

Case Number: 2009-0302

[REDACTED] vs. [REDACTED]
Hearing Officer: Joseph P. Selbka

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

AUG 21 2009

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: 6306556100
Superintendent [REDACTED]
Address [REDACTED]
Represented by [REDACTED]

Parent Name [REDACTED]
Address [REDACTED]
Represented by [REDACTED]

Date and Timelines

Date of Written Request: 02/06/2009
Date of Pre-hearing Conf: 03/18/2009

Date of Hearing: 06/29/2009 to 7/8/2009
12:00:00 AM
Date of Decision: 8/18/2009

Summary of Decision

Student's parents claimed that the District failed to properly implement the Student's IEP. We found no violation in the implementation of the IEP. Student's parents also claimed several procedural violations related to failure to turn over records; failure to provide progress reports; and failure to complete a transition IEP. All procedural violations were found to be harmless.

HEARING DECISION, OPINION AND ORDER

TO: Ms. Mary Long
Illinois State Board of Education
100 North First Street
Springfield, IL 62777-0001

[REDACTED]

[REDACTED]

[REDACTED]

This matter comes before us pursuant to the hearing request of [REDACTED] ("Student's Parents") against [REDACTED] No. 86 ("School District" or "District"), on behalf of their son, ("Student"). The School District is represented [REDACTED] Student's Parents are represented by [REDACTED]. The parties have agreed to extend the forty-five day deadline for hearing to allow for written closing memoranda of law to be provided and for transcripts to be obtained for a final decision to be rendered by August 18, 2009. There were seven days of testimony- May 5-7, 2009, May 29, 2009, June 29-30, 2009, and July 8, 2009. We have jurisdiction to hear this matter pursuant to 105 ILCS 5/14-8.02(a) *et seq.* and 23 Ill.Admin.Code 226.000 *et seq.*

I. Procedural History

The Parents filed a due process hearing complaint, through their attorney, on February 13, 2009. A prehearing conference occurred on March 18, 2009. A subsequent order was entered governing the case.

The hearing occurred at the School District Administrative Office. The Due Process Complaint claims that: (a) Student's IEP was not properly implemented in that many required accommodations were not provided and that the District failed to properly provide social work services; occupational therapy services; and speech and language services by the School District; and (2) Student was not provided the mandated resource minutes; (3) Student's needs in the IEP were not being addressed and goals were not being achieved; (b) the District changed one of Student's goals without conducting an IEP meeting and obtaining the Parents' consent first; (c) the District failed to generate an appropriate transition IEP when Student turned 14.5 years of age; (d) the District failed to provide Student's Parents student records upon request. Student's Parents also requested the equivalent of injunctive relief for placements which the District had proposed to implement but not taken any concrete steps to do so. We dismissed that aspect of the

Complaint because the controversy was not ripe for adjudication—the District had not actually taken any actions to that effect.

II. Issues Identified and Remedies Requested

1) Whether the District violated IDEA by failing to properly implement the IEP. In making that determination, we must determine:

a) whether the District failed to effectively provide the following accommodations to Student in the classroom:

- whether Student was provided with a laptop computer for every class;
- whether Student had a locker at the end of a hallway and a place to put his books near that locker;
- whether Student received visual checks for class;
- whether Student received the Kurzweil program or a similar program;
- whether Student received Draftbuilder or a similar program;
- whether Student received sensory breaks in class;
- whether Student received notes in class;
- whether Student's long-term assignments were broken down with multiple dates as required by the IEP;
- whether Student was provided enlarged graphs in math as required by the IEP;
- whether an autism consultant has ever been used by the District as required by the IEP;
- whether Student has received measuring assistance as required by the IEP;
- whether Student has use of a computer and organizational calendar as required by the IEP.

b) Whether the District failed to provide Student with resource time; occupational therapy; social work services; and speech and language services in the amounts provided in the IEP.

c) Whether the District failed to implement the IEP in a way to meet Student's needs. To wit,

- whether Student's speech and language therapy addresses Student's phonological processing disability in regard to language and reading;
- whether Student's disability related to staying on task and functioning independently has been addressed using resource class, teacher check-in, and organizational systems;
- whether Student's fine motor and visual skills are being properly addressed through the provision of occupational therapy services;
- whether Student's ability to organize and handle social situations is being properly addressed through social work services.

2) Whether the District changed one of the goals in Student's IEP without informing the Student's Parents in regard to Student's speech and language therapy services;

- 3) Whether the District was obligated to create a transition IEP when Student turned 14.5 years of age;
- 4) Whether the District violated IDEA by failing to provide Student's Parents with all of Student's school records in a timely manner.
- 5) Whether the District violated IDEA by failing to provide progress reports.
- 6) Whether, if there were any technical violations of IDEA, the Student's Parents are entitled to any remedy.

III. Findings of Fact

The Drafting of the IEP and Facts Leading up to Student Attending High School at the District

1. Student was a freshman at the District last year. Prior to entering high school, Student's Parents attended an IEP Meeting on January 23, 2008, at the Student's middle school where the current IEP was drafted. A member of the District's special education administration attended the IEP meeting. The District person who attended, [REDACTED] was not at the District by the time Student began school at the District.
2. Student is on the autism spectrum and has attention deficit hyperactivity disorder ("ADHD") (SD 369, 374-375). Student has average cognitive ability, and is thus able to obtain educational benefits from regular classes provided he is properly accommodated (SD 347).
3. The District admits that it is bound by the IEP created at the January 23, 2008, IEP meeting.
4. Student progressed to sophomore year after completing freshman year.

Facts Related to Accommodations Provided to Student in the Classroom

5. Student took Algebra I, Biology, Drama, English I, and World Cultures in his first year (SD 20). Student did relatively well in all classes except biology. When accommodations were not provided, Student's Parents and Student were offered alternative methods to insure that Student obtained the academic benefit from the class (see e.g. Tr. 576, 1720-1721).
6. To wit, Student's Mother admitted that Student obtained a great deal of educational benefit from his English class (Tr. 576). Student's Advocate, [REDACTED] who witnessed several of Student's classes, also admitted that Student was getting the necessary accommodations in his English and World Cultures Class (Tr. 443-444, 469, 483-484). To the extent that Student's IEP accommodations were not followed in English, Student was accommodated in a different way so as not to lose an academic benefit (Tr. 1720-1721). There was no evidence presented that Student did not receive a significant academic benefit from English and World Cultures.

7. Student's Parents called the math teacher (who also cotaught biology), but asked the math teacher no questions regarding math class. In regard to Student's math accommodations, there was no necessity for measuring assistance during Student's year at class (Tr. 1728-1729). Finally, Student's Mother knows of only one instance where Student was not given enlarged graph paper in math class (Tr. 1727-1728). The District [REDACTED] testified that Student was provided with enlarged graphs in math class but he did not want them (Tr. 1647). There was no other evidence as to any problems with accommodations in math class.

8. At the hearing, Student's Parents had [REDACTED] a psychiatrist, testify at the hearing. Student's Parents did not elicit any actual opinions from [REDACTED] as to whether the IEP was being properly implemented or whether any IEP implementation breaches were material (Tr. 73-76, 86-88). [REDACTED] did testify as to what accommodations would help Student in the classroom, but he did not testify as to whether the helpful accommodations were in the IEP or not, and which accommodations were essential for Student to achieve an educational benefit from class. [REDACTED] did testify as to shortcomings in the IEP design, which (with the exception of transition services) is not in issue in this case.

9. [REDACTED] admitted that biology was the only academic subject where Student wasn't being accommodated properly (Tr. 469).

10. In biology class, Students' Parents contend the failure to accommodate was so extreme so as to deprive Student of educational benefits. Biology was cotaught by a regular education teacher, [REDACTED] and a special education teacher, [REDACTED] ([REDACTED] has a master's in special education and certifications in special education for K through 12 students in learning disabilities and behavioral disorders (Tr. 795). [REDACTED] has worked with a number of children on the autism spectrum (Tr. 797).

10. Student has not needed sensory breaks in biology (Tr. 805). He would be given a sensory break if he needed it (Tr. 805). Early on, Student was asked whether he needed a sensory break, and Student always refused (Tr. 864).

11. Student has a laptop computer available to him in biology class (Tr. 806). [REDACTED] has encouraged Student to use the laptop in class, but Student has chosen not to (Tr. 807). Student claims he does not need the laptop (Tr. 807). Student is redirected when he is off-task by [REDACTED] (Tr. 808).

12. Students are generally provided an outline which is then filled in throughout lecture on an overhead projector (Tr. 809). The filled-in notes are available on a biology website at the end of the school day (Tr. 809).

13. Student is also provided a study packet for disabled Students prepared by [REDACTED] (Tr. 812). These study packets are provided at the beginning of a unit (Tr. 813). Answers to classroom exercises or homework assignments are also provided on the website (Tr. 817). Additional practice questions are also provided on the website (Tr. 817). The biology class is not note-heavy (Tr. 832). The filled-in notes were also mailed to Student's Parents prior to the lectures in question beginning in March (Tr. 834-835, 839).

Student's Mother denied receiving any packet of notes except for the March packet (Tr. 838).

14. At the beginning of the school year, [REDACTED] tried to provide filled-in notes to Student prior to every class, but [REDACTED] found that Student would then not focus on the class (Tr. 840-841). In lecture, [REDACTED] noticed Student keeping up with the notes in lecture by handwriting notes (Tr. 843, 857). Therefore, [REDACTED] gave the notes to [REDACTED] Student's case manager [REDACTED] Student's case manager (Tr. 857). Student obtained or could have obtained filled-in notes in three ways. To wit, Student was able to obtain filled-in notes by accessing the website; through [REDACTED] and they were later mailed to Student's Parents at home.

15. No district personnel could testify as to whether Student's long-term assignments in biology were broken up for Student as required by the IEP (Tr. 851). Student's Mother testified there were four long-term assignments in biology which were not broken up properly pursuant to the requirements of the IEP (Tr. 1721-1722).

16. During exams and quizzes, Student was given extra time, was not required to use scantron sheets, was given a larger font for paper (Tr. 849). [REDACTED] also generates exam study guides for Student to narrow what Student has to prepare for (Tr. 854).

17. Student received a D for his first Semester Grade in biology and a C in the Second Semester in biology (SD 20, Tr. 853).

18. Student also took a keyboarding class in the summer before his freshman year where he was not provided accommodations. He received a C in the class. The District offered to Student's Parents the right to retake all examinations with accommodations, but Student's Parents refused, and the parties agreed to grade the keyboarding class as pass/fail (Tr. 1004-1008). Student's Mother believes Student achieved a "tremendous" benefit from the class (Tr. 1007-1008).

19. There was some dispute in the summer before Student's freshman year as to whether Student would receive a properly placed locker pursuant to the terms of the IEP. Student's Mother eventually called the school principal, and Student received a properly placed locker prior to the beginning of school (Tr. 1713).

20. Student also has a place to put his books near his locker as required by the IEP (Tr. 1561-1562).

21. Student received a laptop computer at the beginning of the school year, but he intentionally damaged the first computer the District provided for him (Tr. 991-992; 994-995; 1135-1136). There was no testimony that the destruction of the laptop was a result of any of Student's disabilities. Student strongly dislikes using the laptop in class because it makes him feel different than the other students (Tr. 1118-1119). Student also dislikes carrying the laptop from class to class because the laptop makes him stand out (Tr. 1062, 1143). The District suggested and attempted to use several accommodations including using a laptop sleeve and a brief case; a back pack to carry the laptop; a zip drive to be carried from class to class; and a keeping a laptop in the classrooms (Tr. 1062-

1063; 1144, P 855-856). [REDACTED] also attempted to set up the laptop in biology class for Student, but he refused to use it (Tr. 866-867, 1063, 1560).

22. After Student damaged his laptop, the District attempted to repair the computer, and later obtained a new computer for Student within a few weeks (Tr. 1557). Student's Parents contend that the IEP requires the District to purchase a computer with higher processing speed which also is quieter.

23. The laptop initially issued to Student had Draftbuilder and a program named WINN installed (Tr. 1000, 1555). WINN is a program similar to Kurzweil (Tr. 1555). WINN did not have all of the features which Kurzweil had, and therefore, during the school year, Kurzweil was also added to Student's computer (Tr. 999-1000, 1555-1556).

24. Draftbuilder is a program which has prompts for students who are typing into the computer (Tr. 726-727). Teachers and [REDACTED] would also often create prompts on Microsoft Word rather than using Draftbuilder (Tr. 1000-1001, 1122).

25. Kurzweil is a program where forms are scanned onto a computer and answers can be typed into the forms (Tr. 728). WINN was supposed to do this, but apparently could not (Tr. 729). To make up for the failings of WINN, [REDACTED] had Student handwrite on worksheets and provided Student with completed worksheets (Tr. 1165-1166). Student was able to fill out the worksheets by hand (Tr. 1166).

26. The computer which Student was issued at the beginning of the year has Draftbuilder on it (Tr. 1000). To the extent teachers had difficulty using Draftbuilder, the teachers created prompts for Student using Microsoft Word (Tr. 1000-1001).

27. The District had an autism consultant meet with all of Student's teachers at the beginning of the school year, and additionally the District had [REDACTED] meet with all of Student's teachers at the beginning of the school year (Tr. 1002-1003). DBL was Student's Parents' hand-picked autism consultant. The District's autism consultant, [REDACTED] observed Student in class early in the school year (Tr. 1538).

28. [REDACTED] attempted to help Student organize his homework schedule by e-mailing homework to himself (Tr. 676). By late September 18, 2008, Student had obtained a Google calendar and a paper organizer (Tr. 676, 1174). The Google calendar is a computerized system which aids Student in organization (Tr. 676).

29. The IEP does not require "visual checks" or "visual checklists" as an accommodation (SD 314).

Facts Related to the Provision of Occupational Therapy Services

30. The IEP provides for 30 minutes per week in direct occupational therapy services (SD 324). Student did not receive any occupational therapy services from late August until November 5, 2008 of the school year.

31. Student began receiving occupational therapy minutes on November 5, 2008, of the school year and thereafter received occupational therapy minutes for the rest of the School year (Tr. 590, 990).

32. In order to provide occupational therapy services in the amount mandated by the IEP, the District occupational therapists conducted longer sessions and double-time sessions with Student from Mid-November through the school year (Tr. 589-590, 592).

33. Student worked on his goals, one of which was to use his computer in class, using the internet to look up information, and e-mailing teachers and home including formatting, saving and printing at least five times per week (SD 327). [REDACTED] worked with Student to prioritize what areas he needed work on, whether they were OT specific; whether he was completing his homework log to be e-mailed home; worked on access to Share Point and e-mails to teachers; worked on software such as Kurzweil and Draftbuilder (Tr. 611).

34. Student met this goal in December (Tr. 612). However, as all parties have noted, Student still does not use his computer in class. [REDACTED] and [REDACTED] have repeatedly counseled Student on the benefits of using the computer in class (Tr. 616, 942-943).

35. [REDACTED] and [REDACTED] worked as occupational therapists to provide Student his occupational therapy services. [REDACTED] and [REDACTED] are nationally certified and have a state certification (Tr. 588, 925). [REDACTED] has a bachelor's degree in elementary education and a master's degree in occupational therapy (Tr. 588-589). [REDACTED] also has a bachelor's degree and a master's degree in occupational therapy (Tr. 926). The occupational therapists kept a log of minutes which the Student was provided, but there are, admittedly, mistakes in the log, and [REDACTED] did not keep her own log nor did she verify [REDACTED] recordings of [REDACTED] time (Tr. 662-663, 931-932).

36. Student unequivocally has the skill to use his computer in the classroom; is very good with Draftbuilder; can use the internet to look up information; can e-mail teachers; is good with formatting; copy; can save copy; can paste and use other computer functions (Tr. 612, 1718). [REDACTED] opined that, at this point in Student's career, the Student has to desire to use the computer in class and can not be forced to use the technology (Tr. 669).

37. The occupational therapists cotaught occasionally with the speech and language therapist (Tr. 944).

38. [REDACTED] does not know anything about the occupational therapy services provided at the District and gave no opinion as to the sufficiency or efficacy of occupational therapy services at the District (Tr. 87). [REDACTED] testified that Student should not be forced to use a computer included, but rather should be encouraged to use a computer in class (Tr. 92-93).

Facts Related to the Provision of Social Work Services

39. Student received social work services during his first year (Tr. 993). [REDACTED] was the school social worker at the District who provided social work services for Student.

40. Student was supposed to receive 50 minutes of social work related services per week (SD 324). Student's goal was to participate in open conversation about his transition to high school through first quarter of freshman year (SD 337). There was no other goal, as further goals were to be reviewed after the first quarter. Student met this goal (Tr. 1383).

41. The parties could not come to an agreement as to a new IEP in meetings in December, 2008, and January, 2009. The Parents decided not to pursue any further IEP Meetings thereafter due to the pending litigation. [REDACTED] provided a report to the IEP group at the December meeting on the work she had done with Student so far (Tr. 1408).

42. [REDACTED] worked on matters outside the IEP because Student had met his goals (Tr. 1386-1387). Student also participated in a social skills group (Tr. 1402-1405). Student's Parents disagree with the methods used by the school social worker to provide services over and above the IEP language regarding Student's social skills (Tr. 1387-1388, 1405-1407).

Facts Related to the Provision of Speech and Language Services

43. Student received speech and language therapy minutes during the school year (Tr. 987). The January 23, 2008, IEP called for 60 minutes of speech and language therapy per week (SD 324). The IEP did not differentiate between consult and direct minutes for speech and language therapy (SD 324).

44. [REDACTED] testified on behalf of the District. [REDACTED] has a master's degree in speech/language pathology and a bachelor's in speech pathology (Tr. 1248). She also has state certifications, and is "ASHLA" certified and she has a license from the Illinois Department of Professional Regulation (Tr. 1248-1249). [REDACTED] has a certificate of clinical competency (Tr. 1249). [REDACTED] has worked with a number of students on the autism spectrum (Tr. 1250). [REDACTED] provided Student with his speech and language related services minutes

45. [REDACTED] kept logs of her time spent with Student (SD 25, 238, Tr. 1235). [REDACTED] would usually meet with Student for 50 minute sessions weekly and use an additional 10 minutes for consult time (Tr. 1258). After May, 2009, Student spent 60 minutes direct time and an additional 10 minutes for consult (Tr. 1259-1260). [REDACTED] in some circumstances, cotaught with occupational therapists. [REDACTED] logs contain gaps in the number of minutes provided over the course of the year.

46. The January 23, 2008, had three goals related to speech and language services (SD 288-294). Goals ##1 and 2 of the IEP required [REDACTED] to use "pragmatics" doctrine wherein [REDACTED] created a checklist of appropriate use of social skills in a conversation (Tr. 1272-1273, 1287-1288). The third goal works on Student's phonological abilities—the ability to manipulate letters and sounds to make words and communicate (Tr. 1283-1284). Student's goal was to work on hearing the phonemes and processing them (Tr. 1284). Student made very good progress in phonological awareness (Tr. 1285). Student met his IEP goals for the school year (Tr. 1275, 1289-1291).

47. Students' Parents disagree with the methodology used by [REDACTED]. Specifically, according to Student's Parents, Student had to have his therapy in a typical peer group (Tr. 1340-1342). Student's Expert, [REDACTED] discussed the importance of working with peers who are not on the autism spectrum (Tr. 38, 56-59). [REDACTED] never testified that the District's approach was unreasonable or not able to produce an educational benefit. Student's Parents also called [REDACTED] the speech and language pathologist from the [REDACTED]. [REDACTED] had no knowledge (and thus no opinion on the efficacy) of the services provided by the District (Tr. 176-177, 181). [REDACTED] did work in a group with Student and other students who were not on the autism spectrum (Tr. 1341).

48. The Parents also claimed that Student was not provided services in an unstructured setting (Closing Memorandum). [REDACTED] testified that this meant unstructured conversations (Tr. 1346-1347). There was no testimony to the contrary. Student's Parents also claim that there was no testimony that [REDACTED] worked with Student on his phonological processing (Closing Memorandum). This assertion is untrue (Tr. 1283-1284).

49. There is no evidence the District changed any goal in Student's IEP. The District did use a short term benchmark to measure Student's progress. The benchmark language differs slightly from Student's ultimate goal.

Fact Related to the Provision of Resource Time

50. Student was allocated resource time by January 23, 2008, IEP Team wherein Student's case manager would help Student organize his day; stay up to date with assignments; break down assignments; look at what needs to be done; clarify content and get additional instruction as needed (Tr. 1548-1549).

51. Student's Mother believed, and her belief was corroborated by middle school personnel that Student's resource time would only be with two or three other children (Tr. 572). However, [REDACTED] a middle school member of the IEP Team also noted that, at the January 23, 2008, IEP Meeting, District personnel reserved the right on how exactly to structure resource time (P 2838). The requirement of a class of 2-3 people was not spelled out in the IEP due to the specific direction of the High School District representative (P 2838). [REDACTED] Student's case manager, served as Student's one-to-one resource teacher (Tr. 1105).

52. The January 23, 2008, IEP required that Student received 250 minutes per week of resource time and 140 minutes per week for other related services for 390 total minutes outside the general education setting (SD 324). The District budgeted 250 total minutes for Student's resource time and all other related service minutes (Tr. 1546). The other related services minutes were therefore generally provided during Student's resource time (Tr. 1546, 1548).

53. Student's Mother testified that, at the January 23, 2008, IEP Meeting, the IEP Team made a conscious decision to provide Student with 250 resource minutes per week in addition to Student's related services minutes. The District did not have the representative who attended the January 23, 2008, IEP Meeting testify at the hearing.

54. Unfortunately for Student, but fortuitously for the District, Student broke his leg on October 31, 2008, and was out of gym class from that date until May 1, 2009 (Tr. 1751). Thus, for that period of time, Student received 50 minutes of additional resource time during the class period when Student should have been in gym class (Tr. 1553-1554).

Facts Related to the Creation of the Transition Services IEP

55. Student turned 14.5 years old while attending the middle school district (Tr. 1738-1739¹), and the transition IEP at issue in this case was drafted while Student was a student at the middle school district (Tr. 1015, SD 295).

56. Student and Student's Parent attended a December 18, 2008, meeting, and he discussed his goals in life after high school (Tr. 1029-1031). The IEP Team started working on transition plans at that meeting (Tr. 1029-1032). Student's Parent's input was actively sought by the District prior to the meeting (Tr. 1033-1035). Student's Mother agreed with the suggested goals forwarded by the District (Tr. 1035). Prior to the meeting, [REDACTED] also interviewed Student as to his plans for the future (Tr. 1157).

57. The District held another IEP Meeting on January 20, 2009 (Tr. 1044).

58. Student's Mother testified that other, more pressing issues had to be addressed at the December 18, 2008 and January 2009 IEP meetings than transition services.

59. After the January 20, 2009, IEP meeting, Student's Parents refused to take part in any further IEP meetings until this due process complaint was decided (Tr. 1052).

Facts Related to the Provision of Student's Records and Progress Reports

60. Student's Mother requested Student's Records on or about November 7, 2008 (Tr. 1035). Some time thereafter, Student's Mother received a phone call that the records could be picked up (Tr. 1035-1036). Student's Mother picked up the records in December, 2008 (Tr. 1036). The delay in picking up the records was caused largely by Student breaking his leg and Student's Mother being delayed with other issues unrelated to District conduct (Tr. 1036).

61. Student's Mother participated in two IEP meetings with the District where she participated extensively. Student's Mother also was able to communicate extensively with District Personnel regarding the implementation of the IEP

62. Pursuant to a prior order during this hearing, the District turned over all records and arguable records to Student's Counsel. Student's Parents uncovered several e-mails over the course of the hearing. All such e-mails were admitted. Over the objection of District counsel, we waived the five-day rule. There were also some e-mails from [REDACTED] to [REDACTED] which were not turned over to counsel for the Parents.

¹ In some instances, we refer not to testimony but to the closing arguments. Under Illinois law, unequivocal admissions by counsel (even during closing argument) amount to judicial admissions and are binding on the party making the admissions. *Lowe v. Kang*, 178 Ill.App.3d 772, 776 (1988).

63. [REDACTED] testified that she sent extensive progress reports to Student's Mother (Tr. 1111-1116). Student's Mother admitted to receiving progress reports in the mail (Tr. 1037). Student's Mother and the District also testified to numerous conversations, e-mails, grade reports, progress reports, and correspondence related to Student's progress in class and education. Communications in the record between Student's Mother and District personnel is too numerous to cite and may number in the hundreds.

Inferences and Credibility Findings

i. Accommodations Provided to Student in the Classroom

64. We make a credibility finding that Student was provided with a computer and provided with a second new computer after Student intentionally damaged the first computer. We base this credibility finding on the testimony of District personnel, the admissions of Student's mother, and the lack of

65. We make a credibility finding, based upon the language of the IEP, that the IEP does not require that the District provide a specific brand of computer.

66. We make an inference that District personnel were able to compensate for the lack of Kurzweil and the lack of expertise with Draftbuilder. The District personnel were thus able to accommodate Student using Word and using handwritten documents. We base this inference on the testimony of [REDACTED] that the lack of these programs did not affect Student's educational experience and the lack of any direct testimony to the contrary. We also base this credibility finding on Student's good grades in many of his classes and passing grades in biology.

67. We make a credibility finding that the District had two autism consultants brief District personnel based upon District testimony and the admissions of Student's Mother. We make a credibility finding that [REDACTED] observed Student in class based upon District testimony and the lack of any contradictory testimony based upon personal knowledge. We make an inference, based upon the language of the IEP and the testimony regarding the autism consultants; that the autism consultants were involved to the extent necessary in Student's education to satisfy the language and spirit of the IEP.

68. We make an inference that the District's choice of when to provide typed notes were reasonable choices of methodology and based upon District observations of Student in class. We base this inference on [REDACTED] testimony that providing Student with filled-in notes prior to class hindered Student's attentiveness in class. We make a credibility finding that the notes were provided to Student and Student's Parents based upon the testimony of [REDACTED] that the notes were provided in multiple ways.

69. We make an inference that the District's multiple methods of providing biology notes and biology study materials to Student were reasonable and fulfilled the letter and spirit of the IEP. We base this inference on the testimony of [REDACTED]

70. We make an inference that Student's failure to use his laptop is a matter of choice and not ability. We base this inference on the testimony of all persons who testified at the hearing.

71. We make an inference that Student's actions in intentionally damaging his laptop were decisions made by Student and not manifestations of his disability. We base this inference on the description of the event by [REDACTED] as well as lack of testimony to the contrary.

72. We make an inference that the District's efforts to encourage Student to use his computer in class were: (1) more than reasonable; and (2) more than fulfilled the language and spirit of the IEP. We base this inference on the testimony of District personnel as to all the attempts to get Student to use his computer in class as well as the language of the IEP.

73. We make an inference that [REDACTED] efforts to help Student organize himself were: (1) more than reasonable; and (2) more than adequate to meet the language and spirit of the IEP. We base this inference on [REDACTED] testimony; Student's grades in all classes but biology; Student's passing grades in biology.

74. We make an inference that the District's choices of how to help Student organize as well as experimentation associated with accommodating Student in organizing are matters of methodology. We make the inference that the District's actions were reasonable as well as the timing of the District's actions. We base these inferences on the testimony of [REDACTED] regarding her actions helping Student organize.

75. We make an inference that the one occasion where enlarged graph paper was not provided did not substantially affect Student's educational benefit in math class. We base this inference upon the testimony of Student's Mother that the lack of accommodations was for one unit only; and Student's solid passing grades in math class.

76. We make a credibility finding in favor of Student's Mother and against the District that assignments were not broken up in biology in a manner required by the IEP. We base this credibility finding on the lack of any testimony from District personnel contradicting Student's Mother.

ii. The Provision of Speech and Language Services

77. We make a credibility finding that [REDACTED] addressed all of Student's speech and language goals (including phonological processing). We make a further credibility finding that Student reached all of his goals. We base this finding on [REDACTED] testimony and the lack of any testimony to the contrary.

78. We make an inference that [REDACTED] properly carried out the language of the IEP and that some of the therapy was conducted in a typical peer group. We also make an inference that Student was provided speech and language services in an unstructured setting. We base this inference on the testimony of [REDACTED] and the lack of any testimony contradicting [REDACTED] testimony.

79. We make a credibility finding that Student was not provided all of the minutes required by the IEP in speech and language therapy based upon the gaps in the District logs on the subject. We make a further credibility finding that Student was not denied any educational benefit by the District's breach of the IEP because Student reached his speech and language therapy goals.

iii. The Provision of Occupational Therapy Services

80. We make a credibility finding that Student reached his occupational therapy services goals with one exception (described below). We base this credibility finding on the testimony of [REDACTED] and the lack of any testimony to the contrary. We make a credibility finding that Student is proficient in all of the technology and software set out in the IEP. We base this credibility finding on the testimony of [REDACTED] and Student's Mother.

81. We make an inference that Student cannot be forced to use his computer in class, and that the goal requiring Student to use the computer in class is unattainable until Student decides to use the computer. We base our inference on the opinion of [REDACTED] and the lack of any testimony to the contrary.

82. We make a credibility finding that the District did not provide all the occupational therapy minutes required by the IEP. Our finding is based upon the District's poor records and inability of [REDACTED] to testify as to her own logs.

83. We make an inference that the District's failures to carry out the IEP by not providing all necessary minutes and by providing occupational therapy services out of sequence did not deprive Student of an educational benefit. We base this inference on the fact that Student met all of his goals except using the computer in class; and that no amount of occupational therapy services can force Student to use his computer in class.

iv. The Provision of Social Work Services

84. We make an inference that Student reached his sole social work services goal based upon the testimony of [REDACTED] and the language of the IEP.

85. We make an inference based upon the plain language of the IEP that there is no requirement for a social group of any kind and any participation in a social group is simply an extracurricular activity like any other.

86. We make a credibility finding in favor of [REDACTED] that she reviewed Student's goals based upon the fact that she was prepared to discuss and did discuss future goals for Student at the December, 2008, IEP meeting.

87. We make a credibility finding that Student was not provided all of the social work minutes required in the IEP based upon the District's poor record keeping and we make an adverse inference based upon the fact that e-mails from [REDACTED] to [REDACTED] were not provided to Student's counsel.

88. We make an inference that Student did not lose any educational benefit from the missing social work minutes because Student achieved his goal in social work services.

v. The Creation of the Transition Services IEP

89. We make an inference that the District took reasonable efforts to put together a transition services IEP, but other disputes prevented the District from addressing this issue.

90. We make an inference that Student lost no educational benefit by having a deficient transition services IEP based upon the lack of any evidence to the contrary.

91. We make a further inference based upon the testimony of Student's Mother and the undisputed evidence that the Parents refused any further IEP meetings after January, 2009, that the Parents' conduct prevented the creation of a transition IEP.

vi. The Provision of Resource Time

92. We make an inference based upon the plain language of the IEP that Student was denied many of resource minutes required in the IEP until he broke his leg on October 31, 2009, and had to use gym class as a resource period.

92. We make a further inference that the only lost educational benefit was in biology class. We base this inference on the undisputed testimony that Student was performing well or average in all classes but biology.

vii. The Provision of Student's Records and Other Procedural Claims

93. We make a credibility that all records necessary to conduct this hearing were turned over except for the e-mails from various service providers to [REDACTED] regarding the number of minutes spent with Student providing services. We find this to be harmless error because we have found against the District in regard to the amount of minutes spent in every case.

94. We make a credibility finding that all records necessary to participate in IEP proceedings were made available, but Student's Mother never picked them up. We base this credibility finding on the testimony of [REDACTED] and Student's Mother.

95. We make a credibility finding that Student's Mother was provided sufficient progress reports to keep track of Student's education and provision of services. We base this credibility finding on Student's Mother's admission; the numerous communications wherein Student's Mother was able to protest all aspects of the District's provision of special education to Student; and on the testimony of District personnel, including [REDACTED]

viii. Miscellaneous Inferences

96. We make the inference that the combination of lack of accommodation regarding long assignments and lack of resource time in biology class caused Student to lose an educational benefit in biology for approximately one quarter of his freshman year. We base this inference on the testimony of [REDACTED] who pointed out how important resource time is for Student to organize and study.

97. We make the inference that there are not extraordinary circumstances which would warrant changing Student's grades but a relatively minor actionable breach of the IEP. We base our inference on the fact that Student received a slightly lower grade in biology in one quarter than he otherwise would have.

98. We make the inference that there are no extraordinary circumstances which would warrant requiring the hiring of independent consultants. We base this determination on the facts that the District complied with IDEA in regard to autism consultants and the provision of IEP services.

99. We make the inference that Student would not be aided by increased resource time minutes now because resource time is meant to aid in classes Student is currently taking. Therefore, increased resource time would not aid Student in recouping lost educational opportunity in biology.

100. We make the inference that coteaching is a matter of methodology and that it was not unreasonably adopted by the District in this case. We base our inference on the testimony of [REDACTED] and [REDACTED].

IV. Conclusions of Law

Burden of Proof and The Authority of The Hearing Officer

101. The Federal and State Special Education Laws are set out in the Individual with Disabilities Education Act, 20 U.S.C.A. 1400 *et seq.* ("IDEA") and Article 14 of the Illinois School Code, 105 ILCS 5/14-8.02a. In enacting IDEA, Congress intended to establish a "cooperative federalism." *Evans v. Evans*, 818 F.Supp.1215, 1223 (N.D. Ind. 1993). Thus, compliance with minimum standards set out by the federal act is necessary, but IDEA does not impose a nationally uniform approach to the education of children with a given disability. *Id.* IDEA does not preempt state law if the state standards are more stringent than the federal minimums set by IDEA. *Id.*

102. In regard to the burden of proof in a special education proceeding, the Supreme Court has held that the ultimate burden of persuasion lies with the party filing the due process complaint. *Schaffer v. Weast* 546 U.S. 49 (2005). However, the Illinois School Code has placed a heightened burden on school districts. 105 ILCS 5/14-8.02a (g-55). In a due process proceeding, the school district has the initial burden of production to show that the special education needs of the student are identified and that the special education program and related services proposed are adequate, appropriate and available. *Id.* The parents must prove their case by a preponderance of the evidence.

103. In determining whether services provided are proper under IDEA and the School Code, the hearing officer does not need to defer to the school district witnesses. *School District of the Wisconsin Dells v. Z.S.*, 295 F.3d 671, 676 (7th Cir. 2002)(like Wisconsin ALJ's, Illinois Impartial Due Process Hearing Officers are presumed to be experts on special education law, see 105 ILCS 5/14-8.02c); *Board of Education of Murphysboro Community Unit School District No. 186 v. Illinois State Board of*

Education, 41 F.3d 1162, 1167 (7th Cir. 1994)(hearing officer characterized as expert witness in determining whether placement is proper).

104. Under federal administrative law, hearsay is admissible as long as it is relevant and material. *Otto v. Securities and Exchange Commission*, 253 F.3d 960, 966 (7th Cir. 2001). Expert opinions are admissible if the experts are considered qualified under a relaxed standard similar to the *Daubert* standard used in the federal courts. *Pasha v. Gonzalez*, 433 F.3d 530, 535 (7th Cir. 2005).

Moreover, hearing officers can make reasonable inferences from the evidence adduced at trial. However, like in all administrative adjudications, the inferences must be supported by facts proved or admitted. *National Labor Relations Board v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 814-815 (1990)(Scalia, j. dissenting). The inferences must be drawn from facts through a process of logical reasoning. *Id.* Inferences must also be supported by substantial evidence. Substantial evidence means relevant evidence that a reasonable mind might accept as adequate to support our inferences and conclusions. *Frobes v. Barnhart*, 467 F.Supp.2d 808, 817 (N.D. Ill. 2006). Thus, the hearing officer must draw an accurate and logical bridge between the evidence and result. *Frobes v. Barnhart, supra*.

Similarly, to the extent we rely upon expert opinions, the expert opinions must be inferred ultimately from facts in the record. *Mid- State Fertilizer Co. v. Exchange National Bank of Chicago*, 833 F.2d 1333, 1339-1340 (7th Cir. 1989)(in litigation, expert opinions must be grounded in facts and inferred from a process of logical reasoning).

Illinois law imposes an even more stringent standard on administrative hearings. In addition to the substantial evidence standard, Illinois law requires that administrative decisions be supported by "competent evidence." Competent evidence is either: (1) evidence which would be admissible in a trial; or (2) inadmissible evidence of such a character which responsible persons are accustomed to rely upon said evidence in serious affairs (which we can only rely upon if admissible evidence is unavailable). *Starkey v. Civil Service Commission of the State of Illinois*, 105 Ill.App.3d 904, 910 (1st Dist. 1983) *rev'd on other grounds* 97 Ill.2d 91(1983).

105. Illinois law also requires the trier-of- fact in administrative adjudications to accept uncontradicted factual testimony as true. *Crabtree v. Illinois Department of Agriculture, Division of Agricultural Industry Regulation*, 128 Ill.2d 510, 518 (1989). Thus, for us to disregard factual testimony, it must be contradicted by positive testimony or circumstances, the witness proffering the testimony must be impeached, or the testimony must be inherently improbable. *Bucktown Partners v. Johnson*, 119 Ill.App.3d 346, 351 (1st Dist. 1983).

106. In general, the trier-of-fact is entitled to draw an adverse inference when a document within the control of a party is not produced without excuse to the detriment of another party.

Conclusions of Law Associated with the Failure to Implement an IEP

107. Courts differ on the standard for determining whether the breach of a provision of an IEP is violation of IDEA. Some courts hold that a failure to implement the requirements of an IEP is a procedural violation of IDEA. *Edwin K. v. Jackson*, 2002 WL 1433722 at 13-14(N.D. Ill. 2002) (failure to provide social work related services minutes or implement IEP accommodations characterized as a procedural violation of IDEA). Thus, in order to find an actionable violation, we must find: (a) a breach of the terms of the IEP; and (b) the breach resulted in the denial of a free appropriate public education (“FAPE”); (2) the breach significantly impacted the Parents’ right to participate in the decision making process; or (3) the breach denied the Student an educational benefit. 20 U.S.C.A. 1415(f)(E)(ii)(I-III). In the case of the IEP dispute, denial of FAPE and denial of an educational benefit merge into one determination (denial of FAPE is denial of educational benefit to such an extent that the Student is denied a floor of educational opportunity). Other courts to address this issue have held that a breach of IEP implementation is only a violation of IDEA if it leads to a denial of FAPE (the floor of educational opportunity required by the statute). *See e.g. Van Duyn v. Baker School District 5J*, 502 F.3d 811, 819 (9th Cir. 2007)². In light of the diverging precedent on this issue, we shall analyze the facts of this case under both standards.

108. Although an IEP is not governed by the law of contracts, the Seventh Circuit has instructed courts to apply the parole evidence rule to IEP disputes. *John M. v. Board of Education of Evanston Township High School District 202*, 502 F.3d 708, 715 (7th Cir. 2007)(in a stay-put proceeding, the court should determine the placement from the four corners of the document and extrinsic evidence should not be considered unless there is some vagueness or ambiguity in the IEP).

109. The District is generally entitled to change scheduling of related services and not violate IDEA. *Houston Independent School District v. Bobby R.* 200 F.3d 341, 348-349 (5th Cir. 2000). Short gaps in provision of services also generally do not violate IDEA. *Sarah Z. v. Menlo Park City School District*, 2007 WL 1574569 (N.D. Cal. 2007); *Catalan Ex rel E.C. v. District of Columbia*, 478 F.Supp.2d 73 (D.D.C. 2007).

109. The materiality of a breach of IEP is measured by the loss of educational benefit, and a school district’s efforts to correct lapses in IEP implementation should be considered as to the loss of educational benefit and/or loss of FAPE. *Id.* at 350.

110. Student Progress, both academically and in IEP goals, is strong (although not conclusive) evidence that a breach of IEP is not material. *Van Duyn*, 502 F.3d at 822. In

² The Courts which have taken this position seem not to have considered the constitutional implications of their decisions. Specifically, the rights to educational benefits set out in an IEP are property interests so as implicate the due process clause of the Constitution. *Escatel v. Atherton*, 2001 WL 755280 at 4 (N.D. Ill. 2001). When a school district arbitrarily takes away rights to agreed- upon educational benefits set out in an IEP, it would seem to be a violation of the due process clause of the Constitution, even if the IEP requirements imposes a greater obligation than IDEA requires. *See United States ex rel Shaughnessy v. Accardi*, 347 U.S. 260 (1954)(failure of Attorney General to follow own regulations, even though gratuitously enacted, constituted a denial of due process in a deportation hearing); *Vitarelli v. Seaton*, 359 U.S. 535 (1959)(Secretary of Interior required to follow procedural employee safeguards in his own executive order, even if procedural safeguards not required by statute); *Morton v. Ruiz*, 415 U.S. 199 (1974) (Bureau of Indian Affairs estopped from denying eligibility of benefits for Indians living outside of Reservation land as set out in official policy manuals even though statute may not have required payment of such benefits).

determining whether an IEP breach is material, some of the most important evidence of educational progress and receipt of educational benefit is whether Student met the agreed-upon goals in the IEP. The agreed-upon goals are what the parties believe constitutes progress and educational benefit at the time of drafting the IEP.

111. In implementing an IEP, the school district has the right to choose methodology, so long as the methodology chosen is reasonably calculated to achieve educational benefit as defined by the terms of the IEP. *Lachman v. Illinois State Board of Education*, 852 F.2d 290, 297 (7th Cir. 1988). Moreover, the School District personnel must be given latitude in exercising where and how to implement modifications and accommodations. *Belvidere Community Unit School District No. 100*, 108 LRP 32811 (Ill. SEA 2008).

112. The fact that there is some delay in school personnel mastering pertinent software does not automatically lead to violation of IDEA. *Bradley v. Arkansas Department of Education*, 443 F.3d 965, 975 (8th Cir. 2006).

113. Breaches in implementation of the IEP do not constitute a change of placement under IDEA. *Van Duyn*, 502 F.3d at 819.

Conclusions of Law Associated with the Other Alleged Procedural Violations of the District

114. In order to be actionable, procedural violations of IDEA must result in (1) the denial of a free appropriate public education ("FAPE"); (2) the violation significantly impacted the Parents' right to participate in the decision making process; or (3) the violation denied the Student an educational benefit. 20 U.S.C.A. 1415(f)(E)(ii)(I-III).

115. In order for a refusal to turn over records to amount to an actionable violation of IDEA, the parents must be denied meaningful access in the IEP process or the records at issue must be outcome-determinative to the ultimate placement of the student. *Council Rock School District*, 41 IDELR 204, 104 LRP 28303 (Penn. SEA 2004).

116. Mailing progress reports to parents is sufficient to comply with IDEA. *Sarah Z. v. Menlo Park City School District*, 2007 WL 1574569 at 8 (N.D. Ca. 2007).

117. The failure to develop a transition plan is a procedural violation of IDEA, and thus there must be some showing of harm to be actionable. *Board of Education of Township High School District No. 211 v. Ross*, 486 F.3d 267, 276 (7th Cir. 2007). It is the responsibility of the local school district where the Student goes to school to ensure that the IEP has been properly completed. 23 Ill.Admin. Code 226.200 (each school district has the responsibility to provide special education to its students).

Conclusions of Law Associated with the Remedies Requested by the Student

118. Problems which the Parents want to be addressed by a due process hearing officer ~~must be listed in the due process complaint.~~ 105 ILCS 5/1408.02a(g); 34 CFR 300.508(b)(5). Moreover, we lose discretion to allow amendment five days before the hearing begins. 34 CFR 300.508(d)(3)(ii). Moreover, our pretrial order required a

specific identification of each and every issue the party intends to introduce at the hearing for a decision (See Notice of Pretrial Hearing Conference and Standing Procedural Order, 2b.).

119. In general and absent extraordinary circumstances, hearing officers refuse to change grades because the student has a separate remedy under FERPA to have student records amended. See e.g., *Fairfax County Public School District*, 38 IDELR 275 (Va. SEA 2003).

120. In general and absent extraordinary circumstances, hearing officers are not allowed to order districts to hire specific employees and consultants. *Alex R. v. Forrestville Valley Community Unit School District*, 375 F.3d 603, 610 (7th Cir. 2004).

121. The purpose of compensatory education is to replace lost educational opportunity. *Board of Education of Oak Park, District 200 v. Illinois State Board of Education*, 79 F.3d 654 (7th Cir. 1996). Hearing officers have discretion to weigh the equities in determining whether to award compensatory education and the amount of compensatory education to be awarded. *Bean v. Conway School District*, 18 IDELR 65 (D.N.H. 1991).

VI. Application of Fact to Law

122. In regard to Student's academic schedule, we find that Student obtained the full educational benefit envisioned by the IEP for every class but biology. Therefore, we find that we are not allowed to provide any relief for failure to implement the IEP for any class but biology. Relatedly, we find that the failure to provide enlarged graph paper in one project in math class is so *de minimus* so as not to constitute a failure to provide an educational benefit.

123. We find that the following accommodations listed in the complaint were provided pursuant to the terms of the IEP: Student was provided with a laptop computer; Student was provided a specially placed locker in accord with the IEP requirements; Student was provided with a place to set down his books near his locker; Student received Draftbuilder at the beginning of the year; Student was allowed to take sensory breaks when needed; Autism consultants were provided by the District to aid in Student's education; Student was provided e-mail to send homework home and was provided with a Google calendar during the school year. We further find that any loss of access to a laptop computer resulted from Student's intentional destruction of his first computer.

124. We find that the following accommodations were provided in biology to the extent necessary to comply with the IEP: notes were provided to Student; programs and accommodations similar to Kurzweil were provided; Draftbuilder or a similar program (Word with teacher prompts) was used for longer assignments.

125. We find that the following accommodation is not required by the IEP: visual checks or visual checklists.

126. We find that the following accommodation was never necessary during Student's freshman year³: measuring assistance.

127. We find that Student met all of his IEP goals in speech and language therapy and social work services, and met all but one goal in occupational therapy services. We find that the one goal Student did not meet in occupational therapy (to use his computer in class) was a result of a conscious choice of Student and not a District breach of the IEP.

128. We find that the failure to provide Student all of his minutes in occupational therapy services, social work, and speech and language therapy did not deny Student an educational benefit. We further find that the scheduling of minutes in a way different than set out in the IEP did not deny Student an educational benefit.

129. We find all of Parents' objections in regard to speech and language services are disagreements as to methodology and that there is no evidence the District's choice of methodology was unreasonable. We find that the Parents' objections to the provision of social work services are not supported by the language of the IEP or the facts adduced at hearing. We find that the Parents' objections to coteaching are disagreements to methodology and that there is no evidence the District's choice of methodology was unreasonable.

130. We find that Student's needs in speech and language services in regard to phonological processing were properly addressed pursuant to the terms of the IEP.

131. We find that Student's needs in regard to fine motor skills and visual skills were properly addressed pursuant to the terms of the IEP.

131. We find that Student's ability to organize and handle social situations is being addressed pursuant to the terms of the IEP through meetings with the school social worker. We find that the Parents' proposed methodology of a peer social group is not required by the IEP. We find that the District methodology is not unreasonable.

132. We find that the transition IEP was drafted while Student was at the middle school and any deficiencies in the transition IEP are a liability of the middle school district.

133. We find the District took reasonable efforts to draft a revised transition IEP but such efforts did not bear fruit because of the actions of Student's Parents.

134. We find that the District made available Student's records, but Student's Mother never picked them up. We find that the District provided all records for this litigation except for some e-mails. We find that there is no harm to Student's Parents because inferences of what the e-mails would have shown were drawn against the District. We find no denial of records, even if one occurred is outcome-determinative to any aspect of the IEP creation, implementation, or litigation process.

³ Some accommodations mentioned in the Student's Closing Argument as not present were not listed in the complaint as deficiencies in IEP implementation. We consider any claims of failure to accommodate not listed in the complaint as waived

135. We find that Students' Parents failed to sustain their burden of proof that progress reports were not provided in accordance with federal regulations.

136. We find there was no evidence of the IEP placement being changed at any time.

137. We find that there was no evidence that Student was denied an educational benefit from the District's failure to provide accommodations in the Keyboarding class because the District offered to allow Student to retake the tests with accommodations.

138. We find that Student was denied an educational benefit only in biology as a result of failure to provide all resource minutes as set out in the IEP from August, 2008, to October, 31, 2009; and failure to accommodate Student in regard to breaking down long term assignments. However, we find that there are no extraordinary circumstances which would suggest that we could or should change Student's grade in biology and none of the other requested remedies would make up for the lost educational opportunity in biology. We find that the District properly complied with the IEP in regard to provision of resource time minutes by having [REDACTED] provide 1 to 1 instruction with Student.

139. We find that the Due Process Complaint did not request compensatory education for biology, Student's Parents did not bring up the issue of compensatory education for biology in the prehearing conference; Student presented no evidence as to how many compensatory education minutes would make up for lost educational opportunities in biology; and Student's Parents' closing argument contains no method or formula for determining how to calculate the minutes to make up for lost educational opportunity in biology. As such, any request for compensatory education for lost educational opportunity in biology is considered waived.

140. Moreover, even if the issue were not waived, we invoke our equitable authority to find that an actionable violation of IDEA is so slight that compensatory education for biology should not be available. Student passed biology and improved in grades as the year progressed; he received the correct number of resource minutes for most of the year after he broke his leg; he advanced to sophomore year; he received most of the accommodations required by the IEP. For these reasons, and the reasons set forth in the paragraph above, there is no reason for an award of compensatory education for lost educational benefit in biology.

141. Alternatively, if we were to accept the *Van Duyn* formulation that a failure to implement an IEP must be so severe as to result in the denial of FAPE, it is clear here that Student received FAPE in biology in that he received passing grades from the class and his grades increased over the course of the school year.

142. We find that the District sustained its burden of production regarding Student's placement and needs.

143. We find that Student's Parents did not sustain their burden of persuasion on any aspect of their complaint.

144. We will address the District Motion to Strike the Parents' Memorandum of Law in a separate order.

VII. Order

The District need take no further action. The Parents' Requests in the Due Process Complaint are denied in their entirety.

VIII. Right to Request Clarification

Section 14-8.02(a)(h) of the School Code, allows the hearing officer to retain jurisdiction after the issuance of the decision for the sole purpose of considering a request for clarification. A 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 parties and to the Illinois State Board of Education. The request shall operate to stay the implementation of those portions of the decision for which clarification is sought. I shall issue a clarification of the specific portion of the decision or issue a partial or full denial of the request in writing within ten days of receipt of the request and mail copies to all parties to whom the decision was mailed.

IX. Finality of Decision

This decision shall be binding upon all parties.

X. Right to File Civil Action

Any party to this hearing aggrieved by the final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 ILCS 5/14-8.02a(1) that civil action shall be brought in any court of competent jurisdiction within 120 days after this decision was mailed.

/S Joseph P. Selbka
Joseph P. Selbka
Impartial Due Process Hearing
Officer

Date:8/18/2009

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