

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

RECEIVED

[REDACTED]
Local School District,

v.

[REDACTED]
Student.

CASE NO. 2010-0234

SEP 13 2010

MARY SCHWARTZ
Impartial Hearing Officer

SPECIAL EDUCATION
SERVICES

DECISION AND ORDER

Procedural Background

The district filed a due process request on January 14, 2010 to contest the parents' request for an independent educational evaluation (IEE) at public expense. On January 19, 2010, the Illinois State Board of Education (ISBE) appointed the undersigned as hearing officer. The undersigned issued a Preliminary Scheduling Order and a statement of the parties' rights on January 20th and conducted an initial telephonic status call with counsel for both parties on January 25th. Sometime after January 25th, the district retained new counsel. [REDACTED] of [REDACTED] has represented the district throughout the remainder of these proceedings. [REDACTED] and [REDACTED] of [REDACTED] have represented the parents.

On February 3rd, the parents filed their response to the district's due process request along with a counter-complaint. The ISBE consolidated the parents' complaint with the district's request pending before this hearing officer, which triggered the recommencement of the timelines set out in the Individuals with Disabilities Education Improvement Act (IDEA). The prehearing conference was rescheduled to March 12th. The parties filed a joint motion to extend the resolution timeline until the parents completed the IEE and tendered the report to the district. In their joint motion, the parties also agreed that the district had provided prior written notice to the parents and thus asked that it be excused from filing a response to the counter-complaint. The undersigned granted the joint request on March 10th and rescheduled the prehearing conference to April 5th. The district filed an unopposed motion to again extend the resolution timeline on March 24th. After being informed that the parties would convene a resolution meeting on April 14th, the undersigned granted the motion and rescheduled the prehearing to April 21st. The prehearing was then rescheduled to May 4th due to unavailability of district's counsel. The prehearing was held on May 4th via telephone conference call.

Shortly before the first day of hearing, the district filed three motions: Motion to Bar Testimony, Evidence or Recovery of Various Fees and Expense; Motion to Bar Testimony of [REDACTED], [REDACTED] and [REDACTED]

[REDACTED] and Motion to Allow [REDACTED] to Attend Due Process Hearing. As these motions were received just prior to hearing, the undersigned issued her rulings on the record at the start of the hearing, after hearing the parents' positions on the motions. The motion to allow [REDACTED] to attend the hearing was granted, as was the motion to bar testimony of certain witnesses. The motion to bar testimony, evidence and recovery of fees and expenses was denied. The parents also moved to have district documents that had been filed after the 5 day disclosure date barred from the evidence. The parents' motion was granted, and the hearing officer and parents returned the documents at issue to the district.

The due process hearing was held on August 23, 24, 25, and 26, 2010. The record was held open until August 31st so that the parties could submit written closing statements. Following the proceedings on August 26th, the parties met with the hearing officer to determine which documents had been entered into evidence throughout the hearing. The remaining documents in each party's evidence binder were returned to that party. [REDACTED] provided court reporting services throughout these proceedings. The hearing officer did not receive a copy of the transcript prior to the issuance of this decision; therefore, the testimony below is based on the undersigned's memory and hearing notes. In rendering this decision, the undersigned has considered all evidence entered during the hearing as well as the parties' closing arguments and suggested case law. This decision is issued within ten days after the hearing's conclusion, as required by Illinois law. 105 ILCS 5/14-8.02a(g55)(5).

The following witnesses testified during the hearing:

- [REDACTED] the student's mother;
- [REDACTED] School Psychologist;
- [REDACTED] Hearing Impaired Itinerant in 2008-09, 2009-10;
- [REDACTED] Principal at [REDACTED]
- [REDACTED] parent's independent evaluator.
- [REDACTED] student's 3rd grade teacher at [REDACTED]
- [REDACTED] Special Education Teacher;
- [REDACTED] Director of [REDACTED]
- [REDACTED] Superintendent [REDACTED]
- [REDACTED] Supervisor of Hearing Services, [REDACTED]
- [REDACTED] student's 2nd grade teacher;
- [REDACTED] School Social Worker in 2008-09;
- [REDACTED] Speech/Language Pathologist; and
- [REDACTED] Principal at [REDACTED]

Issues Presented and Remedies Sought

The district filed its due process request to contest the parents' request for an IEE at public expense. Therefore, the district must show that it has conducted a full

individual evaluation of the student. The district asks the undersigned to find that it did so and to deny the parents' request for reimbursement for the IEE.

The parents allege that the district denied the student a free appropriate public education ("FAPE") in the following ways:

1. The district failed its child find obligation as it has been on notice for at least two years that the student has a variety of difficulties in school.
2. The district failed to conduct a full individualized evaluation of the student by:
 - a. not conducting a complete assessment of his cognitive abilities and academic achievement, his emotional status, and his attention issues;
 - b. not considering the impact of his hearing impairment on his processing skills;
 - c. not considering information the district had from its own assessments, report cards and observations or information provided by the parents;
 - d. considering only the severe discrepancy model in determining whether the student has a specific learning disability (SLD);
 - e. not assessing the student for Other Health Impairment (OHI);
 - f. not considering the student's hearing issues as related to his educational needs; and,
 - g. by not considering recent testing results that show he is neither performing at grade level nor at a level consistent with his peers.
3. The parents allege that the district violated their procedural and substantive rights and thereby deprived the student a FAPE, when it denied their requests for a full individual evaluation as follows:
 - a. In March 2009, the student's private doctor sent a letter to the district requesting that it evaluate the student;
 - b. In August 2008, the parents made an oral request for an evaluation to [REDACTED], and they allege that he responded that an evaluation was not necessary;
 - c. In October 2009, the parents made a written request for an evaluation to [REDACTED], which was copied to the student's second grade teacher. The parents allege that the district responded to their request by stating that an Rtl plan was sufficient and that no evaluation was necessary; and,
 - d. The parents allege that the district did not provide them a copy of their procedural safeguards after any of the requests for an evaluation
4. The student's current placement in a regular classroom with accommodations and a Rtl plan does not provide him a FAPE because the plan's accommodations are not being provided, or are being provided inconsistently, and are inappropriate to provide the student an educational benefit.
5. The parents also allege that their procedural rights were violated when the district did not provide them a copy of the social worker's report until May 2009. The parents received a copy of the report from their attorney in May 2009 but maintain they did not see it before that time.

As remedies for the above alleged violations, the parents request that the undersigned

order that the district:

1. Reimburse the parents for the IEEs they have obtained, including transportation costs;
2. Determine that the student is eligible for special education and related services;
3. Develop an appropriate IEP for the student that considers and includes recommendations made in the IEE;
4. Provide ESY; and,
5. Reimburse the parents for private tutoring that they obtained.

Burden of Proof

In an administrative hearing, the party seeking relief bears the burden of proof. *Schaffer v. Weast*, 126 S. Ct. 528, 539 (2005). Therefore, the district has the burden of proof as to whether it conducted a full individual evaluation of the student. The parents have the burden of proof as to all issues raised in their due process complaint.

Findings of Fact

Educational History

At the time of the due process hearing, the student had just entered fourth grade at [REDACTED] in [REDACTED]. The district is a unified district, providing public education for both elementary and high school students. The district has two elementary schools, [REDACTED] and [REDACTED]. [REDACTED] serves students from pre-kindergarten through second grade, and [REDACTED] serves students from third through fifth grades. The student enrolled in Highland at the beginning of kindergarten and began at [REDACTED] in third grade. The [REDACTED] (or cooperative) provides special education and related services, technical assistance, and two low-incidence programs to its 13 member districts, one of which is [REDACTED].

The student's mother testified that she has had concerns about the student's education since preschool, when he had messy handwriting, was "slow moving," and repeatedly failed hearing tests. His medical problems include ruptured eardrums, ear ventilation tubes (three times), and chronic sinus infections. [REDACTED] testified that she first provided information on her son's medical history at kindergarten registration. She also gave information to the Highland principal and updated [REDACTED]'s medical information over the years to his teachers.

[REDACTED] testified that in kindergarten, the student was placed in a reading program when he was doing poorly and then taken out of the program when he was doing well. His first grade year went better because he was in a reading program and his teacher gave him help at the end of the day. Although there was no testimony from the student's kindergarten and first grade teachers, the student's report cards from

those years show a different picture, reporting that the student mastered the vast majority of skill in reading, language arts, spelling, and social skill. (SD 99, 100). However, as neither the kindergarten nor first grade teacher was called as a witness, there is testimony regarding the student's performance at this time and the report cards are of very little evidentiary value.¹

The mother's apparent satisfaction with [REDACTED]'s first grade experience changed when he entered second grade. She testified that he frequently came home with 15 to 17 pages of homework and would end up frustrated and crying from trying to complete it. [REDACTED] testified that her son told her "it took him too long to write." He said he was often kept in from recess and gym to complete his work. She called the principal around Halloween regarding these problems and told him this was causing the student anxiety. [REDACTED] testified that she emailed [REDACTED] after that conversation and requested that the district evaluate [REDACTED]

[REDACTED] the principal at [REDACTED] testified that he has known the student's family since they enrolled in the district. He confirmed that [REDACTED] had informed him of the student's hearing problems when [REDACTED] enrolled in the district and added that they "talked about preferential seating." He described the student as polite and friendly and reported that [REDACTED] had no discipline problems. [REDACTED] knew that the mother was concerned about her son's academic progress during second grade.

Because of her concern, he talked with the second grade teacher [REDACTED]. He said that [REDACTED] told him [REDACTED] was "doing pretty well." However, he also testified that [REDACTED] was concerned about the student's "inattention." He told her to keep [REDACTED] focused and gave her some strategies to do so. He testified that he and [REDACTED] had three conversations about [REDACTED]'s inattention. [REDACTED] did not recall an email evaluation request from the mother but said that if he had received such a request, he would have printed it out and given it to the school psychologist. He described what he said are the school's customary procedures on deleting emails, pursuant to which all emails are regularly deleted every four months. (SD 189).

[REDACTED] testified that she did not think the student had a hearing impairment. She did, however, have concerns about his ability to attend and said the preferential seating was implemented to address this concern. [REDACTED]'s inattentive behaviors included drumming on his desk, going into his desk, and looking around. He also was slow in completing his work. [REDACTED] thought that he needed "motivation" to finish his work. Although the teacher did not give homework, [REDACTED] often took his unfinished daily work home to complete and return to school. The unfinished work was sent home on a weekly basis, which resulted in the student taking many uncompleted assignments home at one time. At times he had 10 to 15 uncompleted papers in a two week period. Other students also took unfinished work home, although not as often as [REDACTED] did. She knew that the mother was concerned about the amount of unfinished work the student brought home. Despite these concerns stated above and the student's grades, [REDACTED] testified that she saw no reason to refer the student for an evaluation for special

¹ This information is for historical purposes only as it is outside the statute of limitations period and has not been considered on any substantive basis in the rendering of this decision.

education.

On February 4, 2009, approximately mid-way through [REDACTED]'s second grade year, [REDACTED] staff and [REDACTED] met to discuss the mother's concerns about her son. The district has designated this meeting (and a subsequent meeting in third grade) as a Response to Intervention (Rtl) meeting and the document developed from it as an Rtl plan. Thus, the undersigned finds that the February 4th meeting, and subsequent third grade meetings, were Rtl meetings and the plans were Rtl plans. Attendees at the February 4th Rtl meeting were [REDACTED] [REDACTED] (position unknown), [REDACTED] school psychologist assigned to [REDACTED] school psychologist intern), and, [REDACTED] Hearing Itinerant). (SD 48; PD 37).

The Rtl team members reviewed the [REDACTED] reports that had been provided to the school. (SD 48; PD 37). The student received two audiology evaluations at NIU in 2008, the first in November and a follow up evaluation in December. The November evaluation found that the student has a mild to moderate bilateral conductive hearing. The evaluator also administered two tests to assess the student's auditory processing. On the Dichotic Digits Test (DDT), [REDACTED] scored just below normal limits for both ears. He also fell just below normal on the Low-Pass Filtered Speech test (LPFS). Based on these results, the audiologist opined that [REDACTED]'s "degree of fluctuation is of concern in terms of the day to day impact on (the student's) ability to function within the classroom" and that "on those days when (the student's) hearing is not within normal limits these difficult listening conditions have even more impact on his ability to deal with information presented auditorily." (SD 68). The report includes several recommendations for the school: preferential seating to assure close visual and auditory access to teacher; an indication that it is time to listen again after a period of seat work; establishing eye contact prior to giving instructions; important information presented while teacher is facing the class; a neighbor to check in with if he is uncertain about what was just said; and an observation by the hearing itinerant teacher. (SD 67, 68). The follow-up December 2008 audiology exam confirms the diagnosis of a bilateral mild conductive hearing loss and states that [REDACTED] shows "a continued pattern of fluctuation in hearing sensitivity." The report indicates that it was sent to [REDACTED]. (SD 133).

The student also received a language evaluation at NIU in November 2008. On the Peabody Picture Vocabulary Test-4 (PPVT-4), [REDACTED] scored within the average range, receiving a standard score of 90, which is at the 25th percentile rank. He also scored within the average range on the Expressive Vocabulary Test-2 (EVT-2), with a standard score was 91, which is at the 27th percentile rank. On the Clinical Evaluation of Language Fundamentals (CELF-4), his language skills varied from the high average range to slightly below average. He scored below average in subtests that measured his ability to apply word structure rules to construct grammatically correct sentences, his ability to understand relationships between spoken words, and his ability to interpret spoken sentences of increasing length and complexity. Although V.V. scored within the average range on the Comprehensive Test of Phonological Processing (CTOPP), the evaluator noted that he demonstrated a range of scores on the test. The student was given two subtests of the Woodcock Reading Mastery Tests-Revised (WRMT-R). He

scored within the high average range in both word identification and word attack. The evaluation team provided a number of recommendations for the school for support in phonemic awareness, written expression, reading, spelling, and oral language. The report also recommends several classroom modifications and that [REDACTED] receive specific support in phonemic awareness, written expression, reading, spelling, and oral language. (SD 69-81). None of the information contained in the foregoing three NIU reports is contained in the Rtl plan, although the plan does say that the reports are attached. (SD 48).

[REDACTED] testified that she raised concerns during the February 4th Rtl meeting about her son's ability to follow directions and focus. The Rtl plan documents those concerns as well as stating that the mother had scheduled a psychiatric appointment for [REDACTED] for the following month. (SD 48; PD 37). [REDACTED] testified that she had raised concerns at the meeting about the student's ability to pay attention and complete his work. She said she had been concerned about [REDACTED]'s difficulty completing work for "a period of time." The Rtl plan states that the student is well-focused in a one to one situation, though whether this was due to his hearing or the small setting is unclear. (SD 49; PD 38). Either way, the undersigned finds that this statement directly contradicts Ms. Rippel's testimony regarding her classroom experience with the student and that her concerns are not stated in the Rtl document. The team agreed to explore phonemic awareness. (SD 49; PD 38).

The Rtl team developed an intervention plan that includes the following: preferential seating; a writing checklist for punctuation and spelling; a peer to help the student go over the checklist; a smaller environment for taking tests and finishing work; an observation by the OCEC hearing itinerant, to be followed by her suggestions for "coping strategies"; and, developing word family lists from a story and adding words for the student to practice other long vowel patterns. [REDACTED] was to implement preferential seating, writing checklist, and peer help on a daily basis, and additions to word families' list on a weekly basis. The smaller environment is to be provided in the Title 1 room, although the plan does not require when or how often this will be done. (SD 49; PD 38). The mother testified that she had agreed to the Rtl plan.

[REDACTED] testified that she did not know [REDACTED] at the time she attended the February meeting. She did not raise questions about ADD at the meeting because she had not yet met the student, and she did not recall if ADD was discussed at the meeting. However, she testified that ADD symptoms could be confused with hearing deficits. [REDACTED] observed [REDACTED] in the classroom shortly after the Rtl meeting, on February 11th. Her observation lasted between 60 and 90 minutes and was done during a math lesson and a group activity, during which the teacher read to the students. Based on her observation, [REDACTED] developed several recommendations. She testified that she went over the recommendations orally with [REDACTED]. She gave [REDACTED] copy of her written recommendations some time after April 2009, which is when she put them into written form. The undated document at SD 82 is a copy of her 2009 recommendations. [REDACTED] corroborated this testimony, confirming that Ms. Benson had given her "a sheet with suggestions." [REDACTED] testified that the

February 4th Rtl plan was never updated to incorporate [REDACTED] recommendations.

On February 25, 2009, the student's primary care physician, [REDACTED] wrote a letter regarding the student, based on the [REDACTED] and a review of the [REDACTED] audiology and speech/language evaluations. [REDACTED] letter states: "Inattention with academic underperformance - [REDACTED] scores are consistent with possible ADD, though it could also be related to chronic rhinosinusitis with secondary sleep impairment, and aggravated by mild hearing loss." He recommended a second opinion ENT evaluation to rule out treatable ENT problems, no changes in the present school schedule, and a trial of medication if the ENT evaluation did not reveal any treatable problems. (SD 138; PD 112). [REDACTED] was not called as a witness, so this letter is the only evidence regarding his evaluation. District testimony confirms that the district received this document.

The parties dispute whether the student made academic progress in second grade. [REDACTED] report cards use numerical scores for conduct/effort and letter grades for academic subjects. Pursuant to school policy, teachers do not give failing grades; thus, a D- is the lowest grade a student can receive. On [REDACTED]'s second grade report card in conduct and effort, his grade decreased from "2" to "4" (unacceptable) in "keeps materials organized" for terms 2, 3, and 4. His grade also dropped from "3" to "4" in "consistently works neatly and carefully" for terms 3 and 4. In "works well with others," he received a "1" (excellent) each term. He received a "3" in "listens and follows directions" the first three terms, and a "2" in the fourth term. In "reads and follows direction," he received a "2" the first two terms and "3" in the final two terms. (SD 104; PD 66).

[REDACTED] testified that not many [REDACTED] students receive a "4" in conduct/behavior. Although he testified that "4" indicates an area of concern, [REDACTED] noted that [REDACTED] received a majority of "3's" in this area. The undersigned finds that the student's 2008-09 conduct/effort scores in "keeps materials organized" and "consistently works neatly and carefully" declined between the first and fourth terms and, in the fourth term both areas were rated as "unacceptable."

The student's academic grades for 2008-09 are shown in the chart below. Teacher comments report that [REDACTED] is easily distracted, needs to write more neatly, and needs to read directions more carefully. Fourth quarter comments state that he "has done a great job with his hearing aids" and improved in getting his work done on time. (SD 104; PD 66).

	Term 1	Term 2	Term 3	Term 4
Language	D-	C	C+	B-
Test	D-	D	D	D-
Daily Work	B	A	B+	A-
Quiz	C-	D	C-	D

	Term 1	Term 2	Term 3	Term 4
Math	B	B+	B	B-
Test	B-	B	D	C-
Daily Work	B+	A-	A-	B-
Quiz				

	Term 1	Term 2	Term 3	Term 4
Reading	C+	B	B	B-
Test	C	B-	C	D+
Daily Work		B	A	B
Quiz	A-	B	C	A-

When shown [redacted]'s second grade report card during his testimony, [redacted] stated that he "would have hoped" that [redacted] had informed him that [redacted] received a D- in language arts. However, he did not recall that she had done so. The principal testified that he would have been concerned that [redacted] did not improve from term 1 to term 4 in language arts and stated that the mother's concern "was justified." He did not recall reviewing the student's test scores while [redacted] was at Highland, although he did review them before the hearing.

[redacted] testified that the student made academic progress in second grade. If one looks only at the cumulative grades, her testimony is supported by the record. However, a closer examination of the entire report card reveals a different and concerning picture. In language arts, his test grades are all D or D-, and his quiz grades drop from C- to D. In reading, his test grade dropped to a D+ by the end of the year. The last two term grades in math tests drop to a D and a C-. Based on this evidence, the undersigned finds that [redacted] did not make adequate academic progress in language arts and reading during second grade and that he showed a decline on his math tests.

The district's evidence binder contains a 12 line typed note, under which is handwritten [redacted] 2nd Grade Teacher, 2008/2009 school year." (SD 186). [redacted] testified that [redacted] asked her to write this note in May 2010. The note recites the Rtl accommodations one by one and why each was implemented. For example: "I had preferential seating for him so he was close to the front. I monitored him more closely to help him with the directions again and to make sure he understood what he was supposed to do and asked if he had additional questions." The details provided in this note are markedly different from [redacted] testimony. Moreover, this amount of detail is remarkable given that [redacted] testified that she did not keep any records on the Rtl implementations or their effectiveness. The undersigned finds that it is not credible that [redacted] could have recalled such detail on her own, one year after the fact, when she was unable to do so in her testimony a few months later. Given [redacted] testimony, the undersigned finds that the note was written in preparation for litigation and differs markedly from the witness's testimony at hearing. Therefore, the note has no evidentiary value as to whether the Rtl plan was actually implemented, or whether the plan was consistently implemented, during the student's second grade year

or as to how the student responded. Moreover, given [REDACTED] testimony that [REDACTED]. [REDACTED] instructed her to write this note, the undersigned has serious reservations about the credibility of [REDACTED] testimony.

Close to the end of the student's second grade year, on May 20, 2009, the school psychology intern at [REDACTED] sent an email to [REDACTED] regarding a conversation she had with [REDACTED]. According to the email, [REDACTED] had called the intern and requested an IEP. The intern told [REDACTED] that "it's too late in the year for us at [REDACTED] to start the eval process & finish it before he goes to 3rd grade. Plus [REDACTED] contract is up. So, I said that I would speak directly to you (i.e., [REDACTED] about it so that the evaluation process could start right away in August when (the student) is at [REDACTED]. She is fine with that, but would like to speak to someone directly at [REDACTED] about this because she wants to schedule an IEP date for next year ASAP." (SD 1). The intern was not called as a witness.

The mother came away from her conversation with intern with a different impression. [REDACTED] testified that she thought that the intern was going to start the evaluation process. She did state, however, that [REDACTED] contacted her "very quickly" after her conversation with the intern. She said that [REDACTED] told her that an IEP evaluation was not necessary because "the most [REDACTED] would qualify for was a Rtl plan. She said that [REDACTED] told her that the district decides whether an evaluation is necessary.

[REDACTED] testified that after receiving the intern's email, she telephoned the mother to discuss [REDACTED]'s concerns. She spoke with the mother on May 22nd. She said she "went by what the mom wanted" and scheduled a meeting before school began in August. She further testified that [REDACTED] did not request an evaluation during their conversation. [REDACTED] also did not consider the conversation between the intern and [REDACTED] as a request for an evaluation. By agreement of the parties, a copy of the intern's note with handwritten notes from [REDACTED] was entered into evidence after all testimony had been presented. The notes indicate that the mother want to meet the third grade teacher and have a plan for the hearing aids. It also states that the mother said she had been asking for an IEP since kindergarten and "now wants to have an IEP" but would be okay with a 504 plan (emphasis in original). (SD 194).

On August 3, 2009, [REDACTED] sent a letter to the parents confirming a meeting for August 13, 2009 at 10:00 a.m. The meeting was being convened pursuant to the parent's request to "address the academic concerns and needs" of the student. The letter asks the parents to bring relevant medical records and recommendations so that "informed decisions" could be made at the meeting. (SD 2).

The Rtl meeting was held as scheduled on August 13, 2009, shortly before the student began third grade. Meeting attendees included: [REDACTED] principal; [REDACTED]; [REDACTED], the student's third grade teacher; and [REDACTED]. [REDACTED] testified that prior to the meeting, she reviewed the [REDACTED] November 2008 audiological and speech/language evaluations, the student's report cards from kindergarten through

second grade, and the February 4th Rtl plan. The Rtl plan includes a one sentence description of the student's problems, stating that he has a history of hearing and audiological problems and that [REDACTED] reports indicate academic concerns in reading comprehension, spelling, and writing as well as concerns in work habits, including a short attention span, distractibility, difficulty with directions, high frustration, and low motivation. The report notes that [REDACTED] was prescribed hearing aids at the end of second grade and is to wear them in third grade during instructional time. The team identified three areas of concern: hearing, language arts, and work habits. (SD 50; PD 34).

The student's third grade Rtl plan includes three of the interventions from the second grade Rtl: preferential seating, a writing checklist, and a smaller environment for taking tests. New interventions include quarterly consultation with the HI teacher; shortened assignments in language arts and math; having the student attempt all 15 spelling words; supplemental instruction in reading three to five times/week with the Title I teacher to address comprehension issues; use of an assignment notebook; storing the student's hearing aids on the teacher's desk; and, weekly counseling. Most interventions require daily implementation by the teacher in the classroom. The smaller environment to complete work or take tests is to be implemented as needed. (SD 51; PD 35). The parent and teacher were to have "regular" communication. The team agreed to consider a behavior chart with incentives if necessary. The student also was to participate in Monroe's school-wide positive behavioral interventions and supports. No follow-up meeting was scheduled. (SD 52; PD 36). [REDACTED] testified that the parent was not given a copy of the procedural safeguards at the meeting.

A note from the school counselor, dated May 18, 2010, states that she met with [REDACTED] three times between the beginning of September and end of October 2009. She also met with the mother four times between September and November 2009. The counseling goal was to help the student "cope with having hearing aides and how that might affect him with friendships due to being self-conscious." The counseling was discontinued because [REDACTED] had met the goal and the parent had agreed to end services. (SD 187). The counselor was not called as a witness. Because the school counselor did not testify at the hearing and there is no evidence of the circumstances under which this note was written, its probative value is limited except as to the short duration of the counseling. [REDACTED] testified that the counseling was to address issues of self-esteem and that she agreed to end the services because she thought they were not helpful.

[REDACTED] testified that the third grade Rtl plan was never revised, even though the counseling was discontinued. [REDACTED] testified that changes were made to the plan during the year but not put into writing. [REDACTED] also testified that she did not do written charting to track the interventions. The student was "pulled out" of class when he had trouble, based on his daily work or when the teacher saw that he did not understand something.

The district convened another meeting on September 22, 2009, to address concerns raised by the mother. [REDACTED] also testified that she wanted to make some changes to the plan. For example, she did not find the grammar checklist useful for

████ because he kept it covered up or fiddled around with the edges of the paper. █████ testified that he asked the mother not to interrupt █████ after she had done so several times. █████ testified that the mother was "unhappy" with the Rtl plan and said she was entitled to an IEP. The meeting ended prematurely, after the mother became upset and said that she was going to call her attorney and the "district would pay for it."

On September 30, 2009, the parent's attorney requested a formal case study evaluation of the student via letter to the district superintendent and █████ principal. The letter states that the district had ignored the parent's request for a 504 plan or IDEA eligibility, even though █████ has a mild to moderate hearing impairment that may affect his school performance. On behalf of the parents, the attorney requested the following evaluations: intellectual level, central auditory processing delay, learning disability, Attention Deficit Disorder, language delay, and social-emotional concerns regarding motivation. (SD 3, 4). █████, director of the █████, notified the parents that an evaluation would be conducted and that the school psychologist would contact them to schedule a domain meeting. (SD 5).

The district convened a domain meeting on October 8, 2009. The domain sheets indicate existing information that would be reviewed and additional information that would be collected. In academic achievement, the student's overall grades are stated as A's and B's. His Rtl plan is noted, as is parental request that an assessment be conducted to rule out learning disabilities. The school psychologist is to assess the student's academic skills and cognitive functioning to rule out potential learning disabilities. The functional performance domain describes the student's motivation as varied; thus, his functional skills need assessment. Because of parental concern about potential language delays as a result of the student's hearing deficits, the speech/language pathologist is to assess the student's speech and language skills. (SD 12). The health domain reports that the student wears hearing aids. The school social worker is assigned to collect a health history, conduct a social developmental study, and a behavioral assessment to address parental concerns regarding lack of motivation and possible ADHD. The document reports that hearing/vision is not a relevant domain; however, the HI supervisor and HI teacher are to observe the student and provide information on auditory discrimination. The motor abilities domain is marked as not relevant and contains no information. (SD 13).

The mother had her attorney review the domain documents prior to giving consent for the evaluation. Parents' counsel suggested several changes, which the district considered. (SD 8, 9). The final domain sheets incorporate most of the requested changes and also add other information. For example, academic achievement adds that the student's Aimsweb Fall 2009 Benchmark scores are R-CBM 81, Maze 7, and M-CBM 11 and that the student "has an Rtl plan in place but mother is concerned it is not providing enough support and is requesting assessment to rule out potential learning disabilities." Communication status adds that the team will consider █████ reports. (SD 15; PD 14). Under hearing/vision, the requirement that █████ reports will be considered is added. (SD 9; PD 15). The parent gave consent for the evaluation

as described in the revised domain sheets on October 14, 2009. (SD 14; PD 13).

██████████ psychoeducational assessment included the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV), the Wechsler Individual Achievement Test, Second Edition (WIAT-II), an interview with the student, and a records review. (SD 32). ██████████ testified that she also informally observed ██████████ in the classroom in October and November 2009. She met with ██████████ four times in November and December 2009, for a total of three to three and one-half hours. He only wore his hearing aids for the last two testing sessions. ██████████ asked him to wear them for the other two sessions but reported that he told her he did not need to because he had a "good report" and so was not wearing them in class or at home. She testified that she sat at ██████████'s left side, looked at him while talking, and gave him redirection when necessary. She felt that he understood the test instructions and directions and rarely needed them repeated. (SD 33; PD 28).

On the WISC-IV, the student obtained the following scores: Full Scale IQ (FS IQ) 95 (37th percentile and within the average range); Verbal Comprehension Index 96 (39th percentile and within the low average to average range); Perceptual Reasoning Index 108 (70th percentile and within the high average range); Working Memory Index 86 (18th percentile and within the borderline to average range); and Processing Speed Index 91 (27th percentile and within the average range). (SD 34; PD 30). Although ██████████ did not include the student's WISC-IV subtest scores within her report, she did provide them to the parents' independent expert ██████████ upon his request. The student's percentile ranks for the individual subtests are: similarities, 75th; vocabulary, 16th; comprehension, 37th; block design, 50th; picture concepts, 91st; matrix reasoning, 50th; digit span, 16th; letter-number sequence, 25th; coding, 16th; and, symbol search, 50th. (PD 91, 92).

On the WIAT-II, the student obtained the following composite standard scores: reading composite 94 (34th percentile); mathematics composite 81 (10th percentile); and, written language composite 87 (19th percentile). His subtest scores are: word reading 97 (42nd percentile); reading comprehension 95 (37th percentile); pseudoword decoding 98 (45th percentile); numerical operations 85 (16th percentile); math reasoning 80 (9th percentile); spelling, 99 (47th percentile); and, written expression 79 (8th percentile). ██████████ noted that although ██████████ scores within the average range in word reading, he added, omitted, or transposed syllables while reading words. On the math subtests, he used the scratch paper "sparingly." (SD 35; PD 31). ██████████ testified that in class, ██████████ relied on a number line for math calculations and that his not using scratch paper to do calculations during the assessment may have impacted his score.

Based on her evaluation, ██████████ concluded that ██████████'s general intellectual level is within the average range. He has significantly higher perceptual reasoning skills than working memory and processing speed skills. ██████████ opined that the student's more highly developed perceptual skills could affect how he attends in class. He has a 15 point difference between his perceptual reasoning index and his

processing speed index, which is significant difference. His reading skills are average, and his math and writing skills are low average. The report states that the student's grades are average to above average. (SD 35; PD 31).

██████████, the school social worker, interviewed the mother and the student, made two classroom observations, reviewed the student's file, and talked with the classroom teacher. He also gave the ██████████ Rating Scales (██████████) to the mother and to ██████████ the student's third grade teacher. The mother told ██████████ that the student's father has ADHD and she has a central auditory processing disorder. (SD 37; PD 16). ██████████ had chronic ear infections since infancy and had pressure-equalizing tubes placed in his ears three times. He also has chronic sinus infections. The mother reported that the student had normal eating and sleeping patterns

The social worker reviewed the ██████████ October 12, 2009 audiological evaluation and reported that the student has a slight to mild hearing loss in the right ear and normal hearing in the left ear. According to ██████████, that evaluation found little indication of an auditory processing disorder but did state that ██████████ has hearing issues in the classroom because of competing signals. . (SD 37, 38; PD 16, 17).

Regarding functional performance, the social worker reported that the student has "exemplary social skills," many peer relationships, and good social skills. ██████████ enjoys a number of sports activities outside of school. He does not have any chronic conduct problems in school. He does have trouble completing assignments and listening to instructions when he is not interested in the work. However, the teacher reported that the student's work motivation was improving. ██████████ has difficulty with multi-step directions and becomes confused or forgetful at such times. He may become reluctant to begin his work if he does not readily understand it. The teacher reported that the student needs "slightly more prompts" than other students to begin working. He also has some trouble working after a transition. (SD 38; PD 17).

██████████ made two classroom observations, one during a less structured/work time and the other during a more structured/instructional time. He reported that ██████████ was on task 90% of the time during both the less and more structured times. The control group was on task 90% of the time during the less structured time and 70% of the time during the more structured period. He stated that the student was able to ignore the fidgety behavior of his peers. (SD 39; PD 18).

The ██████████ is a behavior rating scale used to assess inattention, hyperactivity/impulsivity, learning problems, executive functioning, aggression and peer relations. It also assesses ADHD inattentive and Hyperactive-Impulsive, Conduct Disorders, and Oppositional Defiant Disorder. ██████████ reported that there were no domains in which both the student's mother and teacher scored ██████████ in the at-risk or clinically significant ranges. The mother's ratings placed him in the "symptom criteria is probably met" for ADHD Inattentive, while the teacher's ratings did not yield scores in the at-risk or clinically significant range for any domain. The ██████████ Inconsistency

Index, which measures discrepancies in responses to similar items, indicated that the mother's answers were "probably invalid," and the teacher's were "probably valid." (SD 39). The student's second grade teacher has been given the [REDACTED] on February 2, 2009, and her scores rated the student in the at-risk range in cognitive problems/inattentive, ADHD Index, and Global Index - Restless-Impulsive. (SD 39, 40; PD 18, 19).

[REDACTED], the cooperative's HI itinerant, evaluated [REDACTED] and reviewed the December 11, 2008 and January 22, 2009 [REDACTED] audiology reports and the district's speech/language evaluation. The student wore his hearing aids for all assessments. [REDACTED] administered the Goldman-Fristoe-Woodcock Test of Auditory Discrimination (Goldman Fristoe) to assess [REDACTED]'s auditory discrimination in a quiet environment and in the presence of background noise. He was able to correctly identify 29/30 plates, each of which contained four pictures, in the quiet subtest and 28/30 in the presence of noise. The Wepman Auditory Discrimination Test (Wepman) was administered to assess the student's ability to recognize fine differences between phonemes. Unlike the Goldman-Fristoe, the Wepman used only words, not visual pictures. The words were presented in a quiet environment and in the presence of background noise. [REDACTED] was able to differentiate between 38 of 40 pairs of words in both quiet and with background noise. Errors greater than three are significant. On the Mann-Suiter Auditory Discrimination Screening, which measures one's ability to discriminate between words similar in the initial, medial, and final position, [REDACTED] made one error out of 25 word pairs. Five or more errors are required to find difficulty with auditory discrimination and possible problems with learning through a phonetic approach. Finally, the student was given the Mann-Suiter Auditory Memory Screening for Sentences. This test required him to repeat 20 sentences ranging in length from six to 14 words. He was able to repeat 100% of 17 sentences and was able to get the gist of meaning of two other sentences. He was unable to repeat the 20th sentence.

Based on her assessment, [REDACTED] determined that [REDACTED]'s hearing does not impact his ability to learn in the mainstream classroom. However, he requires the following accommodations to be successful: preferential seating near to and facing the speaker; clear, specific directions when asked to perform tasks and instruction when making inferences from what he hears or reads; maintaining eye contact at the start of directions; repetition or rewording of oral directions; visual access to information, including visual aids, assignments written on the board, and discussion questions and answers written on the board; reduced extraneous background noise during direct instruction time or class discussion; teacher must speak clearly and naturally without exaggerating lip movements or volume at a normal rate; teacher must avoid standing in front of a light source as the glare makes it difficult to read lips and the student uses a lot of visual cues; repeating discussion questions and statements made by other students so that he does not miss part of the message; spelling test words presented in context rather than in isolation, especially if there is a word that auditorily is very similar; and, encouragement of his self-advocacy skills. She also recommended that [REDACTED] wear his hearing aids in all learning environments on a daily basis. (SD 195-197; PD 20-22).

The NIA supervisor of hearing services, ██████████, conducted a functional hearing observation in ██████'s classroom on October 22, 2009 to assess the impact of his hearing loss on his learning. ██████████ testified that she had reviewed the ██████ audiological evaluations from November 2008, December 2008, and January 2009 as well as the ██████ audiograms. The classroom teacher told her that the student only wore his hearing aids for academic subjects. ██████████ reported that the student's classroom and the music room have excellent acoustic features. ██████ was seated in the front row and toward the center of the room in the classroom. During her observation, ██████ worked independently, was not distracted by activity in the room, and remained on task. He asked for clarification when he needed it. However, in music class he missed some comprehension of instruction and social peer interaction. Therefore, ██████████ recommended that the team consider having ██████ wear his hearing aids in all classroom environments. She also recommended that he sit toward the front and to one side in all learning environments so that he would have full view of the teachers' and students' faces. He should be provided with visual supports of information that is presented orally, including daily announcements in a printed format. She concluded that ██████'s "hearing loss does not impact his ability to learn in a mainstream classroom environment." However, the accommodations that were in place should continue to be provided as they "contribute to his success." (SD 89, 90; PD 23, 24).

██████████, the ██████ speech-language pathologist, assessed ██████'s speech and language skills. She also reviewed relevant records, including the ██████ audiology and language evaluations from November 2008, ██████ December 2008 audiology evaluation, the student's AIMSWEB, and the 2nd and 3rd grade RtI plans. She testified that she met with ██████ three times for testing, for a total of approximately two hours. He did not wear his hearing aids during the testing. She described him as polite and cooperative. He has good pragmatic communication skills. He did exhibit some "extra movements" but was able to focus and pay attention. Because he does not have a history of articulation problems, she made an informal assessment of his articulation. She testified that he has clear speech production and correct grammar. Her report indicates that his sentences were appropriate in length and complexity. ██████████ testified that she selected specific assessments so that ██████ would not be given the same tests that he had at ██████. She administered the Expressive One Word Picture Vocabulary Test (EOWPVT) and the Receptive One Word Picture Vocabulary Test (ROWPVT) to assess his expressive and receptive language skills. She also administered the Test of Language Development - Intermediate 3 (TOLD-I:3). His expressive and receptive language skills are within normal limits. On the EOWPVT, he obtained a standard score of 95, which has a percentile rank of 37. He received a standard score of 98, which has a percentile rank of 45, on the ROWPVT. His scores on the TOLD-I:3 also are within normal limits: spoken language quotient 107; listening quotient 111; speaking quotient 102; semantics quotient 102; and, syntax quotient 111. Although he achieved a "very good" score on TOLD-I:3 subtest for grammatical comprehension, the report states that it is "noteworthy to state that on two test items he repeated something incorrectly." (SD 92, 93; PD 26, 27). She testified that these substitutions were similar to those described by the mother.

On December 2, 2009, the district sent a conference notice to the parents, informing them that an eligibility conference would be held on December 15, 2009. (SD 18). Several district witnesses testified that pursuant to mother's request, an impromptu meeting was held a few days before the eligibility conference so that [REDACTED] could receive copies of the evaluations. [REDACTED] testified that the meeting took place on December 11, 2009. [REDACTED] and [REDACTED] also attended the meeting. Both [REDACTED] and [REDACTED] testified that copies of the evaluations were given to parent at the meeting and reviewed with her. [REDACTED] testified that she gave the parent a copy of the social worker's report at the meeting and answered her questions about the Conners' that is reviewed in that report. [REDACTED] testified had completed his report prior to that meeting and had given a copy of it to [REDACTED] to give to [REDACTED] because he could not attend meeting. The parent insists that she was not given a copy of [REDACTED] report prior to the eligibility conference and did not receive the report until her attorney gave her a copy sometime after the meeting. The preponderance of the evidence, however, shows otherwise.

The eligibility meeting was held as scheduled. The parent and her attorney attended the meeting. District and [REDACTED] staff included [REDACTED] special education inclusion teacher [REDACTED] and [REDACTED]. The parent's initials are on procedural safeguards form, which states that she received a copy of the procedural safeguards on October 14 and December 15, 2009. (SD 22). However, [REDACTED] testified that she had not received the procedural safeguards on either October 14th or December 15th. She then changed her testimony to state that she might have received the information on December 15th and that the form might be "in a stack" of information she has at home. The parent has the burden of proof on this issue. Given her change of testimony on this issue, the undersigned finds that she has not sustained her burden of proof on this issue.

As to the eligibility meeting itself, [REDACTED] testified that [REDACTED] led the meeting and had each evaluator present the results of her/his evaluation. The mother's complaints about the meeting are focused on the result - not eligible - rather than the process itself. [REDACTED] testified that she thinks the district's assessments were done in such a way as to skew the results. For example, she said that she was given the Conners' 3 in a cramped 8 x 8 room. She believes that the testing environment can skew the test results. She thought her son performed better on the assessments given by [REDACTED] because of the environment there. However, when confronted with the fact that both [REDACTED] and [REDACTED] evaluated the student privately in a 1:1 situation with little distraction, she was unable to explain a difference in the setting that would impact the evaluation results. She also asserts that the student's grades became inflated after her attorney requested a case study evaluation and therefore are not an accurate reflection of his performance. An allegation, however, requires proof in order to become a fact. The parents have not shown through any evidence that the district inflated the student's grades after it received the parents' request for an evaluation.

[REDACTED] testified that each staff person presented her/his evaluation results

at the December meeting. She testified that her testing showed that [REDACTED] does not have a learning disability. The test results do not show the required two standard deviation discrepancy. Acknowledging that a district is not required to use the discrepancy model, [REDACTED] also testified that the team looked at the student's classroom performance and whether [REDACTED]'s achievement is significantly below that of his grade level peers on state assessments. She testified that it was not.

[REDACTED] attended the eligibility conference and presented his report to the team. When asked by counsel if the team had considered each of the required learning disability criteria, he responded that they had. (SD 29, 30). Each of district's witnesses echoed this testimony regarding the learning disability criteria. [REDACTED] testified that the team had discussed whether [REDACTED] was eligible under other health impairment (OHI) due to his hearing impairment. [REDACTED] testified that in addition to learning disabilities, the team considered whether the student was eligible under OHI, speech/language, and social/emotional. He stated that after the team determined that [REDACTED] is not eligible for special education, he discussed with the mother developing a 504 plan for the student. [REDACTED] said [REDACTED] was to get back to him on his suggestion but has not done so.

The student completed third grade in June 2010. [REDACTED] testified that she implemented the Rtl interventions throughout the year. As "issues" came up, she tried to remedy the problem as soon as possible. For example, about three or four times during the year, [REDACTED] informed her of concerns that the mother had raised regarding the interventions and came in to help [REDACTED] correct the problems. Most of these concerns had to do with the preferential seating. According to [REDACTED] the student relies on visual cuing about half the time in interpreting auditory information. She testified that it is important to keep visual contact with [REDACTED] throughout the day.

[REDACTED] testified that all her students are allowed to "fix" errors they make on their work if she feels they could have done better. When a student does "fix" an assignment, it is given half credit. The teacher testified that [REDACTED]'s fine motor skills were not as developed as those of his peers. However, his cursive was neater than his printing, so she was not concerned about his handwriting. She did not observe any signs of social/emotional problems. [REDACTED] stated that she did not observe signs of frustration in the student; however, she opined that students might show frustration more at home where they are more comfortable.

[REDACTED] said that [REDACTED] did not have Rtl interventions for math. When he needed extra help, he was pulled to the back of the room and given help. He struggled with subtraction, and she tried to help him learn "to walk himself through" the process. At times, however, he was unable to do so. He received shortened math assignments because he struggles with math. After December 2009, an aide began to help [REDACTED] with his math one day/week for 30 minutes. He also was "pulled out" of math to the back of the room when he had trouble on his daily work or when she realized that he did not understand something. The student participated in both small reading groups, which focus on reading stories at the students' levels, and reading centers, which are skill

based and include reading comprehension, vocabulary, and fluency. [REDACTED] testified that [REDACTED] needs small groups for reading and math.

[REDACTED] also testified that the student's cursive was better than his printing, which she said is typical for many students. She said while she had raised a "concern" about the student's handwriting, she meant that in terms of an observation of his skills. It is clear from her testimony that she did not consider the student's printing skills a problem, particularly in light of his beginning to use cursive and his better ability in that skill.

[REDACTED] is the inclusion teacher at [REDACTED]. She testified that she provided 60 minutes/day of inclusion services to [REDACTED] class and that the student was in her reading group every week. There were five to six students in a reading group. She said that she did not see signs of ADD, an emotional disturbance or a learning disability in [REDACTED]. She testified that he made progress in reading in third grade.

[REDACTED] uses the same numerical system for conduct and effort as had been used at [REDACTED]. In third grade, the student's conduct grades were 1 for the first three terms and 2 in the final term. His effort grades were 1 in the first term and 2 in the last three terms. (PD 64).

Unlike [REDACTED] teachers were permitted to give failing grades in academic classes. The student received the following grades in third grade: (PD 64)

	Term 1	Term 2	Term 3	Term 4
Language	B	B	B	B
Test	B	B+	B+	A-
Homework	B	C+	C+	D
Quiz				
Math	Term 1	Term 2	Term 3	Term 4
	B+	B	B-	B
Test	C+	C+		C-
Homework	B+	B	B-	B+
Quiz				
Reading	Term 1	Term 2	Term 3	Term 4
	B	B+	B	B
Test	B	A-	B	B+
Homework	B+	B	B	B
Quiz				

The district uses the STAR reading assessment as a standardized measurement of its students' progress. [REDACTED] was given extended time on this test in both second and third grades. The STAR report states that "(b)ecause this test was not given under the same conditions as the national standardization of STAR Reading, all

norm-referenced scores should be interpreted with caution. PR, GE, and NCE scores might have been lower had the stand time limits been in effect. SS, IRL, and ZPD scores are not affected and may be interpreted as usual." (SD 64). The student's third grade STAR scores are: (SD 64)

Test Date	GP	SS	GE	PR	NCE	IRL	Est. ORF	ZPD
8.27.09	3.00	249	2.3	23	34.4	2.0	60	2.2 - 3.2
11.9.09	3.22	255	2.3	19	31.5	2.0	61	2.2 - 3.2
1.12.10	3.43	273	2.4	18	30.7	2.2	65	2.2 - 3.2

Surprisingly, none of the district personnel were able to explain what the abbreviations in the above chart stand for, except standard score (SS), grade equivalent (GE), and percentile (PR). ██████ testified that she only looks at the reading range (ZPD), not the other sections. Despite being unable to define ZPD, she said that it is the student's reading range and that he reads between a 2.2 grade level and 3.2 grade level. ██████ testified that on the STAR reading summary report for the student's third grade year, he ranked 23rd out of 24 students. (SD 65). She also testified that the student's ZPD score on the STAR assessment did not change throughout the year. (SD 64).

Based on this evidence, the undersigned finds that there was no change in the student's reading level in third grade. Given the disclaimer as to the impact of accommodations, it is difficult to interpret the decrease from 23 to 18 in percentile ranking and the minimal increase from 2.3 to 2.4 in grade equivalency except to say that the latter scores could have been even lower if standard time limits had been used.

The district also uses the AIMSweb assessment to measure reading and math improvement in its students. The student's scores on the AIMSweb reading test in second and third grades are: (SD 53)

Outcome Measure	Year	Grade	Fall	Winter	Spring	Level of Skill	Instructional Recommendation
Reading-curriculum based measurement	2008-09	2	38.0	64.0	80.0	Average	Continue current program
	2009-10	3	81.0	102.0	112.0	Average	Continue current program
MAZE - comprehension	2009-10	3	7.0	16.0		Average	Continue current program

█████ explained that the AIMSweb in an individually given oral reading fluency probe. The scores reported above reveal, for example, that in Fall 2008-09 ██████ was able to correctly read aloud 38 words/minute. ██████ stated that V.B.'s AIMSweb scores "do not tell me a whole lot." He did find it interesting that the student

got the easier words wrong and the harder words correct, as he would expect an average student to miss the harder words. He said he "would wonder" why [REDACTED] had missed the easier words.

The student's math AIMSweb scores are: (SD 55)

Outcome Measure	Year	Grade	Fall	Winter	Spring	Level of Skill	Instructional recommendation
Math computation	2008-09	2			13.0	Well Below Average	Further assess and consider individualizing program
Math computation	2009-10	3	11.0	18.0	19.0	Well Below Average	Begin immediate problem solving

Several administrators testified regarding district policies on parental requests for an IDEA case study evaluation. [REDACTED], the district's superintendent, testified that a parental request must be made in writing and directed to the building principal. If a parent makes an oral evaluation request, staff are to instruct the parent to put the request in writing. A teacher may also refer a student for evaluation if there is evidence that the student is not learning at the expected level. A request by a teacher is taken to a team composed of classroom teacher, special education teacher, reading specialist, and "anyone else" who can address the concern. The team must first see if adjustments can be made within the classroom. If so, interventions must be implemented and data collected, analyzed, and reviewed to determine the impact of the interventions. Superintendent Prusator testified that adjustments within the classroom must be exhausted before a special education evaluation is conducted.

The cooperative director, [REDACTED], stated that if a parent requests an IEP evaluation from someone other than the principal, the request must be put into writing. He also said the staff person who hears such a request should report it to his/her supervisor. He testified that he has instructed parents to make written requests to the building principal when he has been asked about an evaluation.

Both the [REDACTED] and [REDACTED] principals testified that a parental request for an evaluation must be made in writing to the building principal. [REDACTED] added that an email request is considered a written request. He further testified that after receiving a written parental request, the building principal gives the request to the OCEC school psychologist.

Independent Educational Evaluation

The parents obtained an independent evaluation from [REDACTED] in February 2010. [REDACTED] is a licensed clinical psychologist who maintains a private practice in [REDACTED] Illinois. His comprehensive evaluation included a test battery of 33

assessments and an interview with the student. He did not observe the student in school or speak with school personnel. His lengthy report is in the record and thus summarized here along with relevant testimony.

Because the student had recently been given the WISC-IV, [REDACTED] administered the Stanford-Binet Intelligence Scale, Fifth Edition (SBIS). The student achieved a full scale IQ of 93, a nonverbal IQ of 90, and a verbal IQ of 97. All three scores are within average range. [REDACTED] reviewed the student's WISC-IV scores, which were provided by [REDACTED] and opined that the student showed significant scatter between the IQ subtest scores. However, the student's cognitive ability is in the average range. To assess [REDACTED]'s achievement, [REDACTED] administered the Woodcock Johnson III, Tests of Cognitive Abilities and Tests of Achievement (WJ-III). The student's standard scores and grade equivalencies in broad math were 91/3.2, broad reading 94/3.2, and broad written language 89/2.8. (PD 97).

[REDACTED] determined that [REDACTED] has a specific learning disability in math and written language by comparing his "potential as indicated on the WISC-IV" and his achievement scores in math and language. (PD 89-98). He opined that this comparison shows the required two standard deviation difference that is required by the DSM-IV to diagnose a learning disability. [REDACTED] testified that a person's IQ potential is the "true IQ" for that person and should be used to diagnose a specific learning disability. He said that the concept of "true IQ" is his own personal concept. While acknowledging that the witness is entitled to his opinion regarding potential IQ and the use of that in determining a learning disability, the undersigned finds this testimony of little evidentiary value here as it is a non-standard way to find the two standard deviations that [REDACTED] testified are required.

[REDACTED] gave numerous behavioral rating scales to the student, his parents, and the third grade teacher and also several projective tests to the student. (PD 85). In his testimony, [REDACTED] reviewed the results of these instruments, particularly in regard to ADHD, anxiety disorder and emerging somatization disorder. (PD 104). Based on his assessment, [REDACTED] diagnosed the student with ADHD, Combined Type (hyperactive-Impulsive and Passive-Inattentive). (PD 102-104). He opined that although the student's ADHD is "probably moderate" it "might look severe" due to [REDACTED]'s hearing impairment and anxiety.

On the Adaptive Behavior Assessment System for Children, Second Edition (ABAS-II), which was given to both parents and [REDACTED] no areas of concern were identified. The Vineland II, which was only completed by the mother, the rating for general adaptive functioning was moderately low. The student was given the Self Evaluation Form for the Brown Attention-Deficit Disorder Scales for Children, and his score was within the average range. (PD 102). On the Achenbach Teacher Report Form, the scores for inattention, hyperactivity, and impulsivity were all within normal limits. On the Achenbach form for parents, the mother reported more problems than did the father, but still no scores were in a clinical rating. (PD 103). Finally, on the Behavior Assessment System for Children, Second Edition (BASC-II), there were no

clinically significant findings. The student is reported to control his emotions and behavior and overcome stress as well as others his age. (PD 103).

██████████ testified that the BASC-II scores do not support an ADHD diagnosis, although some information is "consistent" with ADHD. He also testified that the scores on the ██████████ and Achenbach do not support a diagnosis of ADHD. However, on the Attention Deficit Disorders Evaluation Scale, Third Edition (ADDES), both parents rated ██████ within the mean in both Inattentive and Hyperactive-Impulsive subscales. (PD 102). On the Millon Pre-Adolescent Clinical Inventory (MPAI), the student's responses were indicative of "hyperactivity and other behaviors suggestive of an attention deficit problem." (PD 104).

██████████ diagnosis of ADHD was based primarily on two assessments: the Integrated Visual & Auditory Continuous Performance Test (IVA+) and the ██████████ Continuous Performance Test-II (CPT-II). According to ██████████, these tests are the "gold standard" of ADHD assessments. He testified that the student showed an extreme impairment on the CPT-II and that such impairment "is likely" to impair ██████'s functioning. The evaluation report does not provide the scores that the student received on these two tests. Having reviewed the report and listened to the witness' testimony, the undersigned finds the data on ADHD inconclusive, at least at it applies to the school setting. Several of the above assessments yielded scores that the evaluator reported are "likely" to impair the student's functioning in school. The difficulty here is that the student's current teacher testifies that she does not see evidence of ADHD in school. The behavior scales she completed as part of the independent evaluation showed scores within normal limits, and the majority of the behavioral scales did not support this diagnosis.

Regarding anxiety disorder, ██████████ opined that school psychologists do not do significant personality tests that help identify this disorder. He did not see any concern from school personnel about an anxiety disorder in his review of documents. His assumption is that school staff saw this behavior (i.e., anxiety) but interpreted it as a hearing problem. However, he did not directly speak with any school staff or observe ██████ within the school setting. The report does not include any scores for the General Anxiety Scale for Children or other behavioral and personality assessments. (PD 102-104).

Much was made at hearing of a statement in ██████████ report that ██████ is a "typical ADD youngster who comes to the classroom filled with anxiety and battered self-esteem." (PD 109). Each of the district witnesses who was questioned about this statement firmly stated that s/he does not see ██████ as either filled with anxiety or suffering from battered-self esteem. District witnesses consistently described the student as a likable, friendly student who has friends and no history of discipline problems. Based on the foregoing, the undersigned finds no support that the student exhibits an anxiety disorder in school.

██████████ described somatization as anxiety that is internalized and then

creates bodily symptoms such as headaches, stomachaches, and muscular pain. He testified that there are indicators of this disorder on the behavior rating scales used in the evaluation, particularly the Achenbach, which has a somatic scale. However, as district's counsel pointed out, this contradicts the expert's statement in his report that the mother reported that the student "has no common physical complaints such as headaches, stomachaches, or muscle aches." (PD 87). Additionally, none of the student's teachers reported [REDACTED] complaining of such symptoms in school. It is true that the student had numerous visits to the school nurse between January 2009 and January 2010. However, of the 13 nurse notes written for that period, there are only two for a headache and one for a stomachache. On each of those visits, the student returned to class. (SD 140, 141; PD 59, 61). The rest are for injuries, a bloody nose, and earaches. The evidence does not support a finding of somatization within the school setting.

The parents provided a copy of [REDACTED] evaluation to the district sometime in March 2009. [REDACTED] testified that although a district is obligated to consider the results of an independent evaluation, it has not done so in this instance because of the due process proceedings.

Conclusions of Law

Did the district fail its child find obligation?

A district has an affirmative duty to identify, locate, and evaluate students with disabilities. *Robertson County Sch. Sys. v. Patrick King, Jr.*, 99 F.3d 1139 (6th Cir. 1996). This duty extends to children who are suspected of having a disability even if they are advancing from grade to grade. 34 C.F.R. §300.11(c)((1). Illinois law requires districts to conduct "(o)ngoing review of each child's performance and progress by teachers and other professional personnel, in order to refer those children who exhibit problems which interfere with their educational progress and/or their adjustment to the educational setting, suggesting that they may be eligible for special education and related services." 23 Ill. Adm. Code 226.100(a)(2).

A hearing impairment, whether permanent or fluctuating, that adversely affects a student's educational performance is a disability under the IDEA. 20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(c)(1)(5). The evidence shows that the district knew that the student has a hearing impairment since he enrolled in kindergarten. The district had evaluations from [REDACTED] confirming that the student has a bilateral conductive hearing loss that is "of concern in terms of the day to day impact" on his ability to function within the classroom. Even though the student's teacher testified that she did not believe that he had a hearing impairment, the district clearly knew that he had a disability. The question, then, is whether his disability adversely impacted the student's educational performance.

The second grade teacher testified that she was concerned about the student's inattentiveness and difficulty completing his work. On his report card, the student

received "4's" in two conduct /effort categories. According to the principal, not many students receive 4's in conduct and effort. The principal, who claimed he was unaware that [REDACTED] had received a "D-" in language arts, said he would have been concerned had he known that. He also said that the mother's concerns were justified. Despite these red flags, the district did not put this information together with the information it had from [REDACTED] regarding the student's fluctuating hearing impairment and from the student's physician that he suspected that the student ADD. The child find duty does not impose absolute liability on a district. However, courts have held that a district has failed its child find duty when it ignored clear signs that a student has a disability and when the district had reason to suspect that a student might need special education because of his disability. *A.P. v. Woodstock Bd. of Educ.*, 572 F. Supp. 2d, 50 IDELR 275 (Conn. 2008); *El Paso Ind. Sch. Dist. v. Richard R.*, 567 F. Supp. 2d 918 (W.D. Tex. 2008). Here, the district had actual knowledge that [REDACTED] has a disability. The teacher's concerns and the student's declining grades in conjunction with the [REDACTED] report should have led the district to suspect that the student might need special education because of his disability.

The district insists that the student made educational progress in second grade. However, the overall report card grades in academic areas are based on weighted grades given in tests, daily work, and quizzes. So, while the student's overall grades did improve, his grades in the categories under each subject do not reflect that improvement. In language arts, [REDACTED]'s grades in tests and quizzes declined to a "D" in the 4th term. In math, his test grade went from a "B" to a "D" and "C-" in the last two terms. His reading test grade went from a "C" to a "D+." Pursuant to the school's grading policy, teachers could not give grades lower than "D." The AIMSweb math test, which the district uses to assess all its elementary students, reveals that the student was "well below average" at the end of second grade. Despite evidence that something was interfering with [REDACTED]'s ability to make progress, the district did not evaluate the student and thereby failed its child find obligation.

The district argues that it developed a Rtl plan to address the student's needs and that the student responded positively to the Rtl plan. A district may use the Rtl process to determine how a student who is suspected of having a specific learning disability responds to scientific, research-based interventions as part of the evaluation procedure. 23 Ill. Adm. Code 226.130(b). Interestingly, there is no evidence showing that the district ever suspected that [REDACTED] has a specific learning disability. The case study evaluation was conducted only because the parents requested an IEE to determine, in part, whether their son has a learning disability.

The evidence shows that the Rtl meeting was called to address the mother's concerns. The second grade teacher also expressed concerns about [REDACTED]'s inattentiveness and difficulty completing his work. An Rtl plan was in effect for the last half of the student's second grade year. The evidence regarding implementation of the plan is questionable, given the teacher's testimony regarding the letter that the principal instructed her to write. The district did not collect any data on how the student responded to the interventions between February and the end of the school year, so

there is no objective way to assess how the student responded to the interventions. And, as discussed above, the district's contention that [REDACTED] made progress under the Rtl plan is refuted by student's grades and AIMSweb math score.

Did the district conduct a full individualized evaluation?

The parents allege that the district did not conduct a full individualized evaluation because it did not conduct a complete assessment of [REDACTED]'s cognitive abilities and academic achievement, his emotional status, and his attention issues.

An evaluation must use "a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent." 34 C.F.R. §300.304(b)(1). The child must be assessed in all areas of suspected disability. 34 C.F.R. § 300.304(c)(4). [REDACTED] testified extensively regarding her evaluation. She assessed the student's intellectual ability and academic achievement using the WISC-IV and the WIAT-II, both of which are nationally recognized assessment tools with standardized norms. Although she came to a conclusion different from that of the parents' expert on the question of specific learning disability, that does not prove that her assessment of the student's abilities was flawed.

[REDACTED] was charged with assessing the student's social/emotional functioning, conducting a behavioral assessment, and collecting a health history. He interviewed [REDACTED] regarding the student's developmental history. His report provides important information about the parents, noting that [REDACTED] has ADHD and [REDACTED] has a central auditory processing disorder. The report briefly covers that student's medical history, noting chronic ear and sinus infections and recently prescribed hearing aids. The report references, though not by name, [REDACTED] letter regarding ADHD. It briefly reviews the [REDACTED] evaluations. The foregoing information is an adequate health history.

[REDACTED] behavioral assessment includes two classroom observations and administering the [REDACTED] to the mother and the student's third grade teacher. The parents argue that these observations and test data do not constitute a behavioral assessment. The IDEA does not define a behavioral assessment for purposes of an initial evaluation. See 20 U.S.C. §1414(b)(2). While it is true that [REDACTED] administered at least 24 behavior-related assessments, the IDEA does not require districts to do so. A district must use a variety of tools and strategies to gather functional and developmental information about a student. . " 34 C.F.R. §300.304(b)(1). The school social worker's assessment meets this standard.

The parents contend the district's evaluation is flawed because it did not conduct an occupational therapy assessment to look at the student's fine motor skills. The district correctly asserts that the domain sheets do not identify fine motor skills as an area of concern. The district, however, is charged with evaluating the student in "all areas of suspected disability." 20 U.S.C. § 1414(b)(3)(B). The question, then, is whether the district had reason to suspect that the student had fine motor problems.

[REDACTED] testimony revealed that the student's cursive is better than his printing, something the teacher considered typical for third graders. Her "concern" about his printing was an observation and not indicative of problems in fine motor coordination requiring an assessment.

Finally, the district's evaluation also included a speech/language assessment and observations by the [REDACTED] hearing itinerant supervisor and hearing itinerant teacher. The district's evaluation covered each of the areas identified on domain sheets. Based on the documentary and testimonial evidence adduced at hearing, the undersigned finds that the district conducted a full individual evaluation.

However, that is not the end of the story. The parents question whether the district fully used its evaluation information, as well as other data available to the team, in determining whether the student has a disability enumerated in the statute and because of that disability needed special education and related services. Other than the two pages required by the ISBE to document the determination of a specific learning disability, the Conference Summary Report contains no information about other disabilities the team considered and no information about how those disabilities (if in fact considered) impacted the student's educational performance.

When asked by counsel if they had considered whether the student was eligible under OHI, the [REDACTED] and district team members all responded that they had. However, none could explain with any detail or clarity what had been discussed and considered. Some said that they had considered whether the student had ADHD. [REDACTED] who evaluated the student in this regard, provided the most expansive testimony and said that he had presented his report at the eligibility conference. There is no documentation of any OHI discussion about ADHD.

More troubling is testimony that the staff considered the student's hearing impairment under OHI. This is concerning for two reasons. First, it reveals a lack of understanding about the IDEA disability categories. A hearing impairment is a separate disability, not something for consideration under OHI. A hearing impairment includes both permanent and fluctuating hearing loss. 34 C.F.R. § 300.8(c)(5). The student has consistently been diagnosed with a fluctuating hearing loss and has been prescribed hearing aids for that reason. A lack of understanding about the disability definitions may lead to an incorrect determination of whether a student has an eligible disability. Second, although staff testified that the student's hearing loss had been considered (albeit under the wrong category), none of them could provide details about the how it was considered - what was discussed, which evaluations were reviewed, what data was available from the school, what staff observations regarding the student's hearing impairment were. The record contains extensive documentation on the student's fluctuating hearing impairment. However, that information is reduced to a few statements in the conference report: "slight to mild hearing loss in his right ear," "hearing challenges," and "prescribed hearing aids and he wears them on and off." (SD 25, 26). This neither adequately or accurately states the information that the district had on the student's hearing impairment. Given the lack of testimony on this issue coupled

with the fact the it document itself contains *no* information regarding consideration of the student's hearing impairment, the undersigned finds no credible evidence that it was fully considered.

Additionally, it is clear from the testimony that the district incorrectly determined (or did not discuss, since again there is no documentation of discussion) that the student's disability did not adversely impact his educational performance. If considered at all, the consideration was from perspective of the Rtl interventions, which had been implemented precisely because of an adverse impact. To determine that the student is not eligible because of the Rtl plan puts the cart before the horse. The district argues that the hearing officer may not substitute her opinion for that of the district's educators unless the district's opinion was unreasonable. *School Dist. of Wisc. Dells v. Z.S.* 295 F.3d 671, 676-77 (7th Cir. 2002) (Z.S.). Z.S. involved a student who was diagnosed with autism, had an IEP and who, at the time of the hearing, was in a homebound program because he could not be successfully contained and educated outside of a residential facility. His guardian refused consent for such placement. The court found that the district's determination that the student required homebound placement was reasonable. The district had, as it was required to do, gone through less restrictive alternatives. The court held that the homebound placement was reasonably calculated to enable the student, who had a "disastrous history of attending regular, or indeed any, classes in any school environment less structured than that of the mental institution in which he had been confined for seven months" to receive educational benefit. *Id.* at 676, 677.

█'s situation is at the other end of the IDEA process. The question, therefore, is whether the district's determination that he is not eligible for special education and related services was reasonable. The undersigned finds that it was not because the district did not fully consider and discuss his fluctuating hearing impairment and did not consider whether such impairment adversely impacted his educational performance.

The district also cites a very recent decision holding that the correct standard is whether the student's disability actually does - not could - adversely impact his educational performance. *Marshall Joint Sch. Dist. No. 2 v. C.D. ex rel. Brian D.*, 2010 WL 2990839 (7th Cir. 2010) (Marshall). The district contends that █'s needs can be met in a regular education classroom *with accommodations*. This argument repeats the flawed reasoning of the IEP eligibility team. It is precisely because the student needs more than regular education to receive an educational benefit that he requires special education. Special education is specially designed instruction that meets the unique needs of a student with a disability. 34 C.F.R. §300.39(a)(1). Specially designed instruction "means *adapting, as appropriate to the needs of the eligible child...the content, methodology, or delivery of instruction*" to address the child's unique need and to ensure access to the general curriculum. 34 C.F.R. § 300.39(b)(3) (emphasis added). The record documents the methodology and delivery of instruction needed to address this student's unique needs. Under the standard enunciated in *Marshall*, the undersigned finds that the student's fluctuating hearing loss adversely impacted his educational performance.

Finally, the parents contend that the district did not consider the IEE report they provided to the district. The district asserts that it could not consider that report because of the stay-put provision, which it argues went into effect on January 14, 2010, when the district filed a due process request to contest the parents' request for an IEE at public expense.

The stay put provision mandates that during the pendency of any administrative or judicial proceeding regarding a due process complaint, the student must remain in his then current placement. 20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a); 105 ILCS 5/14-8.02a(j). A student's stay put placement is that identified in the last agreed-upon IEP. *New York City Dep't. of Educ. v. S.S.*, 2010 WL 983719 (S.D. N.Y.). See also, *John M. v. Bd. of Educ. of Evanston Township High School Dist. 202* ("John M."), 48 IDELR 177, p.4 (7th Cir. 2007) (holding that the stay put placement "must produce as closely as possible the overall educational experience enjoyed by the child *under his previous IEP.*" (emphasis added). Because the student in this case had not been determined eligible for special education and related services at time the district filed its due process complaint, he had no IEP. Thus, the stay put provision does not apply. The district's assertion otherwise is legally incorrect.

A district must consider the results of an independent evaluation that the parent has obtained if the evaluation meets the district's criteria. 34 C.F.R. § 300.502(c)(1). There has been no documentary or testimonial evidence presented showing that [REDACTED] evaluation did not meet district criteria. The district was legally obligated to consider the IEE and should have done so. However, given the hearing officer's conclusion that [REDACTED] diagnosis of specific learning disorder is incorrect, his diagnosis of anxiety disorder and emerging somatization disorder are not supported by evidence that these diagnoses -even if correct - have an adverse impact on the student's educational performance, and his ADHD diagnosis is inconclusive as to its impact on the student's functioning in the school setting, the district does not have to reimburse the parents for the evaluation.

As to the [REDACTED] evaluations for which the parents have requested reimbursement, they undersigned finds that the parents did not follow the required procedures for requesting an IEE at public expense; therefore, the district is not required to reimburse the parents for the cost of those evaluations.

Did the district violate the parents' substantive and procedural rights?

The parents contend they made numerous requests for an evaluation, which the district either ignored or denied and thereby violated their procedural and substantive rights under the IDEA. The first incident is alleged to have occurred in August 2008, when the parents insist that they made an oral request to [REDACTED] for an evaluation, and he told them an evaluation was not necessary. The parents argue that a district may not require parental requests for evaluation to be put into writing.

Illinois law requires school districts to develop procedures by which an evaluation

for special education and related services may be requested. These procedures must designate the steps to be taken in requesting an evaluation, designate the persons to whom a request may be made, and identify the information that must be provided. 23 Ill. Adm. Code § 226.110(a)(1-3). Although the parents insist that a district may not require that a parental request be written, Illinois special education regulations do not support their contention. The testimony of ██████████, and ██████████ supports a finding that ██████████ requires a written request from a parent/guardian to the principal. The parents have provided no evidence showing that the district's procedures are different than those testified to, and the parents have the burden of proof on this issue. There was no evidence showing that the parents made an oral request for an evaluation in August 2008. Assuming *arguendo* that such a request had been made, the district procedure would require that the request be put in writing.

The second instance is alleged to have occurred in October 2008, when the parents allege that they made a written request to ██████████ for an evaluation and copied their request to ██████████. According to the parents, ██████████ told them that an evaluation was not necessary and that a RtI plan was sufficient. There was much testimony presented during the hearing about emails that the mother said she sent to ██████████ regarding the need for an evaluation and many implications that the district had intentionally destroyed those emails. The mother also testified that she does not have a copy of the emails because a hacker hijacked her computer and the emails were destroyed. It is not the district's burden to disprove this allegation. The parents have the burden of proof and have produced no evidence showing that they made a written request to ██████████ and that, in response to that request, he told them that an evaluation was not necessary.

The third instance involves the March 2009 letter that ██████████ sent to the district. The parents contend that the letter is a request by the doctor for an evaluation. ██████████ note summarizes his recommendations for ██████████. His recommendations include an ENT evaluation to rule out treatable medical problems and, if there are no treatable problems, then a trial of medication for ADD. (SD 138). On its face, the letter does not request an evaluation. Rather, it states that the physician is undertaking procedures to determine whether the student has ADD and to rule out medical conditions that might be contributing to the student's symptoms. While such information may have educational and legal import in other ways, the letter is not a request for an evaluation. Moreover, federal law requires that "a parent or a public agency may initiate a request for an initial evaluation." 34 C.F.R. § 300.301(b). A letter from a student's physician does not meet this criterion nor does it comport with the district's procedures discussed above. The parents have not sustained their burden of proof on this issue.

Finally, the parents assert that they were not provided the procedural safeguards after any of the above alleged requests for an evaluation. The law clearly requires that parents must be given a copy of the procedural safeguards upon initial parental request for an evaluation. 34 C.F.R. § 300.504(a)(1). However, since the undersigned has found that none of the foregoing instances was a request for an evaluation, the question of whether the district provided them a copy of their procedural rights is moot.

The parents also allege that their rights were violated when they were not given a copy of the school social worker's report until May 2009, when their attorney gave them a copy of the report. The testimony adduced at hearing shows that the district held a meeting shortly before the December 2009 eligibility conference to facilitate providing the parent with draft copies of the district's evaluations. [REDACTED] was unable to attend the meeting but testified that he had given [REDACTED] a copy of his report, which she was to give the mother at the meeting. [REDACTED] testified that she gave [REDACTED] the report, and other district staff who were at the meeting corroborated [REDACTED] testimony. [REDACTED] testified that she answered the mother's questions about the [REDACTED] which was discussed in [REDACTED] report. Based on this evidence, the undersigned finds that the parent did receive a copy of the school social worker's report prior to May 2009. There was no procedural violation in this instance.

Does the student's current placement in a regular education classroom with accommodations and a Rtl plan provide him with a free appropriate public education?

Having found that the district's determination that the student was not eligible for special education and related services, it follows that a Rtl plan cannot provide him a free appropriate public education. The student requires placement in a regular education with an IEP that provides goals to address his hearing impairment and related attention problems and inconsistent academic performance, curricular modifications including the need for visual presentation of materials, consideration of all recommendations in the [REDACTED] evaluations, and a determination of services needed to address the deficit in his math performance.

IT IS ORDERED THAT: Within 14 school days of this Decision and Order, the district shall:

1. convene an IEP meeting and find that the student is eligible for special education as a student with a fluctuating hearing impairment;
2. develop an IEP that includes goals and measurable objectives to address the impact of the student's hearing impairment on attention, inconsistent academic performance, as well as any other goals the team considers appropriate;
3. review the [REDACTED] evaluations and their recommendations and incorporate into the IEP those recommendations that are necessary to provide the student with a free appropriate public education, including at a minimum:
 - a. preferential seating that allows the student good visual access to the teacher's face and away from noise sources;
 - b. gain student's attention prior to providing important auditory information, particularly after a period of quiet work;
 - c. provide clear, specific instructions when asked to perform tasks and repeat oral directions as necessary;
 - d. repeat/rephrase questions or comments made by other students during discussion;
 - e. make frequent checks for understanding;

- f. provide visual supports to help the student organize his thoughts; and,
- g. provide visual access to information presented orally.
4. Assess the student's difficulties in math computation, determine what his instructional needs are to bring his achievement up to grade level, including resource room instruction, and develop appropriate goals/objectives to implement this; and,
5. Consider and determine if the student requires resource room support for test taking and working on assignments.
6. The parents' requests for reimbursement are denied.

Order

Within 20 school days of receipt of this Order, the School District shall submit proof of compliance to:

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

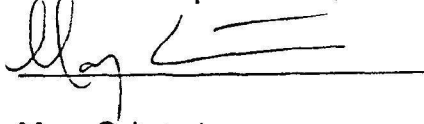
Right to Request Clarification

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

Right to File Civil Action

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

ISSUED: September 9, 2010



Mary Schwartz
Impartial Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Decision and Order was sent by Certified Mail prepaid and directed to:

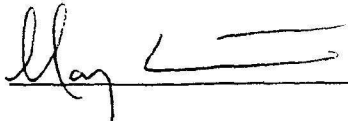
[REDACTED]

[REDACTED]

[REDACTED]

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

before 6:00 p.m. on September 9, 2010.



Mary Schwartz
Impartial Hearing Officer
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