

Case Number: 2009-0298
[Redacted] vs. [Redacted]
Hearing Officer: Kristine Anderson

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

Impartial Due Process Hearing Decision Cover Page

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

District Name [Redacted]

Phone: 7735531000

Superintendent [Redacted]
Address [Redacted]
Represented by [Redacted]

Parent Name [Redacted]

Phone:

Address [Redacted]
Represented by [Redacted]

Date and Timelines

Date of Written Request: 02/02/2009
Date of Pre-hearing Conf: 06/10/2009

Date of Hearing: 10/06/2009 to 10/7/2009 12:00:00 AM
Date of Decision:

Summary of Decision

Parent of 5th grade student filed due process complaint alleging numerous violations by the District including: failure to adhere to child-find requirements; failure to administer adequate and timely assessments; failure to provide necessary occupational therapy and assistive technology; various other procedural violations relating to the student's IEP. The Hearing Officer found in favor of the District on every allegation except the H.O. found that the District failed to provide occupational therapy, and failed to provide the Student with an appropriate IEP goal to address his deficits in reading decoding.

-
-

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

-)
-) **ISBE CASE NO. 2009-0298**
-)
-) **Kristine Anderson**
-) Impartial Due Process
-) Hearing Officer

**ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING**

[REDACTED]))	
))	
Student))	Case No. 2009-298
vs.))	
[REDACTED]))	
))	
Local School District))	

KRISTINE L. ANDERSON, Hearing Officer

HEARING DECISION AND ORDER

This matter comes before me pursuant to the Parent's due process complaint on behalf of her son, [REDACTED]. The family is represented by [REDACTED]. The District is represented by [REDACTED]. I have jurisdiction to hear and decide this matter pursuant to 105 ILCS 5/14-8.02(a) et. seq., and 23 Illinois Administrative Code §§226.600 et. seq.

PROCEDURAL HISTORY

The Student currently is a 5th grader who receives special education services under the eligibility category of mild cognitive impairment and speech and language. The Parent filed a due process complaint on February 2, 2009. The complaint alleges a number of violations by the District, which are described below. In addition to her due process complaint, the Parent separately requested an independent educational evaluation the same day she filed her due process complaint. (See 2/2/09 [REDACTED] letter to [REDACTED]). Though the District responded to the Parent's due process complaint, it did not respond to the Parent's request for an IEE. The District maintained that a separate response to the IEE was unnecessary since it had addressed the issue of evaluations in its response to the due process complaint. I ruled that the District was required to file a due process complaint pursuant to 34 C.F.R. § 300.502(b), since it had denied the Parent's request for an IEE. The District complied with my order and filed a due process complaint on April 7, 2009.

Because the District failed to respond to the Parent's request for an IEE, the Parent requested leave to file an amended complaint to allege procedural violations and seek relief specifically related to that issue. I granted the Parent's request, and an amended complaint was filed on March 26, 2009. The amended complaint expressly incorporated all of the issues raised in the initial due process complaint and asserted the District's failure to respond to the request for an IEE as an additional issue. As noted above, the District has since responded to the request for an IEE by filing its own due process complaint. The additional issue and requests for relief raised in the Parent's amended complaint are, therefore, moot. The issues raised in the Parent's original complaint are still in dispute.

Related to her request for an IEE, the Parent filed a Motion for an Interim Order to obtain a classroom observation on April 4, 2009. I granted the motion in part and denied it in part on April 21, 2009.

The parties held a pre-hearing conference in this matter on June 10, 2009. The hearing took place on September 1-3, and October 6, 2009 at the [REDACTED].

Issues Presented:

- **Parent's Issues**

1. Failure to adhere to childfind obligations per IDEA.
2. Failure to provide the parent a copy of her rights under IDEA when referring the student to an IAT rather than an evaluation under IDEA.
3. Failure to provide an appropriate and individualized evaluation in a timely manner in order to adequately identify the nature and extent of [REDACTED] disabilities from 2/2/07 through the present: Parent submitted request for an IEE on 2/2/09.
4. Failure to send a conference notice within 10 days to convene an IEP meeting after parent submitted IEEs (speech and OT) and requested an IEP meeting.
5. Failure to complete a CPS speech language and OT evaluations before the start of the 2008-2009 school year and convene an IEP meeting to consider the evaluations and develop an IEP per the Illinois School Code.
6. Failure to provide an appropriate educational program/placement based on scientific, researched based evidence including a certified special education teacher, and related service with sufficient intensity to meet [REDACTED] educational needs 2/2/07 to present including ESY 2007 and 2008. 34 CFR 300.35, 300.39(a).
7. Failure to identify in a timely manner and then provide appropriate assistive technology in the classroom setting and for all school work including training for staff, student and parent from 2/2/07 to the present. 34 CFR 300.105.
8. Failure to develop individualized goals/objectives based on accurate present levels of performance in all [REDACTED] IEPs. 34 CFR 300.320(a)(2)(i).
9. Failure to accurately and objectively report to the parent the lack of [REDACTED] progress in the CPS offered services and programs. 34 CFR § 300.320(a)(3)

- **Parent's Request for Relief**

1. Order finding that the district failed to appropriately and timely identify student in all areas of suspected educational need.
2. Order finding that the district violated the IDEA procedures for conference notification of meeting to review IEEs.
3. Order full funding for IEEs either through payment directly to the Parent or the IEE providers.
4. Order district to provide private learning disabilities school program such as [REDACTED] or [REDACTED] (or other private LD school that has accepted the student) including safe and reliable transportation as student requires this LRE setting in order to benefit from a public education.

Parent may provide a 10 day unilateral notice. If a unilateral placement occurs, order the district to reimburse the parent for all costs associated with placement at the [REDACTED] (or other private LD school that has accepted the student) including transportation costs at the IRS rate. OR, order district to provide appropriate program that provides FAPE to the student.

5. Order the district to implement all of the outside evaluators' recommendations.
6. Order the District to convene an IEP to develop an appropriate IEP for [REDACTED] to implement the recommendations of the Order IEEs;
 - (1) [REDACTED] review all evaluation results and recommendations and have appropriate staff at the IEP meeting.
 - (2) [REDACTED] develop appropriate IEP with individualized and measurable goals/objectives and accurate present levels of performance based on [REDACTED] eligibility and identified educational needs including appropriate modifications/accommodations.
 - (3) [REDACTED] identify all direct and related services including, but not limited to psychological and speech/language 90-120 mpw direct services, CAP interventions, OT 60 mpw direct services and learning disability services with appropriate individual and group services across all educational settings.
 - (4) [REDACTED] provide appropriate assistive technology per experts including classroom implementation and training to student, parents and staff as required; Earobics Step 1, Simon sounds it Out (or Lexia), Word Maker (or Lexia), Co:Writer and Write Outloud (or similar programs that includes use of flexible spelling features, word banks, and talking word processor), screen reading/scanning software (Kurzweil), and Literacy Starter reading series (several books available that correlate with curriculum).
 - (5) 60 mpw of direct AT services for the student by a AT trained and certified staff
 - (6) [REDACTED] provide compensatory services as stated in No. 8 below.
 - (7) [REDACTED] identify a private intensive placement/services such as a specialized intensive private LD program at the [REDACTED] (or other private LD school that has accepted the student) for children with severe learning disabilities-dyslexia/language disorders that has appropriate methodology based scientific, research based evidence such as Orton Gillingham, Wilson or other multi-sensory, sequential systematic intensive reading program as well as safe and reliable transportation and full day of ESY 2009 (9 am to 3 pm); or provide appropriate program that provides FAPE; and
 - (8) Other hearing officer ordered relief based on findings.
7. Order a finding that the student was Denied FAPE and is awarded compensatory services for the failure of the District to provide appropriate evaluations and IEPs including appropriate placement in a timely manner.
8. Order compensatory services which MAY include depending on the recommendations of IEE providers:
 - a. 1:1 tutoring services beyond the regular school day by a certified special education teacher trained in scientific research based interventions for non-readers for 60 minutes per session, twice a week for the period denied FAPE; 1:1 speech language services beyond the regular school day by a certified speech pathologist at 60 mpw, for the period denied FAPE; and, 1:1 OT services provided by a certified OT beyond the regular school day 60 mpw for the period denied FAPE; As LRE is determined on a yearly basis per the annual review by the IEP team compensatory services in the form of a placement at the Cove School (or other private LD school that has accepted the student) 1 year beyond the 09-10 school including ESY

- 2010 and 2011 (full day of ESY) that includes additional related services and safe/reliable transportation is generally not acceptable, but would be considered by the parent as additional compensatory education..
- b. Additional assistive technology to assist the student in all academic areas placed on the parent's home computer and/or student's lap top to enable the student to complete homework (Earobics, Write:OutLoud, Co-Writer, Draft Builder, Kurzweil 3000 for Windows and Start to Finish books); and,
 - c. All other relief as appropriate based on the IEE findings and recommendations.
9. All other hearing officer relief as deemed necessary to provide FAPE.

- **District's Issues**

The District contends that it has provided the Student with FAPE and, in particular, asserts it has conducted evaluations that were appropriate to evaluate the Student's needs.

FINDINGS OF FACT

█ is a 10 year old 5th grader who attends █. According to his mother, █ the events that culminated in this due process hearing began at the end of █ second grade year when he received a year-end report card indicating that his reading was "well below" grade level. (See Student's Standard Summary Report, PD-154d, 155, Ex 64) █ testified that the report came as a surprise to her because the previous report card had indicated that her son was making progress in reading. (*Id.* at PD-154e) █ testified that she was determined to find out "what was going on" with her son.

The 2007-08 School Year

As soon as school reconvened in September, 2007, █ requested assistance for her son through school-based problem solving. (See 9/6/07 SBPS Request for Assistance, PD-1, Ex 26) Her stated reason for seeking assistance was that █ was demonstrating academic skills at home that he wasn't using in the classroom. (*Id.*)

The Intervention Assessment Team responded quickly to █ request and met one week later, on September 13, 2007. █ the case manager, led the meeting. Also in attendance were the Parent, █ third grade teacher, █ the school psychologist, █ a special education teacher, and █ the school social worker. (See 9/13/07 SBPS Intervention Plan, PD-7, Ex 31) In addition to █ concerns about her son's academic needs, school staff apparently voiced additional concerns about █ difficulty in making transitions and staying on task. Thus, while the team agreed that █ would conduct an assessment of █ learning style, they also created an intervention plan that focused on helping █ to make smoother transitions and stay on task. (*Id.*)

█ completed her assessment of █ within a week of the intervention meeting. (9/19/07 Assessment Report, PD-074, Ex 14) She testified about the results of that assessment, as well as the results of a subsequent assessment. I found her testimony to be knowledgeable and credible. Specifically, █ testified that she did not consider the initial assessment to be a full psychological evaluation. Nevertheless, she was quite thorough. █ administered the Stanford Binet Intelligence Scales, as well as informal probes to assess █ basic skills in reading and math. She also conducted

interviews with the Parent, [REDACTED] teacher, and the Student. Finally, [REDACTED] completed a classroom observation of [REDACTED] which included a transition from the cafeteria to the classroom, and a teacher directed lesson. (*Id.* at PD-74-75)

With respect to the Parent interview, [REDACTED] reported that [REDACTED] was able to successfully complete a number of academic tasks at home that he apparently could not do at school. These skills included decoding, answering comprehension questions, and completing double-digit addition. [REDACTED] attributed this difference to her belief that [REDACTED] performed well when given one-on-one attention. Unlike [REDACTED] the teacher reported that [REDACTED] performed in the lower group academically, and struggled particularly with blending sounds and comprehension. She also stated that [REDACTED] needed lots of prompts and assistance to start and complete his school work. The teacher also reported that [REDACTED] had trouble with self-control. As an example, she reported that [REDACTED] had been in a fight earlier that day and when an aid had intervened, [REDACTED] "completely shut down and kept on screaming and yelling." [REDACTED] noted that it was reported that [REDACTED] was often engaged in conflicts, and was unable to use his verbal skills to resolve them. Instead, he would yell or push to get his way, and seemed unable to calm himself. (Ex 14 at PD-074)

In addition to the interviews, [REDACTED] completed a 45 minute classroom observation of [REDACTED] [REDACTED] noted that [REDACTED] followed the teacher's instructions and listened attentively during a writing lesson. During a lesson on blending sounds, however, [REDACTED] reported that [REDACTED] laid his head on his desk and faced away from the teacher and the board for 80% of the instruction time. (*Id.* at PD-75)

[REDACTED] assessed [REDACTED] cognitive skills by administering the Stanford Binet Intelligence Scales. [REDACTED] received a full scale IQ of 61 on the Binet, with a verbal IQ of 64 and a nonverbal IQ of 61. These scores placed [REDACTED] in the mildly impaired range. (*Id.* at PD-76) A reading assessment (the Dibbels) indicated that [REDACTED] functioned in the "at-risk" range. [REDACTED] exhibited significant deficits on the math probe as well. In particular, he was unable to successfully add or subtract single digit numbers. (*Id.* at PD-75-77)

The team reconvened on October 11, 2007, and [REDACTED] shared the results of her assessment with the Parent. (10/11/07 Intervention Plan, PD-7, Ex 31) [REDACTED] testified that she didn't fully understand the import of [REDACTED] scores on the Binet. Nevertheless, she agreed with the team's recommendation to conduct a full individual evaluation, and gave her written consent for the testing to proceed. (10/11/07 Consent for Evaluation, PD-8, Ex 31a)

School staff held a domain meeting that same day to determine what tests should be administered to [REDACTED] as part of the FIE. (*See* 10/11/07 Consent for Evaluation and Assessment Planning, PD-9, Ex 35) They decided that he should receive a full psychological evaluation, and that he should be assessed in the domains of health, vision, hearing, and social/emotional status. They did not believe it was necessary to assess [REDACTED] communication status or motor abilities. (*Id.*) Notably, [REDACTED] testified that she did not attend the domain meeting because staff did not inform her of their plans to meet.

In November, [REDACTED] completed the full individual evaluation of [REDACTED]. Since she had already administered the Stanford Binet, she did not administer another cognitive measure. She did, however, administer the Kaufman Test of Educational Achievement to assess [REDACTED] skills in reading, math, and spelling. [REDACTED] also assessed [REDACTED] adaptive skills by asking the Parent to complete the Vineland Adaptive Behavior Scales. In addition, [REDACTED] and one of [REDACTED] teachers completed the Behavior Assessment Scale for Children (the BASC). Finally, [REDACTED] administered the Beery Buktenica Developmental Test of Visual Motor Integration. (Report of Psychological Evaluation, PD-081, Ex 15)

The results of [REDACTED] additional assessments indicated that [REDACTED] functioned at the end of first grade in word recognition and reading comprehension. (1.7 and 1.8, respectively) In math, [REDACTED] obtained grade level scores of 1.7 in math concepts and 2.4 in math computation. [REDACTED] spelling skills were found to be at the beginning first grade level. In completing the Vineland questionnaire, [REDACTED] reported that most of

adaptive behaviors were "adequate." Notably, reported that expressive, receptive and written communication skills were age appropriate. She did, however, report that motor skills were "moderately low." (*Id.* at PD-86) On the BASC, again reported that behavioral and emotional functioning was commensurate with his same age peers. The teacher, however, reported that was "at-risk" for behavioral symptoms and school problems. Finally, with respect to the results of the Beery reported that scored in the "very low" range, suggesting some concerns in visual perception and hand-motor coordination. Significantly, at the hearing testified that performance on the Beery indicated a possible need for occupational therapy services.

completed social/emotional assessment. The assessment included interviews with and (teacher), a student observation, and a review of school records. (12/5/07 Social Assessment, PD-120, Ex 63) From these sources of information, noted that had begun to fall behind at the end of his second grade year. (*Id.* at PD-121) The report also notes that was scapegoated by his peers in second grade. Finally, noted that admitted to sometimes being angry at his peers, and that he grew frustrated with more challenging school work. concluded that was eligible for social work services.

Once the evaluations were completed, the team held an eligibility meeting on December 6, 2007 to review the results and to write an IEP for . In attendance were and her mother, a special education teacher, and third grade teacher. the speech and language pathologist, was asked to sit in on part of the meeting even though had not received a speech and language assessment. (*See* Ex 13 at PD-12) The results of the health, vision and hearing screenings were determined to be normal. The team agreed with recommendation that was eligible for social work services. Finally, with respect to findings and recommendations, the team concluded that was eligible for special education services as a student with a mild cognitive impairment. (*Id.* at PD-19)

does not dispute that she consented to the team's recommendation. She testified, however, that she still did not fully understand what "mild cognitive impairment" meant. She asked to provide her with some literature to help her better understand eligibility determination. promptly responded by providing with a definition of cognitive impairment from procedural manual. (12/8/07 Email to Parent, PD-96-7, Ex 38) The manual defines Cognitive Impairment as "significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior." Notably, did not voice any disagreement with the team's eligibility determination even after reviewing the material that provided to her.

After determining eligibility, the team proceeded to develop an IEP for . This apparently was a thorough and deliberative process. According to the case manager, the meeting (including the eligibility portion) lasted approximately 4 hours. Moreover, both and testified that actively participated in developing IEP goals.

The IEP provided that would receive 600 minutes per week of direct special education instruction in reading and language arts, 300 mpw of math instruction, and 60 minutes per month of social work services. Despite the significant amount of time that was to be devoted to reading and language arts instruction, there is only one goal. That goal appropriately addressed reading comprehension deficits. There are no goals to address decoding deficits. The IEP addresses writing within the reading comprehension benchmarks. (*See* Reading and Language Arts IEP goal, present level of academic achievement, PD-21) At the Parent's request, a benchmark was added to assist in leaving spaces between words. (*Id.*)

The math goal addresses computation and reasoning deficits by targeting addition and

subtraction skills, as well as his ability to explain and solve word problems. Significantly, the evidence indicated that [REDACTED] was particularly involved in creating this goal. In particular, the goal was revised to reflect the Parent's desire that [REDACTED] be required to complete the benchmarks with 90 percent accuracy, even though [REDACTED] believed 80 percent accuracy was more realistic for [REDACTED] (*See Id.* at PD-22)

A third IEP goal was a social work goal that focused on improving [REDACTED] coping skills in dealing with peers and "road blocks" at school. (*Id.* at PD-23) Though the goal could be more precise, it appears to appropriately address [REDACTED] deficits in self-control. In any event, at [REDACTED] request, the team subsequently amended the social work goal in February, 2008. The amended goal still focuses on helping [REDACTED] to develop coping skills, but the benchmarks are more specific in requiring [REDACTED] to identify stressors and implement coping strategies. (2/14/08 IEP Revision, PD-037-39, Ex 40)

In addition to the goals, the IEP specifies that [REDACTED] would receive paraprofessional support. It also includes several other accommodations and modifications that were to be implemented, such as decreasing [REDACTED] workload by 50 percent, frequent monitoring to ensure he remained on task, reading directions aloud, and modified grades. Finally, the IEP states that assistive technology was to be provided to [REDACTED] in the form of a calculator, books on tape, and the use of a computer for spell checking. (*Id.* at PD-19, 20, 27)

[REDACTED] was provided with information concerning her procedural rights at the Eligibility/IEP meeting. (*Id.* at PD-32; 12/6/07 SBPS Parent Participation Letter, PD-35, Ex 52) When asked, [REDACTED] could not recall whether she provided the Parent with such information prior to that time.

The IEP was implemented soon after it was completed, and [REDACTED] began attending [REDACTED] special education class for instruction in reading, language arts and math. He remained in the regular classroom for science and social studies. [REDACTED] testified that [REDACTED] made progress in her class in each of the subject areas that she taught him. [REDACTED] IEP report cards, which [REDACTED] consistently completed, support her recollection. (*See* IEP Report Card, SD-197, Ex 71) According to the report cards, [REDACTED] met most of the IEP benchmarks for the period of time he attended [REDACTED] class. He did struggle, however, to meet some of the math benchmarks that required 90% accuracy.

With respect to [REDACTED] difficulties staying on task, [REDACTED] testified that [REDACTED] received assistance from the paraprofessional assigned to her class as needed. If he needed additional support, [REDACTED] testified that she would sit with him and answer his questions. [REDACTED] believes the arrangement worked well, and that [REDACTED] was able to do much of his work independently. She stressed that [REDACTED] did not need constant attention.

Even after [REDACTED] began receiving services pursuant to his IEP, [REDACTED] testified that she was determined to "leave no stone unturned" to ensure that all of [REDACTED] needs were being addressed. Thus, in late December, she obtained a private occupational therapy evaluation at [REDACTED] (12/27/07 Occupational Therapy Initial Evaluation, PD-263, Ex 8) Two months later, she obtained a private speech and language evaluation at Rush, as well. (2/21/08 Speech-Language Evaluation Summary, PD-244, Ex 19) Both reports, which are discussed in more detail below, recommended that [REDACTED] receive services. The evidence shows that [REDACTED] shared the OT report with the District by mid-January, 2008. (*See* Occupational Therapy Notes, 1/17/08 entry, PD-138, Ex 46) It's unclear when she made the District aware of the private speech and language evaluation, though [REDACTED] believes it was sometime in March of 2008. What is clear is that the District did not convene a meeting to consider the results of either report.

Instead, the team met on May 1, 2008 to consider [REDACTED] request that [REDACTED] conduct its own OT and speech evaluations of [REDACTED] (*See* 4/28/08 Conference Notification, PD-40, Ex 20) They also considered her request for one-to-one paraprofessional assistance for [REDACTED]. The team agreed to conduct both assessments. [REDACTED] however, was unable to complete the evaluations before the end of the school year

and failed to complete them over the summer, as the law requires. (105 ILCS 5/14-8.02) The evaluations were, however, completed shortly after the 2008-09 school year began.

The 2008-09 School Year

The team met to consider the results of the speech and OT evaluations on October 6, 2008. [REDACTED] conducted the speech evaluation, and testified about her findings at the hearing. (10/6/08 Speech Language Assessment Summary, PD-151, Ex 21) In particular, [REDACTED] noted that in conducting her evaluation she relied on some of the formal testing results from the [REDACTED] report, and administered several informal probes to offer additional insight into [REDACTED] language skills. [REDACTED] stressed that it was appropriate to use the [REDACTED] results because the evaluation was less than a year old, and the testing seemed to be "very adequate." In addition, [REDACTED] stated that she didn't want to put [REDACTED] through extensive testing again so soon.

The combination of [REDACTED] standardized results and [REDACTED] informal probes provided a comprehensive picture of [REDACTED] language skills. [REDACTED] concluded that the results indicated that [REDACTED] had a mixed (receptive and expressive) language disorder. [REDACTED] also believed [REDACTED]'s difficulties with language were consistent with his mild cognitive impairment. (*Id.*) Notably, [REDACTED] findings were consistent with the [REDACTED] examiner's findings. (*See* Ex 19 at PD-244) In addition to her general conclusions, [REDACTED] determined that [REDACTED] exhibited deficits in areas such as sound blending and comprehension, which likely contributed to his reading difficulties. She concluded that [REDACTED] deficits made him eligible to receive speech and language therapy.

[REDACTED] conducted [REDACTED] occupational therapy assessment of [REDACTED] (*See* 10/6/08 Occupational Therapy Assessment, PD-134, Ex 10) While [REDACTED] is clearly an experienced occupational therapist, I was concerned by the inconsistency between [REDACTED] extremely low test scores and [REDACTED] conclusion that [REDACTED] does not need occupational therapy. In particular, on the Developmental Test of Visual Motor Integration, [REDACTED] -- who was nearly 10 at the time -- functioned at an age equivalent of 4-10 with a percentile rank of .8. (*Id.* at PD-134) On a test of visual perception and motor coordination [REDACTED] scores ranged from an age equivalent of 4-6 to 6-6. On the Wold Sentence Copying Test, [REDACTED] performance placed him at the 2nd grade level. In other areas such as computer usage, cutting skills and self-care, [REDACTED] informally observed [REDACTED] skills to be more age appropriate. (*Id.* at PD-134-35)

As noted above, despite [REDACTED] poor performance on the assessments, [REDACTED] concluded that [REDACTED] did not require occupational therapy. Rather, [REDACTED] believed that [REDACTED] teachers -- without any OT consultation -- could address his deficits through additional experience and modifications. When asked, [REDACTED] conceded that her recommendation was at odds with two private OT evaluations. She stressed, however, that her conclusions were based on [REDACTED] needs in a school-based setting, not a clinic. Finally, [REDACTED] noted that she saw no sign that [REDACTED] has a sensory integration deficit.

In response to [REDACTED] recommendations, the team agreed to provide [REDACTED] with speech and language therapy for 45 minutes per week. Notably, the IEP indicates that the team also changed [REDACTED] primary disability classification from cognitive delay to dual primary disabilities of cognitive delay and speech and language. (*Id.* at PD-042) With respect to [REDACTED] recommendations, the team agreed that OT services were not indicated. Both [REDACTED] and the Parent testified that the Parent strongly disagreed with the decision concerning OT.

With eligibility questions answered, the team turned to writing [REDACTED] IEP. (10/6/08 IEP, PD-042, Ex 1) In particular, the team wrote goals for reading and language arts, math, social work and speech and

language. Overall, the goals on this IEP are more comprehensive than [REDACTED] previous IEP. For example, there are three goals to address [REDACTED] reading and writing deficits, rather than just one. These goals and benchmarks appear to appropriately address [REDACTED] comprehension, fluency, writing and spelling deficits. A reading goal, for example, states that [REDACTED] will read and interpret a variety of literary works with 80% accuracy. Noticeably absent from any of the reading and language arts goals, however, is any baseline from which [REDACTED]'s progress can be measured. The two math goals provide somewhat more detail concerning [REDACTED] present level of performance. The goals also adequately address [REDACTED] deficits in completing various operations, and word problems. The social work goal addresses [REDACTED] ability to "prevent, manage and resolve interpersonal conflicts." While the social work present levels of performance and benchmarks are stated in quantifiable terms, testimony indicated that staff relies on subjective observation rather than charting to determine if benchmarks are met. Finally, the team added two IEP goals to address [REDACTED] speech and language deficits. Both goals are well written and thorough. (Id. at PD-51-58)

In addition to the goals, the team included a number of modifications and accommodations for [REDACTED] in each of the academic areas. In language arts, for example, modifications included allowing [REDACTED] to listen to reading selections on tape, chunking large assignments into small manageable segments, modeling and re-teaching reading and writing strategies, and giving simple and clearly stated verbal directions. Math and science and social studies modifications were similar, but included the use of a calculator in math, and in science and social studies, allowed [REDACTED] to have one-to-one assistance with reading and completing assignments and tests. To that end, the IEP specifies that [REDACTED] was to have paraprofessional support. Though it does not expressly say so, there was testimony from a number of witnesses, including [REDACTED], the paraprofessional who assists [REDACTED] that [REDACTED] receives full-time, one-to-one assistance.

[REDACTED] gave her consent for the new IEP to be implemented and for [REDACTED] to continue receiving services. Thus, [REDACTED] attended [REDACTED] 4th grade special education class for reading and language arts and math. He attended [REDACTED] regular education class for science and social studies. [REDACTED] implemented the speech and language goals, and [REDACTED] implemented the social work goal. Each testified that [REDACTED] received educational benefit from these services and made progress in the respective areas.

[REDACTED] for example, testified that she worked closely with [REDACTED] to implement [REDACTED] IEP goals. With the modifications and accommodations that were set out in his IEP, [REDACTED] was able to participate in the class lessons and complete the same (albeit modified) assignments as the other students. Though [REDACTED] couldn't independently read and comprehend the 4th grade text books, [REDACTED] testified that either she, [REDACTED] would read the material to him. She conceded, however, that [REDACTED] was not provided with books on tape or other types of assistive technology even though [REDACTED] requested it.

[REDACTED] noted that mainstreaming [REDACTED] into her class did present some challenges. While she had good rapport with [REDACTED] she testified that his behavior was of concern, and that he sometimes had outbursts. She believes that his behavior improved at the beginning of the year, but conceded that it began to decline by the middle of the year. [REDACTED] attributed this decline to the fact that he felt the tension that had begun to build between his mother and school staff. Even so, [REDACTED] believed that [REDACTED] behavior was greatly improved over past years (she had provided him with after school tutoring the previous year, and had seen him in the hallway and cafeteria before he was her student.)

Seeing to it that [REDACTED] completed his homework also presented a challenge. The Parent, for example, sometimes returned [REDACTED] homework uncompleted with the request that [REDACTED] "resubmit" it to her with accommodations and modifications. (See 2/2/09 Parent Letter, PD-364, Ex. 4) To help [REDACTED] better understand the scope of an assignment, [REDACTED] created a detailed assignment sheet that specified both the assignment and the accommodations and modifications that she had implemented before sending the work home. (See Sample Assignment Sheets, PD-362-63, Ex. 3) This effort, however, appeared to meet with limited success. Even though the form expressly indicated the specific modifications that had been

implemented, the Parent still didn't consistently require [REDACTED] to do his homework.

Despite the challenges, [REDACTED] testified that [REDACTED] made educational progress in her class and fit in socially. Consistent with her recollection, [REDACTED]'s report card shows that, with modified grades, [REDACTED] received a final grade of "A" in social studies and a "B" in science. (2008-09 Report Card, PD-185, Ex 6)

[REDACTED] was [REDACTED] 4th grade special education teacher. She testified about the special education services that she provided to [REDACTED] during his 4th grade year, and about [REDACTED]'s performance in her class. Specifically, Bell testified that she wrote [REDACTED]'s academic IEP goals with input from the team, and with the assistance of [REDACTED] of [REDACTED]. The goals were all taken from Illinois' recommended academic goals for 4th graders, and [REDACTED] testified that she selected goals that she believed were "essential" for [REDACTED]'s success. [REDACTED] also testified that she implemented each of the goals and that [REDACTED] met each of his IEP benchmarks. (See [REDACTED]'s 4th Grade IEP Report Card, PD- 189 & 187-1, Ex 78) When asked, [REDACTED] conceded that [REDACTED]'s IEP failed to establish a clear baseline to allow his progress to be measured. She stated, however, that she conducted assessments at the beginning of the year which allowed her to know [REDACTED]'s level of ability. In addition, [REDACTED] insisted that she saw to it that [REDACTED] (and all her students) worked with 4th grade level materials.

In describing [REDACTED]'s classroom performance, [REDACTED] emphasized that [REDACTED] was very distractible. Indeed, according to [REDACTED] [REDACTED] could not complete his work independently because he was distracted by "any little noise." [REDACTED] believes that having a one-to-one aid effectively addressed this problem. When asked how [REDACTED] could have met his IEP benchmarks in light of his distractibility issues, [REDACTED] responded that [REDACTED] understood the concepts, but often needed prompting to redirect his attention back to his work.

[REDACTED] is a [REDACTED] school social worker who wrote and implemented [REDACTED] social work goal. The IEP goal is aimed at reducing [REDACTED] outbursts by teaching him how to distinguish between constructive and destructive ways of resolving conflict, and by learning various self-calming techniques. (Ex 1 at PD-58) [REDACTED] testified that she worked with [REDACTED] at least 15 minutes per week -- often longer -- to implement the goal. According to her observations and reports by his teachers, [REDACTED] believes that [REDACTED] has been successful in controlling his outbursts by decreasing their frequency and intensity. While I found [REDACTED] to be a credible witness, she was unable to support her opinion with quantitative data, since neither she nor [REDACTED] teachers have kept a tally of [REDACTED] outbursts.

Finally, [REDACTED] testified that she implemented [REDACTED] two speech and language goals that targeted phonological awareness, auditory memory (receptive language), sight word and spoken vocabulary deficits, and categorizing. [REDACTED] testified that [REDACTED] met his IEP benchmarks. [REDACTED] IEP report card, which [REDACTED] regularly and thoroughly completed, confirms [REDACTED] testimony. (See IEP Report Card, SD- 172-77, Ex 22)

Two months after the October 6 IEP meeting, [REDACTED] submitted a letter to the principal dissenting with [REDACTED]'s IEP and requesting a "special evaluation." (12/16/08 Parent Letter to Heath, PD-70a, Ex 41) With respect to her IEP dissent, [REDACTED] challenged virtually every page of the IEP. In particular, she stated that she disagreed with her son's label of cognitive disability. [REDACTED] also disagreed with every IEP goal in various ways. In addition [REDACTED] asserted that the team was not providing the assistive technology called for in [REDACTED] IEP and requested that an AT evaluation be completed. As noted, [REDACTED] also requested a special evaluation. This, according to [REDACTED] was a request that the District disregard all of the evaluations of [REDACTED] that it had previously completed and start all over again. In short, [REDACTED] letter was essentially a broad repudiation of everything that the team had put in place for [REDACTED] to that point. Not surprisingly, the District rejected her request, concluding that the team believed the evaluations and [REDACTED]'s IEP to be appropriate. (1/13/09 Notification of Referral Decision, PD-071, Ex. 42)

█████ filed a due process complaint a few weeks after the District refused to implement her demands. Since then, the team has not completed a new IEP for █████'s 5th grade year. They did meet on August 26, 2009 to consider the Parent's private evaluations in speech and language, occupational therapy and a neuropsychological evaluation. As a result, the team agreed to amend █████'s IEP to incorporate some of the evaluators' recommendations. In particular, the team added language consult minutes, additional classroom modifications such as providing preferential seating, study guides and notes. Apparently, the team was unable to consider an outside assistive technology evaluation at this meeting even though Parent's counsel contends the evaluation was provided to █████'s counsel in advance of the meeting. Several of the private consultants who evaluated █████ appeared at the hearing and presented their reports. Their full evaluation reports have been entered into evidence, and the relevant portions of their testimony are discussed below.

The Parent's Consultants

1. █████ Neuropsychological Evaluation

█████ has practiced as a pediatric neuropsychologist for 21 years. He currently maintains a private practice evaluating children's learning needs, and is a Clinical Assistant Professor of Neurology at █████ (See Appelby CV, PD-285, Ex 74) █████ retained █████ in February, 2009 to conduct a neuropsychological evaluation of █████. (See Report of Neuropsychological Evaluation, PD-268, Ex 75) █████'s testimony concerning his findings were largely consistent with the District's assessments. His findings were helpful, however, in providing some additional insight into █████'s learning profile.

█████ assessed █████ in a number of different areas, including █████ cognitive functioning, academic achievement, adaptive behavior, visual-perceptual and visual-motor skills, and expressive and receptive vocabulary. The full results of these assessments are presented in █████'s report. Though the testing was quite extensive, █████'s report indicates that he completed his evaluation of █████ in one session. (Ex. 75 at Pd-268) He observed that █████ was cooperative, persistent and "not actively distractible." He also noted, however, that █████ was "fidgety and restless," "easily inattentive, unfocused and off-task" during the testing. Since █████ apparently was responsive to redirection, █████ concluded that his findings accurately represent █████'s current functioning. (*Id.* at PD-271)

Through his testimony █████ highlighted the most relevant results of his evaluation. In particular, █████ noted that █████ received a full scale IQ of 70 on the Wechsler Intelligence Scale for Children (Fourth Edition). This score places █████ in the 2nd percentile, or Borderline range of ability. █████'s verbal comprehension skills on the WISC were somewhat higher (10th percentile) than his perceptual reasoning and processing speed, which were found to be in the borderline and deficient ranges, respectively. (*Id.* at PD-272) According to █████'s scores on the WISC, demonstrate that █████'s intellectual functioning is "below average, indicative of a reduced overall capacity for learning of the 'typical child.'" (*Id.* at PD-277) █████ stressed, however, that unlike █████'s findings, █████'s scores on the WISC do not indicate that █████ is cognitively delayed. (*Id.*)

█████'s conclusion that █████ is not cognitively delayed rests on more than █████'s performance on the WISC. █████ explained that, before a diagnosis of cognitive disability can be made, a student must exhibit deficits in adaptive functioning skills that are consistent with the student's sub-average IQ score.

Here, █████'s teacher reported that █████'s adaptive behavior skills were adequate or in the low average range. Such skills, according to █████ are not indicative of a student with a cognitive disability.

In addition to assessing █████'s cognitive abilities, █████ administered the Wechsler Individual Achievement Test to measure █████'s core academic skills. █████'s sight word reading skills were found to be at the 12th percentile, with a grade equivalent of 2.8. Decoding skills were measured at the 18th

percentile, with a grade equivalent of 2.1. ■■■'s reading comprehension skills were somewhat lower, with his score placing him at the 5th percentile and a grade equivalent of 2.0. In spelling, ■■■ was measured to be performing at a grade equivalent of 2.3, which is in the 9th percentile. ■■■'s math skills were found to be weaker than his reading and spelling skills. ■■■'s math reasoning skills and his ability to do math operations were both measured to be in the 1st percentile, with grade equivalents of 1.0 and 1.8 respectively.

Though ■■■ concluded that ■■■ is not cognitively delayed, he noted that his results were, on balance, comparable with the results of the District's assessments. (*Id.* at PD-277) ■■■ also noted that his evaluation revealed the presence of "many cognitive, learning and academic issues for ■■■". (*Id.* at 279) In addition to his findings concerning ■■■'s cognitive and academic needs, ■■■ concluded that ■■■ exhibits an Expressive-Receptive Language Disorder. Further, ■■■ testified that his assessment of ■■■ supports a clinical diagnosis of Attention-Deficit/Hyperactivity Disorder. Finally, ■■■ noted that ■■■'s reading skills are consistent with his cognitive ability. He believes ■■■'s math skills, however, are deficient to such a degree to support a diagnosis of a specific mathematics disability.

■■■ made a number of recommendations based on his findings. In particular, ■■■ believes that ■■■ should continue to be educated primarily in a self-contained classroom, with continued support from an educational aide. According to ■■■, ■■■ will function best in a highly-structured, quiet class in which he receives preferential seating. Tasks and instructions should be broken down into smaller units. ■■■ further recommended that ■■■ receive study guides for examinations, and class notes to allow him to focus his attention on lecture materials. ■■■ recommended that ■■■ receive graphic organizers to facilitate written expression. Finally, ■■■ believes ■■■ will benefit from a multisensory approach to reading instruction, such as the Wilson Method.

When asked, ■■■ was unable to explain with certainty why his results on the WISC, which showed that ■■■ has a full scale IQ of 70, differed from ■■■ results showing a full scale IQ of 61 on the Stanford Binet. Significantly, he did not suggest that ■■■ results were unreliable or inaccurate. He agreed that ■■■'s improved verbal scores on the WISC may be attributable to the speech and language therapy ■■■ has been receiving at school. ■■■ also noted that, with the exception of math, ■■■ has made modest progress in other areas, as well. A comparison of ■■■ scores on ■■■ and ■■■ achievement tests confirms that ■■■ has, for the most part made modest gains. ■■■'s scores in word recognition, however, indicate a gain of more than a year.

2. ■■■ Speech and Language

■■■ is Professor in the Department of Communication Disorders at ■■■. The Parent initially retained ■■■ to conduct a private speech and language evaluation in January of 2008. At the Parent's request, ■■■ conducted a follow-up assessment in May of 2009. I found her testimony, as well as the reports of her evaluations to be informative and helpful.

■■■ conducted the first speech and language evaluation of ■■■ in January and February of 2008. At that point, ■■■ had been receiving special education services for only a short period of time. (*See Ex. 19*) Significantly in conducting her initial evaluation, ■■■ noted that ■■■ did not appear to be a student with a language disorder. As ■■■ put it, "Because ■■■ speech sounds normal and he produces well-formed sentences it is not surprising that his more subtle comprehension difficulties ... have received less attention." (*Ex 19* at 248) Nevertheless, ■■■ testing revealed that ■■■ had a mixed (receptive and expressive) language disorder. ■■■'s language difficulties, according to ■■■ were consistent with mild cognitive impairment. She recommended that ■■■ receive special education assistance to strengthen his auditory comprehension, as well as his ability to generate spoken and written stories and reports. ■■■ also recommended that services focus on curriculum-specific vocabulary and word study. (*Id.* at PD-250-51)

As noted, [REDACTED] reevaluated [REDACTED] approximately a year-and-a-half later. The results of her second evaluation confirmed that [REDACTED] continued to exhibit a mixed language disorder. (6/3/09 Speech Language Evaluation Summary, PD-237, Ex. 25) Significantly, however, [REDACTED] noted that a comparison of [REDACTED] scores on both evaluations indicated that [REDACTED] had made a "major" improvement on a sentence generation (expressive language) task, and "modest" improvements on several receptive language tests. (*Id.* at PD-242) [REDACTED] believed that these results showed that [REDACTED] was making "some progress on closing the gap between himself and typically developing peers." While she stressed that the progress was modest, [REDACTED] also found it "encouraging" that the gap was not increasing at a time when school demands are increasing, and attributed [REDACTED]'s progress -- at least in part -- to the special education services that [REDACTED] receives. (*Id.*)

[REDACTED] recommended that [REDACTED] continue to receive the services that were recommended in her first report as well as additional services such as, increasing the amount of work spent on reading comprehension strategies, and ensure that [REDACTED] can explain why they are important. She also recommended that [REDACTED] be taught to apply the strategies to general listening comprehension. To increase [REDACTED] fluency, Scott recommended repeated readings and choral reading, paying particular attention to helping [REDACTED] become a more expressive reader. [REDACTED] also suggested that [REDACTED] frequently read expository information to [REDACTED] in the form of textbooks, newspapers and library books. (*Id.* at 243)

Finally, though [REDACTED] second evaluation confirmed that [REDACTED] has a mixed language disorder, she noted that additional testing called into question her initial conclusion that [REDACTED] language deficits were consistent with mild cognitive impairment. Specifically, at the time of her second evaluation, [REDACTED] had reviewed [REDACTED] conclusion that [REDACTED] functioned in the borderline range of cognitive ability. This prompted [REDACTED] to administer the Test of Non-Verbal Intelligence. Though simply a screening measure, [REDACTED] believed the TONI would shed light on [REDACTED]'s non-verbal cognitive skills. Notably, without the verbal component, [REDACTED] received a score of 80, which placed him at the junction of low average and borderline. (*Id.* at 243)

3. [REDACTED] Occupational Therapy

[REDACTED] is an occupational therapist who operates a private practice in which she conducts OT assessments and provides direct therapy to students. In addition, [REDACTED] also works part-time as an occupational therapist for the [REDACTED]. [REDACTED] retained [REDACTED] to administer an occupational therapy evaluation to [REDACTED]. [REDACTED] was a knowledgeable and credible witness.

[REDACTED] testified about the results of her very comprehensive evaluation which, she testified focused on [REDACTED] clinical and school needs. (*See* 5/25/09 Occupational Therapy Evaluation, PD-202, Ex 8) In addition to the assessments that she administered, [REDACTED] evaluation also consisted of a thorough review of [REDACTED] school record, and a parent interview. [REDACTED] reviewed, for example, the [REDACTED] OT evaluation, which she believed was consistent with her findings that [REDACTED] requires occupational therapy to assist him in benefiting from his learning environment.

From her assessment [REDACTED] concluded that [REDACTED] exhibits significant gross-motor weaknesses that affect his core stability. This is relevant to the school setting, according to [REDACTED] because it affects [REDACTED]'s ability to sit up and attend to classroom activities. In support, [REDACTED] cited that [REDACTED] report that [REDACTED] had laid on his desk for a significant period of time during her classroom observation. In addition, [REDACTED] found that [REDACTED] exhibited deficits in visual-perceptual processing, visual-motor integration and sensory processing. According to [REDACTED], deficits in these areas would affect [REDACTED] ability to visually track information (such as with reading), complete table task work, and take in information from the school environment. (*Id.* at PD-223)

[REDACTED] extensive recommendations are fully presented in her report. First and foremost, [REDACTED]

testified that she believes that [REDACTED] should receive 60 minutes per week of direct occupational therapy with an additional 60 minutes per month of consultation to work with [REDACTED] teachers and the Parent. (*Id.* at PD-230) [REDACTED] also believes that [REDACTED] exhibits sensory integration deficits that call for a qualified OT to assist in creating a sensory diet to support [REDACTED] processing style. (*Id.* at PD-228) [REDACTED] made many specific suggestions to address [REDACTED] needs including, decreasing the amount of text on a page, and highlighting and color coding key information that [REDACTED] is to read. [REDACTED] also suggested that a buddy be assigned to take notes for [REDACTED] (*Id.* at PD-209-210) With respect to [REDACTED] postural and sensory processing issues, [REDACTED] recommended support for [REDACTED] seated posture, and allowing breaks from work with opportunities for movement.

4. [REDACTED] Speech and Language

[REDACTED] runs a private practice that specializes in the evaluation and treatment of children and adolescents who require assistive technology support. She also is an instructor at [REDACTED] teaching classes in the area of assistive technology. (*See* [REDACTED] PD-292, Ex 83) I found her testimony to be well-informed and helpful.

At [REDACTED] request [REDACTED] conducted an assistive technology evaluation of [REDACTED] [REDACTED] reported that [REDACTED] worked very hard on the tasks presented during the evaluation. She noted that he often became sidetracked, however, and needed frequent prompting and reminders. [REDACTED] voiced concern that [REDACTED] seems overly reliant on adult prompting and support. In her opinion, [REDACTED] needs to learn to become more independent in completing academic tasks. Significantly, several of [REDACTED]s teachers voiced the same concern when they testified that [REDACTED] is unable to work independently.

[REDACTED] administered the Test of Written Language -3 (TOWL-3), which assesses a student's written expression in a variety of contexts. (6/12/09 Assistive Technology Evaluation, PD -254, Ex. 84) [REDACTED] scored significantly below average to low average in all areas assessed. (*Id.* at PD-255) [REDACTED] stressed that [REDACTED] was particularly hindered by his lack of vocabulary. For that reason, and because he expected adult prompting, [REDACTED] had trouble generating ideas to write a story.

After administering the TOWL [REDACTED] introduced a story and assessed [REDACTED]s reading comprehension first without and then with the use of screen-reading technology. Without AT, [REDACTED] was unable to comprehend what he had read. With the technology, [REDACTED] reported that [REDACTED] was attentive and was able to answer comprehension questions with 87% accuracy. Next, [REDACTED] showed [REDACTED] how to use Wordmaker and Simon Sounds It Out, both phonics programs, and Earobics, a program to improve auditory processing skills. [REDACTED] was able to use each program and [REDACTED] testified that all would be helpful for [REDACTED] to use on a daily basis at home and at school.

Finally, [REDACTED] asked [REDACTED] to write sentences with the help of Write:Outloud and Co:Writer. Though his performance was not significantly improved, [REDACTED] testified that he was able to write faster and more accurately. Significantly, [REDACTED] noted that [REDACTED] was much more independent and engaged in the writing process. She concluded that [REDACTED] would be an excellent candidate to use assistive technology to help improve his written language output.

[REDACTED] evaluation is the only AT assessment that has been administered to [REDACTED] Evidence presented at the hearing indicated that after the Parent filed her due process request, [REDACTED] offered to conduct its own AT assessment, but that the Parent refused to provide her consent. (*See* 2/19/09 [REDACTED] Letter to [REDACTED])

CONCLUSIONS OF LAW

The Individuals with Disabilities Education Act (IDEA) establishes that all students between the ages of 3 and 21 are entitled to a free appropriate public education. (FAPE) (34 C.F.R. § 300.301) To satisfy this obligation IDEA requires districts to identify and evaluate students who are in need of special education and related services. (34 C.F.R. §§ 300.111(a), 300.301, 300.303-300.305) Once identified, IDEA mandates that a district address a student's educational needs by providing the student with an individualized education program in the least restrictive environment. (*Id.* at §§ 300.111, 300.112, 300.114)

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

The second prong of the *Rowley* test is whether the district has developed an IEP reasonably calculated to enable the child to receive an educational benefit. *Rowley* at 206-07. To meet this requirement, *Rowley* establishes that a school district must provide a "basic floor of opportunity" in the form of specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child. *Id.* at 201. In addition, FAPE requires a school district to "open the door of public education to handicapped children, not to educate a child to her highest potential." *Board of Education of Murphrysboro Comm. Unit. Sch. Dist. No. 186 v. Illinois State Board of Educ.*, 41 F.3d 1162, 1166 (7th Cir. 1994) Whether an IEP confers meaningful benefit to a child must be gauged in relation to the potential of the child at issue. *Deal v. Hamilton County Bd. of Ed.*, 392 F.3e 840 (6th Cir. 2004) Moreover, an individualized education plan is acceptable "when it is 'likely to produce progress, not regression or trivial educational advancement.'" *Alex R., ex. Rel. Beth R. v. Forestville Valley Community Unit School Dist. # 221*, 375 F.3d 603, 615 (7th Cir. 2004)(quoting *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 248 (5th Cir. 1997)).

Finally, in considering whether the District has met the requirements of FAPE, it is important to note that the burden of proof rests with the party seeking relief. *Schaeffer V. Weast*, 546 U.S. 49, 62 (2005) Here, the District chose to file a due process complaint because it did not agree that the Parent's request for an IEE was warranted. Thus, the District bears the burden of proof to show that it appropriately evaluated [REDACTED] in the areas of cognition, speech and language, occupational therapy and assistive technology. The Parent bears the burden of proof on all other issues raised in her complaint.

In applying the law to the facts of this case, I conclude that on the whole, the District has provided [REDACTED] with FAPE. Documentary and testimonial evidence demonstrated that [REDACTED] staff conscientiously attempted to identify [REDACTED]'s educational needs by promptly and thoroughly responding to the Parent's request for school-based problem solving. When its evaluations indicated that [REDACTED] was a student with a disability, [REDACTED] provided him with an IEP that addressed his deficits in reading comprehension, math, and social emotional skills. When [REDACTED] subsequently identified [REDACTED] speech and language deficits, it provided him with IEP goals to address those deficits, as well. The evidence also shows that [REDACTED] made adequate progress on his IEP goals. By providing modifications and accommodations to be employed in the regular classroom, the team ensured that [REDACTED] was educated in the least restrictive environment with his peers, and was exposed to the same curriculum to the extent possible.

While [REDACTED] has largely succeeded in providing [REDACTED] with FAPE, the evidence demonstrates that it failed in two ways: First, though [REDACTED] has targeted [REDACTED] reading comprehension deficits, it failed to address his decoding deficits in his 12/6/07 IEP. As [REDACTED] made clear, these skills are the foundation of reading comprehension. Thus, [REDACTED] failure to address [REDACTED] decoding deficits was a denial of FAPE. Second, [REDACTED] has failed to address [REDACTED] need for occupational therapy. As noted above, [REDACTED] own assessment indicated that he has significant deficits in this area. Two private OT evaluations also concluded that [REDACTED] required occupational therapy to assist him in benefiting from his learning environment. [REDACTED] failure to timely evaluate [REDACTED]'s OT needs and provide him with occupational therapy is a denial of FAPE.

Finally, I have concluded that [REDACTED] did not fail in assessing [REDACTED]'s assistive technology needs because of the Parent's lack of cooperation. I nevertheless took [REDACTED] report into account. Her conclusion that assistive technology will help [REDACTED] to improve his ability to work independently (while bolstering academic deficits) is of critical importance to [REDACTED]'s educational progress, particularly as he grows older.

Whether the District Denied [REDACTED] FAPE by Failing to Adhere to its Child-find Obligation?

The Parent alleges that the District violated its child-find obligation by failing to identify [REDACTED] as a student with a disability prior to December 6, 2007. (The date [REDACTED] was found eligible for special education services.) According to IDEA, a district is required to actively seek out, identify and evaluate all children with disabilities. (20 U.S.C. § 1412(a)(3)(A)) The threshold for suspecting that a child has a disability is relatively low. The appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Hawaii Dept. of Educ. v. Rae*, 158 F.Supp. 1190, 95 (D. Hawaii, 2001) Either the District or the Parent may request an initial evaluation to determine whether the child is eligible for special education services. (20 U.S.C. § 1414(a)(1)(B))

Here, the evidence indicated that the District had reason to suspect that [REDACTED] was a student with a disability at the end of his second grade year. Specifically, in an April, 2007 report card, [REDACTED]'s teacher reported that he was not making expected progress in math because he was not engaged in lessons, and was not able to apply concepts independently. In reading, however, the teacher reported that [REDACTED] was progressing as expected, but needed development. (See Period 3 Summary Reports, PD-154d-f, Ex 64) She did not immediately refer [REDACTED] for testing at this point but apparently chose to monitor his progress. The decision was not unreasonable in light of the fact that [REDACTED] was showing improvement in several areas. By the next reporting period in June, however, [REDACTED] progress had not improved. His report card indicates that he still was not progressing as expected in math and was no longer progressing as expected in reading. (6/14/07 Summary Report, PD 155-56, Ex 64a) It was at this point that the District's child-find obligation was triggered.

Given that the District's child-find obligation was triggered at the very end of the school year, I cannot conclude that the District should have initiated a referral before the school year ended. Rather, the evidence demonstrates the District had an obligation to begin the assessment process for [REDACTED] as soon as school resumed in the fall. The evidence confirms that this is precisely what occurred. Specifically, [REDACTED] requested school-based problem solving on September 6, 2007. The District promptly responded by convening a meeting within a week of her request. [REDACTED] then began its assessments of [REDACTED] less than a week after that meeting. The fact that [REDACTED] initiated the process instead of the District is of no legal consequence. Nor was it inappropriate to pursue school-based problem solving as the first step in identifying [REDACTED] needs since [REDACTED] specifically requested it. In short, I find that the District satisfied its child-find obligation in a timely way.

Whether the District Fail to Timely and Adequately Assess [REDACTED] in All Areas of Suspected Disability?

The Parent's complaint includes a number of allegations relating to the adequacy and timeliness of the

District's evaluations of [REDACTED]. Primarily, the Parent contends that when [REDACTED] finally did comply with its child-find obligation, it administered a full individual evaluation of [REDACTED] that was inadequate for two reasons: 1) It incorrectly identified [REDACTED] as a student with a mild cognitive disability; and 2) The evaluation failed to assess [REDACTED] in speech and language and occupational therapy, which were suspected areas of disability. (Issue 3) In addition to alleging that they were untimely, the Parent further alleges that the speech and language and occupational therapy evaluations speech and language and occupational therapy evaluations failed to appropriately identify the nature and extent of [REDACTED] disabilities. (*Id.*) Finally, the Parent also alleges that the District failed to evaluate and identify [REDACTED] need for assistive technology. (Issue 7)

With respect to the Parent's allegations relating to the [REDACTED] IDEA establishes that a district must use a variety of assessment tools that may assist in determining whether the student is a child with a disability, as well as the educational needs the child. (34 C.F.R. §§ 300.301, 300.304) In addition, a district must ensure that the child is assessed in all areas of suspected disability. (20 U.S.C. §1414(b)(3)(B)) Here, the record establishes that the District satisfied these requirements. [REDACTED] administered several tests that broadly assessed [REDACTED] cognitive abilities, academic achievement levels, adaptive behaviors, visual motor integration, and social emotional functioning. [REDACTED] also assessed [REDACTED] social emotional needs. From these comprehensive assessments the team concluded that [REDACTED] was eligible for special education services as a student with a mild cognitive delay. They also relied upon the results of the [REDACTED] to create an IEP for [REDACTED] that addressed his deficits in the areas of reading, math and social emotional functioning.

The Parent contends that the [REDACTED] was deficient because it incorrectly identified [REDACTED] as a student with a mild cognitive delay. According to [REDACTED] adaptive behaviors, which were in the "adequate" range overall, did not support that finding. Moreover, subsequent testing by [REDACTED] and [REDACTED] indicated [REDACTED] IQ to be in the borderline range of intellectual functioning. While these arguments are noteworthy, they do not show that the team's eligibility determination concerning [REDACTED] was wrong.

First, as discussed more fully above, [REDACTED] testified that [REDACTED] received a full scale IQ score of 61 on the Stanford Binet. This score placed him squarely within the cognitively delayed range of ability. His non-verbal and verbal scores of 61 and 64 were consistent with the full scale results. [REDACTED] also confirmed that she believed the testing process yielded an accurate picture of [REDACTED] abilities. Next, [REDACTED] testified that the team considered [REDACTED] adaptive behavior skills in reaching its eligibility determination. Though she conceded that some of [REDACTED] adaptive skills were shown to be higher than one would expect of a cognitively delayed student, [REDACTED] stressed that several adaptive skills, such as anger control, self-control and daily living skills were consistent with a finding of cognitive delay.

With respect to [REDACTED] and [REDACTED] findings, it is important to note that in her first evaluation of [REDACTED] -- which was just weeks after [REDACTED] evaluation -- [REDACTED] stressed that her findings were consistent with the team's determination that [REDACTED] was a student with a mild cognitive delay. Nearly two years after [REDACTED] [REDACTED] and [REDACTED] conducted additional assessments of [REDACTED] that showed he is functioning at a somewhat higher level of cognitive ability. Rather than showing that [REDACTED] incorrectly identified [REDACTED] these results simply show [REDACTED] level of ability at a later point in time. Indeed, [REDACTED] own report makes clear that IQ scores are not fixed. And when asked his opinion about why the scores were different, [REDACTED] agreed that [REDACTED] improvement on the WISC could be attributable to the gains he has made as a result of his speech and language therapy. In other words, [REDACTED] improved cognitive scores are an indication that he has made progress -- they are not evidence that [REDACTED] incorrectly identified [REDACTED] needs.

To the contrary, even assuming *arguendo* that [REDACTED] "mislabeled" [REDACTED] it still would not lead me to conclude that the error was a denial of FAPE since [REDACTED] has (for the most part) appropriately addressed [REDACTED] underlying deficits. Indeed, many of [REDACTED] recommendations concerning [REDACTED] were already being implemented by [REDACTED] prior to the issuance of his report. Consistent with [REDACTED]

recommendations, for example, [REDACTED] receives academic instruction primarily in a special education classroom. Services include instruction in reading and math, as well as speech and language. Though [REDACTED] concluded that [REDACTED] has ADHD and [REDACTED] did not, [REDACTED] nevertheless addressed [REDACTED] attentional issues by providing him with paraprofessional support in the classroom. This too, is consistent with [REDACTED] recommendations. [REDACTED] in fact, noted that his findings were largely comparable to [REDACTED] findings.

The Parent's second basis for challenging [REDACTED] is that it failed to assess all of [REDACTED]'s areas of need, in particular, occupational therapy and speech and language. There is no dispute that when the met on October 11, 2007 to determine which domain areas should be assessed it did not include an occupational therapy or speech and language evaluation. With respect to the occupational therapy evaluation, there was no credible evidence to indicate that the team's decision on October 11 was inappropriate. However, [REDACTED] testified that the results of her psychological evaluation given shortly after the domain meeting, indicated that [REDACTED] might require occupational therapy. Based on [REDACTED] findings, the team should have ensured that [REDACTED] received an occupational therapy evaluation. Its failure to do so was a violation of IDEA's requirement that children be assessed in all areas of suspected disability.

[REDACTED] ultimately administered an occupational therapy evaluation nearly a year after it should have. The evaluation conducted by [REDACTED] appears to have been thorough, and the results largely consistent with the results obtained by the private evaluators. [REDACTED] conclusion that [REDACTED] did not need occupational therapy services, however, was at odds with her own findings that [REDACTED] exhibited significant deficits. Her recommendations were also at odds with the private evaluators who both recommended that [REDACTED] receive occupational therapy to address his severe deficits. [REDACTED] failure to provide [REDACTED] with occupational therapy as part of the services it provided in [REDACTED] 12/6/07 IEP was a denial of FAPE.

With respect to the allegations concerning the timeliness and adequacy of the speech and language evaluation, the evidence does not support the Parent's assertion that the District erred when it failed to assess [REDACTED] speech and language skills as part of its initial full individual evaluation. To the contrary, as [REDACTED] pointed out in her first report, because [REDACTED] speech sounded normal and his sentences were well-formed, his more subtle difficulties were not readily apparent. [REDACTED]'s Vineland responses, which indicated that [REDACTED] communication skills were adequate, confirm [REDACTED] observation.

Though the District did not err by failing to include the speech and language evaluation in its initial evaluation of [REDACTED] there is evidence that [REDACTED] should have completed the evaluation sooner. Specifically, in response to the Parent's request, on May 1, 2008, [REDACTED] agreed to conduct a speech evaluation of [REDACTED]. Under the law, the District should have completed the evaluation by the time school reconvened in the fall. (105 ILCS 5/14-8.02(b)) [REDACTED] failed to comply with this timetable and, instead, completed the evaluation a month after school was in session. This was unquestionably a procedural violation. The delay was relatively short, however. Moreover, the evidence indicated that [REDACTED] has made clear progress as a result of his speech and language therapy. Thus, I find that the District's procedural violation did not result in a denial of FAPE for [REDACTED].

Nor does the evidence support the Parent's assertions that [REDACTED] speech and language evaluation was inadequate. To the contrary, as fully discussed above [REDACTED] has more than met its burden of proof in demonstrating that its evaluation of [REDACTED] appropriately identified the nature and extent of [REDACTED] speech and language needs.

Parent's last allegation relating to evaluations is that the District failed to conduct a timely and appropriate assistive technology evaluation. While it is true that the District did not conduct an AT assessment, the evidence indicates that it was precluded from doing so because the Parent failed to provide consent. The Parent, instead, chose to rely on a private AT assessment. For that reason, I do not conclude that the District acted inappropriately with respect to an assistive technology evaluation. Thus,

while I did not consider [REDACTED] report as evidence of [REDACTED] failings, I did take her recommendations into account because they specifically addressed [REDACTED] inability to work independently. Several witnesses identified this as an area of significant concern. Specifically, [REDACTED] testified that the assistive technology products she used with [REDACTED] enabled him to work independently while focusing on areas of deficit such as decoding, vocabulary and writing. Moreover, since [REDACTED] was able to complete tasks independently using AT, [REDACTED] also noted that [REDACTED] level of frustration appeared to diminish. Thus, while I find that the District did not violate FAPE with respect to an AT evaluation, I also find that [REDACTED] recommendations concerning appropriate AT services for [REDACTED] must be taken into account in order to meet his learning needs.

Whether the District Committed Procedural Violations that Resulted in a Denial of FAPE?

As noted above, IDEA requires school districts to comply with relevant statutory, or procedural requirements in order to satisfy the requirements of FAPE. Procedural violations cannot be deemed a violation of FAPE unless they have impeded a child's right to a free appropriate public education, significantly impeded the parents' right to participate in the decision making process, or caused a deprivation of educational benefits. (*Id.* at §1415(f)(3)(E)(2007))

Here, the Parent alleges that the District denied [REDACTED] right to FAPE by committing the following procedural violations: 1) The District failed provide the Parent with a copy of her rights when referring the child to an IAT rather than an evaluation under IDEA; 2) The District failed to send a conference notice within 10 days to convene an IEP meeting after the Parent submitted speech and OT IEE's; 3) The District failed to complete speech and language and OT evaluations before the start of the 2008-09 school year as required by the school code; 4) The District failed to provide an appropriate educational program based on scientific, research-based evidence; 5) The District failed to develop IEP goals based on accurate present levels of performance; and 6) The District failed to accurately and objectively report to the parent [REDACTED] lack of progress in [REDACTED] offered programs and services. (*See* Issues 2, 4, 5, 6, 8, 9)

For several of the issues, the Parent failed to provide any credible evidence to support her allegations. Specifically, the Parent failed to demonstrate that the District failed to send a conference notification within 10 days after [REDACTED] submitted IEEs for consideration. Likewise, the Parent did not offer evidence to support her allegation that the District's instructional programs were not based on scientific, research-based evidence. Finally, the Parent's allegation that the District failed to inform her of [REDACTED] progress was contradicted by the weight of the evidence. In fact, the evidence showed that [REDACTED] teachers provided the Parent with regular reports of [REDACTED] progress in meeting his IEP goals and benchmarks.

The remaining issues merit discussion even though I have concluded that none of the alleged procedural violations resulted in a denial of FAPE. Specifically, while it does appear that the District did not provide [REDACTED] a copy of her procedural rights when she requested school-based problem solving, this did cause a deprivation of [REDACTED] educational benefits. The record reveals that [REDACTED] decision to pursue [REDACTED] did not delay the evaluation process for [REDACTED]. Indeed, at the very first meeting -- which occurred a week after the Parent submitted her request -- the team agreed that [REDACTED] would conduct a cognitive assessment of [REDACTED]. Shortly after this first assessment was completed, the team agreed that an [REDACTED] was warranted. Equally important, there is no indication that the District's failure to provide the Parent with a copy of her procedural rights at the time of the [REDACTED] referral impeded her right to participate in the decision making process. Indeed, the evidence indicates that [REDACTED] was an active participant in the team's decisions about [REDACTED] throughout the period at issue.

With respect to the Parent's contention that the District was required, but failed to complete OT and speech and language evaluations prior to the 2008-09 school year, that issue is addressed in the section above pertaining to evaluations. I will not repeat the discussion here.

Finally, in considering the Parent's assertions that the District failed to include accurate present levels of performance in [REDACTED] IEP's, I find that the District's present levels of performance were inadequate for the reading and language arts goals in [REDACTED] 10/6/08 IEP. Because the evidence indicates that [REDACTED] made progress in these areas, however, I do not find that the lack of quantifiable present levels of performance resulted in a denial of FAPE. Specifically, [REDACTED] testified that [REDACTED] met his reading and language arts benchmarks and made progress during the 2008-09 school year when working with 4th grade material. In addition, [REDACTED] report concludes that [REDACTED] reading skills are consistent with his cognitive ability. Moreover, a comparison of [REDACTED] achievement test results to [REDACTED] results also shows that [REDACTED] has made some progress in reading.

Whether the District Failed to Develop an Appropriate IEP [REDACTED]

In addition to a district's obligation to adhere to the procedural requirements of FAPE, *Rowley* imposes the substantive requirement that a district also must develop an IEP that provides specialized instruction reasonably calculated to enable the child to receive an educational benefit. Though the Parent did not allege any substantive violations of FAPE in her complaint, the evidence showed that District failed to satisfy this requirement in [REDACTED] 12/6/07 IEP. Specifically, though the IEP specifies that [REDACTED] exhibits deficits in decoding, it fails to provide [REDACTED] with any goals that directly address his decoding deficits. [REDACTED] testimony made clear that [REDACTED] decoding deficits must not be overlooked because improving [REDACTED] decoding and fluency is essential to improving his reading comprehension skills.

Pursuant to the above findings of fact and conclusions of law, it is hereby ordered:

- 1) The Parent's request that the Hearing Officer find that the District failed to appropriately and timely identify the Student in all areas of suspected disability is denied except with respect to the District's failure to identify [REDACTED] occupational therapy needs.
- 2) The Parent's request that the Hearing Officer find that the District violated IDEA procedures for conference notification of a meeting to review IEE's is denied.
- 3) The Parent's request that the Hearing Officer order full funding for the Parent's IEE's is denied. The District, however, is ordered to reimburse the Parent (or pay the provider directly) for [REDACTED] occupational therapy evaluation of [REDACTED] and for her time spent testifying at the hearing.
- 4) The Parent's request that the Hearing Officer order the District to pay for the Student to attend a private learning disabilities school such as [REDACTED] or [REDACTED] is denied. Without question, the evidence demonstrated that [REDACTED] is the least restrictive environment for [REDACTED].
- 5) The Parent's request that the Hearing Officer order the District to implement all of the outside evaluators' recommendations is denied.
- 6) Within two weeks of this Decision and Order, the District is ordered to convene an IEP meeting to develop an IEP for [REDACTED] that takes this order into account. Specifically:
 - The IEP team shall revise [REDACTED] eligibility determination to reflect [REDACTED] and [REDACTED] recent testing results indicating that [REDACTED] no longer functions in the cognitively delayed range of ability. The team should take into account [REDACTED] recommendation that there is support for a clinical diagnosis of Attention-Deficit/Hyperactivity Disorder. This recommendation is fully supported by evidence

presented at the hearing, especially the testimony of [REDACTED] staff. The team should also take into account [REDACTED] and [REDACTED] findings that [REDACTED] exhibits a mixed (expressive-receptive) language disorder.

- The IEP shall provide for [REDACTED] to receive 30 minutes per week of direct occupational therapy services and 30 minutes per month of consultative services. The IEP team shall develop appropriate OT goals and benchmarks that reflect [REDACTED] findings and recommendations;
 - The IEP shall provide for [REDACTED] to receive appropriate assistive technology, as recommended by [REDACTED] to help improve [REDACTED] written language and auditory processing skills. The accommodations shall include products such as Co:Writer, Write:Outloud and Earobics, Step 1, or similar products. The IEP shall specify that [REDACTED] is to use this AT daily to assist in his classroom assignments, and to assist in developing [REDACTED] auditory processing skills. In addition, the IEP team shall consider creating an IEP goal intended to improve [REDACTED] ability to work independently. This goal may reference [REDACTED] use of assistive technology as a means of improving his independent working skills. In addition, to [REDACTED] recommendations, [REDACTED] shall implement the other AT accommodations already included in [REDACTED] IEP's such as providing [REDACTED] with books on tape;
 - To ensure that [REDACTED] progress can be clearly measured, the IEP team shall develop IEP goals that provide specific, measurable present levels of performance, which directly relate to goals and benchmarks;
- 7) As specified in my decision, [REDACTED] denied [REDACTED] FAPE by failing to conduct a timely occupational therapy evaluation and by failing to provide him with occupational therapy services. [REDACTED] also denied [REDACTED] FAPE in his 12/6/07 IEP by failing to provide him with goals and benchmarks that provided direct instruction in reading decoding. (As noted, the use of pictures and context clues is *not* phonics or decoding instruction.)
- 8) As compensation for its violations of FAPE, [REDACTED] shall provide [REDACTED] with no less than two hours a week of reading instruction utilizing a multisensory approach, such as the Wilson or Orton-Gillingham method, that focuses on improving [REDACTED] decoding and word recognition skills. The instruction is to be provided in the form of 1:1 tutoring. For purposes of this decision, in addition to the Parent and members of the [REDACTED] team, the team must also include a [REDACTED] reading specialist who will provide guidance in selecting the appropriate multisensory methodology for [REDACTED] and support in implementing the instruction. The reading instruction must be provided by an instructor who is trained and experienced in teaching that multisensory method of instruction, and is to take place beyond the regular school day. The instruction is to commence by December 1, 2009 and continue until the end of the 2009-10 school year. My expectation in setting this time frame is that [REDACTED] will receive approximately 45 to 50 hourly sessions.
- 9) As compensation for [REDACTED] failure to adequately assess and provide [REDACTED] with OT services, [REDACTED] shall receive private occupational therapy at District expense. The therapy shall be provided for one hour per week, before or after school, or on weekends, for a period of one calendar year. The Parent may obtain the services of [REDACTED] or another occupational therapist included on ISBE's lists of approved therapists. The District shall reimburse the Parent for reasonable transportation costs to and from the provider.
- 10) With respect to my order concerning Assistive Technology services and products for [REDACTED] the District is also ordered to provide [REDACTED] with appropriate assistive technology support. This requires more than insuring AT products are available in the classroom. [REDACTED] must provide [REDACTED] special

education and regular education teachers, as well as [redacted] with adequate training to be able to use and benefit from the AT products.

11) The District shall provide proof of compliance with the aforesaid orders to the Illinois State Board of Education, Compliance Division, 100 No. First St., Springfield, Il. 62777-001, on or before December 4, 2009.

RIGHT TO REQUEST CLARIFICATION

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

RIGHT TO FILE A CIVIL ACTION

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the aforesaid Decision and Order was transmitted to the parties by email on October 20, 2009, and by U.S. Mail on October 21, 2009 with first class postage prepaid and directed to the Parent's counsel and District's counsel at their respective addresses.

DATED: October 20, 2009

[Redacted signature box]

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

[1] [REDACTED] whose testimony I found to be quite persuasive and helpful, stated that she was asked to give ideas for teaching strategies for [REDACTED]. She stressed, however, that no one at the meeting suggested that [REDACTED] needed speech and language therapy. As [REDACTED] put it, there often is overlap between the types of services that she provides and those that are provided by a special education teacher. In other words, listening comprehension, and blending or sounding out letters, -- issues that were exhibited by [REDACTED] -- could have been addressed either by a special education teacher or a speech pathologist.

[2] Significantly, [REDACTED] Vineland scores, which were primarily in the "adequate" range, do not clearly indicate that he had deficits in adaptive behavior. When questioned about this, [REDACTED] noted that [REDACTED] teachers reported that [REDACTED] had adaptive functioning deficits in areas such as self-control, problem solving and resolving conflict. According to [REDACTED] it is typical for students with cognitive delays to exhibit deficits in these areas. [REDACTED] also suggested that [REDACTED] may have provided a somewhat inflated picture of [REDACTED] skills. Subsequent Vineland responses that were provided by [REDACTED] 4th grade special education teacher were, however, consistent with the scores provided by [REDACTED].

[3] One of the benchmarks for the comprehension goal purports to target decoding. However, a close reading of that benchmark reveals that it doesn't actually target decoding skills, but instead focuses on teaching [REDACTED] how to use context clues and pictures to identify words.

[4] The OT report recommended that [REDACTED] receive weekly OT services for 3 months to address his needs. [REDACTED] saw to it that [REDACTED] received private OT therapy consistent with the examiner's recommendations. (See 7/3/08 Occupational Therapy Summary, PD-262, Ex 9)

[5] Also of concern was evidence demonstrating that no other student at [REDACTED] receives occupational therapy, and testimony suggesting that with a very busy schedule, [REDACTED] may have been reluctant to travel to [REDACTED] solely for one student. [REDACTED]

[6] Though there are no goals that expressly focus on science and social studies, [REDACTED] testified that she worked to improve [REDACTED] comprehension of the content areas by using such strategies as previewing headlines, providing [REDACTED] with a word journal, and allowing [REDACTED] extra time to complete assignments.

[7] [REDACTED] current special education teacher, provided similar testimony about [REDACTED] homework. [REDACTED] stated that before she assigns homework, she first confirms that the students understand the assignment and are capable of completing it. Nevertheless, on several occasions, [REDACTED] has failed to require [REDACTED] to do his homework because she contends that there are no modification or accommodations. (See, e.g., 8/11/09 Parent Note, PD-445, Ex 69)

[8] With the exception of [REDACTED] all of [REDACTED] teachers and service providers testified that [REDACTED] outburst have diminished and that he has begun to employ coping strategies to avoid or resolve conflict. That [REDACTED] (the paraprofessional assigned to assist [REDACTED] does not believe [REDACTED] outbursts have diminished is of concern. Her lone opinion, however, is insufficient to cause me to disregard the weight of evidence indicating [REDACTED] has made progress in this regard.

[9] As noted above, [REDACTED] own definition of cognitive impairment requires consideration of both IQ and adaptive functioning. (Ex. 38)

[10] In response to questioning at the hearing, the Parent denied that there was any connection between this letter and [REDACTED] offer to administer an AT assessment. Since there were no other evaluations being contemplated, however, her responses simply were not credible. Moreover, the letter, though carefully worded, sends the unmistakable message that the Parent will not consent to any evaluations by [REDACTED].

[11]

The 1/30/06 Period 2 Summary Report pre-dates the statute of limitations period by more than a year. I nevertheless took it into account in determining when the District's child find obligation was triggered. Since it showed that [REDACTED] was progressing in all areas, it did not indicate that the District's child-find obligation was triggered at that point.

1121

Evidence presented at the hearing showed the relationship between the Parent and staff has become somewhat strained, and that the tension may, in fact, be partly due to [REDACTED]'s high level of participation in decisions about her son's education. [REDACTED]'s desire to be fully informed and involved should not be a point of contention. On the other hand, it was clear that [REDACTED] need to understand all facets of [REDACTED] education can result in unusually lengthy meetings. One way to address the "friction" is to provide [REDACTED] with evaluation reports and draft IEP goals (if there are any) prior to convening IEP meetings. In that way, [REDACTED] will have an opportunity to inform herself, and she will not feel at a disadvantage as compared to other team members. From the staff's perspective, meetings should be more efficient if all of the team members are given an opportunity to review relevant information prior to the meetings.