeared that [REDACTED] simply ignored the Parent's requests to meet.

Fortunately, [REDACTED] actions (or failure to act) did not interrupt the appropriate math services that the [REDACTED] team put in place for [REDACTED] on November 21st. But by failing to convene an IEP meeting, [REDACTED] failed to resolve the open issue of whether [REDACTED] should receive assistive technology services. Moreover, by ignoring the Parent's request to hold an IEP meeting, [REDACTED] significantly impeded any further opportunity for the Parent to participate in the decision making process. According to IDEA, this is a denial of FAPE. (See 20 U.S.C. § 1415(f)(3)(E)(2007)) In reaching this conclusion, I am mindful that once a Parent files a due process complaint the stay-put rule is in effect, and the Student's placement is to remain the same until the dispute is resolved. But the stay-put rule does not entitle a school district to ignore a Parent's requests to meet as [REDACTED] did in this instance.

- **Whether the District Appropriately Evaluated [REDACTED]**

In addition to filing a due process complaint, [REDACTED] provided [REDACTED] with a written request for an independent educational evaluation on January 28, 2009. The letter does not specify the precise types of evaluations [REDACTED] was seeking. But subsequent communications between the parties, as well as evidence presented at the hearing established that [REDACTED] sought a private evaluation to determine whether [REDACTED] had a non-verbal learning disability. [REDACTED] also wanted [REDACTED] to receive a private assistive technology assessment. The District did not agree that these private evaluations were warranted and, as is required by law, it filed a due process complaint on this issue on February 6, 2009. Because the District is the filing party on the issue of independent educational evaluations, it bears the burden of proof to show that its evaluations were appropriate.

I find that the District has demonstrated that it appropriately assessed [REDACTED] for a non-verbal learning disability. That issue was fully discussed above (See pp.7 & 9), and I will not repeat it here.

With respect to its assistive technology assessment, however, the District failed to offer any proof whatsoever. It did not call a witness to testify about its AT assessment of [REDACTED]. Nor did it seek to introduce its February 4, 2009 AT Assessment Report. Accordingly, the District failed to demonstrate that its assistive technology assessment of [REDACTED] was appropriate.

In contrast, the Parent called [REDACTED] who testified and presented a report summarizing her AT assessment of [REDACTED]. As described above, (See pp. 10, 11 & 14) [REDACTED] provided credible and convincing testimony supporting her conclusion that [REDACTED] requires AT support to help her minimize her difficulties with writing.

Accordingly, the findings on the specific issues are:

1. The District appropriately evaluated [REDACTED] for a learning disability.
2. Though the District did fail to provide the Parent with a completed copy of the IEP on 11/6/08 and 11/10/08, these technical procedural violations did not amount to a denial of FAPE. Evidence demonstrated that the District provided the Parent with a copy of the IEP no later than 11/14/08.
3. Likewise, though the District did refuse to provide the Parent access to student records on 11/10/08, it was not a denial of FAPE. The evidence showed that school staff was unaware that the Parent intended to pick up school records on 11/10. School personnel promptly copied the records

and provided them to the Parent no later than 11/14/08.

4. The District's failure to send a conference notification for a meeting on 9/24/08 did not result in a denial of FAPE. The Parent had requested the meeting, and was aware of the meeting date. The Parent did, in fact, attend the meeting, where she met with staff and had an opportunity to voice her concerns.
5. The District did not violate the Parent's rights at the 11/6/08 IEP meeting. (See No. 3 for details.)
6. Other than the assistive technology assessment, the District appropriately evaluated [REDACTED] and provided her with appropriate educational services.
7. The District failed to timely provide an assistive technology evaluation and the assistive technology services necessary to meet [REDACTED] educational needs.

With respect to the Parent's request for relief it is hereby ordered:

1. The Parent's request for reimbursement of the IEEs completed by [REDACTED] and [REDACTED] is denied. The District, however, is ordered to reimburse the Parent for [REDACTED] assistive technology evaluation. (See [REDACTED] 7/23/09 invoice for AT evaluation, PD-237, Ex 60)
2. The Parent's request that the Hearing Officer order that all IEP meetings failed to follow proper procedure, thereby resulting in a denial of FAPE is denied. The District did, however, impede the Parent's right to participate in the decision making process after 11/21/08 by failing to respond to her requests to convene an IEP meeting. Those actions constituted a denial of FAPE.
3. The Parent's request that the Hearing Officer order that all IEPs are inappropriate is denied. Likewise, the following requests are also denied: that the district convene an IEP meeting to implement the findings of the IEEs and recommendations including, but not limited to; multi sensory math program, visual accommodations/modifications: eligibility for math learning disability and to provided 200 mpw in math in the general education room with a special education teacher and 200 mpw in a resource room (1:1 or in a very small group-distraction free area); order IEP that includes organization goals (OHI) per IEE.
4. The District is ordered to provide [REDACTED] with sufficient training and AT support to allow her to become proficient at using AT devices and programs to assist her with her educational needs. This must include a minimum of 20 mpw of AT support for [REDACTED]. It must also include additional time for training of staff (at least [REDACTED]'s regular classroom and special education teacher) and parent.
5. The Parent's request for compensatory services in the form of 1:1 tutoring in math is denied.
6. Within two weeks of this order, the District shall reconvene an IEP meeting to create an IEP for [REDACTED] that takes this decision into account. As part of that process, the IEP team must take into account the findings and recommendations of the Parent's consultants, which [REDACTED] failed to consider when it refused the Parent's requests to convene an IEP meeting. In particular, in creating an IEP for [REDACTED] the IEP team must:
 - Include appropriate AT services for [REDACTED] using the products (or similar products) recommended by [REDACTED]. This is in addition to my order in No. 4 above.
 - Take into account the instructional recommendations offered by [REDACTED] and [REDACTED] on pp. 200-202 of their report. The team should pay particular attention to their recommendations concerning [REDACTED] need for a multisensory approach in math, as well as recommendations that address [REDACTED] visual spatial deficits.
 - Take into account [REDACTED] testimony and letter of July 17, 2009 in which she states that she recently diagnosed [REDACTED] with Anxiety Disorder NOS and recommends social work services for [REDACTED] and an appropriate reinforcement-based behavioral program.

7. Because I find that [REDACTED] denied the Parent FAPE by refusing to respond to her requests to meet, I also find that the Parent is entitled to compensatory services for that denial. Specifically, the Parent may invite [REDACTED] or [REDACTED] (one but not both) and [REDACTED] to accompany her to the IEP meeting to present their reports to the team, and to assist in creating appropriate goals and objectives for [REDACTED]. If they attend the IEP meeting, [REDACTED] must reimburse them a reasonable amount for their time.
8. As a compensatory service for [REDACTED] failure to identify [REDACTED] assistive technology needs, [REDACTED] will be allowed to conduct a classroom observation of [REDACTED] to assess whether the District has appropriately integrated AT support into the Student's curriculum. The observation shall take place after [REDACTED] has had an opportunity to implement AT services for [REDACTED] but no later than 60 days from the date of this order. The observation will take place on a mutually agreeable date, and will last for a reasonable period of time. The District shall reimburse [REDACTED] for her time.
9. The District shall provide proof of compliance with the aforesaid orders to the Illinois State Board of Education, Compliance Division, 100 No. First St., Springfield, IL 62777-001, on or before September 26, 2009. With respect to No. 8, which may not be completed within that time frame, the District must provide proof of compliance within 10 days of [REDACTED] observation.

RIGHT TO REQUEST CLARIFICATION

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

RIGHT TO FILE A CIVIL ACTION

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the aforesaid Decision and Order was transmitted to the parties by email and by U.S. Mail on August 26, 2009 with first class postage prepaid and directed to the Parent's counsel and District's counsel at their respective addresses.

DATED: August 26, 2009



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

¹¹¹ The Parent asserted at the hearing that the District's failure to convene a formal IEP meeting until November 6, 2008 was a procedural violation that denied [REDACTED] FAPE. However, in her contemporaneous communications, [REDACTED] referred to the September meeting and a subsequent October meeting, as "IEP meetings," suggesting that she believed the school was appropriately responding to her requests to hold IEP meetings (even if she was unhappy with the outcome of those meetings). (See, e.g., 10/31/08 Parent email to [REDACTED] PD-282, EX 55, 11/20/08 Parent email to [REDACTED] EX 38)

¹²¹ The Parent recalled that [REDACTED] did support special services for [REDACTED] at the September meeting. I deferred to [REDACTED] recollection about how she felt at the time, because the notes of the meeting do not support [REDACTED] version of events, and, throughout her testimony, [REDACTED] had noticeable difficulty remembering the timing of some events.

¹³¹ At the hearing, the Parent sought to highlight inadequacies in the behavior plan. While the plan could have been more precise, there was no evidence to indicate that its imprecision resulted in a denial of FAPE to [REDACTED]. In any event, this was not an issue raised by the Parent in her due process complaint.

¹⁴¹ At the hearing the Parent asserted that [REDACTED] had committed procedural violations by failing to appropriately respond to the due process request that she had included in her dissent to [REDACTED] and by failing to timely respond to her request for documents. On these issues, I found [REDACTED] testimony and supporting evidence to be persuasive. Specifically, [REDACTED] who currently is a Specialized Services Administrator for [REDACTED] testified that she met with [REDACTED] within a few days of [REDACTED] dissent and request for records. In their meeting, [REDACTED] explained the appropriate steps for filing a due process complaint, and also provided [REDACTED] with a copy of the school records she had requested. [REDACTED] executed a legally sufficient due process complaint on November 21, 2008. (See ISBE's District Request for a Due Process Hearing, HO Admin. Ex 1) (showing District received parent's request on 11/21/08) The District responded on December 17, 2008, more than two weeks late. (See 12/17/08 District Response to DPC, PD-145, HO Admin. Ex 2)

¹⁵¹ The IEP doesn't expressly state that it is an interim IEP. Nevertheless, the document specifies that the team was to meet again on December 17, 2008 to review [REDACTED] progress. In addition, relevant testimony from [REDACTED] and others confirmed that the team intended to create an interim IEP in this meeting.

¹⁶¹ Once [REDACTED] retained counsel, her attorney continued to ask [REDACTED] to schedule an IEP meeting. [REDACTED] however, never complied with the Parent's request. Indeed, the District failed to present any evidence that it even attempted to schedule a meeting, or responded to the Parent's communications. (See 5/26/09 [REDACTED] Email to [REDACTED] PD-306, HO Ex 2) (referencing several unanswered emails sent by [REDACTED] to [REDACTED] to arrange an IEP meeting)

According to the report, the CAS is the Cognitive Assessment System, the NEPSY is a Developmental Neuropsychological Assessment, and the BRIEF is a questionnaire that was completed by [REDACTED] teacher. It asks questions about a student's ability to "plan, prioritize and produce in the real world." (*Id.* at 192)

¹⁸¹ [REDACTED] suggested that the Everyday Math program may not be appropriate for [REDACTED] because it isn't a sequential program, and [REDACTED] believes it doesn't make consistent use of manipulatives to teach concepts. [REDACTED] conceded, however, that she has never taught math with that curriculum and her observations have been limited. In addition, her testimony is at odds with [REDACTED]'s teachers who testified that they frequently used manipulatives to teach [REDACTED]. Likewise, the Parent testified that the [REDACTED] class that [REDACTED] took this summer (which utilized the Everyday Math curriculum) was very effective with [REDACTED].

¹²¹ While the Parent's choice of schools is not at issue in this hearing, [REDACTED] and [REDACTED] candid recommendation that [REDACTED] attend a program that emphasizes her strengths, not her weaknesses, was perhaps the single most important recommendation to ensure [REDACTED]'s academic success and sense of achievement.

¹¹⁰¹ Though [REDACTED] added math instruction to her IEP, it did not change or add to [REDACTED] disability classification, which remained OHI. That [REDACTED] did not change [REDACTED] "label" is legally irrelevant in light of the fact that it provided [REDACTED] with appropriate math services. *Heather S. v. State of Wisconsin*, 125 F.3d 1045, 1055 (7th Cir. 1997).

¹¹¹¹ As noted above, [REDACTED] agreed to conduct an AT assessment during the November 21st IEP meeting. It did not complete its assessment and report until February 4 -- after the resolution session had been completed. Thus, the team never met to consider the results of the assessment, and whether [REDACTED] should begin receiving AT services.

¹¹²¹ By ordering the team to "take into account" recommendations by the Parent's consultants, I am merely instructing the team to consider whether any of the recommendations may be appropriate for [REDACTED]. I am not directing the team to adopt the consultant's recommendations.