AUG 10 2009

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

[redacted]
Student,

v.

[redacted]

CASE NO. 2009-0215

MARY SCHWARTZ
Impartial Hearing Officer

DECISION AND ORDER

Jurisdiction

This matter is before the undersigned hearing officer on the parent's request for a due process hearing. The district has filed a cross-complaint. This hearing officer has jurisdiction pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. § 1400 *et. seq.*, 105 ILCS 5/14-8.02a *et. seq.*, and 23 Il. Adm. Code § 226.600 *et. seq.* The parties have been fully advised of their rights pursuant to these statutes and regulations.

Procedural Background

The parent filed a due process complaint on December 9, 2008, which the district received that same day. On December 18th, the Illinois State Board of Education ("ISBE") appointed the undersigned as hearing officer in this matter. The undersigned issued a Preliminary Scheduling Order on December 19th, and attempted to contact the parties to schedule an initial telephone conference call. The district responded to the parent's complaint on December 19th, asserting that its decisions regarding the student's placement had been made at an IEP meeting and that the parent had been given copies of documents generated at that meeting.

On December 29th, the parent filed an amended due process complaint, alleging that the December 1st had not been concluded and did not result in a placement determination. She also asserted that she had not received prior written notice because she had not received any documents from the December 1st meeting. The amended request also requested homebound services until a permanent placement could be arranged. The district responded to the amended complaint on January 16, 2009, stating that the issue of appropriate placement in the least restrictive environment would be addressed in an upcoming IEP meeting.

The parties participated in mediation, which resulted in an agreement to reconvene an IEP meeting on January 20th. At the January 20th meeting, the district asked to re-evaluate the student, and the parent agreed to the re-evaluation. The district convened an IEP meeting on April 21st to discuss its re-evaluation. On April 23rd, the parent requested an

independent educational evaluation ("IEE") at public expense, stating that she disagreed with the district's evaluations dated March 27, 2007 and April 21, 2009. The district then filed a due process request, asserting that its evaluations are appropriate. On April 30th, the ISBE consolidated the district's request with that already before this hearing officer.

On April 24, 2009, the parent filed a second due process request. Although there is no record that the district forwarded that request to the ISBE, the district filed a response to the new complaint on May 5th. The issues identified in the April 24th complaint are incorporated into the parent's first request and amendment.

The prehearing conference was continued several times throughout these proceedings at the parent's. The district did not object to the continuance requests, which were then granted. The prehearing conference was held via telephone conference call on May 19, 2009.

The due process hearing was held on June 5, 8, 9, 26, 29, July 6, 7, and 15, 2009. The record was held open until July 29, 2009 so that the parties could submit written closing statements. Each party entered its entire binder(s) into evidence at the conclusion of the hearing, without objection from opposing counsel. Court reporting services were provided by [redacted] The hearing officer has not received a transcript of these proceedings; therefore, the testimony below is based on the undersigned's hearing notes memory. This decision is issued within ten days after the hearing's conclusion, as required by Illinois law. 105 ILCS 5/14-8.02a(g55)(5).

Issues Presented and Remedies Sought

The parent alleges that the district has denied the student a free appropriate public education ("FAPE") since December 9, 2006 by:

1. Failing to provide a timely full and individualized evaluation that adequately identified the nature and extent of the student's disabilities from December 9, 2006 to the conclusion of the hearing in this matter;
2. Failing to provide an appropriate educational program/placement (IEP) based on an appropriate and individualized evaluation and with IEPs and related services of sufficient intensity, including assistive technology and a transition plan, to meet the student's educational needs between December 9, 2006, and the conclusion of the hearing in this matter;
3. Failing to assess, identify, and then provide in a timely manner appropriate assistive technology for the student in the classroom setting and for all school work, including training for staff, student and parent from December 9, 2006, to the conclusion of the hearing in this matter;
4. Failing to convene an annual IEP review meeting in March 2008. Although IEP amendment meetings were held between January 2007 and May 28, 2008, none of these meetings was an annual review. The May 28, 2008 meeting updated only the student's speech goal. The last annual IEP meeting was held on March 27, 2007.

5. Failing to implement the IEPs of September 2006, January 2007, and March 2007, including special education services, assistive technology, weekly progress reports, modifications/accommodations, extra credit, a second set of books, etc.; and,
6. Failing to have the IEP team make a determination whether home/hospital services are necessary and develop/revise the student's IEP accordingly.

The parent also alleges that the district violated her procedural rights, which resulted in a denial of FAPE to the student, by:

1. Failing to provide a conference notice for the December 1, 2008, and January 20, 2009, IEP meetings;
2. Failing to develop an IEP dated December 1, 2008, with the parent's involvement and input. The parent did not participate in developing the IEP from the December 1st meeting and was unaware of its existence until it was provided to her on April 21, 2009. This IEP is currently being implemented by the district according to staff at the April 21st IEP meeting;
3. Failing to provide prior written notice when the district denied home/hospital services for the student as recommended by her psychiatrist and as shown on the completed district form;
4. Failing to provide prior written notice and/or an adequate response to the parent's December 9, 2008 due process request and December 29, 2008 amended due process request. The district's responses, dated December 19, 2008 and January 16, 2009, states that decisions were or will be made at IEP meetings regarding placement in the lease restrictive environment. On April 21, 2009, the parent received copies of the December 1, 2008 and January 20, 2009, IEP documents, which she asserts are not adequate to provide prior written notice. Lack of prior written notice provides an unfair advantage for the district; and,
5. Failing to provide the student's educational records, as requested by the parent, in a timely manner.

As remedies for the above alleged denials of FAPE to the student, the parent requests the undersigned to order the district to:[1]

1. Fully fund the independent educational evaluation that the student has received, which includes a neuropsychological evaluation, a speech/language evaluation, an assistive technology evaluation, and an occupational therapy evaluation.
2. Implement all the recommendations made by the IEE providers;
3. Place the student at [redacted]
4. Provide compensatory services for denial of FAPE, including:
   a. Two additional school years at [redacted] after the student graduates from high school, for the FAPE denial violations over the past two years through the date of hearing;

[1] The parent withdrew her requests for an independent [redacted] evaluation at public expense and for reimbursement for private tutoring at the hearing's conclusion. She also withdrew her request that the district be ordered to comply with the School Code and federal regulations. Therefore, these remedies that were listed in the prehearing conference report are omitted in this decision.

b. Individual services from certified professional providers to be provided beyond the school day for the period of December 1, 2008 through April 16, 2009 as listed in the March 27, 2007 IEP and May 23, 2008 IEP revision that pertains to speech services, including:
    i. Tutoring, for two 60 minute sessions/week for 16 weeks; and
    ii. Speech/language therapy for one 30 minute session/week for 16 weeks;
c. Assistive technology, social work, and psychological services, provided at [redacted] and,
d. Any other compensatory services that testimony from IEE evaluators supports.

5. Convene an IEP meeting to develop an appropriate IEP for the student, that includes placement and:
    a. A review of all evaluation results and recommendations;
    b. Appropriate individualized and measurable IEP goals and objectives that are based on accurate present levels of performance reflecting the student's eligibility and identified educational needs, have appropriate modifications and accommodations, and address extended school year ("ESY") needs;
    c. A functional behavior analysis ("FBA") and a behavior intervention plan ("BIP");
    d. A transition plan;
    e. Identifies all direct and related services;
    f. Provides appropriate assistive technology per IEE evaluation, including classroom implementation and training to student, parent, and staff as required;
    g. Compensatory services for FAPE denial; and,
    h. Placement at a therapeutic day school, [redacted]

The district filed a due process request, contending that its evaluation of the student is appropriate.

Burden of Proof

In an administrative hearing, the party seeking relief bears the burden of proof. *Schaffer v. Weast*, 126 S. Ct. 528, 539 (2005). Therefore, the parent has the burden of proof as to the issues raised in her due process complaint. The district has the burden to proof as to whether its evaluation is appropriate, pursuant to its April 24th cross-complaint.

Findings of Fact

[redacted] is currently 17 years old and has just completed 11th grade at [redacted] (PD 161; SD 2).[2] Her early history is notable for significant medical issues. She was born premature, at 24 weeks, and weighed 1 pound, 7 ½ ounces. She had bleeding on the brain at birth. (PD 700). All her developmental milestones were delayed. Additional medical complications include a history of asthma with several hospitalizations and an abnormal EEG,

[2] Parent's documents are referenced throughout this decision as PD followed by a page number. District's documents are referred to as SD followed by a page number. The parties did not submit any joint documents, although both evidence binders contain many of the same documents. The undersigned has tried to include citations to both parent and district documents whenever a document appears in both parties' evidence binders.

which showed a neurophysiological disturbance of the mid-temporal area. (PD 244). Testimony indicates that [redacted] received early intervention services for her developmental delays. In 1996, she was enrolled in an early childhood program in which she received special education and related services. (PD 244). At that time, delays were noted in her fine motor skills, visual motor integration skills, verbal comprehension skills, and daily living skills. (PD 255). [redacted] has continued to receive special education and related services throughout her educational career.

In ninth grade, the student attended [redacted] The September 12, 2006 IEP identifies her educational program as a self- contained classroom for math and language arts, for a total of 420 minutes/week, and special education services in a regular education classroom for language arts and science, for a total of 300 minutes/week.[3] No related services are included in the IEP. (PD 11). Modifications and accommodations include extended time on major assignments, assistance with organizational skills, assistance with grammar and editing when writing essays, and a reduced workload for major writing assignments. (PD 7). The student's work was graded using a modified scale of 85-100 A, 74-84 B, 65-74 C, 55-64 D, and 0-54 F. (PD 14). Her present level of performance ("PLOP") in both reading and math was at the third grade level. (PD 3, 8, 10).

The mother filed a complaint with the ISBE on December 8, 2006, alleging that the district had failed to provide any of the special education services required in the student's IEP from August 15 to September 12, 2006, had failed to provide direct special education services in a general education classroom as required by the September 12, 2006 IEP, and had failed to provide the speech/language services required in the November 22, 2005 and September 12, 2006 IEPs. The mother also alleged that these failures had negatively impacted the student's grades. (PD 582, 583).

The district convened an annual IEP review meeting on January 23, 2007 to address the parent's concerns. The parent and her advocate attended the January 23rd meeting, as did a representative from the district's due process department. (PD 19). According to the IEP, the parents concerns were that [redacted] was not making academic progress and had difficulty retaining information. The student was failing English and biology and had a D+ in pre-algebra. She was struggling in both the general education and special education classrooms. The mother requested placement in a small, self-contained classroom. The student's psychiatrist requested a full evaluation to determine a more appropriate placement. (PD 22). Although the prior IEP had listed only a learning disability, this IEP identifies the student's disabilities as learning disability and speech/language impairment. (PD 4, 24).

The IEP team reviewed the student's goals. In math, she was performing at a third grade level. The math goal is essentially the same as in her September 2006 IEP and requires her to describe numerical relationships with 75% accuracy. The benchmarks are also the same at those in September IEP but have reduced performance criteria, from 75% accuracy/quarter to 65%, 70%, and 75%/quarter. (PD 8, 30). The student's PLOP in writing

[3] The statute of limitations in the IDEA is two years. The parent's due process complaint was filed on December 9, 2008, and received by the district that same day. This IEP is referenced herein as it was in effect during the relevant time period in this matter.

states that she "struggles with the basic writing skills to write essays." This is a change from the September PLOP, which states that [redacted] lacks some grammar skills. (PD 9, 27). The goal and benchmarks remain the same, while the quarterly benchmark criteria are reduced from 75% accuracy to 65%, 70%, and 75%. (PD 9, 27). The reading PLOP indicates that [redacted] was reading at the third grade level. Her reading goal is to increase her reading by one grade level with 75% accuracy. The PLOP and goal are the same as in the September IEP. The benchmarks are changed, now requiring the student to: establish a purpose for reading, survey materials, ask questions, make predictions, and connect, clarify and extend ideas with 65% accuracy; identify structure of various texts to improve comprehension with 70% accuracy; and, to analyze the meaning of words and phrases in their context with 75% accuracy. (PD 10, 29).

The team added goals for biology, social science, and speech/language. In biology, [redacted] PLOP states that she had difficulty understanding biological concepts. The goal calls for her to demonstrate a knowledge of concepts that explain how living things function, adapt and change and how living things interact with each other and their environment. The benchmarks require the student to demonstrate knowledge of how genetic combinations produce visible effects and variations among physical features of organism with 50% accuracy, to demonstrate knowledge of various systems of the human body with 60% accuracy, and to compare physical, ecological and behavioral factors that influence interactions of organisms with 65% accuracy. (PD 28). The student's PLOP in social sciences reports that she has knowledge of the differences between conservatives and liberals as well as social class differences but needs to learn more about global issues and historical world events. The annual goal requires her to demonstrate understanding of different moral and belief systems and global issues with 70% accuracy. The benchmarks require her to compare and contrast various moral issues and belief systems of different social groups with 60% accuracy, to make generalizations about how human activity has affected global factors and issues with 65% accuracy, and to analyze and report historical events to determine cause/effect relationships with 70% accuracy. (PD 31). The speech PLOP states that [redacted] has decreased expressive language skills. The annual goal calls for her to improve her expressive language skills to 80% accuracy level. The benchmarks provide that the she will complete a sentence choosing an appropriate vocabulary word, define and give examples for a given vocabulary word, and retell a story after reading and recall details, all with 80% accuracy. (PD 32).

The team developed a transition plan, which includes three goals. The post-school education goal is to "possibly attend a community college or trade school." The post-school employment goal states that the "student is uncertain at this time," and the community integration goal is to "continue to go to church and participate in the activities that they offer." The activities to achieve these goals include researching different community agencies, continuing to receive outside speech therapy, exploring different community agencies, developing independent living skills, and a career evaluation and interest inventory. (PD 39).

The mother presented the IEP team with a list of requested modifications and behavioral interventions. (PD 23). The IEP team incorporated many of her suggestions into an extensive list of accommodations and modifications, which includes: extended time on

major assignments, reduced workload for both in-class work and homework, modified grades, shortened major assignments, assistance with organizational skills, proximity seating, teacher checking in with student at least every 20 minutes for accuracy, a second set of books for home, a checklist and schedule in the student's locker, reminders to establish eye contact, one-step directions, assignments broken down into smaller steps, reading ACT passages aloud, a peer buddy to help maintain focus, modification of vocabulary of materials to an appropriate reading level, detailed study guide, home-school communication system, multi-sensory instruction, verbal reinforcements, and after school tutoring. (PD 34). The modified grade criteria set out in the prior IEP was maintained. (PD 37). The student's special education minutes were increased to 630 minutes/week in a self-contained classroom for writing, English, and math, and 630 minutes/week in a regular education classroom with a special education teacher (inclusion classroom) for science, social studies, and reading. The IEP also calls for speech/language therapy for 30 minutes/week. (PD 35). The student was to be provided with a calculator, books on tape, and a tape recorder as assistive technology. (PD 26).

Compensatory services, which were designed to address the district's failure to provide consistent speech services and consistent special education support as required in the November 2005 IEP, are included in the IEP. (PD 38). The compensatory services are 30 minutes/month of speech/language services and three special credit projects that the student was to complete. (PD 38). After the IEP meeting, both the parent and her advocate filed dissents to the IEP. Although the mother disagreed with the IEP, she agreed that it could be implemented and would be re-evaluated again in five weeks. (PD 20). The advocate dissented to the IEP because it does not address the student's social/emotional needs, inadequately addresses her organizational problems and educational needs, and does not provide an appropriate placement. The advocate's dissent also repeated the request for a re-evaluation. (PD 42-44).

On January 29, 2007, the ISBE issued its investigation report. The district acknowledged that it had not provided the student a FAPE and had convened an IEP meeting to determine changes to the student's educational program and to design compensatory services. The parent agreed that the issues had been satisfactorily resolved, and thus the investigation was closed without corrective action. The report states that the complaint process does not preclude a party from requesting a due process hearing. (PD 582-585).

The district re-evaluated [redacted] academic, cognitive, and adaptive behavior skills on January 30, 2007. On the Wechsler Intelligence Scale for Children-4th Edition ("WISC-IV"), the student's verbal comprehension index standard score was 81, which is in the low average range. Her perceptual reasoning index standard score was 59, which is in the deficient range. She also scored in the deficient range on measures of visual reasoning ability, visual spatial relations, and abstract formation, leading the examiner to conclude that [redacted] has a significant weakness in perceptual reasoning. Although [redacted] achieved a working memory index standard score of 72, the examiner found that her ability to attend and concentrate is weak. Her processing speed index standard score was 73, which is within the borderline

range. However, there was variability in her subtest scores. As measured on the WISC-IV, [redacted] full scale IQ was 65. The examiner opined that this score does not adequately represent [redacted] abilities due to significant variability in her performance. The student's academic achievement was assessed through the Kaufman Test of Educational Achievement - Brief ("KTEA-Brief"). The psychological report lists [redacted] standard scores on the KTEA-Brief as 91 in reading, 69 in math, and 66 in writing. The report does not discuss the significance of these scores other than to state that [redacted] academic skills range from two years below grade level to significantly below grade level. On the Vineland Adaptive Behavior Scale, the student's adaptive behavior composite was 76, which is within the borderline range. Her skills ranged from near age appropriate to deficient. Her overall skills in the socialization domain were least developed, particularly her inter-personal and coping skills. The school psychologist recommended that [redacted] would benefit from a small, structured classroom and "special focus" on improving her social and community related skills. (PD 248-254; SD 94-100).

The student was referred for an initial AT evaluation on January 23, 2007 and evaluated on February 26, 2007. The referral notes that [redacted] has problems with the mechanics of writing and with organizing the content of her writing. Teachers reported that her handwriting was consistently illegible and that she needed redirection 50% of the time to stay on task. (SD 122-125). The evaluation assessed the student's abilities with dictation, copying, and spontaneous writing tasks. [redacted] was able to write a dictated sentence in 22 seconds with no errors. It took her three minutes and 50 seconds to copy two sentences - a total of 39 words - from her social studies book. Her copied sentences had three omissions, three spelling errors, and two punctuation errors. She required five minutes and 43 seconds to type the same 39 words. She typed using only her right hand. For spontaneous writing, she wrote three sentences about music. The sentences had one spelling error and one capitalization error. She was able to use an AT device to correct her spelling errors. The evaluator concluded that [redacted] handwriting is functional and legible to familiar readers. The evaluator recommended a portable word processor, a portable speaking dictionary, and Real World Grammar, which is a software program. (PD 334, 335; SD 101, 102).

The district re-evaluated the student's speech/language skills on March 19, 2007. The evaluation assessed the student's receptive and expressive language skills, listening comprehension, and oral expression. The examiner noted that within the classroom setting, [redacted] was hesitant to speak and used "shortened utterances" when she did respond. The evaluator reported that [redacted] speech became less intelligible as her rate of speech increased. However, she did respond to cues to speak more slowly. On both the Peabody Picture Vocabulary Test, 3rd Edition ("PPVT-III") and the Expressive Vocabulary Test ("EVT"), [redacted] achieved a standard scores of 84, which is at the 14th percentile. Her standard scores on the Oral and Written Language Scales ("OWLS") were: listening comprehension, 79 (8th %ile), oral expression, 83 (13th %ile), and oral composite 79 (8th %ile). The examiner recommended services to improve [redacted] expressive and receptive language skills. (PD 320-322; SD 106, 107, 116-118).

The IEP team reconvened on March 27, 2007 to review the student's progress and recent evaluations. Both the mother and her advocate attended the meeting, as did a

representative from the district's due process department. (PD 51; SD 67). The student remained IDEA eligible as learning disabled and speech/language impaired. (PD 60; SD 73). Several accommodations and modifications were added to those listed in the January 23rd IEP, including assigning preferential seating or allowing the student to sit away from distractions, informing the student before changing from one activity to the next, and highlighting to alert the student to key points within written directions to assignments. (PD 63; SD 80). Assistive technology was updated to include the recommendations from the AT evaluation: a portable word processor, a portable dictionary, and Real World Grammar. (PD 62; SD 79). The modified grading scale remains that same. (PD 74; SD 91).

The student's writing PLOP specifies her writing problems as difficulty putting her ideas down on paper in an organized fashion using correct grammar and punctuation. The goal and benchmarks are the same as in the January IEP, although the goal criterion is revised to 70% accuracy, and benchmark criteria are changed to 70%, 65%, and 70% accuracy. (PD 65; SD 82). The reading goal also is the same as in the prior IPE, although the proficiency required is reduced from 75% accuracy to 70%. The Brigance is to be used to assess reading comprehension. (PD 66; SD 83). The math PLOP states that [redacted] can "add, subtract, multiply and divide 2 and 3 digit whole numbers and decimals as well as expand and reduce fractions." The goal remains the same, but the criterion is reduced to 70% accuracy each quarter, (PD 67; SD 84). The biology goal is unchanged. Its criterion is increased to 70% accuracy, and the benchmark criteria are increased to 70% accuracy each quarter. (PD 64; SD 81). The social science goal remains the same, but its benchmarks are changed to require 70% accuracy each quarter. (PD 68; SD 85).

The IEP team developed a new goal for social work services. The social/emotional PLOP states that [redacted] shows poor social judgment skills and is unable to establish positive peer relationships. The goals are for her to identify one new friend and five positive characteristics about herself. The benchmarks include making positive friendship choices with assistance, improving social judgment skills, and improving positive self-awareness. (PD 69; SD 86). The speech/language PLOP indicates that [redacted] has a moderate receptive and expressive language deficit. The annual goal is for her to improve her language skills using curriculum vocabulary to an 80% accuracy level. The benchmarks include: using context clues, [redacted] will choose appropriate vocabulary word to complete sentence with 80% accuracy; demonstrating understanding, [redacted] will formulate a sentence for given vocabulary word with verbal cue as needed with 80% accuracy; and, [redacted] will answer comprehension questions after listening to a passage with 80% accuracy. (PD 70; SD 87). The transition goals are the same as in the prior IEP; however, social work services are added as related services. (PD 76; SD 93).

The student's placement includes 630 minutes/week in a self-contained classroom for writing, English, and math, and 630 minutes/week in a regular education classroom with a special education teacher for science, social science, and reading. Related services include 30 minutes/week of speech therapy, 60 minutes/month of social work services, and 60 minutes/quarter of nurse services. (PD 71; SD 88).[4]

[4] The calculation of total amount of special education and related services on PD 71 is incorrect. The service minutes in the grid include 630 minutes/week in a self-contained classroom, 630 minutes/week in a regular classroom with a special

On December 3, 2007, the IEP team convened to revise the student's March 13th IEP. This meeting was the first IEP meeting held at [redacted] The mother attended the meeting, as did a district representative from the due process department. (PD 100; SD 45). The meeting was held to address the parent's concerns about accommodations and modifications, psychological services, and assistive technology. (PD 102; SD 47). Several new accommodations and modifications were added, including asking [redacted] to repeat directions or concepts to ensure comprehension and understanding of a task, providing consultative services from the school psychologist to help teachers establish and maintain the student's organizational skills, and establishing an organizational system for [redacted] using color coded folders and notebooks. (PD 105, 106; SD 50, 51).

The student's placement in December includes 460 minutes/week in a self-contained classroom for math and science, 460 minutes/week in a regular education classroom with a special education teacher for language arts and social science, social work for 60 minutes/month, speech/language for 120 minutes/month, psychological services for 30 minutes/month, and nursing for 60 minutes/quarter. (PD 108; SD 53). The student also had physical education, Spanish, and music in regular education classes. (PD 108; SD 53). The IEP team did not determine whether she was eligible for ESY services. (PD 104).

The IEP team developed a new modified grading scale, lowering the scale to 76-100 for an A, 66-75 for a B, 56-65 for a C, 46-55 for a D, and 45 and below for a F. The student was required to pass her core classes with a C in accordance with the modified scale. (PD 110; SD 55). During the meeting, the team learned that [redacted] had not had access to her AT equipment because it had not been sent from the charter school to [redacted] Replacement equipment was requested on December 12th. (PD 758). The IEP team again developed compensatory services, this time to address the lack of the AT equipment. The compensatory services consisted of extra credit assignments in physical education and U.S. History. (PD 111; SD 56).

The team developed a new goal to address [redacted] organizational problems. The PLOP states that she has significant organizational deficits that result in missing and incomplete homework and class work. The goal requires her to improve her completion of homework and class work by 75% through implementation of organizational skills. The benchmarks state that [redacted] will establish an organizational system with the assistance of the school psychologist and continue to use the system throughout the year. The school psychologist is to work with the student on this goal for 30 minutes/month. (PD 107; SD 52). No other goals are included in this IEP.

Although the 2007- 08 first quarter progress reports indicate that [redacted] was meeting her benchmarks in speech, English, geometry, history, and earth science, the comments provide a somewhat different story. The music teacher stated that [redacted] needed to work on being on time and keeping her notebook organized. In history, the teacher reported that the student

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education teacher, 30 minutes/week of speech therapy, 60 minutes/month of social work - which is 15 minutes/week - and 60 minutes/quarter of nurse services, which is 6 minutes/week in a 10 week quarter. This totals 1,311 minutes/week, rather than 1410 minutes/week as the IEP states. (PD 71).

had learned the basics of the two chapters, used the organizational system, and took notes in her agenda book. The English teacher stated that [redacted] was a hard working student who asked for help when necessary. The earth science teacher reported that [redacted] had earned a 50.83% average, which is a D according to the modified grading scale. The teacher also noted that [redacted] was doing "much better" after being placed in an instructional class. The geometry teacher reported that [redacted] "did her best in inclusion, but she really didn't understand much. She is doing much better in instructional Geometry." (PD 592c; SD 126, 127, 131, 133, 134, 135, 136, 137). [redacted] report card for the first semester of 2007 shows that she received an A in American Literature, Geometry, and Physical Education. She received a B in science and music, and a C in history and Spanish. (PD 599).

[redacted], the student's case manager, sent a memorandum to [redacted] teachers on January 28, 2008, informing them that the IEP required them to submit weekly progress reports. She attached a progress report form to the memorandum. The report form uses a four point rating scale to assess [redacted] attendance, homework completion, participation, behavior, and overall performance. It also provides a place for teacher comments. (PD 640, 641; SD 138). The physical education teacher completed two forms in January, rating [redacted] as "4" in each category on both forms. (PD 643, 648; SD 146). On January 7th, the science teacher noted that [redacted] rarely participated in class and commented that she "has to be told to put her head up." The teacher gave [redacted] a "1" in participation. (PD 644; SD 149). On January 30th, the science teacher commented that [redacted] could not find her book and had not had one for about a week, which had impacted her ability to complete assignments. The teacher rated [redacted] as "2" in participation and overall performance and as "3" in attendance, homework completion, and behavior. (PD 647; SD 147). The history teacher consistently rated [redacted] as 3's and 4's. The history teacher also noted that [redacted] handwriting was hard to read and asked three times that she use her Alpha Smart for written assignments. The teacher asked the parent to read a book with the student for a quiz. (PD 645, 650, 651, 653, 655, 659, 660, 661; SD 144). The geometry teacher's reports contain extensive comments on [redacted] progress and behavior. On January 7th, the teacher noted that [redacted] had visual-motor difficulties, organizational problems, and trouble understanding higher level concepts in geometry. She rated [redacted] as "2" in overall performance. (PD 642; SD 150). By January 29th, the teacher reported that [redacted] had "improved greatly" and rated her overall performance as "3." (PD 646; SD 145, 148). The next report notes that [redacted] confidence and performance had improved. (PD 649). On February 18, the geometry teacher commented that [redacted] had helped a classmate with her work. She also asked whether [redacted] had assistive technology, as it would help the readability of [redacted] work. (PD 652). On February 25th, the geometry teacher noted that the Alpha-Smart would not help with geometry because of the mathematical figures. The student received all 4's that week in geometry. (PD 654). The next report states that [redacted] had a difficult time on a test because she did not have geometry notebook. (PD 656). On March 10th, the teacher reported that [redacted] had been distracted all week and that her organizational skills had declined. The student told the teacher that her problems were due to peer pressure. (PD 657). The teacher noted improvements in [redacted] handwriting on March 31st and May 12th. (PD 658, 662).

On May 23, 2008, the student's speech/language goal was revised. Although the IEP indicates that the revision was from the December 2007 IEP, no speech/language goal was

developed at the December meeting. The PLOP states that [redacted] "is able to answer comprehension questions after listening to multiple-paragraph stores. She continues to present with receptive and expressive language deficits that affect her ability to succeed in the academic setting." The goal calls for her to improve her expressive and expressive language skills by using context clues to determine the meaning of words with 70% accuracy. There is only one benchmark, which states that she will use contextual clues to determine the meaning of vocabulary words with 60% accuracy given maximum verbal and visual cues. (PD 114-116; SD 41-43).

The speech pathologist completed an ESY form for the student in Spring 2008. The form compares [redacted] ability to answer comprehension questions after listening to a paragraph before and after winter break (December 24th to January 6th) and before and after spring break (March 17th to March 21st). The speech pathologist determined that [redacted] did not require any time to recoup her ability to perform this task and thus was not eligible for ESY speech services. (PD 743, 770). The science teacher also completed an ESY form and found that it took [redacted] three weeks to recoup her skills. She determined that the student was eligible for ESY. (PD 769). Based on this information, [redacted] was scheduled to attend ESY in summer 2008. (PD 771, 772).

At the beginning of the 2008-09 school year, the school psychologist sent a memorandum to all the student's teachers informing them that the student's IEP required weekly progress reports from each teacher. The progress report form attached to the memo is the same as that used the prior year. (PD 664). The only reports in the record for Fall 2008 are from the algebra teacher, who had also been the student's 10th grade geometry teacher. On September 15th, the teacher expressed concern about the student's ability to focus and noted that [redacted] seemed agitated. (PD 665). The following week, the teacher reported that [redacted] "tried to do her work" but was distracted by worries that bugs would fly into the classroom and issues around washing her hair. [redacted] also was having trouble doing her homework. (PD 666). On September 29th, the teacher reported that [redacted] ability to focus continued to decline. She was not completing her work, and the work she did complete was incorrect. (PD 667). Although the teacher noted some improvement the following week, the progress was short lived. On October 20th, the teacher reported that [redacted] "attention is deteriorating. On one occasion, I had to pull the shades down to cover the windows because she kept looking out the windows. " (PD 668, 669). In a letter dated November 26th, the teacher reported that [redacted] had been "mostly quiet" for the past two days and was shaking and trembling. When the teacher asked her a question, [redacted] stated that she did not know anything about math. She had trouble pressing the calculator keys and difficulty naming simple numbers. The student's "working memory was almost nonexistent." (PD 670, 671).

The related service providers also reported a decline in [redacted] behavior and performance during Fall 2008. Although the student had been successfully working on her speech goals with between 80% and 100% accuracy at the beginning of the year, the speech therapist noted on November 26th that [redacted] "is not herself today - she responded in single words to the clinician's questions and required constant redirection to the task." (PD 744, 745; SD 152-156). On September 10th, a teacher requested that the school psychologist work with [redacted] because she was "demonstrating significant difficulties concentrating in the

classroom." (PD 727; SD 152). The psychologist met with and the student on September 29th regarding concerns noted in the weekly progress reports. The student was having difficulty understanding classroom material, and they worked on strategies to help her tell the teacher when she did not understand. (PD 728). On November 19th, the school psychologist reported that [redacted] was very disoriented, had a hard time staying focused, and complained of feeling dizzy. The school psychologist consulted with the parent about the dizziness and suggested the mother get "information from doctor to see if changes needed to be made to student's IEP." (PD 729; SD 155).

On November 27, 2008, [redacted] was admitted to the child and adolescent psychiatric inpatient unit at [redacted]. Her symptoms upon admission were talking to herself, poor sleep, walking around at night, paranoia, and a threat to kill her brother and the rest of her family. A nursing assessment reports that [redacted] had blunted affect, auditory and visual hallucinations, poor eye contact, psychomotor retardation, and was guarded and withdrawn. Her concentration, insight, and judgment were impaired. Her Global Assessment of Functioning score upon admission was 30. (PD 695-703).

An annual IEP review meeting was convened on December 1, 2008. The mother attended the meeting and informed the staff that [redacted] had been psychiatrically hospitalized. The December 1st IEP is labeled "DRAFT." (PD 117; SD 156). The section for listing the student's strengths and parent's concerns is blank. (PD 118). The document lists several new accommodations and modifications, including: using concrete examples of concepts before teaching the abstract; providing an overview of the lesson before beginning; allowing the student to obtain and report information using cassette recorders, dictation, typewriters/computers, interview, calculators and fact sheets; monitoring the rate at which material is presented; giving additional presentations by varying the methods using repetition, simpler explanations, more examples, and modeling; providing clear, concise directions and concrete examples for homework assignments; assigning tasks at an appropriate reading level; allowing for oral administration of tests; prioritizing assignments and/or steps to completing assignments; consistently following a specific routine; alternating quiet and active tasks; setting time limits for specific task completions; allowing for spelling errors; setting realistic and agreed upon expectations for neatness; letting the student type, record, or give answers orally instead of writing; avoiding the pressures of speed and accuracy; reducing the amount of copying from text and board; slowing the rate of presentation; and, giving written directions to supplement verbal directions. (PD 122). Although the IEP indicates that AT is not required, the same section states that [redacted] needs a calculator and agenda book to access the general education curriculum. (PD 121).

The IEP goals are different from those in March 27, 2007 IEP, which is the last IEP meeting at which goals were developed for [redacted] academic classes. All of the December 1st academic goals contain identical language regarding the student's PLOP: she is performing more than two years below grade level and has "scores" that are significantly below grade level. (PD 124-128). The language arts/reading goal states that [redacted] will read, recognize, write, listen, speak, and use a wide variety of information and resources to communicate effectively. The benchmarks are to provide grammatically correct papers when given written assignments, to read a novel and answer questions, and to contribute to class discussions,

writing assignments or an alternate assessment. Each benchmark requires at least 50% accuracy. (PD 124). The math annual goal is "to perform number concepts, ratios, percentage, measurement of area and volume, graphs and geometric concepts also skills in estimation." The benchmarks are divided into three areas: word problems - to interpret written presentations of material with at least 50% accuracy; life skills - to relate mathematical concepts and terminology to events read and heard outside of the classroom with at least 50% accuracy; and, problem solving - given mathematical equations, the student will provide information using steps to solve problems with at least 50% accuracy. (PD 125).

The science goal is "to understand, inquire and investigate the fundamental principles of scientific technology and contemporary contents." The benchmarks require [redacted] to recognize and interpret ideas and information and relate them to life skills information with 50% accuracy; given textbook questions, to interpret information and related it back orally or in writing with 50% accuracy; and to perform, analyze and communicate results orally and in writing, using appropriate technology, with 50% accuracy. (PD 126). The goal for social sciences is to understand political and economic events, geography, and social systems, with an emphasis on the United States. The quarterly benchmarks require the student to recognize that consequences are the result of actions in social studies problems with 50% accuracy, to express information and ideas orally and in writing on assignments with 50% accuracy, and to recognize ideas that apply to instructions and connect ideas to real life skills with 50% accuracy. (PD 127). The transition goal states that [redacted] will increase her career awareness and vocational skills and improve her general employability skills through vocational education programs or school related seminars. The benchmarks include recognizing the importance of supervision by demonstrating appropriate responses to instruction, completing 40 hours of community service over a four year period, and developing self-advocacy skills and demonstrating proper grooming while attending school. (PD 128).

The speech/language goal is significantly revised. The PLOP states that [redacted] can use context clues to determine the meaning of words. However, she sometimes speaks with an increased speaking rate, which makes her speech less intelligible. She becomes more intelligible when asked to decrease her rate of speech. She continues to show decreased language skills, which affects her ability to complete classroom tasks. The annual goal requires [redacted] to increase her language skills, particularly in reading/listening comprehension and syntax. The goal's benchmarks are to answer questions regarding information read or heard, to complete subject-verb agreement activities in structured tasks, and to combine simple sentences and form two complete sentences given a compound/complex sentence. Each benchmark requires 70% accuracy given maximum verbal and visual cues and prompts. (PD 137).

The independent functioning goal, which is implemented by the school psychologist, lists the student's PLOP as "difficulty with time on task and remaining focused in the classroom." The annual goal calls for [redacted] to improve her overall time on task, ability to remain focused, and organizational skills. The benchmarks include identifying the factors that negatively impact her ability to focus within the classroom and discussing strategies she can use to assist with coping with distractions, discussing the strategies she is implementing to

improve time on task and showing her organized folders, and continuing to implement strategies to improve time on task, organizational skills, and class work completion on a consistent basis. Neither the goal nor any of the benchmarks has a quantifiable measure of progress. The time provided for this goal is 45 minutes/month. (PD 123).

The placement grid appears on two separate pages. The first grid is empty except for notations that [redacted] is to receive nursing services for 60 minutes/quarter and social work services for 60 minutes/month. (PD 129). The second grid indicates that [redacted] is to be placed in a self-contained classroom for 460 minutes/week for math and science and also receive special education services within the regular education classroom for 460 minutes/week in language arts and social science. Related services includes speech services for 90 minutes/month and services from the school psychologist for 45 minutes/month. (PD 130). The section entitled "Assurance of Procedural Safeguards" is completely blank, except for the initials [redacted] (PD 135).

[redacted] remained in the psychiatric hospital until December 16, 2008. During her three week hospitalization, she received two hours/day of educational services in the hospital's educational program. She had difficulty remaining on task in school and trouble completing homework assignments. [redacted] also showed "intermittent episodes of reality testing by staring, showing inappropriate affect in social situations such as laughing, internalizing her thoughts and talking to herself." (PD 693). A December 8th staffing note reports that although [redacted] said she was feeling "normal," she was still talking to herself. (PD 703). On December 13th, staff reported that she appeared "very internally stimulated." She talked to herself frequently and had difficulty participating in groups. (PD 704). A December 15th staffing note reflects the same symptoms. (PD 705). Her discharge diagnoses were ADHD, psychosis not otherwise specified ("NOS"), rule out schizophrenia and bipolar disorder. Her medication at time of discharge was Risperdal and Cogentin, both twice a day. (PD 696-699). The treatment team recommended homebound school until a therapeutic school could be found. The student was "not to return to Bogan." (PD 705).

The medical director of the inpatient unit completed the district's form for Medical/Psychiatric Referral for Adjustment of Educational Program in mid-December 2008. The form provides student identifying information, physician identifying information, the date of the most recent psychiatric examination, and the diagnosis of psychosis NOS. The student's medications are also listed. The form requests homebound teaching. The psychiatrist also recommended placement in a therapeutic school as soon as possible. (PD 786-788). On January 8, 2009, the home/hospital services office faxed the form to the homebound coordinator at Bogan with a notation "cannot read forms clearly needs school evaluation." The form cover sheet is marked "Urgent." (PD 789-791).

The district convened an IEP meeting on January 20, 2009, pursuant to a mediation agreement. The district agreed to re-evaluate the student in the following areas: health, social/emotional status, intellectual functioning, academic performance, speech/language functioning, central auditory processing, and occupational therapy for fine motor functioning. (PD 143, 144). The parent signed consent for the evaluations on January 28, 2009. (PD 146). Letters and emails between counsel for the parties shows that the executed consent

form was sent to the district's attorney on February 2nd. However, the form was not provided to the high school until February 18th, when the parent faxed it to the case manager. (PD 145, 148, 150-153; SD 158). The parent gave written consent for an AT re-evaluation on March 12, 2009. (PD 329-332).

The student's current treating psychiatrist [redacted], diagnosed her with borderline intellectual functioning and possible schizophrenia on February 28, 2009. [redacted] reported that she had difficulty sustaining attention and completing tasks, was extremely disorganized and impulsive, and had poor decision making skills. He recommended a small therapeutic educational setting to address her emotional and social needs. (PD 706). On April 3, 2009, [redacted] revised [redacted] psychiatric diagnosis to schizophrenia, undifferentiated type. (PD 708).

[redacted] did not return to [redacted] after her psychiatric hospitalization until April 16, 2009. The parent had requested a plan to help [redacted] safely transition back to school. The plan was not developed and implemented until mid-April. (PD 151,152, 388- 407, 483, 484). The district did not provide educational services for [redacted] during her absence. However, the mother did pick up the student's schoolwork and return the completed work to the school. (PD 531).

The school psychologist conducted her evaluation on March 12, 2009. She administered the Wechsler Adult Intelligence Scale, 4th Edition ("WAIS-IV"), the KTEA-III, and reviewed the student's records. The examiner noted that although [redacted] was motivated to do well on the evaluation, she worked slowly, which may have impacted her performance. She also frequently asked for breaks. On the WAIS-IV, [redacted] standard scores are: verbal comprehension index, 78; perceptual reasoning index, 67; working memory index, 69; and, processing speed index, 56. The index scores for perceptual reasoning, working memory, and processing speed are within the deficient range. Her verbal comprehension index is within the borderline range. Her full scale IQ was 63, which is at the first percentile. The student's standard scores and percentile rankings on the KTEA-II are letter and word recognition, 84, 14th %ile; reading comprehension, 76, 5th %ile; math computation, 58, 0.3%ile; math concepts and applications, 52, 0.1%; spelling, 80, 9th %ile; written expression, 59, 2nd %ile; reading composite, 78, 7th %ile; and, math composite, 58, 0.3%ile. The examiner opined that [redacted] has adequate phonetic skills but has difficulty decoding more complex words. Her vocabulary skills were limited. In math, she relied on visual cues to solve computation problems and had difficulty determining the correct operation to use in solving story problems and counting money. [redacted] was overwhelmed by the written expression subtest and had difficulty understanding basic sentence structure, punctuation, capitalization, and organizing her ideas. While many of [redacted] scores were considerably below average, the examiner stated they were in line with the student's WAIS-IV scores. The school psychologist reported that [redacted] overall intellectual functioning is within the deficient range and is consistent with her varied performance over the years. The examiner also stated that the student's current diagnosis of psychosis may cause a variance in her daily functioning and also makes it difficult to determine if she has a learning disability or an emotional disorder. The report concludes by saying that "it is difficult to determine that if (the student) follows her psychiatrists (sic) prescribed medication schedule that she would be unable to mange (sic) within a familiar educational setting."(PD 255-259).

The school social worker interviewed [redacted] and reviewed her records. She reported that the student told her that she missed school and wanted to be back in school. She recommended social work services to address social, emotional, and academic challenges that might arise. (PD 260, 261).

The district's audiologist conducted a central auditory processing assessment on March 25, 2009. The assessment began with an evaluation of the student's hearing, which was determined to be normal. The central auditory processing evaluation consisted of eight separate tests: the Test for Auditory Processing Disorders in Children-Revised ("SCAN-C"), the Wepman Auditory Discrimination Test ("Wepman"), the Pitch Pattern Sequence Test ("PPS"), the Spondee Binaural Fusion test ("SBF"), the Dichotic Digits Double Pairs test, the Time Compressed Speech test ("TCS"), the Auditory Continuous Performance Test ("ACPT"), and the Three-Interval Forced Choice Gap Detection Test. The examiner noted that [redacted] responded quickly and impulsively initially and appeared less focused as the evaluation progressed. However, she opined that the overall reliability of the student's responses was good on the tasks she was able to complete. Based on her assessment, the audiologist determined that [redacted] has an auditory integration deficit. Her report states that students with auditory integration disorders are at risk for difficulties in reading, spelling and writing. They may also have weaknesses in auditory memory skills, communication skills and visual-motor deficits. She provided a list of accommodations for the IEP team to consider, as well as games and activities to improve the student's auditory integration skills. (PD 264-270).

The district's occupational therapist administered the Beery-Buktenica Development Test of Visual Motor Integration ("VMI") to determine whether [redacted] needs occupational therapy services. The student's standard score was 66, which is very low. The evaluator determined that the student has legible printing skills, can write her name in cursive, and uses AT to assist in written communication. Therefore, she concluded [redacted] "needs have been met," and she does not qualify for occupational therapy services. (PD 291-312).

The speech/language therapist gave several tests to evaluate the student's language skills. During the evaluation, [redacted] "exhibited an open mouth posture, heavy breathing, and at time would take a deep breath that was followed by her body trembling. " She requested six breaks during the two hour assessment. On the EVT, the student's standard score was 76, which is at the 5th %ile and in the below average range. Her standard score on the PPVT-III was 86, which is at the 18th %ile and in the low average range. On the OWLS, her standard scores were 89 in listening comprehension, 83 in oral expression, and 84 on the oral composite. [redacted] was inattentive during the OWLS and required repetition of most of the test items, although only one repetition is allowed. She also had an increased response time. Based on this assessment, the examiner determined that [redacted] has a mild receptive and expressive language deficit that adversely affects her educational performance. (PD 324-326).

The district convened two IEP meetings to discuss the evaluations and develop an IEP. (PD 161; SD 2). The student was determined IDEA eligible under both the learning disability and emotional disturbance categories. (PD 167, 171; SD 8, 12). The IEP contains

extensive modifications and accommodations. (PD 176, 177). The student is to have a paraprofessional for all academic areas and to assist in transition in and out of the school building. (PD 175; SD 16). She is to attend seven weeks of ESY in an instructional setting. (PD 172; SD 13). Assistive technology includes an Alpha Smart, a Franklin Speller, a calculator, color-coded folders, and Real World Grammar software. (PD 175; SD 16).

The IEP team developed new goals for academics and related services. In math, the PLOP states that [redacted] has "elementary concepts understanding." She has difficulty with subtraction that requires borrowing, basic multiplication, determining the correct operations to solve word problems, and counting money. The goal requires her to correctly identify the order of operations 9 out of 10 times given 10 computation problems. The benchmarks call for her to increase her ability to identify the correct order of operations from two out of 10 times to seven out 10 times. (PD 179; SD 20). The vocabulary PLOP identifies her deficits as difficulty in decoding multi-syllabic words, spelling, comprehension, drawing conclusions and making inferences, basic sentence structure and rules of grammar, punctuation and capitalization. The annual goal is for her to increase her vocabulary skills by using a vocabulary sheet that contains words in each academic area, with words given daily, weekly, and monthly. The benchmarks progress from using the monthly word chart on a weekly basis to applying the words in weekly writing assignments and finally in sentences using a dictionary. (PD 182; SD 23). The language arts PLOP states that [redacted] has difficulty decoding multi-syllabic words, inconsistent spelling skills due to unawareness of complex vowel patterns and consonant blends, diminished reading skills, and difficulty with basic sentence structure. The annual goal is for [redacted] to read, recognize, write, listen, speak and use a variety of resources to communicate effectively. The benchmarks include answering comprehension questions, reading and understanding a reading assignment, and contributing to class discussions, writing assignments or alternate assessments. None of the benchmarks identifies criteria to measure progress. (PD 185; SD 26, 27).

In science, the PLOP states that [redacted] deficits in basic reading decoding, reading comprehension, spelling, written expression, vocabulary, and math impact her ability to learn science. The annual goal is to describe and identify two gases, liquids, and solids, either orally or in writing. The benchmarks divide this goal topically, into identifying gases the first quarter, then liquids and finally solids. (PD 180; SD 21). The social science PLOP states that [redacted] ability to chart, organize, and recreate the timelines necessary for social science are impacted by her deficits in reading comprehension, decoding, and organizational skills. The goal is for her to identify at least three community leaders and three city and state government leaders, either orally or by charting. The benchmarks call for her to identify three community leaders first quarter, three state government leaders second quarter, and three local school administrators in the third quarter. (PD 181; SD 22).

The IEP has two independent functioning goals. The first addresses the student's difficulty telling time on an analog watch. The annual goal requires her to tell time on an analog watch by the quarter, half, and three quarter hour for each hour, given prompts or cues. The benchmarks begin with telling time to the quarter hour and proceed systematically to the three-quarter hour, with accuracy required in five out of five trials. (PD 178; SD 19). The next independent functioning goal addresses [redacted] significant deficits in organizational

skills. The annual goal requires her to improve the identified deficits by consistently and correctly implementing an organizational system developed with the school psychologist. The first quarter benchmark is for [redacted] to establish the organizational system and discuss the steps needed to effectively implement the system. Next, she is to demonstrate how she is maintaining the system. The last quarter benchmark is essentially the same, requiring her to continue to demonstrate her ability to consistently use the system. (PD 183; SD 24).

The social/emotional PLOP states that [redacted] has poor social skills and judgment. The annual goal requires her to demonstrate decision-making skills and responsible behaviors in the school and community for 70% of the day. The benchmarks require her to identify how social relationships impact her academic performance, with increasing frequencies from 50% to 70% of her day. (PD 184; SD 25).

The speech/language goals address the student newly identified auditory integration deficit, which impacts her receptive language/auditory comprehension skills. The first goal calls for her to improve her auditory integration skills by" demonstrating the ability to answer questions related to figurative language about stories she has heard in her left ear in the presence of different stimuli heard in the right ear within structured tasks in 16/20 trials." The benchmarks progress from answering questions about stories heard in her left ear: in the presence of competing non-linguistic stimuli in 16/20 trials with maximum verbal cues the first quarter, in the presence of competing linguistic stimuli in 16/20 trials given moderate verbal cues the second quarter, and finally in the presence of high interest competing stimuli in 16/20 trials given minimal verbal cues. (PD 187; SD 28). The second goal addresses a deficit in her receptive language/auditory temporal patterning skills. The goal requires her to auditorily discriminate/produce different acoustic patterns in quiet and in noise focusing on pitch variation in 18/20 trials. The benchmarks begin with discriminating pitch patterns in quiet, moves to repeating pitch patterns in quiet, and finally to discriminating and repeating pitch patterns in the presence of competing sounds, each in 18/20 trials. (PD 188; SD 29).

Although the speech/language pathologist had prepared a speech goal in conjunction with her April re-evaluation of the student, that goal is not included as part of the May 2009 IEP. The PLOP states that [redacted] has mild language deficits as evidenced by grammatical and semantic/pragmatic errors and requires direct speech/language services to increase her receptive/expressive language skills and to succeed in the educational setting. The goal states that [redacted] will write to communicate for a variety of purposes and read with understanding and fluency. She will demonstrate this skill by answering questions related to figurative language, combining simple sentences to make compound/complex sentences, identifying what is grammatically wrong with a sentence, and formulating grammatically correct sentences. The benchmarks address each of these areas and identify measurable criteria to determine quarterly progress. (PD 328).

A transition goal and a transition plan are included in the IEP. The transition PLOP states that [redacted] had emotional and learning difficulties and lives at home with her parents. The goal is for her to find employment in a career in which she is interested and that will eventually allow her to live independently. The benchmarks are to complete a career interest inventory, to work as a volunteer for the required 40 hours of community service, and

to complete a job shadowing experience with a community business. (PD 189; SD 30). The transition plan lists her PLOP as difficulty decoding multi-syllabic words, being unaware of complex vowel patterns and consonant blends, diminished reading comprehension due to limited vocabulary, difficulty drawing conclusions and making inferences, and difficulty with basic sentence structure, grammar, punctuation, and capitalization. Her post-school education goal is to attend college or university. Her post-school employment goal is to work part-time while attending college. The community integration goal is to live independently while attending college. The activities required to help [redacted] achieve these goals include consultation by the district's transition department with the IEP team, provision of related services pursuant to her IEP, contact with the Illinois Department of Human Services to identify community opportunities, and a functional evaluation of the student's interests and functional abilities. The plan also states that [redacted] will become independent in managing her medication, scheduling her medical appointments, and using transportation services. (PD 196; SD 37).

The student's placement is a self-contained classroom for language arts, math, science and social science for 920 minutes/week, divided into 230 minutes/week for each subject. She is in regular education for world language, music, physical education, and art. The IEP also requires 60 minutes/month of social work services, 30 minutes/week of speech/language services, 45 minutes/month of psychological services for independent functioning, and consult nursing services. (PD 190, 191; SD 31, 32). The accommodations and modifications are identical to those in the December 2008 IEP, with the addition of weekly progress reports pursuant to parental request, a paraprofessional, and consultative nurse services with the parent and teachers. (PD 176, 177; SD 17, 18).

The IEP team also conducted a functional behavioral analysis ("FBA") and developed a behavior intervention plan ("BIP"). The student's targeted behaviors include self-stimulating behaviors, poor time on task, and poor peer relations. Non-restrictive interventions include the following: proximity control; frequent teacher prompts and cues; teacher assigned peer partner to assist in building social skills, pacing, and time on task; preferential seating; and, incentive programs to promote time on task and participation, as determined by individual teachers. The BIP also requires an appropriate staff person to be assigned for [redacted] to go to when she shows signs of significant emotional distress. All staff who work with the student are responsible for monitoring the BIP. The plan requires weekly anecdotal records and teacher reports. (PD 173,174; SD 14, 15).

The parent and her advocate each dissented to the IEP. The parent had numerous concerns about the IEP and felt that many of them were not included within the IEP. For example, she was concerned about the educational placement, AT, the district's evaluations, the modified grading scale, appropriate services for the student, and the refusal of homebound services. Her dissent states that the district did not conduct a FBA for the BIP it prepared. She was concerned that many of the goals do not have do not have baselines, are not individualized, and are not measurable. The dissent states that she had no input into the transition plan. (PD 208, 209). The advocate's dissent asserts that the teachers did not adequately assess [redacted] present levels of performance, did not provide the required progress reports, ignored the accommodations and modifications included within the IEP, and did not

provide an appropriate placement. (PD 200-205).

The student's teachers began completing weekly progress reports after [redacted] returned to school. The forms used from May onward are significantly different from those used in Fall 2008. On the original form, the first row is labeled "attendance," and the first rating is "does not come to class." The new form's attendance row begins with "did not come to class more than three days." The homework completion information is relatively the same on each form. The original form has a row entitled "behavior" and another entitled "overall performance." On the new forms, these have been changed to "completing in-class assignments" and "prepared for class." (PD 673, 674).

On April 27th, the algebra teacher reported that [redacted] was "doing better everyday she is in school." Academically, she participated in class and was able to answer geometry questions that her classmates could not answer. However, the teacher also stated that [redacted] often whispered to herself and once began singing to herself softly. When the teacher asked her to be quiet, [redacted] replied that she wanted to be a singer. The teacher rated her a "2" in overall performance, which indicates that she was demonstrating difficulty but was willing to work. (PD 672). The following week, the teacher reported that [redacted] needed to be better organized and keep her notebook in sequential order. The student's performance varied. Some days she was able to take notes, complete the opening quiz and participate in class, but other days she was not focused enough to do so. She continued to whisper to herself. (PD 673). On May 18th, the algebra teacher indicated that [redacted] was doing better, completing her homework, and participating in class. (PD 685). The following week, however, she reported that [redacted] was having trouble working independently and focusing on her work. Unless the teacher stood next to [redacted] the student did not finish her work. She was unable to complete a test, even though there was time to do so. Her whispering to herself had decreased. The teacher gave [redacted] a "2" in overall performance. (PD 691).

On May 7th, the history teacher reported that [redacted] was having difficulty staying on task. He commented that "(s)he could benefit from a placement in a small, structured, instructional class." (PD 674). The following week he reported that [redacted] had walked out of class without permission. (PD 679). The May 22nd progress report states "(p)lease ask (the student) to sit in he chosen seat for the duration of the semester." (PD 690). The chemistry teacher completed only two progress reports. Her May 8th report states that [redacted] was completing some assignments but not putting forth a good effort and was only partially participating in class. (PD 675). Her second report, which is not dated, rates the student as "2" in participation and "4" in all other areas. (PD 681). The Spanish teacher reported that [redacted] did not come to class with all her materials; otherwise, she rated the student a "4" in all other areas. (PD 678, 684). The band teacher reported one week that [redacted] partially participated in class but did not distract others and another week that she participated in class but did distract others. Neither form is dated. (PD 677, 682). The literature teacher completed two reports. On May 15th, the literature teacher rated [redacted] as "2" in the areas of participation, prepared for class, and homework completion and "4" in attendance. The May 26th report rates the student as "4" in attendance, prepared for class, and homework completion, "3" in completing in-class assignments, and "2" in participation. (PD 680, 689). The art teacher completed one report, on May 22, on which she rated [redacted] as "4" in all areas except completing in-class assignments,

which was a "3." (PD 687).

The speech therapist implemented the new [redacted] goal on May 18th. Her progress notes for May indicate that [redacted] was able to answer reading comprehension questions heard in her left ear in the presence of non-linguistic stimuli 20/20 trials on the first day, 17/20 trials on the second day and 18/20 trials on the third day. [redacted] was able to discriminate pitch patterns in quiet in 19/20 trials the first day and 20/20 trials the second day. (PD 748).

[redacted] conducted an independent neuropsychological evaluation of [redacted] on May 9, 2009. The evaluation assessed the student's cognitive and academic abilities. The student was given two cognitive tests, the Universal Nonverbal Intelligence Test ("UNIT") and the WISC-IV - Integrated. On the UNIT, [redacted] full scale IQ was 57. Her WISC-IV standard scores were 10 in similarities multiple choice, 8 in vocabulary multiple choice, and 5 in comprehension multiple choice. On the Test of Silent Word Reading Fluency ("TO/SWRF"), Form A, [redacted] standard score was 62, which is at the first percentile. The student also was given the Wechsler Individual Achievement Test - Second Edition ("WIAT-II"), on which she achieved the following standard scores/percentiles: word reading 76, 5th %ile; reading comprehension 59, 0.3%ile; pseudoword decoding 85, 16th %ile; reading composite 71, 3rd %ile; spelling 66, 1st %ile; written expression 51. <0.1st %ile; written language composite 50, <0.1%ile; and numerical operations 54, 0.1%ile. On the Key Math Diagnostic Test-Revised (Form A), the student's standard scores were numeration 2, rational numbers 1, geometry 2, addition 3, and subtraction 1. All her Key Math standard scores are at <1st %ile except for addition, which is at the 1st %ile. [redacted] report contains a cautionary statement on the use of grade equivalents, stating that they do not represent grade level scores. The report states that grade equivalents are subject to misinterpretations for the following reasons: they are incorrectly regarded as performance standards; they suggest performance differences when the actual differences are insignificant; they are not directly comparable across tests, subtests, or measures; and, they are *not* the same as grade level and do not represent a standard of growth per year or grade. (emphasis in the original). Based on her evaluation, [redacted] determined that [redacted] has a developmental reading disorder, a developmental arithmetical disorder, and a specific developmental learning difficulty in written language. (PD 732-736).

Conclusions of Law

A. Substantive Issues

1. Whether the district failed to provide the student a timely, full individual evaluation that adequately identified the nature and extent of her disabilities from December 9, 2006 to the conclusion of this hearing

A district must assess a student in all areas of suspected disability and must use a variety of assessment tools and strategies to gather the functional, developmental, and academic information necessary to determine if the student has a disability and how the disability impacts the student's educational needs. 20 U.S.C. §1414(b)(2)(A), (B). The district assessed the student's assistive technology needs in February 2007. Between

December 2006 and April 2009, the district re-evaluated the student's cognitive abilities, academic achievement, speech/language skills, and occupational therapy needs. In April 2009, the district conducted its first evaluation of [redacted] for central auditory processing disorder ("CAPD"). The parent disagreed with the district's evaluations and has requested an IEE at public expense. 34 C.F.R. § 300.502(b); 105 ILCS 14-8.02(b). The district requested a due process hearing to show that its evaluation is appropriate and therefore has the burden of proof to show that its evaluation is appropriate. 105 ILCS 5/14-8.02.

[redacted] has been the district's educational audiologist for 23 years. For the past 18 years, she has conducted CAPD evaluations for the district. She described central auditory processing as the central nervous system's ability to take in auditory information. [redacted] assessed the student's performance in different listening situations by using eight different central auditory processing tests. Based on her assessment, [redacted] determined that [redacted] has an auditory processing deficit. The student has great difficulty taking in auditory information and suffers from auditory fatigue in an educational setting. She needs to be shown, rather than told, how to do things. She must do one thing at a time, *e.g.* listen or take notes. [redacted] explained that CAPD may impact [redacted] in many academic areas, including reading, auditory comprehension, expressive language, and visual-motor coordination skills. She stated that concerns were raised about the student's skills in these at the May IEP meeting.

The uncontroverted evidence shows that [redacted] has an auditory processing deficit that adversely impacts her learning in all academic areas. [redacted] testified that [redacted] has had CAPD at least since she began school. A student can be assessed for CAPD beginning at seven or eight years of age. The district did not evaluate [redacted] for CAPD until she was 17 years old. Based on this evidence, the undersigned finds that the CAPD evaluation was not timely and therefore the 2007 evaluation did not fully evaluate the nature and extent of [redacted] disabilities.

The district speech pathologist who evaluated the student in 2007 did not testify at the hearing.[5] [redacted] currently provides speech/language services to [redacted] and conducted the April 2009 speech/language re-evaluation. She has a master's degree in speech pathology from [redacted], a certificate of clinical competency in speech/ language pathology and is licensed in Illinois. [redacted] administered the EVT to asses the student's expressive language skills, the PPVT-III to assess receptive language skills, and the OWLS to assess her listening comprehension and oral expression. She did not administer the OWLS written language subtests. During the evaluation, [redacted] was breathing heavily and trembling. She also was inattentive, poorly focused, and gave up easily. Despite these behaviors, [redacted] opined that the test results were valid. [redacted] determined that [redacted] has a mild expressive and receptive disorder.

[redacted] testified regarding her opinion of the district's speech/language evaluation. She has a [redacted] in speech/language pathology with a specialization in augmentative communication and childhood language. She also has

[redacted] appeared briefly to prepare and sign an affidavit stating that she had no records on this student other than what is contained in the parent's evidence binder at PD 320-322. (PD 737).

assistive technology training and teaches in an AT certification program at the [redacted]. [redacted] has a certificate in clinical competence in speech/language pathology, is a licensed speech/language pathologist in Illinois, and holds a Type 10 special education certificate. (PD 711-715). As part of her evaluation, [redacted] reviewed the student's records, including IEPs, district speech/language evaluations, hospital records, and the private neuropsychological evaluation results.

[redacted] estified that each of the tests administered in the district's recent speech/language evaluation is out of date. The use of outdated tests does not invalidate the district's results, but the witness questioned why outdated assessments had been used. She did not observe any of the unusual behaviors reported by [redacted] during her evaluation and thus could not comment on those behaviors. [redacted] testified that the student's PPVT-III and EVT scores are significantly below average or at the end of low average on all the district's assessments, which indicates that [redacted] is struggling with expressive language skills.

Although it is troublesome that the district used outdated assessment tools, there is no evidence showing that doing so invalidated the test results. There is also no evidence showing that the student's unusual behaviors during the April evaluation invalidated the test results. While [redacted] opined that [redacted] probably would have done better on the tests had they been given last year - in other words, before [redacted] was diagnosed with schizophrenia - there is no evidence showing that her behavior during the evaluation or the new psychiatric diagnosis invalidated the results. [redacted] did not assess the student's written language on the OWLS, but again the evidence does not show that the evaluation was inadequate because of this omission. Based on the foregoing reasons, the parent has not shown that the district failed to fully evaluate the student's speech/language needs during the relevant time period.

[redacted] has been employed by the district as a school psychologist for the past eight years. She has a master's degree in school psychology and is a certified school psychologist. She provides direct services to [redacted] and recently evaluated her academic and cognitive functioning. [redacted] used the KTEA-II to assess the [redacted] academic achievement; however, she did not administer all the instrument's subtests. She testified that she did not administer the reading related subtests because she could get the same information from subtests she had given. These subtests include phonological awareness, nonsense word decoding, word recognition fluency, decoding fluency, associational fluency, and naming facility. (PD 755). She did not give the Nonsense Word Decoding subtest because "nonsense words are not used in school." She also did not administer the oral language portion of the test. [redacted] determined that [redacted] has difficulty with basic word attack skills and phonetic skills. Her reading comprehension skills are "well below average." The school psychologist stated that it is difficult to tell if [redacted] has a learning disability because of her recent diagnosis of schizophrenia. Even though prior evaluations had determined that [redacted] has a learning disability, [redacted] opined that a person could have a learning disability at one time and later not have a learning disability. As to the student's cognitive abilities, [redacted] stated that [redacted] scores in processing speed, perceptual reasoning, and working memory could be affected by schizophrenia or the medication that she is currently

taking. [redacted] testified that because [redacted] academic achievement is higher than one would predict from her full-scale IQ scores, she must be "outsmarting her brain." Since that is not possible, she said there must be some other explanation of this discrepancy, although she did not offer one.

[redacted] testified the if the student's scores on the KTEA are consistent, she has made academic progress. She further testified that it is possible to compare the KTEA-Brief to the KTEA-Comprehensive. In 2007, [redacted] standard scores were 91 in reading and 69 in math. In 2009, she received standard scores of 76 in reading comprehension, 84 in letter-word recognition, 52 in math concepts and applications, and 58 in math computation. [redacted] testified that [redacted] did not make progress because her scores were still within the deficient range.

[redacted] conducted an independent psychological evaluation of the student. [redacted] is a neuropsychologist and has a Ph.D. [redacted] in clinical psychology. She has been a licensed clinical psychologist since 1997. She maintains a private practice in neuropsychological and educational evaluations of children, adolescents, and young adults. (PD 720-726). In addition to the formal testing she conducted, [redacted] also reviewed the student's records, including IEPs and teachers' progress notes.

[redacted] testified that the KTEA - Brief is a screening measure that gives a "ball park idea" of a student's level of academic functioning. It does not tease apart different skills such as word recognition and reading comprehension. The 2007 psychological report only briefly discussed the student's academic functioning and, in doing so, relied on grade equivalency scores. According to [redacted], "every academic test manual" contains a warning that grade equivalencies can be misinterpreted. She testified that a grade equivalency score does not mean that a student is performing at a certain grade level; rather, it means that a student's raw score on a test is at a particular level. A student's progress cannot be measured by grade equivalency scores because these scores cannot be compared across the years. Grade equivalencies can be useful to teachers in determining the level of instruction.

Although [redacted] opined that the district's 2009 academic assessment was more thorough because it used the comprehensive KTEA, she stated that the evaluator had not given [redacted] the complete KTEA. The student was not given the oral language subtests and the reading related subtests. The oral language subtest measures academic language, which is different than the expressive/receptive language skills assessed by speech pathologist. The letter and word recognition subtest, which the student was given, uses irregular words such as "people" and "said" and thus measures sight word recognition, not decoding skills. Because the district did not administer the reading related subtests, the student's skills in phonological awareness, reading fluency, decoding, and visual processing were not assessed. [redacted] testified that all these are necessary skills for reading. Also, the district did not assess the student's written expression, even though she showed a significant weakness in this area. [redacted] opined that the district should have conducted further testing to determine why there was a significant discrepancy between the student's KTEA reading and math scores. Further testing also would help develop interventions for teaching

the student. As to the student's WAIS-IV scores, [redacted] opined that because there was a "very significant" discrepancy between the student's scores in verbal comprehension and perceptual reasoning, her full scale IQ "does not tell us the whole story." Because of the student's complex medical history coupled with the results of the WAIS, [redacted] believed that [redacted] should have been given more extensive testing.

[redacted] used the WIAT to assess [redacted] academic performance. The WIAT is given at a student's grade level to begin, but a student must answer at least one question correctly to stay at that level. [redacted] could not answer any 11th grade questions, and [redacted] had to "backtrack" to the 8th grade level to begin the assessment. Even at that level, [redacted] had a "very, very hard time." The student's standard scores were 76 (5th %ile) in reading, 59 (0.3%ile) in reading comprehension, 85 (16th %ile) in pseudoword decoding, 66 (1st %ile) in spelling, 51 (<0.1st %ile) in written expression, and 54 (<0.1st%ile) in numerical operations. She said that [redacted] reading comprehension score was "extraordinarily poor" and significantly lower than her score on the KTEA. She opined that the difference might be due to the different structure of the two tests. The WIAT calls for open-ended responses to questions, which was difficult for the student. [redacted] selected the Key Math to assess the student's math skills because it measures separate math skills. [redacted] has "very poor" basic math skills. She used her fingers a lot during the test, which was very time consuming. Her math skills are not automatic. [redacted] scored below the 1st %ile in all the math subtests except addition, in which her score was at the 1st %ile. [redacted] stated that the student's reading fluency score of 62 (1st %ile) on the TOSWRF was an underestimate of her ability because she lost time. The student also was given the WISC-IV Integrated for purposes of comparison. It was given in a non-standardized way because [redacted] is three months out of norms. [redacted] opined that [redacted] did better on this test because it uses a multiple-choice format.

[redacted] stated that [redacted] showed frequent "attentional lapses" during her assessment of the student. She "almost froze" one time for over a minute but came back when the examiner called her name. [redacted] stated that these lapses are not normal attention problems. She also observed [redacted] very quietly whispering to herself two or three times while she was waiting to begin a task. [redacted] did not whisper during the testing. These are concerning observations, but there was no testimony showing that these behaviors invalidated the assessment results. [redacted] testified that because [redacted] had significant deficits before her recent diagnosis of schizophrenia, her learning deficits are unrelated to her current psychiatric diagnosis. Her disabilities, however, are now complicated by the schizophrenia. Based on her evaluation, [redacted] determined that [redacted] has a developmental reading disorder, a developmental arithmetical disorder, and a specific developmental learning difficulty in written expression. Her CAPD is a neurological disorder that has a "pervasive" impact on all academic areas and affects her performance across the board.

The above testimony raises many concerns about the district's evaluation. [redacted] explanation for not giving the entire KTEA shows a lack of understanding about the structure of the test and what the subtests measure. Based on [redacted] explanations, the subtests were necessary to measure the basic skills that comprise reading - decoding, fluency, and phonological awareness. Moreover, the district did not assess written expression, which is a longstanding deficit for this student. Comprehensive testing has two

purposes: to determine the nature and extent of a student's disabilities and to provide information for teaching strategies. A full, individual evaluation is required by statute and is necessary so that a district can provide consistent, adequate educational programming for a student. *Board of Education of Oak Park & River Forest High School District Number 200 v. Illinois State Board of Education,* 21 F. Supp. 2d 862, 875 (N.D. Ill. 1998). The undersigned finds that the district's psychological evaluation was not appropriate.

The district's occupational therapist did not testify at the hearing. The documentary evidence shows that the district conducted an occupational therapy evaluation of the student on March 12, 2009. The evaluator administered the VMI. The student achieved a standard score of 66 on the VMI, with an age equivalency of 8 years, 4 months. Based on this assessment, the examiner determined that [redacted] has a delay in visual motor skills. Despite this deficit, she concluded that [redacted] is not eligible for OT services because she has legible printing skills, can write her name in cursive, and uses AT to assist in written communication.

[redacted] conducted an independent occupational therapy assessment of the student in June 2009. [redacted] has a master's degree in occupational therapy and is currently in an OT doctoral program. She is licensed in Illinois and also certified in the Sensory Integration Praxis Test. Additionally, she has a certificate in therapeutic listening/Samonas and a multi-disciplinary certificate in child and adolescent mental health. She works part-time as an occupational therapist for [redacted] and also has a private practice. [redacted] assessment consisted of reviewing the student's medical and academic records, interviewing the mother, and assessing the student. She testified that [redacted] has a significant medical history, which includes premature birth, a bleed on the brain, mid-temporal lobe damage, early motor delays, and respiratory problems. [redacted] noted that the mid-temporal lobe is the area of the brain that controls language and sequencing.

[redacted] testified regarding her review of the district's March 2009 OT evaluation. She said that while the VMI is a useful screening tool, more specific tests are necessary to fully identify a student's problems. She opined that [redacted] standard score of 66 on the VMI is very low. Her 2009 VMI age equivalency score of 8 years, 4 months is seven to eight years below her chronological age. In 2002, [redacted] had achieved a VMI age equivalency score that was only two years below her chronological age. [redacted] testified that the evaluator did not administer the VMI subtests for visual perception and motor coordination. Although it is up to a clinician's "therapeutic judgment" whether these two subtests should be given, [redacted] stated that less information is gathered when these subtests are omitted. [redacted] reviewed the student's VMI answer sheets and noted that [redacted] has problems crossing the midline, which impacts her ability to write and type. She also has poor spatial relationship skills, which impacts her math and organizational skills. [redacted] testified that the VMI did not assess the student's ability to generate text on her own, which is a more complex task than copying sentences.

[redacted] assessment included the Bruininks-Oseretsky Test of Motor Proficiency ("BOTMP"), Adult/Adolescent Developmental Test of Visual Perception, Lowenstein Occupational Therapy Cognitive Assessment of Adults and Adolescents, Adult/Adolescent Sensory Profile, and a task analysis. The student's visual processing score on the BOTMP

was in the first percentile [redacted] testified that this low score indicates that [redacted] will have great difficulty picking out a word in sentences, which is necessary for reading. On a test of categorization/organizational skills in which the student was asked to place various objects into categories, [redacted] placed a rake in the transportation category. [redacted] described this as a "startling" response. When she asked [redacted] to explain her reasoning, the student was unable to do so. Based on her evaluation, [redacted] determined that [redacted] has deficits in visual and auditory processing, organizational skills, and bilateral coordination. She also has "huge" sensory problems. [redacted] testified that [redacted] sensory profile matches that of an adult with schizophrenia. [redacted] is a "complex individual," both educationally and behaviorally. [redacted] recommended that [redacted] receive 60 minutes/week direct OT services and 60 minutes/week consult OT services.

The foregoing evidence supports a finding that the district's OT evaluation was not adequate. The district OT assessment did not evaluate the student for sensory integration deficits, which the evidence shows is a major area of deficit for this student. The unexplained significant discrepancy between the student's VMI scores in 2002 and 2009 calls into question the district's conclusion that the student's need for OT had been met.[6] Finally, the decision of the district's OT to omit the VMI visual perception and motor coordination subtests resulted, in this instance, in a critical lack of information about this student. The undersigned found [redacted] testimony not only credible but also quite helpful in explaining many of the student's deficits. Her testimony stands in stark contrast to the district's cursory statement that the student's OT needs are met because she has legible printing, can write her name in cursive, and uses AT to assist with written communication.

An IEP team must consider whether a student requires AT devices and services to increase, maintain, or improve her functional capabilities when it develops the student's IEP. 20 U.S.C. §§1401(1)(A), 1414(d)(3)(B). The district first evaluated [redacted] AT needs in 2007. She had been referred for the evaluation because of problems in writing mechanics and organizing the content of her writing. The evaluator determined that the student should use a portable word processor for her written assignments, a portable speaking dictionary, and a software grammar program. In Spring 2009, the [redacted] case manager completed an AT referral form, which notes that [redacted] handwriting is consistently illegible. It also indicates that she had only intermittent success with the portable word processor and no success with typing notes on a computer or using a graphic organizer. The referral does not indicate that [redacted] has problems with written expression. The parent consented to the AT evaluation on March 12, 2009. (PD 329-332). [redacted] coordinator of the district's AT department, testified that she had not seen the March 2009 referral form prior to the date of her testimony. She stated that it was not in the student's AT file. It is undisputed that the district did not re-evaluate the student's AT needs in 2009 despite the parent's request, and signed consent, to do so.

[redacted] testified that although the district's 2007 AT evaluation had looked at the student's ability to write dictated sentences and copy sentences, it did not

[6] There is no documentation in the record that the district conducted any OT evaluations other than those in 2002 and 2009. The OT progress notes do not provide any VMI scores or assessment data other than what is included herein. (PD 280-290).

require her to generate sentences herself. She opined that the 2007 evaluation showed that [redacted] took a long time to copy sentences and made many errors when doing so. [redacted] testified that the AT recommended in 2007 does not address [redacted] deficits in expressive vocabulary, visual and auditory processing, written expression, and spelling. [redacted] testified that the student has limited typing ability and so the Alpha Smart is of little use to her. The device also does not address her deficit in written expression.

The independent evaluator had the student try several specific AT devices selected to target her deficit areas. For example, [redacted] had the student try a talking word processor and a word prediction program. She said that [redacted] "really liked" these devices and was able to summarize an article using them. When the student tried a writing program with a flexible spelling feature, she was able to recognize the right word even when she had spelled it incorrectly. [redacted] was very motivated by the AT equipment. [redacted] recommended the following AT equipment for [redacted] a laptop computer with a screen reading program such as Kurzweil or Read Out Loud; a talking word processor writing program such as Write Out Loud; a word prediction program along with her Franklin Speller, and a graphic organizer such as Draft Builder. She also recommended that [redacted] use a computer program, such as Earobics or Fast Forward, to help with her CAPD, as these programs teach students how to process auditory information. The student could use Earobics on her own, after she receives training in the program. The program is designed to become increasingly more difficult as a student progresses. [redacted] stressed that the student, her parents, and school staff must all be trained on all AT devices that the student uses. The student's IEP must contain clear AT goals. She recommended that [redacted] receive 30 to 60 minutes/week in AT services initially. Eventually, the AT should be integrated into [redacted] curriculum, at which point she will need 30 minutes/week of AT services.

The undersigned finds [redacted] testimony credible, both as to the district's 2007 evaluation and recommendations and [redacted] current AT needs, with one exception. The district's 2007 AT evaluation did require the student to generate sentences on her own. She wrote three sentences on music. The problem with this brief writing sample is that the evaluator's only conclusion was that it contained two errors, one in spelling and the other in capitalization. The evidence shows that the AT equipment given to the student has been little help to her. At the time of the 2007 evaluation, [redacted] typed only with her right hand. Despite the Alpha Smart, the student's teachers still expressed concern about her difficulty copying notes, handwriting, and organizational skills. The math teacher testified that the device was no help in math, which requires numerical notations. The AT referral prepared by [redacted] states that the Alpha Smart had only been intermittently useful. The other devices were not successful. (PD 331). There is no competent evidence showing that [redacted] benefited from the AT devices recommended in the 2007 evaluation. The independent AT evaluation, on the other hand, was comprehensive and considered all the student's deficits in its recommendations. For the foregoing reasons, the undersigned accepts [redacted] AT evaluation and recommendations and finds that the district did not evaluate the student's AT needs in a full, timely manner.

2. *Whether the district failed to provide an appropriate IEP that was based on an appropriate and individualized evaluation and included related services of sufficient intensity, assistive*

technology, and a transition plan to meet the student's needs between December 9, 2006 and the conclusion of the hearing in this matter

The parent testified that [redacted] did not make progress in ninth grade. She said that her daughter's grades did not reflect the information in the IEP report cards and were contrary to what the teachers told her about [redacted] performance. [redacted], the student's ninth grade teacher, testified regarding her experience with [redacted] She taught writing, English, and math in a self-contained classroom. She testified that while in ninth grade, [redacted] performed at a third grade level in math and reading. She testified that [redacted] "probably" met her language arts goal but did not recall if [redacted] had met the math goal. She was "uncertain" whether the student had met her other benchmarks except for biology, which [redacted] had "probably not" met because the class content was very difficult. Despite her uncertainty about the student's actual progress, she testified that [redacted] made academic progress in 2006-07. The undersigned does not find the majority of [redacted] testimony helpful due to inability to recall pertinent information about the student. Her assurance that the student had made academic progress is puzzling since she could not recall whether [redacted] had met her benchmarks. Her statement that [redacted] was performing at a third grade level, however, is consistent with documentation in the record.

The evidence shows that at the time of the January 2007 IEP meeting, [redacted] was failing English and biology and had a D+ in pre-algebra. In response to the mother's concerns, the district increased [redacted] time in a self-contained classroom from 420 minutes/week (math and English) to 630 minutes/week (math, English, and writing). Her time in an inclusion classroom was increased from 300 minutes/week (language arts and science) to 630 minutes/week (science, social studies, and reading). What the district did not do was revise the student's math, writing, and reading goals and benchmarks to address the noted lack of progress. The January 2007 goals are essentially the same as their September 2006 counterparts, with the quarterly mastery level reduced. The same modified grading scale is utilized to assess the student's work. The most significant change in the IEP is the number of modifications and accommodations, which dramatically increased from four to 20.

After the January meeting, the district conducted a special re-evaluation, which determined in part that [redacted] academic skills ranged from two years below grade level to significantly below grade level. Her adaptive skills ranged from near age appropriate to deficient, with socialization skills being the least developed. Despite this information regarding the student's deficiencies in academic skills, the March 2007 goals for writing, reading, and math are essentially unchanged, except that the goal mastery level is reduced from 75% accuracy to 70%. Three new accommodations are added.

A student's IEP must be tailored to her unique needs in order to provide a free appropriate public education. *Heather S. v. State of Wisconsin*, 125 F.3d 1045, 1055 (7th Cir. 1997). The goals must be measurable and contain information about the student's level of performance. *Knable v. Bexley City School District ("Knable")*, 238 F.3d 755, 769 (6th Cir. 2001); *Evans v. Board of Education of the Rhinebeck Central School District ("Evans")*, 930 F. Supp. 83, 97 (S.D. N.Y. 1996). In *Evans*, the court found that even though the IEPs

included the student's scores on IQ tests achievement tests, they were inadequate because they failed to establish the student's *individual* needs and did not provide specific strategies for evaluating progress or determining effective teaching strategies. *Evans* at 95-97 (emphasis added). The student's January and March 2007 IEPs fall woefully short of this standard. For example, the March biology PLOP states that [redacted] has "difficulties understanding the difficult biological concepts." In writing, she "struggles with putting her ideas down on paper," while in reading she comprehends at an upper third grade level. None of these statements provides a description of [redacted] unique needs. The goals and benchmarks appear to generically mirror the state standards. They contain no information pertaining to the student's individual needs, nor do they provide specific teaching or evaluation strategies. Finally, even though the district knew in March 2007 that [redacted] was not making adequate progress, it again did not revise her IEP goals, as required by the IDEA. 20 U.S.C. §1414(d)(4) (A)(ii).

Because the mother was dissatisfied with her daughter's progress at the charter school, she enrolled [redacted] in her neighborhood high school for tenth grade. The mother testified that the student's schedule was changed multiple times at the beginning of the 2007-08 school year because of computer problems. She stated that [redacted] was placed in all regular education classes for the first several weeks of school.

[redacted] the student's case manager at [redacted] testified regarding the student's two years at [redacted] She testified that [redacted] was placed in all inclusion classes when she entered [redacted] According to [redacted] this change in placement happened because all the IEP goals indicated "collaborative teaching in a regular education classroom." The placement grid in the March 2007 IEP, however, requires placement in self-contained classes for core academic classes and an inclusion setting for other academic subjects. It is unclear why the district chose to follow the goal information rather than the placement grid, which clearly specifies which subjects are to be taught in a self-contained class and which in an inclusion setting.

The parent persisted in her efforts to get her daughter placed in what she believed was the appropriate setting and finally, in December 2007, [redacted] again received services in both a self-contained room and an inclusion setting. However, her total number of special education minutes was reduced from 1,311 minutes/week to 995 minutes/week. In addition to a reduction in service minutes, the classes in which [redacted] received instruction in a self-contained room were changed. Her December 2007 IEP placed her in a self-contained room for math and science, whereas she had previously received writing, English, and math in a self-contained room. (PD 71, 108; SD 53, 88).[7] The revised IEP did not update the student's goals to include the courses she was actually taking at that time. This meant that her ninth grade goals for reading, writing, math, biology and social sciences were to be applied in her tenth grade physical education, earth science, U.S. History, and geometry classes. Finally, and perhaps most importantly, the December 2007 IEP adopted a new modified grading scale, which significantly lowered the scale used to grade [redacted] work. [redacted] testified that in December 2007, the school's usual grading scale was 95 to 100 for an A, and 75 was

[7] Apparently the charter school had longer school days as the total instructional minutes/week was 2010, whereas [redacted] provides 1500 minutes/week of instruction. (PD 71, 108).

the cutoff for failing. Under the grading scale developed for [redacted] 76 and above was an A, 66 to 75 was a B, 56 to 65 was a C, 46 to 55 was a D, and 45 and below was failing. This scale allowed the student to receive an A for work that would be failing for a regular education student. [redacted] testified that the modified scale was developed to increase the student's grade point average. Undoubtedly the scale accomplished its purpose; but in doing so, it obfuscated any verifiable way to ascertain if [redacted] was progressing academically.

The only teacher who testified regarding the student's 10th grade year was [redacted] the student's geometry teacher.[8] [redacted] has been a special education math teacher at [redacted] for eleven years. She taught the instructional geometry class in 2007-08. [redacted] testified that [redacted] began tenth grade in a geometry inclusion class and was transferred to the instructional class in November per teacher's request. She testified that [redacted] did "quite well" in her class. The student also attended Saturday math tutoring. [redacted] used the March 2007 modified grading scale (A 85-100, B 75-84, C 65-74, etc.) rather than the December 2007 modified scale because she did not feel the student needed the extra help. Students in the instructional class use the same textbook as the regular geometry class and then learn "to the best of their ability." She testified that [redacted] was at a second grade math level - her addition and subtraction skills were not strong, and she needed to use a calculator. [redacted] occasionally read the text to the student and copied work for her or limited the information that [redacted] had to copy. [redacted] was given extended time on all tasks. She had minimal homework of approximately two to five problems. [redacted] testified that she did "anything that would make (the student) successful." She said that the student was successful until Fall 2008.

[redacted] testified regarding her weekly progress reports on the student. In January 2008, she was concerned about [redacted] participation and overall performance. The student had difficulty copying information from the board, taking notes, and reading problems. [redacted] could not read the student's handwriting and said that [redacted] could not always read her own handwriting. [redacted] graded her students based on test scores, daily quizzes, homework, participation, and extra credit. [redacted] lowest area was test scores. In March 2008, [redacted] began to note changes in [redacted] She was distracted and had trouble getting to class. Her organizational skills declined. There was no explanation for these changes, but by May the teacher reported that [redacted] was doing better. [redacted] helped the student make a schedule for her locker so that she would not be late to class and stressed the importance of organization for the student's success.

The student's IEP was not revised for 11th grade. This meant that when she began her new classes - advanced algebra with trigonometry, chemistry, U.S. history, Spanish, and British Literature - there were no IEP goals or benchmarks to guide her year's work. The last IEP with academic goals was developed in March 2007, when [redacted] was in ninth grade. [redacted] testified that the IEP was not updated because the district's tracking system had listed December 3, 2007 as an IEP revision date. To her, this meant that the next annual review was due in December 2008. She was unaware that [redacted] last IEP goals, which had been developed on March 27, 2007, had expired on March 28, 2008. The IEP team did not

[8] The numerous problems surrounding securing testimony from district staff were memorialized during the hearing and are part of the transcript. Thus, they are not recounted here.

develop a new IEP at the December 2008 IEP meeting because they focused on the student's psychiatric hospitalization. [redacted] testified that the service provider developed the IEP academic goals and completed the other IEP pages after the December meeting.[9] The speech pathologist and school psychologist had prepared their goals before the meeting, and those are included with the IEP. The mother was not given a copy of the December 2008 IEP because it was a "draft" document.

[redacted] testified that the student's performance began to decline in September 2008. She noted dramatic changes in [redacted] behavior, including being tardy to class, agitation, and an obsession about bugs flying into the room. [redacted] also had difficulty focusing and concentrating. She was unable to complete her homework. These observations are memorialized in [redacted] progress reports, which she gave to [redacted] to take home to her parents. Unfortunately, [redacted] did not know that the student was not giving the progress notes to her mother until November 26th, when the mother told her during a parent/teacher conference that she had never seen the reports. Based on [redacted] observations, the mother agreed to consult with the student's psychiatrist about the changes in [redacted] behavior. [redacted] prepared a letter for the parent to give the doctor. The letter reported that [redacted] had been shaking and trembling, could not push the buttons on her calculator, and had virtually no memory. The next day, [redacted] was psychiatrically hospitalized.

When [redacted] returned to school in April 2009, [redacted] observed her whispering to herself. She tried to do her work but had trouble focusing enough to do so. Her organizational skills had declined from the prior year. [redacted] not only had difficulty completing her individual work but also no longer worked well in a group setting. [redacted] testified that in tenth grade [redacted] had been one of the more productive group members. She reported that [redacted] was "very quite" in class in the spring 2009, whereas the prior year she had talked to the other students. [redacted] stated that [redacted] would perform better if she could "spend all her time" with the student.

[redacted] has taught social studies at [redacted] for the past four years. He has a master's degree in teaching and is a certified teacher in Illinois. Although he is not a certified special education teacher, he does have 50 observation hours in special education. The student was in his American History class this past year. The class is taught in an inclusion classroom, by both a regular education and special education teache[redacted] taught [redacted] for only two weeks in the fall, as he went on paternity leave until December. The student returned to his class in April, when she returned to school. He reviewed several assignments he had given the student in September, stating that [redacted] had received a failing grade on all the work. The assignments were all reading and writing assignments. Since returning to his class in April, [redacted] has completed only a few assignments to the level that he requires. She is distracted and has a hard time staying on task. She has walked out of class twice without permission. In May, she changed her seat so frequently that he finally assigned her a specific seat for the rest of the year. [redacted] has never seen [redacted] IEP. He does not know what CAPD is and was unaware of the student's speech/language deficits or visual/

[9] A service provider is a special education teacher who is assigned to implement a student's IEP. In this case, the service provider was also responsible for sending out the progress reports and ensuring that staff completed the reports. Both parties listed the service provider as a witness, but she did not appear.

motor problems. He said that [redacted] is "out of it" on a fairly consistent basis. He described her as "slow speaking in getting her point across." She continues to have difficulty with organization skills, which impacts her academic work.

The undersigned finds both witnesses credible, and [redacted] particularly so. Her concern and care for [redacted] is clear, and she has obviously given the student a great deal of time and attention. She is the only teacher who conscientiously and routinely completed the weekly report cards required by the student's IEP. Her careful and thoughtful observations prompted the mother to seek immediate medical intervention for [redacted] deteriorating mental state. It is clear from her testimony that [redacted] benefited from this teacher's attention and care. The undersigned also does not doubt [redacted] statements about the geometry that she taught [redacted] However, given the fact that the student still has difficulty with basic math operations and performs below the first percentile in math computation and concepts, it is questionable that she received more than minimal beneficial from studying geometry and algebra. Based on [redacted] testimony, there is no evidence showing that she benefited more than minimally from his history class.

If an IEP with inadequate PLOPs and unmeasurable goals and objectives violates the IDEA, then certainly an outdated IEP is a more egregious violation. The evidence shows that the student did not have an IEP for tenth or eleventh grade that addressed the academic courses that she took during those years. Her tenth grade "revised" IEP, which was developed on December 3, 2007, has one goal, which addresses independent functioning. The IEP team did not meet again until December 1, 2008, and did not develop an IEP at that meeting. A "draft" IEP was developed outside of the IEP meeting, without input from the parent or teachers. A "draft" IEP is not an IEP for purposes of determining whether the district has provided a free appropriate public education. *Knable*, 238 F.3d at 767. Finally, an IEP must be based on a full assessment of the student's disabilities, as the district "cannot properly address problems which they do not understand." *Board of Education of Oak Park & River Forest High School District Number 200 v. Illinois State Board of Education*, 21 F. Supp. 2d 862 (N.D. Ill. 1998). The undersigned has already found that the district's 2007 evaluation was not appropriate; thus, the IEP did not address all the student's educational needs.

In addition being outdated, the IEPs that [redacted] staff were supposedly working under contained extensive accommodations such as reducing the amount of work the student did, modifying vocabulary, and reading work aloud to the student that it is impossible to ascertain what, if any, academic progress [redacted] made between September 2007 and June 2009. The modified grading scale, which gave the student an "A" for work that normally would receive a failing grade, makes it impossible to ascertain if her skills did progress over the two years in question. The undersigned finds that neither the student's report cards nor the fact that she was promoted each year are reliable indicators of academic progress. Finally, there is the testimony of the district's school psychologist, stating that [redacted] did not make progress because her scores were within the deficient range.

The parent alleges that the student's transition plan was inadequate and therefore denied her a FAPE. The first IEP to be in effect when a student turns 16 must contain a

transition plan. 20 U.S.C.§1414(d)(1)(A)(i)(VIII). The transition plan must contain "appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills" and transition services, including courses of study, to help the student achieve the transition goals. 20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa), (bb).

The district developed the student's first transition plan at the January 2007 IEP meeting. The goals - to "possibly" attend a community college or trade school, to continue to go to church and participate in church activities, and a statement that [redacted] is uncertain about what employment she would like - fail to meet the statutory standard. None of these goals is measurable, and none is based on an appropriate transition assessment. The activities to help the student achieve the transition goals suffer from the same fatal defects as the goals. When the IEP team reconvened on March 27, 2007, it added social work services as a related service in the transition plan. No other changes were made to the plan. The social work goal calls for the student to identify one new friend and five positive characteristics about herself. The transition plan was revised in the "draft" December 1, 2008 IEP. As was the case with the other "draft" goals, the mother had no input into the goal. The new goals, which are for the student to increase her career awareness and vocational skills and improve her general employability skills, are again unmeasurable. The student's first transition plan indicated that staff would conduct a career evaluation interest inventory. There is no evidence showing that such an evaluation was ever conducted. The mother testified that [redacted] has never had such an evaluation. The transition plans in the IEPs dated January and March 2007 and December 2008 do not meet the standard set out in the IDEA.

There are several differences between the IEP developed in May 2009 and those reviewed above. The student is now identified as having both an emotional disorder and a learning disability. The IEP contains a FBA and BIP that address the student's self-stimulating behaviors, poor time on task, and poor peer interactions. Several goals have PLOPs that are descriptive and provide information about the student's actual functioning level. For example, the new independent functioning PLOP states that [redacted] has difficulty telling time on an analog watch. Her math PLOP reports that she relies on visual cues and has difficulty determining the correct order of operations. Although some of the goals are measurable and tied to the PLOPs, several others are not. The reading goal states that the student will read, recognize, write, listen, speak and use a variety of resources to communicate effectively. This is neither measurable nor tied to the PLOP, which states that [redacted] has trouble decoding and has diminished reading comprehension skills. The transition plan requires [redacted] to complete a career interest inventory, her service learning hours, and a job shadowing experience. The student's placement is 920 minutes/week in a self-contained classroom for language arts/reading, math, science, and social science. She is in regular education for world language, music, physical education, and art. Related services consist of 30 minutes/week of speech/language therapy, 45 minutes/month of psychological services for independent functioning, 60 minutes/month of social/emotional support, and consultative nurse services. The question, then, is whether this IEP provides the student a free appropriate public education in the least restrictive environment. The parent asserts that it does not.

The student's current and past mental health providers testified regarding their recommendations for educational placement. [redacted] is a special education teacher at the [redacted] inpatient psychiatric unit. She has a master's degree in special education and is a certified special education teacher in Illinois. She was [redacted] teacher while the student was hospitalized at [redacted]. She stated that [redacted] needs to be in a low-stress environment with staff trained to work with a student with schizophrenia. If the student is subjected to increased stress, she could regress in all areas of functioning. Although [redacted] has had no contact with the student since her discharge from [redacted] she has had contact with the mother. She recommended placement in a therapeutic day school that has a small teacher/student ratio.

[redacted] is a licensed clinical professional counselor in Illinois. She currently provides individual counseling to the student. [redacted] attended the April 2009 IEP meeting. She testified that [redacted] needs placement in a therapeutic day school for several reasons. [redacted] mental status and ability to make decisions fluctuate on a daily basis. She has auditory hallucinations and may have trouble making safe decisions when she is experiencing such hallucinations. She opined that a 1:1 aide is not trained in mental health work and thus cannot provide adequate assistance for [redacted] She stated the student would have difficulty in a large school that requires changing classes and has lots of activity and students.

[redacted] is the student's treating psychiatrist. He is a licensed psychiatrist in Illinois. He also recommended placement in a small therapeutic day school. He expressed concern about the student's poor decision making skills and stated that she can be easily preyed upon or manipulated by others. He also is concerned about her lack of academic achievement.

[redacted] recommended placement is a communication disorders classroom, stating that CAPD is the student's overarching deficit. It impacts her language and learning. She does not have the profile of a classic learning disability, although there is variability in her scores. [redacted] testified that the student needs an educational program that addresses language in an integrated approach. Those who work with [redacted] must understand CAPD and how to communicate with the student. [redacted] is unable to understand abstract concepts. She needs to fill in the foundation of basic skills - reading, writing, and math. She needs a classroom with a small student/teacher ratio.

[redacted] stressed the necessity for staff who are trained in working with students with mental illness. She expressed safety concerns about the student and noted that the student's unusual behavior during the recent speech/language assessment was similar to what [redacted] had described before the student was hospitalized last November. She cautioned that [redacted] is newly diagnosed with schizophrenia and "it does not take much for things to go awry." She stressed the need for an integrated approach of services.

The principal of [redacted] testified regarding [redacted] educational program. The mother contacted [redacted] after reading about its program on the ISBE approved schools list. She and the student visited [redacted] in the spring [redacted] testified that [redacted] has worked successfully with students who have learning disabilities, CAPD, and

schizophrenia. She described the school as a small, nurturing environment. The school does not have students with severe behavioral problems. [redacted] provides an array of related services including speech/language, OT, vocational/transition, and social work. The school has a behavioral specialist and a psychologist who is "available at any time." All of the teacher's aides are certified teachers, and each class has a teacher's aide. The school has a 1:3 teacher/student ratio. Assistive technology is available in each classroom. The school has a written language program, a social skills program, and a school-wide organizational system that is implemented within each classroom.

[redacted] testified that [redacted] needs a placement where she feels safe and where her needs will be addressed. The student needs access to a social worker and psychologist. Although [redacted] has these services, they are not available on a daily basis. [redacted] testified that a "good aide" could be useful, but schools cannot always choose their aides. [redacted] stated that there is not an aide for the student in her class, although someone does escort [redacted] between classes. [redacted] testified that she has not received a copy of the May IEP and did not know about the behavior intervention plan. She has not been asked to provide behavioral data on the student. [redacted] testified that [redacted] needs a small, structured classroom.

The district asserts that the hearing officer must defer to its educational professionals and their recommendations as long as their judgment is reasonable. *Alex R. v. Forrestville Valley Community Unit School District No. 221*, 375 F.3d 603 (7th Cir. 2004); *School District of Wisconsin Dells v. Littlegeorge*, 295 F.3d 671, 676-77 (7th Cir. 2002). At issue in *Wisconsin Dells* was whether the district's decision to provide homebound instruction to a student with severe autism was reasonable. The student had been placed in a residential facility, discharged, and placed in a public school. In the public school, the student became so disruptive and violent that he had to be placed in another specialized school, where his problematic behaviors continued. The district was concerned that returning the student to public school again would ruin his chances of ever being able to get along with his peers and so recommended homebound placement. Based on the student's history of being unable to attend public school and his violent behavior, the court found the district's decision to provide homebound instruction reasonable.

In this matter, however, the issue is very different. [redacted] is a student with significant academic deficits and numerous other needs. She has been recently diagnosed with schizophrenia and is under medical treatment for her mental illness. Her treating professionals have raised concerns about her safety in a large public school because of her fluctuating mental state, auditory hallucinations, and poor decision-making skills. The recommendations of independent evaluators include significant related services, a classroom with a small student/teacher ratio, staff trained in working with students with schizophrenia and CAPD, and an integrated approach to educational services. Independent evaluators who recently assessed the student noted unusual behaviors including a "startling" response to an assessment question, whispering to herself, and frequent "attentional lapses." One of the student's current teachers report that the student appears "out of it" on a fairly consistent basis, is slow speaking, and has difficulty with organization skills. That teacher recommended placement in a small, structured class. The teacher who has had the most

experience with the student has observed the student whispering to herself and having trouble focusing enough to get her work done. She reports that the student is very quiet and does not work well in a group setting. Given these observations and the student's newly diagnosed schizophrenia coupled with her other disabilities, the undersigned finds that the district's placement is not reasonable. The placement in a self-contained classroom for core academic subjects is less restrictive than the student's prior placement, which the undersigned has determined did not offer her a free appropriate public education. And, as above, the May 2009 IEP was not based on a full individualized evaluation. It therefore follows that it cannot offer a FAPE for this student.

Whether [redacted] benefited from the related services provided by the district is analyzed separately. There was no testimony regarding the student's speech/language services prior to October 2007. Documentary evidence from December 2006 to October 2007 consists of IEP goals and benchmarks. There are no progress notes or updates on the goal sheets to indicate whether the student met her benchmarks. Without such evidence, it is impossible to determine if the student made reasonable progress in this time period.

[redacted] testified that the student made progress on her IEP goals and benchmarks since she began working with the student in October 2007. Her progress notes support her testimony. (PD 738-742, 744-748). It is also worth noting that the speech pathologist is the only staff person who recognized that the student's IEP goals had expired in Spring 2008 and took the initiative to update the goals outside of a formal IEP meeting. Based on this evidence, the undersigned finds that did benefit from her speech/language services between October 2007 and the end of November 2008. The student was not in school from the end of November 2008 to mid-April 2009 and so did not receive any speech/language services during that time. [10]

According to [redacted] the speech/language goals she developed in April 2009 were draft goals, based on her re-evaluation of the student. The goals were developed prior to the CAPD evaluation. She testified that addressing the student's CAPD should take priority because "that might be what is causing her receptive and language problems." She stated that the draft speech goals could be addressed in the special education classroom. As an example of this, she said the teacher could help the student with grammar while she was doing an assignment. The only speech/language goals in the May 2009 IEP address [redacted] auditory integration disorder. [redacted] developed these goals in consultation with [redacted] [redacted] testified that the CAPD goals are appropriate and can be implemented by a speech pathologist. However, she also testified that the CAPD goals were not meant to replace the speech/language goals.

[redacted] testified that the April "draft" speech/language goal addresses the student's speech/language needs, although she said the goal as written is "huge" and difficult to measure. She opined that the goal could not be addressed within the classroom because a speech pathologist's focus on vocabulary is different from a teacher's focus on teaching vocabulary for an academic curriculum. A speech/language pathologist addresses

[10] The omission of all related services during the student's lengthy absence from school between November 27, 2008 and April 16, 2009, is addressed in the home/hospital section below.

vocabulary by teaching strategies for storing and organizing words. She further testified that the vocabulary and reading goals in the May 2009 IEP do not address the areas covered in the "draft" speech goal. She opined that the speech/language goal should not have been replaced by CAPD goals because both are "very necessary." However, she recommended that the "draft" goals should be revised into separate, measurable goals for figurative language, vocabulary, and grammatical awareness. [redacted] recommended that [redacted] receive 60 minutes/week of speech/language therapy.

Based on the foregoing documentary and testimonial evidence, the undersigned finds that the lack of goals addressing [redacted] deficits in figurative language, vocabulary, and grammatical awareness in the May 2009 IEP results in the student not receiving speech services necessary to address identified areas of deficit. [redacted] testimony that the CAPD goals were not to supplant the speech/language goals coupled with [redacted] testimony regarding the need for services confirms the necessity of these services. Prior to the CAPD evaluation and its recommendation for services, [redacted] had developed goals based on her evaluation of the student's needs. The CAPD evaluation does not change or obviate those needs. The undersigned finds [redacted] testimony regarding the difference between a speech pathologist's focus on vocabulary and a teacher's focus persuasive. And, vocabulary is only one of the student's identified deficits - the same likely holds true for figurative language and grammatical awareness.

The student has not received OT services since Spring 2005. The district's current OT evaluation determined that [redacted] is not eligible for OT services. However, as discussed in the prior section, the undersigned finds that the student has deficits in the areas of visual and auditory processing, organizational skills, bilateral coordination, and sensory integration, which require OT services. These are not new areas of deficit, although the sensory integration issues may be confounded by her recent diagnosis of schizophrenia. Therefore, the lack of OT services in the May 2009 is a denial of FAPE. Additionally, given the significant decline in [redacted] standard score on the VMI and the fact that her current age equivalency on the VMI of 8-4 years is at least nine years below her chronological age, the undersigned finds that the lack of OT services for the past two years has denied the student a FAPE.

As discussed above, the undersigned has already found that the student requires specific assistive technology to address her needs. Therefore, the AT devices listed in the May 2009 (Alpha Smart, Franklin Speller, Real World Grammar, calculator, and color coded folders) are insufficient to meet her needs and did not meet her needs for the past two years. Additionally, neither the May IEP nor any of the prior IEPs has any goals addressing AT or integrated ways to incorporate AT into the student's curriculum. Given the history of IEP implementation problems in this matter and the lack of goals to address the student's unique needs, this a serious omission.

3. *Whether the district failed to assess, identify, and provide appropriate assistive technology for the student, including training for the student, parent, and staff from December 9, 2006 to the conclusion of the hearing in this matter*

As discussed in Issue 1, above, the undersigned has found that the district failed to adequately assess, identify and provide the appropriate assistive technology for the student during the relevant time period. Additionally, the district did not provide training for the parent. [redacted] testified that the student did not have a portable word processor from the time she began at [redacted] through December 2007. She testified that the student was given extra credit assignments as compensatory education for lack of AT, to "inflate her grades." The December 2007 IEP confirms that the AT device had been misplaced and that the student was given extra credit assignments in physical education and history as compensatory services. The parent has sustained her burden of proof on this issue.

4. *Whether the district failed to convene an annual review IEP meeting in March 2008*

The undersigned has found in Issue 2, above, that the district did not convene an IEP meeting in March 2008 and thereby denied the student a free appropriate public education.

5. *Whether the district failed to implement the IEPs developed in September 2006, January 2007, and March 2007*

The parent alleges that the district did not implement the above-mentioned IEPs by not providing weekly progress reports, failing to give the student a second set of textbooks, not implementing all accommodation and modifications, and not providing all required special education services. The evidence shows that student's teachers did not all provide weekly progress reports as required by her IEP. The lack of such reports has made it difficult to track the student's progress and has certainly made it hard for the parent to keep tabs on what happened at school. However, the parent has not shown that the lack of these reports denied the student a FAPE. The same holds for the lack of a second set of books. As to accommodations, the undersigned has already found that the numerous accommodations made it difficult to assess the student's progress. The parent has argued the same; thus, to complain that all accommodations were not implemented in illogical.

As to special education services, the evidence shows that the district did not place the student in a self-contained classroom when she entered [redacted] as her IEP required until December 2007. The evidence therefore shows that the district did not implement the student's IEP as to placement from September to December 2007. The evidence also shows that the district did not provide all AT listed in the student's IEPs. Also, the student was eligible for ESY in summer 2007; however, the evidence shows that the district did not provide ESY services for the student.

The current IEP requires a fulltime 1:1 aide, and there is testimony showing that an aide has not been provided in at least one class. However, other testimony shows that the aide has been in place other times during the day. The evidence in inconclusive as to the 1:1 aide.

6. *Whether the district failed to have the IEP team determine whether the student needed home/hospital services and develop/revise her IEP accordingly*

The mother testified that at the December 1st IEP meeting, the school nurse told her that [redacted] might qualify for home/hospital services. The nurse gave her the home/hospital request form and later called her to say that she had a revised form that the mother must complete. The mother completed the revised form and submitted it to the case manager the day before the school's winter break.

The mother testified that the homebound coordinator told her that he had spoken with [redacted] in the home/hospital department, who had informed him that [redacted] was not eligible for services. He suggested that the mother contact [redacted] herself. The mother called [redacted] and spoke with her on the telephone. She testified that she has never spoken with [redacted] The mother also asked about home/hospital services at the January 20th IEP meeting. The IEP team told her that the central office had determined that [redacted] was not eligible for home/hospital services because [redacted] could not understand the form and had stated "this is a placement issue."

[redacted] testified that the IEP team did not discuss whether [redacted] needed home/hospital services at either the December 1st or January 20th IEP meeting. She testified that the homebound coordinator informed her that [redacted] had been denied the services. After she received this information, she contacted [redacted] who said that [redacted] had been denied homebound services because the form indicated that she should be placed in a therapeutic day school. [redacted] testified that [redacted] told her that home/hospital is not a placement, and the school must determine the student's placement. [redacted] informed the mother of her conversation with [redacted] Since this was [redacted] first time dealing with a home/hospital request, she did not know what was needed on the form to get it approved.

[redacted] is a senior specialist and team leader in the home/hospital department. She also is a certified special education teacher. She reviews eligibility for approval of services to medically ill students, not those with psychiatric diagnoses. [redacted] first testified that she was unaware of a request for home/hospital services for [redacted] She then stated that the mother had called her and asked about homebound services. She told the mother that a physician must complete a medical referral. She did not document her telephone conversation with the parent and did not recall when it occurred.

[redacted] testified that home/hospital services may be provided to a student who will be absent for 10 or more school days. The request for home/hospital services begins at a student's school. The school receives a home/hospital request from a doctor, which is reviewed by the school nurse. The nurse then gives the form to the school's home/hospital coordinator, who sends the form to the home/hospital department. [redacted] reviews the form for medically ill students. If she approves a request, she sends the form back to the school to identify a teacher to provide services. If a request is not approved, the homebound coordinator is notified regarding what information on the request form is missing. She stated that the IEP team is not required to meet to determine if a student is eligible for home/hospital services. She said she was unaware of any special education regulations requiring the IEP team to meet to determine if home/hospital services are necessary.

[redacted] manages the home/hospital department and determines eligibility for students with psychiatric disorders. She is a speech/language pathologist and has a master's degree and has completed her doctoral classes in speech/language pathology. She testified that she was not sure if the mother had called her or had spoken with someone else in her department. She did not start keeping notes on the student's case until March 23, 2009 when she "revisited" the case because it was "unresolved." She was unable to explain why she revisited the case after a two months of inactivity.

[redacted] also described home/hospital instruction as a temporary service for students who are too ill, physically or emotionally, to attend school. The services are to help students transition back to school and re-integrate into the educational setting. She corroborated [redacted] testimony that the home/hospital department determines eligibility for services, not the IEP team. As she put it, the district's "protocol" is that IEP team defers to the home/hospital department and the district's central office.

As to [redacted] testified that she received the parent's initial home/hospital request in mid-December 2008. She said the physician's telephone number was illegible, and the student's demographic information was incomplete. The homebound coordinator was to have completed the required student information before sending the form to her office. She testified that she reviewed the form on January 8, 2009, indicated the deficiencies on a review form, and faxed it to the homebound coordinator. She said that she also spoke with the homebound coordinator about getting the additional information. She never received a completed back form from the homebound coordinator. [redacted] testified that she contacted the homebound coordinator again on March 27, 2009 regarding the incomplete form but did not receive anything back from him.

The home/hospital department typically takes three to five days to make an eligibility determination and can do so in 24 hours. A student's school notifies parents when a home/hospital request is not approved. The homebound coordinator is also responsible for informing parents of the appeal process when a request is not approved. To appeal, a parent must write a letter to the homebound program indicating why a review is needed. The parent can also send additional information from a physician. [redacted] has trained the homebound coordinators about the appeal process.

[redacted] testified that [redacted] was "not specifically denied" home/hospital services. Rather, her department could not determine if [redacted] was eligible for home/hospital services. The department did not notify the parent that it could not determine the student's eligibility for home/hospital services. [redacted] testified that she had recommended that [redacted] have a case study evaluation because there was inadequate information to determine if she needed home/hospital services. Although [redacted] sometimes consults with private psychiatrists when she receives a psychiatric referral for homebound, she could not recall if she had called the student's psychiatrist.

The evidence shows that the IEP team did not determine whether the student needed home/hospital services. That determination was made by the home/hospital department. Whether [redacted] or [redacted] made the decision is irrelevant. Both testified that they

had never met the student or her mother. Neither reviewed any documentation on the student's educational needs or psychiatric status. The only information they had regarding [redacted] was a one page, fill in the blank form that is used for each student who requests home/ hospital services. A student's educational placement must be made by the persons knowledgeable about the student, including the parent. 34 C.F.R. §300.116(a)(1). In this instance, neither the parent nor anyone who knew the student participated in the homebound determination. The evidence shows that the homebound decision was not made by the IEP team.

B. Procedural issues

1. *Whether the district failed to send the parent a conference notice for the December 1, 2008 and January 20, 2009 IEP meetings*

The mother testified that when she called the case manager on December 1st to inform her that [redacted] was psychiatrically hospitalized, the case manager told her that an IEP meeting was being held that day. She attended the meeting to inform the IEP team about the student's hospitalization. The mother testified she had not received a notice of the meeting. [redacted] testified that she thought she had sent a conference notice to the parent. She usually keeps a copy of conference notices in her files. Because records requests were an ongoing issue in this matter, the undersigned asked [redacted] to bring her files to the hearing room. After reviewing the files, [redacted] did locate a copy of a conference notice for December 1st. As to the January 20th IEP meeting, [redacted] testified that she had not prepared a conference notice for the meeting because it was held pursuant to a mediation agreement. The evidence shows that the district did not send an IEP conference note for the January 20th meeting. A conference notice for the December 1st was prepared, although the mother testified that she did not receive it. She was verbally informed of the meeting when she called [redacted] on December 1st and then went to the meeting.

A hearing officer may find that a student did not receive a FAPE if the procedural inadequacy significantly impeded the parent's opportunity to participate in the decision-making process. 20 U.S.C. §1415(f)(3)(E)(ii)(II). In this instance, the evidence shows that the parent attended both the December and January IEP meetings. A notice was not sent for the January meeting, and the mother insists that she did not receive a notice for the December meeting. Assuming arguendo that no notice was sent for either meeting, the mother still attended both meetings. Therefore, the lack of a conference notice did not impair her opportunity to participate in the IEP meetings.

2. *Whether the December 1, 2008 IEP was developed without the parent's participation*

According to the mother, the December 1st IEP meeting focused on the student's hospitalization. The nurse asked questions regarding the student's medications, and the speech/language pathologist reviewed the goals she had developed. The mother told the team that the student might need to change schools and was told that that would be discussed later. She said that the meeting then ended. She was not given any documentation of the meeting when it concluded. She testified that she never received a

copy of the December 1st "draft" IEP from the district and was unaware of it until the service provider presented it at the Spring 2009 IEP meeting.

[redacted] testified that the December 1st IEP meeting focused on the student's "current situation," i.e., her psychiatric hospitalization at [redacted]. She said nothing in the IEP was developed at the meeting except the related service goals. The speech/language pathologist and school psychologist reviewed the goals they had developed. The service provider later developed the academic goals. [redacted] testified that the mother was not given a copy of the IEP because it was a draft document.

The evidence shows that the parent was not involved in the development of the December 1st IEP. The IEP was developed by the service provider, without input from the parent or other IEP team members. Therefore, the parent's opportunity to participate in the decision-making for her daughter was significantly impeded, which resulted in a denial of FAPE.

3. *Whether the district failed to provide prior written notice to the parent when it denied the home/hospital services as recommended by the student's psychiatrist*

A district must ensure that a continuum of alternative placements, including home instruction, is available to meet the needs of students with disabilities. 20 U.S.C. §1412(a)(5); 34 C.F.R. § 300.115. Because home instruction is a placement pursuant to the IDEA, a district is required to provide prior written notice when it refuses a parental request for home instruction. 20 U.S.C. §1415(b)(3)(B); 34 C.F.R. §300.503(a)(2). There is no evidence showing that the district ever provided the parent with a written response of any type to her request for home/hospital services. The home/hospital administrators testified that the parent's request was not denied. Rather, the home/hospital department determined that [redacted] was not eligible for home/hospital services. In this instance, there is no difference between "not eligible" and "denied" as the impact on the student is the same: she did not receive the services requested. The district was required to provide prior written notice of its decision, and it did not do so. The lack of notice significantly impeded the parent's opportunity to participate in decision-making for her daughter.

It is important to note that the lack of prior written notice also denied the parent her right to appeal the district's decision. Of course, this assumes that the district had informed her of her appeal rights, and testimony shows that it did not.

4. *Whether the district failed to provide prior written notice or an adequate response to the parent's December 9, 2008 due process complaint and her December 29, 2008 amended due process complaint*

The IDEA requires that a district's response include an explanation of why it proposed or refused to take the action raised in the complaint, a description of other options the IEP team considered and why the team rejected those options, a description of each evaluation procedure, assessment, record, or report the district used as the basis for its proposed or refused action, and a description of the factors relevant to its proposal or refusal. 20 U.S.C.

§ 1415(c)(2)(i)(I); 34 C.F.R. § 300.503(a). A district does not have to provide this detailed response if it has already provided the parent with prior written notice regarding the subject matter in the complaint. Prior written notice must include: a description of the action proposed or refused by the district; an explanation of why the district proposed or refused to take the action and a description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action; a statement that the parents of a child with disability have protection under the procedural safeguards in the IDEA and the means by which the parents can obtain a copy of their procedural safeguards; sources for the parents to contact to receive assistance in understanding their procedural safeguards; a description of other options the IEP team considered and the reason why it rejected those options; and, a description of other factors relevant to the district's proposal or refusal. 20 U.S.C. §1415(c)(1); 34 C.F.R. §300.503(b).

The parent's December 9th due process complaint concerns the student's placement and alleged harassment at school. The district's December 19, 2008 response states that the IEP team made decisions regarding the student's placement at the December 1, 2008 IEP meeting and shared documents from that meeting with the parent. The district asserts that those document constitute prior written notice of the parent's concern regarding the appropriateness of the student's placement in the least restrictive environment. The evidence shows that the IEP team did not make any decision regarding placement on December 1st, which makes the district's response factually incorrect. Moreover, the parent informed the district after reviewing its response that she had not received any documents from that IEP meeting. Testimony at hearing supports the parent's assertion that she did not receive a copy of the December 1st IEP.

In response to the parent's amended due process complaint, the district stated that an IEP meeting would be held on January 20, 2009 to review the student's educational program and placement and to determine an appropriate program and related services. Logically, a meeting scheduled in the future cannot provide prior written notice of a district's action as to any matter. It may be that the district presumed that its earlier response had served as prior written notice; however, that is not what the IDEA requires. And, since the original response did not constitute prior written notice, it is not possible it could serve as prior written notice to the parent's amended complaint.

5. *Whether the district failed to provide the student's records as requested by the parent in a timely manner*

A parent must be granted access to her child's educational records within a reasonable time period from the date of request and in no case more than 45 days after the date of the request. 20 U.S.C. § 1232g(a)(1)(A). In Illinois, records must be provided within 15 days of a parental request. 105 ILCS 10/5(c). The parent made numerous requests for the student's educational records, beginning in January 2009 and continuing throughout these proceedings. On May 16, 2009, this hearing officer ordered the district to provide all records that the parent had requested. Some records were produced at the hearing and have been added to the parent's evidence binder. For example [redacted] testified that she had provided her home/hospital records on the student to the district the day before she

testified. The evidence clearly shows that the district did not provide the requested educational records in a timely manner.

Based on the foregoing denials of a free, appropriate public education between December 6, 2006 and the date of this decision, the undersigned orders the following:

IT IS ORDERED THAT:

1. The district is to place the student at a private therapeutic day school with staff who have training and experience working with students who have schizophrenia, CAPD, learning disabilities, and sensory integration problems. The school must have a small student: teacher ratio and must be able to provide the intensity of related services listed below. The student must have access to a staff person trained in dealing with serious emotional disorder, to provide her with individual support as needed. The school must have an integrated approach to service delivery and an organizational system to assist students with organizational problems.

2. The district is to provide two additional years at the above-described private placement for two years after the student's graduation for FAPE violations over the past two years.

3. The district is to provide compensatory education for the denial of FAPE between December 1, 2007 through April 16, 2009, as follows: 1:1 tutoring by certified professional, given in two 60 minute sessions for 16 weeks, to be provided beyond the school day; and, 1:1 speech therapy, given in one 30 minute session/week for 16 weeks, provided beyond the school day.

4. The district is to provide related services in the intensity recommended by the independent evaluators as stated in this Decision. Additionally, the district is to provide the AT recommended by [redacted] and training for the student, parent, and school staff.

5. The district is to fully fund the following independent evaluations: occupational therapy, assistive technology, and neuropsychological.

6. The district is to convene an IEP meeting within 10 business days of the date of this decision to develop an appropriate IEP for this student that includes the above placement, compensatory services, and the related services ordered in this decision. The IEP team must review the IEE reports and recommendations and develop appropriate, individualized goals that are based on accurate PLOPs and reflect the student's individualized needs, as noted in the IEE evaluations. The IEP team must develop a new, appropriate transition plan for the student that has measurable goals and activities.

7. The district is to conduct a comprehensive vocational assessment (not a career or interest inventory) of the student to compensate for the lack of an adequate and appropriate transition plan in her prior IEPs. The assessment must be used as the basis for developing a

new transition plan for the student.

Within 30 calendar days of receipt of this Order, [redacted] shall submit proof of compliance to:

Illinois State Board of Education
Program Compliance Division
100 North First Street
Springfield, Illinois 62777-0001

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 other party(ies) and the Illinois State Board of Education. After a decision is issued, the hearing officer may not make substantive changes to the decision. The right to request such 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 Civil Action

This decision is binding on the parties unless a civil action is timely 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),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.

ISSUED: August 8, 2009

Mary Schwartz
Impartial Hearing Officer

CERTIFICATE OF DELIVERY BY MAIL

The undersigned hereby certifies that a true and correct copy of the Decision and Order was sent by certified mail from [redacted], and directed to:

[redacted]

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

before 3:00 p.m. on August 8, 2009

Mary Schwartz
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