

Case Number: 2010-0006  
[Redacted] s. [Redacted]

Hearing Officer: Michael Risen

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

MAY 20 2010  
Special Education Services

### Impartial Due Process Hearing Decision Cover Page

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

District Name [Redacted] Phone: [Redacted]  
Superintendent [Redacted]  
Address [Redacted]  
Represented by [Redacted]

Parent Name [Redacted] Phone: [Redacted]  
Address [Redacted]  
Represented by [Redacted]

Date and Timelines

Date of Written Request: 09/11/2009  
Date of Pre-hearing Conf: 03/02/2010

Date of Hearing: 05/10/2010 to 5/12/2010 08:30:00  
Date of Decision: May 17, 2010

Summary of Decision

The District prevails in a due process complaint notice (DPCN) brought by the Parent. The Parent sought compensatory education, a one to one personal aide for the Student and Assistive Technology as recommended by an Occupational Therapist. The Parent failed to meet the required Burden of Proof related to the four issues charged in the DPCN, including: failure to evaluate and identify the Student within 60 school days, failure to properly evaluate the Student, failure to provide required assistive technology, and failure to involve the Parent in the IEP development. In all issues, the Parent failed to sustain her burden of proof and persuasion at hearing.

ILLINOIS STATE BOARD OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)  
) **ISBE CASE NO. 2010-0096**  
)  
) **Michael Risen**  
) **Impartial Due Process**  
) **Hearing Officer**

On Monday, May 10, 2010 at 9:50 AM, an Impartial Due Process Hearing was convened by D. Michael Risen, the hearing officer, on behalf of [REDACTED], the Mother of the Student, hereinafter referred to as the Parent, at [REDACTED] A transcript was not completed prior to the writing of this decision. The Hearing officer has jurisdiction to hear and decide this matter under 105ILCS 5/14 – 8.02a et seq., 23 Illinois Administrative Code 226.600 et seq., the Individuals with Disabilities Education Act 20 USC 1400 (IDEA), and 34 CFR 300.507 et seq. The parties were informed of their rights under 105 ILCS 5/14 – 8.02 et seq., 23 Illinois Administrative Code §§226.636 and CFR 300.509. Participating in the hearing was the Mother of the student, [REDACTED] who was represented by Advocate [REDACTED] [REDACTED] (hereinafter referred to as the Parent). Participating for the District was [REDACTED] [REDACTED] (hereinafter referred to as the District).

The Parent filed a request for a due process hearing on September 11, 2009. The District letter to ISBE and the accompanying ISBE form labeled “District Request for an Impartial Due Process Hearing Officer” was signed by the District Superintendent [REDACTED] on September 15, 2009 and the form date stamped at ISBE on September 21, 2009 by the Division of Program Compliance. The Hearing officer assignment letter from ISBE signed by Due Process Coordinator Andrew Eulass was dated September 21, 2009. The appointment and aforementioned letter and form were received on September 21, 2009 when the Hearing officer accessed same on the ISBE web site for Hearing Officers known as SEDS.

The hearing officer notified the District and the Parents, that the Pre-Hearing Conference would be held on October 13, 2010, which would be more than 30 days from the date the due process request was filed. This notice also included an initial letter to the Parties from the hearing officer detailing the appointment of the hearing officer, hearing officer jurisdiction, and other pertinent information needed by the Parties, as well as, information related to the rights of parties related to hearings, the

required disclosure list, sample parent and district witness/document lists, a form detailing suggestions for stipulations of fact, and the format for both the Pre-Hearing Conference and the Hearing Format. On September 22, 2009 via electronic mail, the Hearing officer received the District's response to the Due Process Complaint Notice (DPCN). As part of that response, the District filed a motion for dismissal for insufficiency (HO DR 0024). The Parent did not file a response to the District's notice of insufficiency. On September 29, 2009, the hearing officer issued a ruling (HO DR 0026) granting the District's motion to dismiss for insufficiency. The Order granting the motion was to be effective two weeks hence on October 15, 2009 to enable the Parent to file an amended complaint. The hearing officer order provided pertinent detail (HO DR 0027) of the requirements the Parent would need to remedy the DPCN should the Parent choose to file an amendment. On October 15, 2009, via electronic mail attachment (HO DR 0043-0043B) an amended DPCN was filed by [REDACTED] as advocate for the Parent. A prehearing conference was then scheduled for November 17, 2009 and sent to both parties via electronic mail on October 16, 2009. A continuance was then requested by the District. The continuance was granted and the Prehearing Conference was rescheduled to December 1, 2009 at 9:30 AM via teleconference. The District filed via electronic mail a motion to dismiss for failure to participate in a resolution/mediation session on November 24, 2009 (HO DR 0059). Included with the District's motion to dismiss were the required pre-hearing conference disclosure documents. The Parent filed a response (HO DR 0063) on November 30, 2009 via electronic mail substantiating the likelihood that communication issues caused the failure to participate and the advocate's behaviors were not intentional. In an email dated November 30, 2009, the hearing officer denied the District's motion and reviewed the procedures for the upcoming pre-hearing conference. On December 1, 2009, the District filed a request for a continuance in hopes of meeting with the Parent in mediation to attempt to resolve the issues in the DPCN. The hearing officer conducted a teleconference status call on December 1, 2009 with both parties participating. During that status conference the parties agreed to participate in State sponsored mediation, agreed to a mutual continuance, and the District affirmed their belief the amended DPCN was sufficient. The pre-hearing conference was then scheduled for December 18, 2009 and an order confirming same was sent via electronic mail to both parties (HO DR 0086-0089). The Parent filed pre-hearing conference disclosure documents on December 3, 2009 via electronic mail (HO DR 0096-0200). The parties participated in mediation on December 9, 2009 and mutually requested a continuance of the pre-hearing conference to

beyond December 31, 2009 to enable the parties to meet again in an effort to resolve the issues. The prehearing was then set for January 19, 2010 at 9:30 am and an order confirming same was sent via electronic mail to both parties (HO DR 0104-0106). However, the District then notified the hearing officer of a conflict with the scheduled date. As a result, the prehearing conference was again rescheduled to February 2, 2010. Both parties had previously filed prehearing disclosure documents. The District then sent information documenting potential progress towards settlement and requested another continuance which was granted. The prehearing conference was continued to March 2, 2010 to enable the parties to continue settlement discussions. The prehearing conference was held on March 2, 2010 via teleconference with [REDACTED] participating for the District along with [REDACTED], the Parent's representative. Hearing dates were confirmed for May 10, 11, 12, and 13, 2010. The March 13, 2010 date was not needed as testimony and document presentation/review were completed in three days.

### PREHEARING CONFERENCE AGREEMENTS

On March 2, 2010 a prehearing teleconference was held. Participating in the teleconference was [REDACTED] for the District and advocate [REDACTED] for the Parent. The following items were agreed to at the Pre-Hearing:

- 1) Neither party had objections to the Hearing officer serving in this manner.
- 2) The Parties were informed that the Hearing officer would rule on any new evidentiary objections at the Hearing and that the Parties could raise such on the record at the beginning of the Hearing on any matters where they disagreed with the Hearing officer's rulings.
- 3) No interpreter was needed.
- 4) All witnesses were to be sequestered prior to their testimony.
- 5) The Parents chose for the Hearing to be closed and to have a written transcript.
- 6) The District would arrange for the court reporter. As Petitioner, the Parent would present their case first and shoulder the burden of proof.
- 7) Opening statements would be limited to five (5) minutes.
- 8) By agreement of the parties, the five business day rule deadline was set at 5:00 PM on May 3, 2010.

- 9) The Parties agreed that written briefs would not be filed at the close of the Hearing.
- 10) The Parties agreed the Student is a resident of the District.
- 11) The Parties agreed that the Student was attending school at the [REDACTED] at the time of the prehearing.
- 12) The Parties agreed the Student's primary eligibility as listed on the Student's most recently agreed to IEP was mild cognitive impairment and speech and language.
- 13) The Parties agreed the Student is a student with a disability eligible for programs and services as stipulated by the Individuals with Disability Education Act (IDEA).
- 14) The Parties agreed that the issues identified herein were the only issues in this DPCN and that they contained no insufficiencies.

### ISSUES PRESENTED

The Parties agreed the following six issues were the issues to be resolved in this DPCN:

- a. Did the District fail to identify the student as a student with a disability within the 60 school day time period as required by the IDEA and the State of Illinois rules and regulations?
- b. Did the District fail to properly implement the SBPS (School Based Problem Solving) as required? During the discussion of the issues, it was agreed that both parties would submit their legal brief related to their position as to whether or not issues (i) and (ii) as stated herein should be allowed as issues for consideration by the hearing officer. Legal briefs were to be submitted by 5:00 pm on April 26, 2010.
- c. Did the District fail to properly evaluate the student such that the extent of the child's disability was not fully identified?
- d. Did the District fail to properly explain to the Parent the Parent's rights under the Procedural Safeguards for Parents?
- e. Did the District fail to implement assistive technology for the student as identified in a January 2009 IEP?
- f. Did the District fail to properly execute the IEP process by asking the Parent to sign IEP documents away from the IEP team meeting(s) that the Parent was not a participant of?

The District submitted an argument as described paragraph (b.) above (HO DR 0159-0171), the Parent did not. As a result of the District's submission, the hearing officer ruled (HO DR 0173-0176) on April 29, 2010 that issue (ii.) related to SBPS would not be an issue in this DPCN and it is hereby stricken.

During the opening discussions at the hearing on May 10, 2010, the District asked if any of the remaining five issues might no longer be issues as previously identified at the prehearing conference. The District asked this question as the District believed that the several efforts at resolving the issues prior to hearing may have addressed one or more of the issues as identified during the PHC. After a lengthy discussion with the Parent, the Parent indicated that issue (d.) above is no longer an issue and the Parent agreed to voluntarily strike issue (d.) from the DPCN and that the Parent would not address the issue during the hearing. As a result, four issues were now identified as the issues to be addressed at the hearing. The issues identified were issues (a.), (c.), (e.) and (f.) listed above.

Also at hearing during the discussion of admission of documents, the District raised an objection to the Parent's witness list. The District asserted the Parent failed to meet the requirements of the 5 business day rule because the Parent's Witness Lists were not submitted as separate documents but were imbedded in the Parent's Document List. Additionally, the Parent's Witness Lists (PD 221-222) were labeled "Prehearing Conference Witness List" and the District asserted that the lists were not submitted properly for the hearing and the statutes related to the 5 business day rule. The hearing officer pointed out that 105 ILCS 5/14-8.02a (g-50) stipulates: "The parties shall disclose and provide to each other any evidence which they intend to submit into the hearing record no later than 5 days before the hearing." During the discussion of the issue, the District acknowledged that the aforementioned documents were submitted by the Parent's advocate before 5:00 PM on May 3, 2010 by personal delivery to the District. The hearing officer over ruled the District's objection on the basis that the statutes stipulate the deadline for receipt of the documents and/or witness lists, but the statutes do not stipulate form. Therefore, the Parent's witness lists as submitted on the aforementioned documents were ruled as admissible. However, the District further pointed out that ~~the Parent failed to include the Parent on the Parent's witness lists and the District therefore~~ objected to the Parent being allowed to testify. This objection was sustained.

### **PARENT'S POSITION**

The Parent's position, as stated during the opening statements, is that the Student is a student eligible for special education services. The Parent asserts the District failed to identify the student

within the 60 school day time period, failed to properly include the parent at IEP meetings, listed some teachers as participating at IEP meetings that were not present to participate or at meetings that never occurred, and failed to provide adequate services to the student as needed. The Parent is asking that the hearing officer order a one to one aide for the student, compensatory education at school at the mother's discretion to accommodate for the loss of FAPE for the past six years.

### **DISTRICT'S POSITION**

The District first cited the four issues before the hearing officer in this hearing; proper identification within 60 days, proper evaluation, implementation of assistive technology and parent's participation in the IEP process. The District did want to point out that the burden of proof is on the party seeking relief and cited ██████████ v. ██████████. The District described the student as an eleven year old female student with mild cognitive impairment as identified in each IEP completed in 2006 and 2008 and a most recent triennial evaluation completed early by the District in 2010 reflects the student is eligible as a student with moderate cognitive impairment. The District noted that the recent triennial evaluation was completed one year early in an effort to more fully respond to the allegations in the DPCN. The District also noted that the Parent chose not to attend the most recently conducted IEP meeting whereby the triennial evaluation was reviewed. The District also noted that the results of that IEP meeting concluded the Student would benefit from a placement in a therapeutic day school. The District further reviewed that the IEP team recommended that the staff at the therapeutic day school be responsible for addressing the need for a one to one aide for the student. The District asserts that the evidence will show that the assistive technology has been implemented and that the process has been followed.

### **FINDINGS OF FACT**

1) The Parent was not ready to proceed first with the witnesses on the Parent's witness list. In order to make the best use of time, the District agreed to proceed with its case first and allow the Parent to either recall witnesses on Wednesday or to call anyone on the Parent's witness list that had not yet testified. There were eight (8) witnesses who testified during the three (3) days of hearing and three (3) witnesses who were recalled to testify.

- 2) A written transcript of the hearing was taken, but was not available for the writing of this decision.
- 3) There were two volumes of bound exhibits submitted, one by the Parent and one by the District.
- 4) The Parents' documents as submitted were numbered as 1-245.
- 5) The District's documents were numbered SD1-262.
- 6) Additionally, the Hearing officer submitted exhibits consisting of 205 pages and marked as "DR HO 0011 – HO 0205." The exhibits from the hearing officer were documents representing the various email and USPS communications between the parties as well as motions or objections and subsequent rulings on both that occurred prior to the hearing.
- 7) The Student is a female who was born on [REDACTED]. The Student celebrated her 11<sup>th</sup> birthday in the summer of 2009 and is currently in the sixth grade in special education.
- 8) The document identified as SD65 reflects the most recently completed IEP for the Student and is dated February 10, 2009. The Document identified on page SD3 reflects a completed IEP and it reflects the Student has been identified by the District as a student eligible under the IDEA since at least December 18, 2006. The Student's primary eligibility as identified in SD 65 was "cognitive disability."
- 9) The first witness to testify was [REDACTED] who identified herself as the current case manager for the Student. [REDACTED] testimony was received as credible and honest. She identified her primary responsibilities as insuring that procedural safe guards are followed for the Student, schedule IEP meetings, make sure the IEP's are properly developed, meet with students, and listed the various disabilities served in her program. [REDACTED] testified the Student receives about 60% of her instruction in an instructional special education classroom away from her non-disabled peers. When questioned by the District about the most recent IEP meeting dated April 20, 2010, [REDACTED] [REDACTED] indicated she attended. She confirmed under questioning by the District that the IEP team

reviewed the report of the social worker, the psychological report, speech and language report, nurse assessment but not the OT assessment. When questioned why the OT assessment was not completed, the witness testified the Parent did not return the necessary forms with her signature affixed on them. Also under questioning from the District, [REDACTED] testified the Parent did not attend the IEP meeting and therefore the team was unable to finalize the IEP. [REDACTED] did testify that the Parent's advocate attended a good portion, but not all, of the IEP meeting. [REDACTED] also testified to SD 152-154 which was a written statement from the IEP team expressing concerns that the Parent did not attend the IEP meeting. [REDACTED] confirmed her signature was on page SD 154 and she supported the written statement. When asked if she believed that the current recommendation found in [REDACTED] for a therapeutic day school placement was the LRE for the Student, [REDACTED] confirmed she believed that it was. Finally, [REDACTED] testified she believed the Student could benefit from a shared aide being assigned to her program but that a one to one aide was not necessary if the Student were placed as recommended in the IEP dated April 20, 2010. The Parent had no questions of this witness.

10) The next witness called by the District was [REDACTED] [REDACTED] is the current sixth grade home room teacher and teacher for language arts and social studies for the sixth grade. [REDACTED] testified she has the student for a 15 minute home room period and that the student would also come to her class whenever her students went for "specials" (e.g., PE, music, art, etc.) and lunch. These periods were the periods when the Student would be educated with her non-disabled peers. [REDACTED] did testify that her brief but daily interactions with the Student reflects that the Student would benefit from a one to one aide as the Student while in her home room requires much of her time for direct instructional help when working on any assignment. [REDACTED] also testified after questioning from the District that she did not believe she was qualified to make that determination on her own, but rather it should be determined by an IEP team. The Parent had no questions for this witness but wanted to reserve the right to recall her.

11) Next to testify was [REDACTED] who is the upper level resource room teacher. [REDACTED] testified she has 29 years experience teaching special education, including experience as a case manager. [REDACTED] testified she was the Student's case manager until the start of the 2009-2010 school year. [REDACTED] testified that SD3 was the Student's IEP developed on December 18, 2006.

The witness testified that the Parent's signature was on that document. The witness also testified that SD20 reflects her initials certifying the Parent was given her procedural safeguards at the IEP meeting dated December 18, 2006. [REDACTED] also testified that the Parent signed [REDACTED] which is the Student's IEP dated February 13, 2008 and she also testified that she remembered the Parent as being present at the IEP. Further, she testified that [REDACTED] also reflects her initials certifying the Parent was provided her procedural safeguards and that she explained them to her during the February 13, 2008 IEP meeting. Her testimony also reflected that the Parent signed [REDACTED], a revised IEP dated February 10, 2009 and she testified the Parent was present for the IEP meeting. She also confirmed that [REDACTED] reflected her initials again certifying the Parent was given and had her procedural safeguards explained to her at the February 10, 2009 revised IEP meeting. This testimony was the same for [REDACTED] a revised IEP dated April 24, 2009 and the same for the Assurance of Procedural Safeguards found on page [REDACTED] for the April 24, 2009 IEP meeting. Similarly, the witness testified the Parent signed the 4/24/09 waiver of IEP revision ([REDACTED]), the Notice of Safeguards on 2/13/08 ([REDACTED]), the Notice of Conference on 9/7/07 ([REDACTED]), and a consent for evaluation on 9/14/07 ([REDACTED]). Finally, when asked if the Parent ever missed an IEP meeting while the witness was case manager, the witness responded that the Parent was always present and described the Parent's behavior as "diligent." The Parent had no questions for the witness but wanted to reserve the right to recall her.

12) The final witness to testify on Day 1 of the hearing was [REDACTED] who is the Student's current special education teacher. [REDACTED] testified that she has had the Student since September of 2009. [REDACTED] testified that her program is a cross-categorical program with eleven students assigned to her room. During testimony, the witness reflected that one of those students has a personal aide. [REDACTED] testimony confirmed the testimony of the previous two witnesses regarding the Parent's attendance and participation at IEP meetings. The Parent had no questions of this witness but reserved the right to recall her. This concluded the first day of testimony.

13) The second day of testimony began with the testimony of the (OT) Occupational Therapist, [REDACTED] [REDACTED] testified she provides consultative services for the Student. When questioned by the District, she testified that she was unable to complete an OT evaluation as the Parent did not provide the required signed forms from the Parent and the Student's physician. [REDACTED]

██████████ testified that she had observed that as of 10/19/09, the software Lexia and CoWriter had been installed in the Student's classroom for her use as assistive technology. She testified she had used the software and assisted the teacher with its use during that time frame. The Student's current use of the AT reflects practice learning to use the computer mouse and to navigate the computer.

14) Next to testify was ██████████, school psychologist. The witness testified regarding ██████████ which was her completed psychological report. The witness testified that the Student scored on the moderate cognitive impairment range on the tests that were administered. These tests included the Stanford Binet Intelligence Scales – Fifth Edition and the Vineland Adaptive Behavior Scales – Second Edition (SD 104). When asked by the District if the Student could be in the range of severe cognitive impairment the witness answered definitively “no.” The witness pointed out that on page ██████████ some of the Student's scores on the Vineland were actually above the range for mild cognitive impairment with a score of 69 in Daily Living Skills and 75 in Socialization. The witness testified it is not likely that a student with a severe cognitive impairment could achieve those scores on that test. When asked if the witness was familiar with the Student's prior evaluations the witness indicated that she was and she also confirmed under questioning that the scores obtained appeared to be valid and reliable.

15) The next witness to testify was ██████████ evaluator for the District in the area of Assistive Technology. ██████████ testified that after he evaluated the Student he recommended that the District provide assistive technology in the form of computer programs known as Lexia, Write Out Loud and Co-Writer to assist the student with both her reading and writing skills. The witness testified that ██████████ was the assistive technology report that he completed after he evaluated the Student's needs for assistive technology. The witness testified that the District's data base reflects that the software has been installed in the Student's classroom and that the trainer had been to the room to train the staff on the use of the software. When asked by the Parent if the witness knew if the software was being used he replied that he did not. He did confirm that the school had the software installed on the computer when asked again by the Parent. This witness was the final witness of Day 2 of the hearing.

16) The first witness called on Day 3 of the hearing was [REDACTED] who was the Student's special education teacher for the previous three years. The witness testified that attention was not an issue for the Student while she had in her in the classroom but that the Student would grow tired when working academically and gave as an example that reading a five page book would tire the Student or writing a one sentence assignment would have the same impact. She also testified that by the end of the 5<sup>th</sup> grade, the Student had learned the lay out of the Dewey Fine Arts Academy and could run errands for the teacher independently. This witness did share some testimony that was conflicting to some extent with the testimony of some of the witnesses who testified ahead of her. She testified that during the IEP meeting of February 10, 2009 (SD 65), the recommendation for placement in a therapeutic day school was discussed but rejected because the Mother, whose signature was on page [REDACTED] indicating her presence at the IEP meeting, did not want the Student to change schools as Dewey was the Student's home school and the Student's siblings attended Dewey as well. She also testified that she had recommended that the Student would benefit from having a one to one aide assigned to her but she was told that an aide would be difficult to secure. However, she was not questioned by either party as to who told her that or why she was told that. When asked by the District if a decision to provide a one to one aide for any student should be a team decision she replied that "yes" she thought it should be. She also testified that the team did not make such a recommendation. Finally, she testified that she did not believe the current placement for the Student was the most appropriate but that it was continued at the Parent's insistence.

17) The next witness to testify was [REDACTED] who had the Student in her home room for a few minutes each day until she left the school for another school in October, 2009. She did not have any relevant testimony to share.

18) The next witness was [REDACTED] (the Student's current home room teacher) recalled by the Parent and questioned first by the Parent. She testified under questioning from the Parent that the Student is unable to do any work without the teacher's direct supervision and help. She also provided conflicting testimony to that of [REDACTED] in that she responded to the Parent's question as to whether she could send the Student anywhere in the building alone and she testified "never." She testified that she only sends the Student with other students or with an escort if she needs to

leave the room. [REDACTED] again testified that she believed it would be beneficial for the Student to have an aide assigned to assist her with her current placement.

19) The next witness to testify was [REDACTED] who was recalled by the Parent and questioned first by the Parent. The most significant portion of her testimony was that she did not believe the Student needed a one to one aide at this time. Additionally, she also confirmed under questioning from the Parent that the name [REDACTED] indeed appears on page [REDACTED] of the Student's IEP and that this is not the correct name of the Student. When asked by the hearing officer if the name [REDACTED] were substituted into the text on page [REDACTED] with the Student's name if the text would be a true statement, she testified that it would be. As a result, it was the conclusion of the hearing officer that this was some sort of ministerial error, similar to another error towards the top of [REDACTED] that reflected "he" when referring to the Student rather than "she."

20) The final witness to testify was [REDACTED] who was recalled by the Parent. Her testimony was substantially the same as it was when she was examined under direct examination by the District. She provided no more additional testimony at this time that was any more illuminating on the issues before the hearing officer.

### DISCUSSION AND CONCLUSIONS OF LAW

When considering a dispute regarding a student with a disability and the student's school district, the hearing officer must first begin by considering the Supreme Court decision in Rowley (*Board of Education of the Hendrick Hudson School District, Westchester County et al. V. Rowley* by her Parents, Rowley et ux. 458 U.S. 167 (1982)). In Rowley, the decision as directed by the Supreme Court which set forth a two pronged test for determination of a Free Appropriate Public Education (FAPE) in the least restrictive environment (LRE). The first prong directs the decision to determine whether or not the District has complied with the statutory procedures required by the Individuals With Disabilities Education Act (IDEA) 20U.S.C. 1401 et seq. Rowley indicates that any substantial denial of procedural safeguards that results in adverse impact on the parents' participation or the Student's education in so much as the result is a loss of educational opportunity then there has been a denial of the law's requirement for FAPE. This first test of Rowley provides

for relief only when the procedural violations result in substantial harm to the student (*W.G. v. Board of Trustees*, 960F.2d 1479, 1484 (9<sup>th</sup> Circuit 1992)). In the instant case, the Parent through the issues identified in the DPCN, sought to prove that the District violated the procedures of the IDEA in all four issues. First, the Parent alleged that the District failed to identify the Student within the required 60 school days as required in the State of Illinois (23 IL Admin Code §226.110 (d)). The Parent failed to present any testimony or submit any documents to support this allegation. Therefore, the Parent failed to meet their burden of proof with this issue. The second procedural allegation submitted by the Parent related to whether or not the District asked the Parent to sign documents away from the IEP process and thereby denied the Student's right to FAPE by denying the Parent the opportunity to participate fully and completely in the IEP process. Again, the Parent did not provide any testimony or documents in support of this allegation. In fact, the preponderance of the testimony heard over the course of the hearing supported the opposite, that the Parent participated regularly and signed documentation to reflect same. One witness even described the Parent as being "diligent" in her participation in support of her daughter. As a result, the Parent did not meet her burden of proof with this issue either.

The hearing officer also rules that there are problems with the Parent's arguments regarding the other two procedural issues considered during this hearing. First, the allegation that the District failed to fully and completely evaluate the Student (issue iii.) in order to properly and completely identify the extent of the Student's disability – again the Parent failed to meet her burden of proof on this issue as well. In fact, the testimony of both the witnesses submitted by the District and those of the Parent, as well as documents referenced herein, the preponderance of which reflect the District completed multiple evaluations of the Student that the Parent consented to in writing. The testimony and evidence reflects that the District reviewed these evaluations at IEP meetings that the Parent attended and participated in, facts which are supported by both the Parent's signature on IEP documents and the testimony of witnesses who confirmed her attendance and participation. Evaluations related to psychological development, socialization and maturation, speech and language and assistive technology were all submitted as evidence in this hearing. Each of those documents and the testimony of witnesses confirmed the District's efforts to fully and completely evaluate the Student and to identify the nature and extent of the Student's disability(s) and thereby

program appropriately for the Student. Therefore, the Parent failed to meet her burden of proof on this issue as well.

Finally, with respect to the final issue (initially issue v. but then became issue iv.), regarding whether or not the District failed to implement assistive technology for the Student as identified in a January 2009 IEP, the Parent also did not meet her burden of proof on this issue. The Assistive Technology evaluator, [REDACTED], testified unchallenged by the Parent that he completed an Assistive Technology evaluation of the Student and confirmed that his recommendations for software known as Lexia, Co-Writer and Write Out Loud were installed in the Student's classroom for her use. He further testified that District logs reflected that the trainer for this software had been to the Student's classroom. The only portion of his testimony challenged by the Parent was whether or not he could now personally confirm that the recommended assistive technology had been used with the Student. While he testified he could not confirm himself that it had been used, this was not enough to be convincing that the District had failed its obligation with this issue in light of the facts that he had completed the evaluation, confirmed the recommendations were installed in the classroom and trainers had been out to the classroom to work with the teacher. As a result, the Parent did not meet her obligations for burden of proof on this issue.

The second prong of the Rowley test is to determine whether or not the individualized program developed through such procedures is reasonably calculated to enable the Student to receive educational benefit. The Parent did not allege any issues related to the Student receiving educational benefit and thus this prong is not considered in this decision.

### **Burden of Proof**

In conclusion, it is the finding of this hearing officer that the preponderance of the evidence presented that was convincing relevant to the issues in this hearing was actually presented by the District. Therefore, as required under *Schaffer v. Weast*, 546 U.S. 49, 62 (2005), the Parent failed to meet their Burden of Proof in this DPCN. Further, the hearing officer concludes that the evidence submitted by the District is most convincing. Specifically, the preponderance of the evidence supports that the District met the provisions of the IDEA in the development of the Student's IEP

and met the procedural requirements as stipulated under Rowley. Therefore, in respect to the issues presented in this case, the hearing officer rules in totality for the District as follows:

**RECEIVED**

MAY 24 2010

**SPECIAL EDUCATION  
SERVICES**

1. The District demonstrated that the District properly identified the student as a student with a disability within the 60 school day time period as required by the IDEA and the State of Illinois rules and regulations;
2. The District demonstrated that the District has in all circumstances as examined in this hearing properly evaluated the Student and that such evaluations were completed in a manner that insured the extent of the child's disability was fully identified;
3. The District demonstrated that the District has properly evaluated the Student for Assistive Technology and that the recommended Assistive Technology as been provided in the Student's classroom as recommended; and
4. The District demonstrated that in all IEP documents examined during this hearing that the Parent was afforded the opportunity to both attend and participate in the IEP process as required by the IDEA and the Rules and Regulations of the State of Illinois.

**ORDER:**

- I. The Parent's request for relief is denied.
- II. The District is the prevailing party.
- III. The District need take no further action.

**RIGHT TO REQUEST CLARIFICATION**

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party(s) and to the Illinois State Board of Education. After a decision is issued, a hearing officer may not make substantive changes to the

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



---

D. MICHAEL RISEN  
HEARING OFFICER

ENTERED: May 19, 2010

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the **Decision and Order** was sent via first class USPS, certified mail, return receipt and electronic mail, return receipt, and directed to:

[REDACTED]

and

[REDACTED]

[REDACTED]

and

Mr. Andrew Eulass  
Illinois State Board Of Education  
100 N. First St.  
Springfield, IL 62777-0001

(USPS only)

before Noon on May 19, 2010

*D. Michael Risen*  
D. MICHAEL RISEN, PH.D.  
DMR EDUCATIONAL CONSULTING  
222 E. SURREY LANE  
EAST PEORIA, IL 61611  
[mikerisen@msn.com](mailto:mikerisen@msn.com)  
309-694-4864 (phone)  
309-694-2995 (fax)  
309-202-4654 (cell)