

Case Number: 2010-0286

Hearing Officer: Harry A. Blackburn

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

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**Impartial Due Process Hearing Decision  
Cover Page**

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District Name [REDACTED] Phone [REDACTED]  
Superintendent [REDACTED]  
Address [REDACTED]  
Represented by [REDACTED]

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

Date and Timelines

Date of Written Request: 02/17/2010  
Date of Pre-hearing Conf: 06/10/2010  
Date of Hearing: 07/26, 27, 28, 30/2010  
8/9,13/2010 12:00:00 AM  
Date of Decision: AUGUST 23, 2010

Summary of Decision

The [REDACTED] failed to provide the Student a free appropriate public education (FAPE)—District Ordered to place the Student at [REDACTED] a Private Therapeutic Day School with other appropriate related services; Transportation shall also be provided; The Student shall be entitled to an additional 2 years of compensatory education at the [REDACTED] and reimbursement for all expenses incurred by the parents.

ILLINOIS STATE BOARD OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)  
) **ISBE CASE NO. 2010-0286**  
)  
) **Harry A. Blackburn**  
) **Impartial Due Process**  
) **Hearing Officer**

**DECISION AND ORDER**

**Jurisdiction**

This matter is before the undersigned-Hearing Officer for a due process hearing pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA 2004"). 20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)-(D), 34 CFR 300.511(c), Section 14-8.02(b) of the Illinois School Code [105 ILCS 5/14-8.02c(b)], and 23 Illinois Administrative Code 226.630(a).

The Parent, through her attorney(s), filed a due process complaint on February 16, 2010. The undersigned was appointed as Hearing Officer by the Illinois State Board of Education ("ISBE") on February 21, 2010, via letter, which the Hearing Officer received on February 23, 2010. The Hearing Officer subsequently contacted the parties and arranged for the convening of a status teleconference call for the purpose of discussing resolution or mediation efforts and establishing prehearing conference and hearing date(s). The parties and Hearing Officer participated in a telephone Pre-Hearing Conference held on June 10, 2010. Pursuant to a Motion filed by the Parent's Attorneys, an Interim Order was issued on June 19, 2010, Ordering the initiation and completion of Independent Educational Evaluations ("I.E.E.s") of the Student at the District's expense. IEEs were conducted in the areas of Psychological evaluation ([REDACTED]), Speech/Language and Assistive Technology evaluation ([REDACTED]), Occupational Therapy ([REDACTED]) and Central Auditory Processing Disorders evaluation (CAPD) ([REDACTED]). There are IEEs that were requested in other areas that, as a result of the aforementioned evaluations, may identify a further need for testing (i.e..Health/Nursing evaluations and Functional Behavioral Assessments). The IHO reserved Ruling on these additional areas until presentation of the evidence at Hearing. The Hearing took place over a six (6) day time span, beginning on July 26, 27, 28, 30, 2010 and August 9 and 13 at the administrative offices of the District. The Hearing was officially closed on August 13, 2010. The parties used a "jointly" agreed upon documentary evidence packet presented in a three ring binder notebook. The parties were permitted to submit their respective case summaries and supporting case law via e-mail to the Impartial Due Process Hearing Officer on or before August 15, 2010 which both parties did. The Parent submitted:

## ISSUES PRESENTED AND REMEDIES SOUGHT

### Matters In Dispute

The Parents are requesting resolution to the following issues as summarized below:

- a. The [REDACTED] (hereafter "District") did not provide the student a free appropriate public education (FAPE) from February 16, 2010 to August 13, 2010, based on:
  1. Failure to timely provide the student records.
  2. Failure to timely respond to the Parent's IEE request as required by Federal and state law within 5 days of receipt.
  3. Failure to provide appropriate and individualized evaluations in a timely manner in order to adequately identify the nature and extent of the student's disabilities from 2/16/08 through the present including, but not limited to: psychological, speech language (communication disorder), central auditory processing, fine/gross motor skills, assistive technology ("AT"), sensory, attention and other areas per IEEs, child find and request for IEEs.
  4. Failure to develop an Individualize Education Program ("IEP") where: present levels of performance accurately and objectively state current academic, functional and developmental skills of the student; goal statements are responsive to the learning impediments of the student, objectively measure student's progress, and are based on accurate present levels of performance; and objectives provide accurate and meaningful strategies for improving the student's academic, developmental and functional skills.
  5. Failure to provide an appropriate educational program/placement based on scientific, research based evidence including a certified special education teacher, and related services and assistive technology with sufficient intensity to meet the student's educational needs 2/16/08 to present including Extended School Year ("ESY") 2008 and 2009 (and 2010).
  6. Failure to identify in a timely manner and then provide appropriate assistive technology in the classroom setting and for all school work including training for staff, student and the Parent from 2/16/08 to the present.
  7. Failure to accurately and objectively report to the Parent the lack of the student's progress in the District offered services and programs and/or implement an appropriate response to the student's continuous lack of progress 2/16/08 through the present.
  8. Failure to develop a timely and adequate functional behavior analysis and behavior intervention plan for the student.
  9. Failure to offer a complete curriculum in the areas of reading, language arts, math, social studies and science.
  10. Failure to identify and utilize effective teaching methodologies at a sufficiently intensive level that would enable the student to make progress commensurate with his cognitive skills.
  11. Failure to provide 6 weeks of ESY for summer 2008, 2009, and 2010.

## **Relief Being Sought By The Parent**

1. The issuance of an Interim Order requiring the District to fully fund the IEE or file for due process.
2. An Interim Order requiring the District to provide all of the student's records maintained by the District regardless of the form and including, but not limited to, all report cards, progress reports, evaluations, teacher-parent correspondence, etc.
3. Order the District to provide private learning disabilities school program such as [REDACTED] or [REDACTED] including safe and reliable transportation as the student requires the Least Restrictive Environment ("LRE") setting in order to benefit from a public education or provide such an intensive program at a different school within the District. If a unilateral placement occurs, order the District to reimburse the Parent for all costs associated with placement at the [REDACTED] or [REDACTED] including transportation costs at the IRS rate.
4. Order the District to convene an IEP to develop an appropriate IEP for the student utilizing the Parent's obtained IEEs and any District evaluation results:
  - (1) The District review all evaluation results and recommendation and have appropriate staff at the IEP meeting;
  - (2) The District develop an appropriate IEP with individualized and measurable goals/objectives and accurate present levels of performance based on the student's eligibility and identified educational needs including appropriate modifications/accommodations;
  - (3) The District identify all direct and related services based on scientific researched based evidence including, but not limited to psychological and speech/language direct services, Central Auditory Processing ("CAP") interventions, Occupational Therapy ("OT") direct services and learning disability services with appropriate individual and group services across all educational settings;
  - (4) The District provide appropriate AT per experts including classroom implementation and training to student, the Parent and staff as required;
  - (5) The District provide compensatory services as stated in Par. 5 below;
  - (6) The District identify a private intensive placement/services such as a specialized intensive private LD program at the [REDACTED] for children with severe learning disabilities-dyslexia/language disorders that has appropriate methodology based scientific, research based evidence such as Orton Gillingham, Wilson or other multi-sensory, sequential systematic intensive reading program as well as safe and reliable transportation and ESY 2010; or provide such intensive program/placement at a different school within The District; and

- (7) Implement other Hearing Officer ordered relief based on findings.
5. In addition, the District provide compensatory services for the failure to provide an appropriate evaluation and IEPs including appropriate placement in a timely manner which may include depending on the recommendations of the IEE providers:
- a. 1:1 tutoring services beyond the regular school day by a certified special education teacher trained in scientific research based interventions for non-readers for 60 minutes per session, twice a week for the period denied FAPE; 1:1 speech language services beyond the regular school day by a certified speech pathologist 60 minutes per week ("mpw"), 1 time a week for the period denied FAPE; and, 1:1 OT services beyond the regular school day by a certified OT 60 mpw, 1 time a week for the period denied FAPE; and/or placement at the Cove School 1 year beyond the 2010-2011 school including ESY 2011 and 2012 that includes additional related services.
  - b. Additional AT to assist the student in all academic areas placed on a lap top computer with appropriate program interventions to enable the student to complete homework (Earobics, Lexia, Write: OutLoud, Co-Writer, Draft Builder, Kurzweil for Windows (and scanner) and Start to Finish books or other such type books); and,
  - c. All other relief as appropriate based on the IEE findings and recommendations.
6. Other Hearing Officer relief in order to provide the student with FAPE. The Hearing Officer decision must specify the educational and related services that shall be provided to the student in accordance with the student's needs and the timeline for which the school District shall submit evidence to the Illinois State Board of Education to demonstrate compliance with the Hearing Officer's decision.
7. The Parent requests reasonable attorneys' fees (the Parents acknowledge that the Hearing Officer has no authority to order reasonable attorney fees, but state it for purposes of future Appeal, if necessary).

**The District's Response to the Parent's identified issues and relief:**

The District, in its Pre-hearing Disclosure Statement filed on June 10, 2010, summarized the Parent's allegations and requested relief. The District summarized its responses to the requests made by the Parent for student records and the efforts made by the District employees to send records to the Parent attorneys. The District denied that it is "consciously or vindictively" withholding records and states that it has continually asserted that "some (or many) documents noted in the due process complaint likely do not exist". The District asserted that it has requested that a District case manager forward all student records that have accumulated since March (2010) be forwarded to the Parent's counsel.

With respect to the Parent's requested relief, the District maintains that items 1 through 3 should be rendered moot. Item 5, the District states, reflects an action that the District is already required to do and should not be requested relief or part of an Order. Item 7, the District believes, is not appropriate relief per a due process request.

The District concluded that the student has been provided with an adequate educational program, related services, accommodations and modifications, and supplementary aids and services reasonably calculated to allow him to make meaningful educational gains. The District asked the Hearing officer to deny all relief sought by the Parent.

### FINDINGS OF FACT<sup>1</sup>

- 1) The relevant period of time for purposes of the Parent's claims runs from February 16, 2008 through the close of the hearing August 13, 2010. In February 2008, the Student was in the 3<sup>rd</sup> grade; 2008-09 school year 4<sup>th</sup> grade; and, 2009-10, 5<sup>th</sup> grade. the Student is about to start 6<sup>th</sup> grade. The student has only attended [REDACTED] while residing in the District.
- 2) In the case at hand, the Parent continually asserted that the District's program and placement were not meeting her child's educational needs. These concerns are documented in all the IEPs under "parent concerns." (PD 82, 63, 56-7, 35, 7). All school staff testified that they had a good relationship with the Parent. One exception was [REDACTED] who stated that her second year teaching the student, "mom avoided her." However, the Parent testified that it was [REDACTED] who avoided her and would not look her in the eye.
- 3) The Student is described in IEPs as a very artistic student who loves to draw and is quite creative; generally well-behaved and loves to help teachers and respectful. (PD 63).
- 4) The Student was first referred for an evaluation in 1/13/04 when he was in pre-kindergarten. (PD 146-8; PD 148 student referral form). The Student was reported to have "a short attention span, easily distracted and unable to focus, even on interested tasks; at times appeared uninvolved or withdrawn. The Parent states difficulty in trying to teach him simple things such as colors and shapes; he has a developmental delay, a speech/language problem, academic problems, and behavior problems. He is a Student that has unintelligible speech. (PD 146).
- 5) The Student's second referral was on 9/27/04 at the beginning of kindergarten. The referral indicates the Student was "unable to make sense out of language"; "confused child, cannot concentrate and learn, breaks crayons and tries to throw them at children, hits children." (PD 144-5) (PD 145).
- 6) In the 5/3/05 IEP while still in kindergarten, the Student was referred for initial-speech services only. (PD 128) Under "communication" it is stated that "on the Auditory Comprehension subtest he showed a fair amount of scatter." The Parent

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<sup>1</sup> The Parent's attorneys provided a summary of facts. Some are stated verbatim and/or modified after verification with Hearing Officer Notes and incorporated by reference herein as "material" to the Parent's case.

reported that her child "...seems to be not focused... needs help with speech and understanding things." (On PD 130) The Parent requested the school to "help her child learn to focus, help with his learning, and with his speech." PD 132.

- 7) On 2/10/06 an IEP was developed while the Student was in the 1<sup>st</sup> grade, after a special evaluation, the Student was identified with a learning disability and a speech/language impairment. (PD 116), (PD 122). Under "health" the IEP indicates that the student "appears to have short term memory problems, treated for high lead level, Mother is receptive to services that he needs to improve his abilities." (PD 117). Under "social emotional" the IEP indicates: "the Student has some emotional issues; he has a short attention span and memory; Mother said her child cannot remember from one day to the next; He is easily frustrated because of his inability to follow the instructions...he has the tendency to fantasize especially when he's nervous or uncomfortable; social worker's service is not warranted at this time." (PD 118). Under "communication" the IEP indicates: "speech intelligibility is impacted, student has difficulty with processing and retaining information." (PD 118). Speech articulation goal only. (PD 124). No other goals sheets or summary of special education services in the IEP. The IEP summary sheet indicates significant learning characteristics testified to as still existing according to 5<sup>th</sup> grade special education teacher Osgood. (PD 126). "Red flags" are prevalent for referral for CAPD assessment per Dr. Ferre and other expert testimony.
- 8) In the 2/9/07 IEP, developed while the Student was in the 2<sup>nd</sup> grade, an annual review was conducted. The Student was found eligible for LD and Speech services. (PD 96). Under Parent concerns: "The Student (Name removed) becomes angry quickly. He also has difficulty keeping his hands to himself. Mother is also concerned about his education." (PD 97). Summary of special education services indicates 1300 mpw; 1200 mpw in a separate class. (PD 107). No social work services are offered in the IEP. [emphasis added].
- 9) In the 2/8/08 IEP, developed while the Student was in the 3<sup>rd</sup> grade, an annual review was conducted. The Student was identified as being LD and speech/language impaired. (PD 81), (PD 83). The Parent concerns include not paying attention and inability to remember to do basic tasks. The Parent helps with homework, provides computer, and ensures services to stay healthy. (PD 82). No behavior intervention plan needed. Determined eligible for 4 weeks of ESY. (PD 84). Assistive technology required: "allow use of calculator" and "allow use of computer to access the curriculum." (PD 85). Paraprofessional support recommended for 30 minutes daily. (PD 85). The modification and accommodations section does not include recommendations for CAPD per [REDACTED] testimony. IEP goals are not appropriate to meet student's needs and are not measurable. Testimony of [REDACTED] and [REDACTED] Speech goal is articulation only with immeasurable second part. (PD 89) and per testimony of [REDACTED]. Summary of special education & related services indicates: 500 mpw in regular classroom and 315 mpw in separate classroom for a total of 815 mpw. Speech services are reduced from 90 Minutes Per Month ("mpm") to 60 mpm (or 15 mpw). (compare PD 90 to PD 107). A decrease in all special education services from 2/9/07 IEP: from 1300 mpw to 815 mpw. No social work services are offered in the IEP.

- 10) PD 93 indicates that IEP progress reports will be provided in addition to the standard report card. The District produced one IEP report card from February 2008 to April 2010: the speech progress report is only signed by a paraprofessional. (See PD 160-1. PD 604), ISBE guidelines, indicates that a paraprofessional "may not...sign any document without the co-signature of the supervisor." The IEP summary sheet indicates significant learning characteristics still exist in all areas according to 5<sup>th</sup> grade special education teacher [REDACTED] testimony. (PD 95).
- 11) [REDACTED] the District speech pathologist testified that (PD 515) was prepared by her and in her handwriting. The document is dated 1/12/09 the same as the day domain meeting. Staff testimony indicates that the team including the Parent met on 1/12/09. (PD 504-speech & psychologist 1/12/09 entries). On PD 515 it indicates that parent is reporting "suicidal tendencies" and student "suspended 2-3 days for fighting." It also notes "referred for counseling." the Parent provided consent for 3-year re-evaluation on 1/12/09. (PD 78). The District complete the following evaluations: speech evaluation (PD 196-7); psychological (PD 237-8); and social emotional (PD 352).
- 12) The speech evaluation reports assessments utilized by the District are out of date per testimony of [REDACTED] and [REDACTED] (PD 199, EVT 1997; PD 211 OWLS 1995; PD 228 1997). [REDACTED] testified that outdated assessments could invalidate the assessment. [REDACTED] reports "receptive/expressive language skills were slightly below age-expectancy." (PD 197 & 61). Upon questioning, she admitted that the score for the PPVT-II, as per PD 228 Bell Curve, for all the assessment results indicate "moderately low score" and more than 1 standard deviation below the mean. A stanine 1 is in the "extremely low score" range. Per [REDACTED] [REDACTED] On PD 196 it is reported that the Student was functioning on language assessments 2-4 to 3-5 years below his age expectancy. [REDACTED] indicated in her report and at the 2/2/09 IEP meeting that "language deficits are related to his learning disability." PD 197 and 61. She did not recommend an increase in speech services or that the IEP have a goal for anything other than articulation.
- 13) PD 237-8 represents the District's school psychological testing of the Student. The date is actually 1/26/09 per [REDACTED] the District's school psychologist. This report states: "Academic progress over the past three years has been slow." PD 237. [REDACTED] utilized an "abbreviated" intelligence measure as a complete evaluation stating it is not required for a re-evaluation. [REDACTED] testified that an evaluation must address all the student needs and indicate whether the student has made progress. This report does not indicate that a classroom observation was completed as required by IDEA. [REDACTED] admits that she did not complete the following: written language, math reasoning, attention or executive functioning, motor processes, emotional functioning, spelling, listening comprehension, language assessment. She stated that written language was not a concern, so she did not assess this area. She did not have an explanation when she was referred to the 2/8/08 IEP, under present level indicating writing difficulties and a benchmark addresses writing. (PD 87). The 2/2/09 IEP also addresses writing deficits. (PD 68-second benchmark). The report does not indicate whether the findings are valid. (Testimony of [REDACTED] [REDACTED] The Student's intellectual ability is misstated. In the summary it states "Academic progress reported by his special education teacher has been extremely

poor.” (PD 238). This was not reported in the 2/2/09 IEP. (PD 60-1). [REDACTED] did recommend “intensive academic support to address language and academic deficits.” (PD 238). This report did not indicate a comparison to the previous District psychological which clearly shows student had regressed academically. (PD 237 and PD 296).

- 14) The social assessment states “he appears to have problems processing receptive language. His mother has concerns about his language skills and his short term memory...seems immature...sucks his thumb...appears to like school and motivated to learn.” (PD 352). This report also states that “his conversation was not focused on any one thing and he seemed to mix fantasy with reality.”
- 15) In the 2/2/09 IEP, while the Student was in the 4<sup>th</sup> grade, a 3 year re-evaluation was conducted. (PD 58): The IEP identifies the student as LD and with a speech/language impairment (PD 62). Under social emotional it states that “[the Student] doesn’t always understand things said to him. The Student has problems with processing information...his peers will tease him and he gets upset..somewhat immature...it is recommended that when he’s upset, to let the teacher know or to talk to the counselor. (PD 61). The IEP does not report that the teacher stated his academic progress was extremely poor. Under the Parent concerns: “[the Student] is not learning in his current classroom environment, needs more help at school, either does not have homework or he does not understand it. Speech has not progressed enough.” No behavior assessment or ESY services indicated. (PD 65). No AT is provided for. (PD 66). Paraprofessional support is 60 minutes per day (“mpd”) for general education classroom. (PD 66).
- 16) Per the testimony of all experts who testified on behalf of the Parent, the modifications/accommodations are not sufficient particularly for CAPD. IEP goals do not address the Student’s needs and are not measurable. [REDACTED] the Student’s special education teacher, testified that the goals were not measurable and she was not sure what some of the benchmarks meant. (PD 68-9). PD 68 does not include a goal/benchmark for reading comprehension. The speech goal is for articulation only. The summary of special education services indicates 915 mpw in a separate classroom for language arts and math; 15 mpw of speech. Per staff reports the special education teacher at the time [REDACTED], unavailable to testify at hearing due to her moving to the State of Georgia) had a lot of concerns about his reading and he would benefit in a separate class ([REDACTED] testimony); not seeing the progress she wanted and [REDACTED] wanted to improve his progress ([REDACTED] testimony). Social work services were not indicated despite the LRE section stating placement for all the regular education classes rejected because “concerns about the Student’s self-esteem, below-level math and reading skills, and his inability to stay on task” as well as separate/resource classroom...due to his low reading, below-level math skills and inability to focus.” (PD 72).
- 17) PD 74 indicates that IEP progress reports will be provided in addition to the standard report card. No IEP reports cards have been produced by the District except PD 160-1 (speech paraprofessional) and (PD 1-3) provided by the District’s attorney after school ended in June 2010. Ms. Osgood testified that she did not know about the IEP report cards. When directed to PD 2, Ms. Hong appeared not aware that this IEP

report card existed and admitted she had not reviewed the document. The paraprofessional's name, [REDACTED] is listed on (PD 2. PD 1-page printed). Upon questioning [REDACTED] whether the IEP report card was issued for fall 2009 she stated: "no." She was not sure when IEP report cards are to be issued. She was directed to (PD 58 2/2/09 IEP-PD 74): Section 16; in addition to IEP progress report. She agreed that it did indicate in the IEP that an IEP progress report was to be issued. When directed to PD 1, IEP report card, she did not provide a copy of this document with report card or at any point in time to parent; she was not sure who is/was responsible to provide the IEP report card to the Parent.

- 18) [REDACTED] testified that per the Student's 2/2/09 IEP, the Student was not eligible and did not attend ESY summer 2009.
- 19) Per discipline records obtained during the Assistant Principal's testimony at Hearing, the Student was involved in incidents where: a teacher was hit in the face on 10/7/09. (PD 617); and, student "flipped a desk over and then threw a chair" On 10/15/09. (PD 618). [REDACTED] also testified that in December 2009 when she was absent the student was involved in a behavior incident. There has been no behavior assessment conducted on the child.
- 20) In the 1/13/10 IEP, while the Student was in the 5<sup>th</sup> grade, an annual review was conducted. The student is identified as LD and speech language impaired. (PD 33). Per Section 7 of the IEP, the student can read through a 2<sup>nd</sup> grade level word list; read a passage at a 2<sup>nd</sup> grade instructional level; struggles in reading comprehension; often misplaces words for similar looking words and does not notice the error nor the subsequent change of meaning. Under developmental/functional needs: "[the student] sometimes struggles with inter-personal relationships...reacts quickly to negative peer behavior and often has trouble regulating his emotions..mood can be labile [inferred word rather than that indicated by District "liable"], often moving quickly between anger and playfulness." (PD 34). Under transition information: "speaks to peers and needs reminders to stay quiet in the hallways." Under the Parent's concerns: "the Student has not made any academic progress. She is concerned about both his academics and his self-esteem." (PD 35). A behavior assessment is not indicated. (PD 37). Under AT, it lists what is available that the student could utilize, but not what the student needs. (PD 37). A shared paraprofessional for Biology and social sciences is indicated in the IEP. The paraprofessional minutes have decreased from 300 mpw (2/2/09 IEP PD 66) to 200 mpw (PD 37). [REDACTED] testimony. Per the IEP, paraprofessional support is to "provide support during activities to keep the Student on task." (PD 37). Dr. Ferre and experts testified that the accommodations/modification were not either appropriate or sufficient.
- 21) The IEP goals are not measurable as the goals lack accurate present levels of performance. (PD 41-45; Parent expert testimony). The present levels on the goals do not address a baseline, starting point or correlate with the goal/benchmarks per [REDACTED] testimony. Per expert testimony, the goals do not address the Student's deficit areas, are not appropriate and are not measureable. [REDACTED] admitted that the speech goal's first benchmark on, PD 44, was the same goal on PD 70 except that PD 44 required "moderate prompting/cues and the 2/2/09 goal states "minimal cues." The speech goal only addresses articulation.

- 22) The 1/13/10 LRE page on PD 46 indicates a decrease of services-615 mpw of special education services as compared to 2/2/09 IEP-915 mpw (PD 71) and 2/8/08 IEP-815 mpw (PD 90). Despite concerns regarding social emotional, self esteem and behavioral, social work minutes are not [emphasis added] indicated in the IEP. The IEP does not provide any consultative minutes for the paraprofessional or speech consultation minutes to teachers and staff.
- 23) PD 47 indicates that the Parent will be notified of the student's progress per the District IEP progress report. Again, ██████████ testified she did not know about the IEP report card. The Student is not eligible for ESY. Staff attempted to testify that ESY decisions were made later in the school year. However, as pointed out during staff testimony, the 2/8/08 IEP team did make a decision for 4 weeks of ESY. (PD 84).
- 24) The Parent provided a dissent to ██████████, the student's case manager, for the 1/13/10 IEP on 2/9/10. (PD 54 fax verification). ██████████ testified that he gave a copy to school staff. ██████████ testified that he called the Parent shortly after receiving the document and informed her that an IEP meeting would have to be scheduled. It was unclear from his testimony why the IEP team was waiting until June 9, 2010 and then the IEP team did not address the Parent's dissent. ██████████ also testified that he was "surprised" by the Parent's dissent, but he did not inform the Parent of this "surprise" until he stated it during his testimony on July 26, 2010 of the Hearing. ██████████ stated that the Parent could bring issues after the IEP was written. Per the Parent, the 1/13/10 IEP was sent home with her older child and she did not receive a copy at the end of the IEP meeting. ██████████ testified that it was a reasonable letter from the Parent and that it raised issues that the District should have addressed. i.e. sensory needs. ██████████ also testified that based on her experience as a school OT, the Parent often expressed many of the statements in the dissent. ██████████ stated that the Parent's dissent was very good as it pointed out all the issues.
- 25) A document dated March 9, 2010, "Assistive Technology Resource Center Referral Form" indicates that it was completed by the student's special education teacher, ██████████ (PD 612-4). In the section indicating "Are there any behavior considerations (both positive and negative) that may *impact* the student's performance" it indicates the following: "...low frustration tolerance with peers and he is quickly angered by negative peer behavior sometimes resulting in his turning over his desk or storming out of the room...also seems sensitive to noise and often requests to sit separately from peers and ask peers to be quiet..." (PD 613).
- 26) On May 14, 2010, ██████████, the student's regular education teacher, completed a "Sensory Profile" stating: "the Student is having trouble focusing, completing tasks, and interacting with his peers." (PD 621--copy provided by outside OT. ██████████).
- 27) In March through May 2010, ██████████ and ██████████ all completed observations of the Student in his current educational placement at ██████████. ██████████ testified that to complete her CAPD assessment, she did not need to complete an observation or talk with staff as it would not change the assessment

results or her recommendations. She did review school records to obtain information on the Student's school experience. [REDACTED] and [REDACTED] note in their reports that the Student was distracted during class work. (PD 390-Block; PD 418-19-[REDACTED]). [REDACTED] reported that during her observation the Student did not complete any writing for journal activity. (PD 431). Per the 6/9/10 IEP language arts present level, it states: "often during journal time, he will write one or two sentences on the given topic and then begin to draw a picture (often the same picture of the profile of a boy). He will add more when prompted, but put little effort into his work." (PD 16). [REDACTED] testified upon the District's attorney questioning that the Student did write in his journal in her class. However, the IEP states that he does not do much for journal writing. [REDACTED] and [REDACTED] did not observe any computers in [REDACTED]'s classroom. The Parent testified that she was in [REDACTED] classroom once a month and did not observe any computers.

- 28) Throughout student records it indicates that the Student sucks his thumb at school. (PD 352-Social Assessment, "he sucks his thumb"); (PD 389-OT report 5/4/10 and PD 391-5/11/10). Case manager for 2008-09 and 2009-10 school years, [REDACTED] testified that the Student sucks his thumb at school.
- 29) On June 8, 2010, the District completed an AT assessment. (PD 192-4). It notes that the Student reads approximately on the 2<sup>nd</sup> grade level; writes legibly, but it is a very difficult and time consuming task for the student; student has no previous experience with assistive technology. (PD 192). [REDACTED], an AT evaluator for District for ten (10) years, testified that [REDACTED] provided a text at a second grade level which "the Student was unable to decode all the tests...he was not able to remember them in subsequent sentences...answer some comprehension questions but did not know what all the vocabulary meant." She notes that he recognized the program from a previous evaluation (non District) and "editing was easier for the Student when he used the programs." (PD 193). PD 615 is the writing sample from this assessment. She recommended programs that were already available in another teacher's classroom, [REDACTED]. Also a reading pen "to decode text or worksheets that he needs to complete at home." (PD 194). She testified never attending any IEP meetings for the Student She provided student records at the time of her testimony. (PD 609-615). She obtained information from the District's referral form completed by [REDACTED] (PD 612-4). PD 615 is the writing sample she obtained during her assessment.
- 30) During the District AT evaluator's testimony, additional student records were provided by the evaluator and District's attorney: (PD 609-615). [REDACTED] testified that on 3/9/10, her department received the AT referral from [REDACTED]. (PD 612-4). She obtained some information for her report from this form. She did not include all the information in her written report such as the behavior described under No. 9. (PD 613). Number 10 indicates that in four (4) areas that student is expected to do in the classroom he is not able to do/perform/achieve: complete seat work, work in a noisy environment with peers, reading and comprehend text, problem solve in math. (PD 613). Number 10 also states that interventions including "change seating in classroom and positive reward for appropriate behavior" had intermittent results. Number 12 indicates that staff had "limited knowledge of assistive technology.

- 31) In the 6/9/10 IEP, where the Student will be in the 6<sup>th</sup> grade, the Student is identified as LD and speech/language impaired. (PD 4). Per section 7 academic needs, the Student reads at the 2<sup>nd</sup> grade level per a word list and a basic inventory that is not a reading comprehension assessment. ██████████ testified to her assessments on PD 181-3 and 188-9. PD 181 dated 9/2009 (██████████ testified that it should be 2009 not 2010). States in the upper left hand corner that it is Grade 2. PD 182 indicates that it is a Grade 3 word list. Per testimony this was a frustration level for the Student and the scoring guide at the bottom indicates "13 or less" is frustration. PD 188 is dated 6/8/10 and indicates at the bottom that it is at the Grade 2-Fluency Assessment." Per ██████████ testimony and documentation she did not administer any comprehension assessments. On PD 6, much of the information is repeated from the 1/13/10 IEP. (PD 34-5).
- 32) Spring 2009 ISAT scores are reported: 14% in reading and 8% in math. (PD 6). Spring 2010 preliminary scores: 2% reading and 5% math. All who testified agreed that comparison of Spring 2009 to Spring 2010 did not indicate progress.
- 33) Developmental/functional needs indicate the following: repeat of struggles with interpersonal relationship, reacts quickly to negative peer behavior, trouble regulating his emotions, mood can be labile [inferred word rather than that indicated by District "liable"] often moving quickly between anger and playfulness as well as low frustration tolerance. Added is: angry outbursts have significantly decreased. (PD 7). The IEP does not indicate and school staff could not state just how many times the Student had outbursts. The District did not provide any data to support whether his outburst have decreased. This section also states: "the Student also has difficult(sic) staying on task and is easily distracted by peers. Even in a small group of 2-3 students. the Student needs constant redirection to focus." The District did not produce any data to support these statements as a behavior assessment has not been completed.
- 34) The following is reported under transition information: "when transitioning from classroom to speech therapy, the Student often requires intervening or redirecting for behavior. He is easily agitated by other students, even when walking through the halls." (PD 7). The Student is to have a 1:1 paraprofessional for science, social studies, math and language arts to: "provide support during activities to keep the Student on task." The IEP does not include any remediation or interventions to improve the Student's attention span other than to be cued constantly by an adult.
- 35) ██████████ testified that the Student's behavior did impede his learning and that of others. ██████████ testified that he only had behavior problems in her classroom and therefore a behavior assessment or plan was not required. However, the 6/9/10 IEP states on PD 14 under functional performance: "The Student has difficulty staying on task during class in both the general education classroom and the special education classrooms." Under other considerations it states: "the Student struggles to stay on task and gets very little work done in the general education classroom, even with frequent check-ins from the general education teacher. He is easily distracted by peers." The assistant principal, ██████████, stated that the Student was a "discipline challenge."

- 36) The 6/9/10 IEP goals are repeats of the 1/13/10 IEP with benchmark dates changed with the exception of 2 new IEP goals. (PD 14-23). PD 14-15 is the same goal as PD 41. PD 18 is the same goal as PD 43. PD 22 is the same goal as PD 44 and parts of the goal on PD 70. None of the goals state accurate and precise present levels that are related to the goals in order to measure progress per [REDACTED] testimony. Expert testimony indicates that the goals are not appropriate or not addressing his deficits such as the CAPD goals suggested by [REDACTED] PD 443-444 (discrimination training, auditory vigilance, speech recognition in noise, lip reading/speech reading training, meta-linguistic training, auditory closure training). Section 12, LRE does not indicate consultation by the speech pathologist for the general education teacher or the paraprofessional. 930 mpw are indicated for special education services. Speech services were increased by 15 mpw.
- 37) [REDACTED] testified that she did not make a decision regarding whether speech should be provided during ESY. However, the IEP indicates that speech will not be provided in ESY. (PD 27). PD 165 was completed by [REDACTED]. Critical skills and special circumstances were not indicated. [REDACTED] or the speech paraprofessional [REDACTED] did not complete this form. [REDACTED] testified that he provided a copy of the ESY Monthly Reminder to staff. (PD 167).
- 38) None of the IEPs address the student's deficits in time and money management as identified by [REDACTED] and [REDACTED] (PD 409, 411, 423).
- 39) During testimony, the Principal stated that the Read 180 program would not be available for the Student next year. The IEP indicates that Read 180 will be provided. (PD 11--under language arts). [REDACTED] testified that during the 2009-10 school year she "did not have a reading program for the Student, but wished she did." After a short break she continued her testimony with questions asked in cross examination by the District's attorney stating that she did not really mean this as she had lots of different programs she used. The principal stated that the school did not have a curriculum for science and social studies but used an "expedition" program where certain State standards were addressed. On the Spring 2009 ISAT, the Principal testified that the Student's science score was "academic warning" the lowest level. (PD 360). [REDACTED] notes in her report and in testimony that the Student "was unfamiliar with many social studies and science concepts, which should have been mastered at this point in his educational career." (PD 422).
- 40) [REDACTED] testified that for the 2009-10 school year, she was a social worker in the Health Clinic. She is not a District employee. She did not meet regularly with school staff providing services to the Student. Other than the October 2009 meeting and her attendance at part of the 1/13/10 IEP meeting, she was not involved in the Student's school activities. [REDACTED] and [REDACTED] testified that [REDACTED] was not involved in writing the IEP or monitoring school progress. [REDACTED] testified that she did not provide school based social work services and her services were not intended to replace school social work services. [REDACTED] and [REDACTED] talked with her at the beginning of the 2008-09 school year. Both teachers claimed making a referral to the Health Services. She testified that it is not automatic that a student would receive her service from school year to school year, instead, it is to be determined at the beginning of the 2010-11 school year. She testified that her

services are not intended to replace school based social work services. She stated that it was not discussed that her services replace school social work services. She affirmed that her role is not supposed to replace school social work services. In response to a question asked by Parent's attorney as to why she did not advocate for school social work services she responded, "I am not familiar enough with the process...it is not my purpose to say what I was doing." [REDACTED] stated that she does not meet often with District staff. She admitted meeting with the Student for forty-five (45) minutes weekly. She stated that if the Student moves to another school it is unclear whether he would continue receiving her services. She verified that there is no automatic continuation of services for 2010-11 school year. [REDACTED] admitted having very little communication with the District's social worker; she stated she talked twice within a six (6) month period. She admitted that generally, she does not talk with District employees as it is "confidential and separate from the District." She stated that she never spoke with the School Psychologist, [REDACTED] about the Student.

41) [REDACTED] Testified that she had reviewed paraprofessional [REDACTED] speech progress notes. PD 503-8 and 491-8. However, [REDACTED] did not know that several other students' names were listed in the progress notes. PD 504-entry 3/25/09; PD 505-entry 1/28/09; PD 492-10/29/09 entry. Also a review of the progress notes indicates that data either was not recorded on progress toward the student's IEP goals or that the student was not making progress on his IEP goals/benchmarks. Examples: PD 81 2/8/08 IEP-goal PD 89: 4/15/09 entry-produce /r/ 16/24 in the initial position—[REDACTED] was unable to determine if his response was at about 70% as per the IEP Goal/Benchmark associated with this entry; PD 503-2/11/09 answering comprehension questions answered 6/10 correct with *max* cues; PD 505 entry 2/4/09-CW answered 7/10 questions with *maximum* cues; PD 507-1/7/09 entry-answered 3/5-models and prompting; PD 507 3/4/09-maximal prompting 6/8 questions; PD 89 2/8/08 speech goals: Measurable annual goal says *moderate* cues and prompts in 8/10; PD 2/8/08 goal: It says staying on topic and providing brief answers given moderate cues and prompts in 8/10 opportunities-Was your determination about progress based on the progress notes with the data on 1/7/09 (507); 2/4/09 (505); 9/24/08 (503); 12/10/08 (503) demonstrated difficulty formulating sentences; 11/5/08 (506) required prompt and peer models to identify antonyms 5/10; 9/17/08 (506) unable to spontaneously answer questions required prompts to complete tasks; after 2/2/09 IEP: 2/25/09-required maximal prompting and modeling to identify correct synonyms (506); PD 505-3/11/09-required prompts to answer 19/24 what questions; PD 503-2/11/09 6/10 max cues; PD 507-3/4/09-maximal prompting to answer 6/8 questions

42) Upon questioning regarding speech progress notes for the 09-10 school year (PD 491-7503-8), [REDACTED] only explanation for the lack of data regarding progress on the IEP goals was that she did not need to take data as the Student had met the speech goal. She could not explain why he had the same speech goals in the 2/2/09, 1/13/10 and 6/9/10 IEPs. (PD 70, PD 22). Per ISBE Guidelines as part of her responsibilities, "documenting student performance and progress toward meeting established goals and objective or benchmarks and reporting the information to the supervisor." (PD 604). [REDACTED] completed the speech IEP report card for the Student. (PD 2). Per ISBE Guidelines, [REDACTED] "may not...sign any document without the co-

signature of the supervisor.” (PD 604). Additionally, [REDACTED] as a speech paraprofessional. Per ISBE guidelines, she “may not...develop, write, or modify IEPs or treatment plans in any way.” (PD 604).

- 43) [REDACTED] and [REDACTED] appeared unaware that parents must be notified **“in writing”** [emphasis added] of the fact that when a paraprofessional is responsible for carrying out treatment plans for individual students. (PD 604-bolded and underlined as stated in the ISBE Guidelines). The Parent testified that she was not notified in writing of this fact.
- 44) [REDACTED] is the case manager/counselor at [REDACTED]. He did not provide any direct services to the student. He testified that the Student was already receiving services through the health center and that was adequate. [REDACTED] reported a good relationship with the Parent.
- 45) [REDACTED], the Principal of [REDACTED] testified that the Read 180 program will not be provided at the school next year for the student. He stated that preliminary ISAT scores can be used to retain general education students. He testified that the District relies on these scores. (PD 360 Spring 2009 ISAT) The assumption is that the student had modifications. Reading and math scores indicate that the student is functioning below standards and in science at the academic warning level. The Student is in the lowest quartile in terms of testing. Comparing the scores in math and reading to Spring 2010, the Principal affirms that it does not indicate that the Student has made any progress. Being questioned about the physical make up of the classrooms at [REDACTED] the Principal testified that they “have high ceilings”. He testified that they do not use a reading program and in 2008-09 reading program-basal series was used “intermittently” The Principal didn’t recall having attended an IEP meeting or reviewing the Student’s records. The Principal testified to having a good relationship with the Student’s mom; worked with her other child and had no problems with the Parent’s at all.
- 46) Assistant Principal, [REDACTED] testified that he is assigned to handle special education discipline matters at [REDACTED]. He testified to the Student being a “discipline challenge” and on a scale of 1 to 10, with 10 being high, he rated the Student to fall in the 4 to 5 range. He testified that the Parent came to him frequently and she followed his instruction to speak with [REDACTED] about her concerns. He described his relationship with the Parent as being “good.”
- 47) [REDACTED] was assigned as the Student’s regular education teacher for 4<sup>th</sup> and 5<sup>th</sup> grades. She worked with [REDACTED] the Student’s special education teacher for 2008-09. She also worked with [REDACTED]. When directed to PD 95—IEP Summary Sheet. [REDACTED] recalled seeing before. She was directed to the “Learning Characteristics” section by Parent’s attorney on direct examination. [REDACTED] testified to agreeing to all boxes checked and added that the last 3 boxes, although not checked, should have been: “Is disorganized and often misplaces things; Has difficulty copying from the board; is slow to switch from one task to another. (PD 95). When directed to PD 359 [REDACTED] testified she distributed this document which reflects the Student’s Preliminary Illinois Standards Achievement Test (“ISAT”) scores for the Spring of 2010, on the last day of school year. The

scores received in class. document the student's low test scores in Reading and in Math. ██████ testified to remembering that the Student's scores decreased from the year before." When questioned about noticing the Student "sucking his thumb" she testified "Yes" she noticed he sucked his thumb-in 2008-09 twice a week; 2009-10 once a week. She noted the thumb sucking occurred at times when the student was academically frustrated. She affirmed that thumb sucking indicates that the Student may be nervous and suffering anxiety. ██████ testified that when the Student gets stressed he withdraws, puts his head over the table and starts to draw and will do it for a long time unless addressed. She admitted never talking with the school Social Worker. She recalled speaking with ██████ when she referred the Student to the Health Center, but had no recollection of any collaboration with ██████ after the initial referral. When questioned about why she referred the Student in September 2009, she referenced the Student's anxiety and poor peer relationships.

- 48) ██████ was assigned as student's special education teacher for the 2009-10 school year. She attended the 1/13/10 and 6/9/10 IEPs and developed goals/benchmarks for the student. She implemented the 2/2/09 IEP goals for the student. During testimony, in response to a question on whether the approach to reading utilized for the Student was research based, ██████ stated several times "I would loved to have had a reading program." the Student did not meet the 2<sup>nd</sup> benchmark. Regarding math goals, ██████ testified that they worked a lot on solving word problems. She Did not "chart his progress as thoroughly as I should have." Did not meet the 3<sup>rd</sup> benchmark. "This goal is a little ambiguous-I would have written this a little more clear." "Goal not measurable. Present level does not indicate a baseline-place to start-unclear what is meant by multi-digits-a little unclear. No percent of accuracy-so again ambiguous." (PD 69 math goal). With respect to PD 33-1/13/10 IEP meeting,. the math goal on PD 43 does not indicate how it will be measured; the present level does not give a baseline or starting point for where the Student was currently functioning. ██████ did not know how to measure progress and did not know where the Student was starting. According to ██████ he was frequently off task. "He would go back and forth on task...in terms of quantify, I am sure I can." "Pretty frequently off task unless I was standing right there." 7 or 8 students in class-did not always have an aide in the morning. "Generally no, he could not stay on task" unless ██████ stood beside him. ██████ affirmed in her testimony a Student suspension in December-a day when she was not there and a substitute was taking her place. This point, she admitted was not brought up at the 1/13/10 IEP meeting as a behavior concern. The substitute was not as familiar with the Student and therefore did not know how to calm him down. ██████ stated that if his behavior had started escalating and no one stops him a Behavior Intervention Plan ("BIP") would be for the rest of the school staff and it would have been appropriate to put it in a plan. ██████ admitted when questioned by Parent's attorney that a BIP would have been beneficial for other staff to know the interventions that ██████ implemented. She admitted not sharing any data with other school staff with respect to handling the student's off task behaviors. Likewise, she could not document with certainly how often the Student performed off task, had angry outbursts or how often to use "intervention" techniques. There simply was no data recorded by ██████ in terms of documentation of frequency and the duration and response to interventions. ██████

██████████ admitted that she did not do this to the degree that she would have liked. She admitted that she would like to have done more for him. ██████████ admitted that she did not discuss completing a BIP at the IEP meeting nor did she talk with the Parent about a BIP. She admitted not talking with ██████████ about a BIP. She primarily talked with ██████████ but no other staff in the school. ██████████ testified to having background as a behavior specialist, she believed that it should be common knowledge across the school setting and beneficial for everyone to know intervention techniques that worked with the Student.

- 49) ██████████, a District school psychologist testified at the hearing. She was assigned to ██████████ for the 2008-09 and 2009-10 school years. She is not a nationally certified school psychologist. She has no experience as a teacher or special education teacher. ██████████ was assigned one day per week for both school years. Her responsibilities included providing school psychological services, group and individual counseling, and consultation to teachers and the Parent. None was provided for the Student. She testified that the Parent was very good about showing up to the IEP meetings. She testified that she did not complete a written language assessment as the Student was not receiving services for this and there were no concerns. (PD 81 2/8/08 IEP; PD 87 goal addressing written language). However, discussion with teachers indicated concerns with reading. ██████████ did not complete a math reasoning assessment; written language; listening comprehension, or oral expression. She also did not complete any language assessment, attention, executive functioning, behavior assessment-informally talking with teacher(s), or auditory processing. ██████████ stated that a complete [emphasis added] and full evaluation on a triennial evaluation is not necessary. In comparison, the Parent's Independent Evaluator, ██████████, testified that in regards to testing, there is no difference between a three year re-evaluation and an initial evaluation, therefore begging the question of how "complete" an evaluation should be. The Student's academic performance was very poor for a student in 4<sup>th</sup> grade for language arts and math in separate class. ██████████' report does not indicate that she observed the Student in any classrooms nor did she report in the IEP summary that academic progress was slow and extremely poor. ██████████ did not remember giving a copy of her report to the Parent. ██████████ testified that the Parent has expressed, at all his IEP meetings, her concerns with respect her child's academic performance. ██████████ testified that, compared to other students in the program, he was very low recognizing the Student scored at a stanine 1 and 1%, the lowest one can score. She described her role as being only responsible to review the outside psychological evaluation at the 6/9/10 IEP meeting and it is not her practice to contact the outside evaluator regarding an IEE. Parts of the IEE were shared at the 6/9/10 IEP meeting. She admitted reviewing the 6/9/10 IEP two days before her testimony. She confirmed that an audiologist was not at the IEP meeting and does not recall who reviewed the independent AT evaluation. She affirmed that there was no reason to doubt the validity of the test listed in ██████████ report. ██████████ does not recall her recommendation regarding fine motors skills to the IEP team. She did not bring to the IEP team's attention the recommendation regarding the CAPD interventions. (PD 425). She did not bring to the IEP team's attention to Dr. Jansson's recommendation for a specific reading program. ██████████ did not know what the specific reading program was utilized with the Student for the 2008-09 and 2009-10 school year. The Parent points out that the practicum student did

numerous observations of the Student because the Parent had concerns and they wanted to help him. Further, the Parent avers that a school psychologist would not do a visual assessment, but a school OT would.

- 50) [REDACTED] is the speech pathologist who was assigned to the Student for the 2009-10 school year. She testified to completing an evaluation of the student. (PD 196-7). When asked about the affects of utilizing outdated assessments she stated "It might be considered invalid based on her training." [REDACTED] opined that language is embedded in the Student's classroom and he is getting enough language stimulation within the classroom. [REDACTED] administered the Expressive Vocabulary Test (EVT) (PD 199 copyright 1997). She didn't recall whether there was a revision of the test or not. [REDACTED] stated that she uses tests that are provided and available to her by the District.
- 51) [REDACTED] the City Wide Occupational Therapist, visited [REDACTED] one (1) time per week. She testified that she reviewed the outside OT evaluation and attended the 6/9/10 IEP meeting. She has never observed, assessed or met the student. When asked by Parent's attorney whether she was aware of the Student's "thumb sucking", inability to tell time, make change or regulating behavior" she said, "No." She testified that she reviewed the outside OT report but did not recommend OT services for the student. She did not incorporate all of the modifications/accommodations recommendation in the 6/9/10 IEP. She did not address sensory needs or recommend OT consult services to the school staff for the Student and she did not discuss the OT report with her supervisor.
- 52) [REDACTED] was the [REDACTED] case manager/counselor during the 2006-07 and 2007-08 school years. She attended the 2/9/07 and 2/8/08 IEP meetings for the student. (PD 96 and PD 81). She remembered the Parent as cooperative and had a good relationship with the Parent. She remembered seeing her at school and speaking with her in person at various times. She did not write the IEP goals/benchmarks.
- 53) [REDACTED] was assigned to the student as a speech therapist paraprofessional during the 2006-07, 2007-08 and 2008-09 school years. She wrote an IEP report card with her signature without the signature of her supervisor contrary to ISBE Guidelines. (PD 160)-(PD 604). The Guidelines state, in pertinent part that a paraprofessional may not "Sign any document without the co-signature of the supervisor." The IEP report card does not specifically address the goals/benchmarks on the 2/2/08 IEP. [REDACTED] never met or spoke with the Parent. She admitted not being aware of the ISBE Guideline that parents must be notified in writing regarding paraprofessional assignment to work with a student.
- 54) [REDACTED], Executive Director of the [REDACTED] testified. She was directed by the Parent's attorney to a letter of acceptance from [REDACTED] for the Student for the 2010-11 school year. (PD 601). [REDACTED] described [REDACTED] as a school for students with Learning Disabilities, Speech Disabilities, Emotional Problems, Other Health Impaired and Traumatic Brain Injury. Approximately 135 students are expected to start in fall and 84 staff members will be present. School enrollment will likely reach 145 students by the end of next year. [REDACTED] is a K-12 school, certified by the State of Illinois as a private therapeutic day school. As a part of the approval process

by ISBE, [REDACTED] is required to comply with all rules and regulations required for that certification approval. [REDACTED] serves the following grade levels: Elementary grades 1-6; Jr. HS--7 & 8 and HS 9-12 plus. [REDACTED] testified that the case manager and teachers hold proper state certification, with a student-teacher ratio of 8 to 10 students and assistant in every classroom certified to meet the requirements of the State of Illinois; [REDACTED] staff includes 4 reading teachers; 2 OTs; 6 Speech Language Professionals; 5 Social Workers; a certified OT acts as AT specialist; a neuropsychologist 1 day per week and a Clinical Director, [REDACTED], a nationally certified psychologist with a doctorate in Learning Disabilities. Typical students at [REDACTED] have more than one disability, a combination of LD and SLP, and experiencing emotional challenges that come from the complexity of the needs they have. It is a part of [REDACTED] philosophy to provide a lot of support using a collaborative approach to meet their needs. [REDACTED] testified that she has met the Parent and the Student and reviewed the packet of information containing academic as well as medical information of the Student that was presented upon application to the school. She testified that for the 2010-11 school year there is an opening for the Student to attend and could start at the [REDACTED] August 25, 2010. A letter of acceptance has been received by the Parent. She testified to the application process as involving an interview with the Parent and meeting the student which usually lasts about an hour followed by a tour of the school. The process of acceptance includes: collecting evaluations from parent and districts; utilizing neuropsychologist to review all the documents; and review by the social worker and/or speech team. [REDACTED] affirmed that the Parent and the Student went through this process. She testified further. She stated that with students diagnosed with CAPD, the speech pathologist completes an evaluation and makes recommendations to add for classroom modification. [REDACTED] testified that she reviewed the Student's recommendations for psychological, CAPD, AT and affirms that [REDACTED] can meet all those identified needs. [REDACTED] described the [REDACTED] facilities has having small classrooms that incorporate "FM system-phonetic ear" that has special speakers and a microphones for the teacher to block out the voice-noise is blocked out so the student can hear. For students with attention issues that are a result of CAPD, interactive white boards are installed and available. The classrooms are designed to minimize background noise. The speech room has special sound proofing to minimize the sound. The teacher and assistants provide much support and redirection for the student. [REDACTED] testified that currently there are several District students attending [REDACTED] [REDACTED] described the school's computer lab and confirmed they are initiating new technology efforts. She affirmed that technology will be integrated into the classrooms and the computer lab is available for teachers for keyboarding practice. [REDACTED] described the AT programs at [REDACTED] including writing, reading programs, Dragon Dictate-allows a student to speak and computer will write what the student says; Solo 6, Kurzweil. She affirmed that [REDACTED] also conducts a 6 week extended school year program during the summer. [REDACTED] stated that support services such as social work start right away and is part of the program and social workers take an active role in the program. [REDACTED] has a library, music class, art class. This coming school year the art class will be integrated into the enrichment shared with other fine arts in the afternoon. There is a science lab but is typically used high school students. [REDACTED] has science, social studies, reading and math programs. There are a variety of reading programs used at [REDACTED] to include: Wilson, Slant, Language, Reading milestones, and LL1 programs by Fontus-Pinnell. All reading programs are

scientifically research based and Slant is in the process of being determined scientifically researched based. For the math program Saxon is most used. It is based on research and successful for students who have math deficits. A math specialist has recently been hired to begin this coming fall. When a student comes into the school, a reading team member will determine the program best suited for the Student and whether need groups and/or 1:1 instruction. █████ confirmed collaboration as an IEP team to see what a student needs and they integrate speech in the classroom. █████ affirmed that language is a part of everything █████ does. Pull out services are sometimes recommended. █████ administration and staff have worked with a consultant to ensure that their curriculum is aligned with the state standards and matches the students they service. █████ has a variety of text books and visuals, curriculum aligned to state standards and goes through a process to match grade level curriculum with different districts. In the past, the District has provided access to AT for homework. █████ █████ states, does not have a "formalized" after school tutoring program, but when a district or parent requests the building is made available. It is █████ belief that very few students experience low self esteem from being with all learning disabled students to counter the District's reason for not remaining in the District's "LRE" placement. In talking directly with the Student, █████ believes that the Student wants to attend █████ and to be in an environment where he did not feel "bullied." With regards to OT services, █████ testified that █████ occupational therapist addresses sensory needs and students have sensory diets. █████ OTs are trained in sensory diets. All elementary students see an OT as part of the program. █████ affirmed that █████ does address bullying—social workers work specifically with any kind of situation whether prior or current.

- 55) █████ certified as a Parent's expert witness in the field of Audiology testified as to the three general deficit characteristics the Student exhibits in school: 1) academic problems in reading and spelling; 2) problems in communication-poor vocabulary, semantic, syntax; 3) behavior appears inattentive excessive distractibility, inappropriate responses. (PD 437-445 written report for student). █████ notes that the Student has evidence of primary auditory decoding deficits and it could not be ruled out a deficit in output-organizational skills. (PD 439). █████ testified and her report states: "even under optimal listening conditions, his auditory system is working harder than normal to analyze incoming acoustic information...as auditory overload occurs, fatigue sets in and overall listening comprehension deteriorates." (PD 439). For output-organization deficits, she notes, "may adversely affect planning, direction following, spelling, writing skills, word finding skills, expressive language skills, ability to complete assignments in a timely fashion and/or to "get started" on long assignments." (PD 440). "A secondary Central Auditory Processing ("CAP") test profile, output-organization difficulties likely reflect delayed development of attention, motor planning and /or executive function skills...underlie our ability to set goals, manage time, organize information, and maintain focus and concentration." (PD 440). She opines that "repetition or rephrasing may work but only if information is broken down into smaller linguistic units...use of tag words such as "first", "last", "before", "after", "now", etc. is helpful, as are outlines, checklists, and assignment notebooks." (PD 440). █████ stated that you "Can't develop an appropriate intervention if you do not know what the problem is." She recommended specific interventions, including a "oral rehabilitation program" for school: comprehensive assessment of language with suggestions for assessments (PD

440); "as part of his education program" *home use* of Earobics auditory games-Step 1 followed by Step 2 Fast ForWord (quicker result) is also recommended; specific therapy recommendation of bottom-up exercises and top-down strategies;" "the Student needs a systematic, explicit, multisensory phonics based remediation program to improve academic skills." (PD 441)- recommended very specific and individualized modifications which per testimony were not incorporated or not accurately included in the Student's IEPs (PD 441); specific areas to be addressed include 6 areas: discrimination training, auditory vigilance training, speech recognition noise, lip-reading/speech reading training, Metalinguistic/Metacognitive skills training, and auditory closure training. (PD 443-4). ██████ testified that, Fast ForWord obtains benefits quicker for students over age 10: auditory discrimination skills should be adult like by age 10 and significant risk for being very far behind for phonological, vocabulary, spelling, work load is getting harder and harder and if still impaired at 10 you want to get in there and do something about it. Get as much bang for your buck as you can." Intense program is appropriate as he is past age 10. Computer assisted programs are supplemented in an oral rehabilitation program. (PD 441 No. 3): type of reading program based on deficient discrimination skills that would remediate secondary academic deficits. Per testimony, this is "very important for the Student. My understanding he is very delayed...designed to close the gap." Recommendations for school. (PD 441 No. 4): environmental modifications based on test results. Research on accommodations and these should work. Per testimony, these recommendations have been affective for other students in public schools with the deficits. No. 4, "these are things the Student needs." CAPD testing is conducted in an "optimal listening environment." ██████ did not know why anyone would wait 3 minutes for a response. (PD 11-12): "Provide extra response time: 3 minutes." ██████ opined that early on the Student's school records indicated that he had CAPD. (PD 144). ██████ reviewed all the early referrals and all the student's IEPs. All documents indicated red flags and that in first grade the Student should have been referred for CAPD assessment. This was based on the summary of the 1<sup>st</sup> grade team that indicated the Student processes poorly which "begs the question let's get his auditory processing assessed." (PD 118 2/10/06 IEP). She also stated that she personally knew the District's audiologist that completes CAPD assessments. Dr. Ferre opined that the IEPs of 2//8/08 (PD 81), 2/2/09 (PD 58), 1/13/10 (PD 33) and 6/9/10 (PD 4) all were inappropriate to meet the Student's educational needs in that the goals and modifications did not address his CAPD. ██████ testified that the prudent action would be to assess the Student's auditory process in order to determine whether it is attention or auditory processing issues. The Student's CAPD deficits did not suddenly appear and ██████ opined that he probably had CAPD deficits all his life. ██████ also opined that with the implementation of proper CAPD interventions, she believed based on research that the Student's CAPD deficits could be resolved or reduced.

██████ stated he should have compensatory services for CAPD deficits: aural rehabilitation; combination of top down/bottom up therapy to reduce or resolve deficits. ██████ would have an audiologist or speech pathologist with expertise of CAPD meet the Student three (3) times per week; supplement that with daily assisted computer training (Earobics or Fast ForWord); direct individualized therapy; 30 minutes 3 times per week; computer assistance would be after the school day and 90 minutes direct during and after school day; combination of during and after school

services would be recommended. ██████████ concluded that the Student would need a lap top for the computer assisted intervention.

56) ██████████ called as an expert witness for the Parent, is a nationally certified school psychologist and has been employed in public schools as a school psychologist, special education teacher and regular education teacher. She is also a licensed clinical psychologist licensed in the state of Illinois. In her report she notes that the Student continues to suck his thumb. (PD 416). The Parent reported to her that the Student has angry outbursts when frustrated. (PD 417). ██████████ completed two classroom observations: March 24, 2010 and April 10, 2010. On the first observation she observed ██████████ classroom: no behavior management plan was observed, the Student was "off task", no aide in the classroom, and concluded that the Student did not adequately benefit from the instruction provided. (PD 418). The second observation was the student in the Read 180 program. (PD 418-9). All the students were off task. The Student was observed to often guess on his answers finally providing the correct answer. (PD 419). She stated that the Student requires a more structured phonics and vocabulary than Read 180 can provide. (PD 419). ██████████ found that he had average intelligence and that a full scale score should be considered an underestimate of his true intellectual capacity. (PD 421). ██████████ testified that while the Student did well with reasoning, he couldn't respond to some questions because he did not know the vocabulary. She found that he had difficulty with visual analysis (similar to the OT's findings) and testified that the Student had "significant" fine motor difficulties. (See also PD 421). ██████████ language processing assessment found significant difficulties with the Student's phonological processing, significant deficits in receptive language when required to understand directions and deficits in expressive language. (PD 421). The conclusion was drawn that the Student had weak skills based on a vocabulary subtest. (PD 422). ██████████ testified that the Student really tried to do his very best on these assessments. He was unfamiliar with many social studies and science concepts, which she believed should have been mastered at this point. (PD 422). Behavior rating scales suggest attention issues. (PD 422). He has difficulties with cognitive shifts. (PD 422). He exhibits difficulties with planning and organization. (PD 423). Academic functioning is significantly below grade level in all academic areas. (PD 423). The Student's written language skills are significantly delayed: handwriting reveals poorly developed letter formation. (PD 423). He has not mastered the basic math facts for addition, subtraction and multiplication. (PD 423). He has limitation in counting money. (PD 423). He remains far below current grade level placement in math. (PD 423). She testified that as per student report, he has been bullied at school: name-calling, spitting, fist fighting, sexual provocations and damage to his attire. (PD 423). He says that the teacher talks too fast for him to listen in school. (PD 423). Dr. Jansson believes that he is at high risk for developing depression and should be carefully monitored. (PD 424). ██████████ believes the Student's auditory processing weaknesses may affect his speech articulation areas. She concludes that the Student appears anxious and high risk for developing depression given the level of frustration he experiences at school. (PD 424).

██████████ testified that she believes the Student has traits similar with a diagnosis of dyslexia and should be taught using the Orton-Gillingham method; a program which was not mentioned in any of the Student's IEPs. ██████████ described dyslexia as a

neurological condition which affects reading, spelling, use of language, ability to spell, and use ideas in the written form. She further stated that those with dyslexia often have issues related to "executive functioning," a set of processes that have to do with managing oneself and one's resources in order to achieve a goal. ██████ testified that, from her conversations with the Parent as well as from her assessment from the Student, the Student experiences high frustration at school because of his inability to do the work and that he also struggles with interpersonal relationships at school which cause him problems with his peers. She testified that in regards to math, the Student does not understand the division process, has difficulty regrouping, and cannot do fractions.

██████ recommendations for the Student include: Intensive remediation of reading, language and math is necessary; very structured sequential, multisensory, phonetic base to teacher such as Orton-Gillingham and Wilson; recommends placement at the ██████ where can receive such specialized instruction. (PD 424). ██████ testified that the Student is in need of intensive remediation because his skills are so significantly below grade level that he cannot take advantage of his current environment. She testified that she recommended ██████ because it has current availability to take the Student and that the Student was a student who needed services right away. She also recommended ██████ because of its use of the Orton-Gillingham system and because it could accommodate the Student through high school if necessary. ██████ testified that the Student must be taught how to problem solve, and that he struggles when moving from one conceptual class to another. ██████ testified that she believes an OT should have been involved with the Student's IEP development since the first grade. She further testified that the Student cannot do any of the benchmarks from 2/8/08 IEP forward to 6/9/10 IEPs. The Student has not made progress in school. Per ██████ testimony, the Student has "lost ground," has not stayed stable and that if he had been correctly remediated, his scores on the psychological subtests would be in the average range. She also reported that the Student was frustrated that he had not yet been taught how to write in cursive. ██████ testified that she felt the Student was "high risk" because school was just really hard for him and that he should be carefully monitored because of his difficulty with language. She further testified that he cannot organize his emotional life because he doesn't have the vocabulary to handle it. ██████ testified that the Student is a child with high anxiety, and that children with high anxiety often develop depression. ██████ compared her testing results to the districts results which indicated that the student had regressed significantly. She testified that, as shown throughout the school records, school staff has also indicated his lack of educational progress. She believed that a behavior assessment should have been completed based on the long history of behavior issues, lack of focus and attention issues.

- 57) ██████ testified as Parent's expert witness in the area of Occupational Therapy. ██████ observed the Student on two separate days in May 2010. (PD 287-392). She observed that the Student sucked his thumb throughout her two observations. (PD 389 & 391). ██████ stated that school staff requested further information on why the Student sucked his thumb but did not believe it appropriate in her role at the time to comment. ██████ observed that the Student was off task when paired with a peer and the peer became off task also. ██████ also had

concerns regarding [REDACTED] special education classroom. [REDACTED] did not observe any computer(s) in [REDACTED] classroom. Even with a calculator, the Student did not obtain a correct answer on a math problem. (PD 391). [REDACTED] did speak with [REDACTED] and [REDACTED] regarding her concerns. (PD 392). The assessment results indicate that the Student has sensory issues, visual processing deficits (PD 27), made recommendations based on DTVP-AA including safety concerns on the school playground (PD 401), reading recommendations that are not to pick and choose but are needed for the Student (PD 402-3), visual deficits (PD 408), concerns for telling time (PD 409), concerns for money management (PD 411). [REDACTED] listed her concerns relating the lack of giving the Student visual prompts; lack of strategies for visual scanning/processing; sensory processing; significant concerns with the Student's lack of knowledge about being able to tell time and count money. (PD 412). [REDACTED] observed that the Student's school environment was noisy and overwhelming for the Student. She observed that high ceilings and hard surfaces allowed sound to amplify and bounce. (PD 413). [REDACTED] recommended: strategies for visual access, scanning/processing, development of organization/operation skills, sensory diet or sensory-based interventions, self advocacy skills, safety, access computer, IEP goals, AT and speech language services, smaller-quiet setting is "highly recommended", listening devices. She recommended 40 minutes (two twenty minute sessions) per week spent directly working with the Student, his teacher, and team members and 30 mpm consultation. (PD 415). [REDACTED] indicated that none of the student's IEPs addressed the Student's school based OT needs. [REDACTED] testified that she received a sensory profile from the regular education teacher, [REDACTED] dated May 14, 2010 that states: the Student is having trouble focusing, completing tasks and interacting with his peers. (PD 621).

58) [REDACTED] testified on behalf of the Parent as an expert witness in Speech and Language and Assistive Technology. Her report and testimony indicate no Student progress in the areas of speech language skills. (PD 427). [REDACTED] testified that the Student really carefully tried to complete the assessments that she administered to him, but had much difficulty as he asked several times what words meant and needed frequent repetition. She stated that the Student did not understand what the words "synonym" or "antonym" meant. During testimony, [REDACTED] stated that the Student couldn't be much further at the bottom in regards to his results on the Test of Written Language. She stated that he didn't receive any points for punctuation. She opined that the District's speech pathologist utilized outdated assessments as updated assessments were available two years before the District's assessments. The Student's scores were significantly low on the TOWL-4. (PD 429). [REDACTED] recommends AT for School and home. She testified that when given fifteen minutes to write a story by hand, the task was very difficult for the Student, but when using assistive technology to type the story, he was much more successful at the task. She stated the differences between the Student's writing and typing were "quite dramatic." She recommended a lap top computer with appropriate programs. Her observation at [REDACTED] indicates (as well as per her testimony) that [REDACTED] classroom did not have any computers. (PD 431). [REDACTED] stated during testimony that she left [REDACTED] classroom feeling that the classroom was "not working" for the Student and that it was "not appropriate" for him. She recommends 60-90 mpw of direct speech

instruction, Earobics and Lexia, keyboard training, specific reading program, Solo 6, compensatory services: after school tutoring services and speech/language services. (PD 432-3). During her testimony, ██████████ stated that the bulk of AT services could have started in the third grade and that his IEPs have only focused on articulation, and that the Student should have qualified for services well beyond articulation. Upon review of the District AT report, she does not recommend a reading pen or Fusion devices. She has attended 6-7 IEP meetings at ██████████ and is familiar with ██████████ and the staff. She recommends placement at the ██████████ for the Student. She believed that the Parent's statement on (PD 56-7) was on point as it brought out all the issues. ██████████ also testified that she reviewed all IEPs from 2007 onwards, and that the 15 mpw the Student received for Speech services (2008 & January 13, 2009 IEPs) was not adequate. She stated that while she saw that the 6/9/13 IEP gave the Student 30 mpw of Speech services, she still did not agree that the amount was enough.

59) The Parent was present for each day of the hearing except for one day due to a Dr's appointment for one of her children. She testified at the hearing and testimony throughout the hearing clearly showed that she has consistently advocated for her child and brought to the district's attention his lack of success in school. The Parent has been involved with all IEPs for the Student, frequently visits the Student's school and communicates with the Vice Principal ██████████ and Case Manager ██████████ regarding her son. The Parent testified that she has received very few IEP progress reports, but has picked up the Student's report card every report card period. The Parent states that she wrote the letter dated February 9, 2010 in dissent to the IEP team meeting convened on January 13, 2010. (PD-56, 57). The Parent testified that she knows her son is not making progress through her consistent work with him after school, and knows that her son cannot make change nor tell time. During Cross Exam, the Parent testified that she believed the Student wasn't getting the services he needed because he wasn't making progress, and that if he was actually getting services, they weren't working – again due to his lack of progress. The Parent facilitated each independent evaluation of her son including the school observations, and drove him to offices in ██████████ and ██████████ Illinois for these evaluations. She testified that the Student did well on each drive, to and from, and that two of these drives were over an hour long. The Parent further testified that she took the Student to visit ██████████ spoke for over an hour with ██████████ director at ██████████ regarding the school and its programs, and believes that ██████████ would be an appropriate placement for the Student. The Parent testified that the Student wants to attend ██████████ and that she believes he would have no problem making friends there.

#### **Burden of Proof**

The parents have the burden of proof as they filed the due process complaint. *Schaffer v. Weast*, 126 S.Ct. 528 (2005). Under Illinois law, the school district must provide evidence that the special education needs of the child have been appropriately identified and that the special educational program and related services proposed to meet the needs of the child are adequate, appropriate and available. 105 ILCS 14-8.02a(g). The Illinois School Code clearly requires the district to present evidence at hearing that it has properly identified and evaluated the nature and severity of the student's suspected or identified disabilities including eligibility for special education and related services. 105

ILCS 5/14-8.02a(g-55). *Kerry M. v. Manhattan*, 106 LRP 58547 (N.D. Ill. 2006). The Parent believes that the District avoided the burden of proof by refusing to file for due process to defend its evaluation in response to the Parent's September 24, 2009 IEE request. The District was officially Ordered to fund IEEs on June 19, 2010.

### **Discussion and Conclusions of Law**

The above facts, reflect the Parent's viewpoint of the facts as the 6 days of Hearing progressed. The Hearing Officer is able to verify with certainty that the facts as stated are an accurate reflection of the testimony and evidence presented at the Hearing and therefore has re-stated the facts as presented. Based upon the testimony and evidence presented at Hearing, it is the opinion of this Hearing Officer that the Parent has successfully sustained its burden with respect to each and every issue raised in its initial Due Process Complaint.

### **ISSUE 1: FAILURE TO TIMELY PROVIDE THE STUDENT RECORDS.**

The Parent's, in their written closing arguments submitted to the Hearing Officer two days after the conclusion of the Hearing as agreed to by the parties on the last day and at the close of the Hearing, summarized this issue as follows:

"Throughout the hearing Parent's counsel have been provided a variety of records from school staff that were not previously disclosed to the Parent, parent's counsel, or on the five (5) day exchange date. The district is in the **best position to gather** [emphasis added] all the necessary records to complete a full and individual evaluation. *Escambia County Bd. of Edu. v. Jarred Benton*, 406 F. Supp. 2d 1248, P21 (S.D. AL 2005) (Court found "unacceptable and in violation of" of IDEA-district's disregard for minimum practices of keeping meaningful records); *NG v. DC*, 2008 U.S. Dist. LEXIS 25302, P15 (D.C. 2008) (district not justified in making an eligibility determination "based on what it had" as the district failed to gather relevant functional, developmental and academic information per 20 USC 1414(c)(1)). The US Supreme Court has opined that "School districts have a 'natural advantage' in information and expertise, but Congress addressed this when it obliged schools to safeguard the procedural rights of parents and to share information with them." *Schaffer v. Weast*, 546 U.S. 49, page 7 (2005). In this case, staff has testified to records that have not been provided, i.e. emails, sign in sheet to the student's file, discipline records, AT records, etc. No credibility should be given to testimony without documented support. Otherwise, the district can make up anything.

Records important to the issues of this case were either delayed in their production, produced at hearing or after specific witnesses testified, or not produced at all, and include: staff emails, behavior/discipline reports, sign in logs for review of student's records, related service logs for the 09-10 school year (only speech provided), ISAT spring 2010, Read 180 documentation, IEP report cards, ESY determination pages, AT referral form dated 3/9/10 and fax (PD 609-615) and 4<sup>th</sup> grade report cards. (See

parent's PHC PD 595, PD 600 dated 6/10/09; PD 591 9/24/09, PD 587 1/7/10, PD 584 6/9/10 record requests). [REDACTED] testified upon request of student records, she printed a behavior log and gave it to [REDACTED]. The district did not produce this document even after the documents were provided during the hearing. This delay and absence of production prevented parent's counsel from questioning district staff during testimony, participating in resolution and IEP meeting (6/9/10) as well as lack of expert's being able to review the documents. "Preponderance of evidence supports the parent's position that she was denied FAPE by district's failure to provide copies of all student's records in a timely manner, effectively impeding counsel and the IEE assessors from ascertaining relevant information concerning Student's educational history, status and programming." *IC v. CPS*, page 15 (SEA IL 5/19/10).

At the end of the Hearing, the District's counsel suggested extending the hearing in order to call district witnesses back to question them on documents provided after their testimony. Such a "remedy" is not in the best interest of the student who requires immediate access to much needed appropriate educational services. Additionally, parent's counsel made multiple records requests long before the hearing started which compelled district to share these documents before the start of the hearing. (9/24/09 PD 590-4; 1/7/10 PD 587-9; 6/9/10 PD 584-6; 6/10/10 PHC-PD 600). Finally, IDEA requires the district to allow parents or their representatives to inspect and review records "without unnecessary delay and before any meeting regarding an IEP, or *any hearing...*" §300.613(a) (emphasis added); 105 ILCS 10/5(a)(Illinois Record Act, copy all student school student permanent and temporary records...). See 300.611 definition (a) and (b); § 105 ILCS 10/2(d) ("...means any writing or other recorded information concerning a student and by which a student may be individually identified, maintained by a school or at its direction or by an employee of a school, regardless of how or where the information is stored.") Case manager [REDACTED] testified that the sign in log for recording access to student' school records should have been in the file. IDEA requires a record of access. 300.614. District counsel stated that she had requested it, but was unsure why it was not provided. This was requested on 7/26/10, the first day of the hearing during [REDACTED] testimony and should have been provided to the parent's counsel per the multiple records request.

Document PD 627, added at the close of the hearing, is the same type of document as listed on PD 503-8, only printed on portrait instead of landscape. The dated stamped at the bottom of the page is 8/12/10. The related services entry dates are updated for the 09-10 school year as PD 503-8 only represents the 08-09 school year. Document PD 627 was not provided until the last day of the hearing. It lists entries for 10/21/09, speech language, psychologist and social worker. The speech entries state "manifestation meeting for [the Student]...came up with strategies needed to help the Student deal with behavior issues." The psychologist entry states "conference to discuss The Student's acting out behaviors and

negative self image..." and the Social worker entry states: "Mother requested a conference regarding the Student's behavior. Mother is concerned about his self esteem and alleged depression. A plan was developed by the team to help with his low self image." Parent and Parent's counsel did not receive a copy of the plan and or the opportunity to question school staff on the entries. In the records requests, Parent's counsel "specifically requests that all staff involved with the student be advised of their obligation not to destroy information related to the above student, whether on paper or electronically stored information ("ESI)". See PD 586. District staff reported that emails were automatically deleted and they were unaware of this automatic process. However, given the dates of the Parent's records request, it is unlikely that these emails were deleted at the time of the records request. Not producing emails per the earlier records' request and the automatic deletion effectively destroyed student records. FERPA requires prior written notice to the parent and opportunity to respond before any student records are destroyed. § 105 ILCS 10/4(h)- Before any school student record is destroyed or information deleted there from, the parent shall be given reasonable prior notice..." 34 CFR 300.624(a)."

Throughout the development of this case, from the beginning discussions between the Hearing Officer and the Parties up to the start of the hearing and throughout the hearing's 6 day progress to its end, the Parent's attorneys raised concerns with respect to their receipt of current and past student records, including report cards and student progress notes. The Hearing Officer never issued a separate Interim Order as requested by the Parent's attorneys that would have required the District to provide records to the Parent's attorney. No Order was issued primarily because of the Attorney for the School District's continued verbal and written assurances that all efforts are being made to assure that whatever records exist have been or will be promptly turned over to the Parent's upon their receipt from the appropriate school staff in possession of these records. It was evident, once the Hearing was convened, that not all records were turned over based upon testimony of some witnesses called at the hearing and their acknowledgement that they believed they had student records that were never provided to the District's attorney. This fact is noted not to cast doubts upon the District as to their "good faith" efforts, it is merely noted to show that in this case there exists a drastic lack of communication between the necessary parties who control student records and/or failure on the part of those who have been requested by their attorney to provide the records to perform "due diligence" in seeking the records requested and then providing them to the District's attorney or to maintain the records in the first place. Whatever the reasons, it has been established that student records in this case were not produced for either the reasons stated or they simply do not exist. Whatever the reasons, the District is in violation of the relevant parts of the laws referenced by the Parent's above, requiring Districts to maintain appropriate and relevant student records. The District's failure to provide requested student records amounts to a denial of FAPE.

**ISSUE #2: FAILURE TO TIMELY RESPOND TO THE PARENT'S IEE REQUEST AS REQUIRED BY FEDERAL AND STATE LAW WITHIN 5 DAYS OF RECEIPT.**

IDEA (34 CFR § 300.502) and the Illinois School Code require the District to either file for due process or fund the parent's IEE requests. § 300.513(a)(3). The District declined to file for due process or fund the parent's IEE request. After the Parent filed a Motion For Interim Order Compelling District To Comply With Procedural Requirements of IDEA Regarding Parent's Individual Educational Evaluation ("IEE") Request, a written Interim Order was entered by the Hearing Officer on June 19, 2010 Ordering the School District to reimburse the Parent for the expense of having an Independent Educational Evaluation conducted in the areas of Psychological evaluation (██████████), Speech/Language and Assistive Technology evaluation (██████████), Occupational Therapy (██████████) and Central Auditory Processing Disorders evaluation (CAPD) (██████████). There were other IEEs that were requested in other areas that, as a result of the aforementioned evaluations, may identify a further need for testing (i.e..Health/Nursing evaluations and Functional Behavioral Assessments). However, the Hearing Officer "reserved" Ruling on these additional areas until presentation of the evidence at Hearing. The Parent is correct in its conclusion presented in its written closing argument that the District still bears the burden of proof that its evaluations were appropriate for the student and cannot avoid this by failing to act. Testimony was presented by at least one expert witness in not having been reimbursed by the District. The District presented a reasonable explanation for the delay in payment and there appears no reason to fear that any of the expert witnesses will not get reimbursed for their services in conducting their respective IEEs on the Student.

**ISSUE # 3: FAILURE TO PROVIDE APPROPRIATE AND INDIVIDUALIZED EVALUATIONS IN A TIMELY MANNER IN ORDER TO ADEQUATELY IDENTIFY THE NATURE AND EXTENT OF THE STUDENT'S DISABILITIES FROM 2/16/08 THROUGH THE PRESENT INCLUDING, BUT NOT LIMITED TO: PSYCHOLOGICAL, SPEECH LANGUAGE (COMMUNICATION DISORDER), CENTRAL AUDITORY PROCESSING, FINE/GROSS MOTOR SKILLS, ASSISTIVE TECHNOLOGY ("AT"), SENSORY, ATTENTION AND OTHER AREAS PER IEES, CHILD FIND AND REQUEST FOR IEES.**

20 U.S.C. § 1412(a) imposes an affirmative obligation on LEAs to identify, locate and evaluate all children with disabilities who regardless of the severity of the disabilities: (1) have disabilities and need special education and related services as a result; or (2) are suspected of having disabilities and being in need of special education and related services, (34 CFR 300.111(c)) even though a student is advancing from grade to grade. A parent's failure to make such a request for evaluation does not relieve the district of its child find obligation. *Robertson County Sch. System v. King*, 24 IDELR 1036 (6<sup>th</sup> Cir. 1996); *Dept. of Educ. v. Cari Rae S.*, 35 IDELR 90 (D. Hawaii 2001); *Lakin v. Birmingham Pub. Schs.*, 39 IDELR 152 (6<sup>th</sup> Cir. 2003); *N.G. v. District of Columbia*, 50 IDELR 7 (D.D.C. 2008); *Newman-Crows Landing Unified Sch. Dist.*, 108 LRP 45928, 6 ECLPR 24, page 10 (SEA CA 2008)("the threshold for suspecting that a child has a disability is relatively low. A district's appropriate inquiry is

whether the child should be referred for an evaluation, not whether the child actually qualifies for services.”).

The Illinois School Code places the **burden on the school district** [emphasis added] to show that it has:

“properly identified and evaluated the nature and severity of the student’s suspected or identified disability and that, if the student has been or should have been determined eligible for special education and related services, that it is providing or has offered a free appropriate public education to the student in the least restrictive environment...” 105 ILCS 5/14-8.02a(g55).

IDEA defines an evaluation as procedures mandated to determine whether a child has a disability and the **nature and the extent** [emphasis added] of the special education and related services that a child needs. 34 CFR § 300.15. The IDEA requires that the evaluation materials include those tailored to assess specific areas of educational need including that the district “use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information.” 34 CFR §300.304 (c)(2). IDEA also requires that a full and individual evaluation include all components that are needed to identify a student’s disability and educational needs including related services. 34 CFR § 300.301(a).

Congress imposes an affirmative obligation upon school districts to identify, evaluate and place potentially disabled students. 20 USC § 1412(a)(3)(A); S. 226.100. “**An appropriate education specific to a disabled child’s needs must begin with full recognition of the disability and assessment of its extent. School authorities cannot properly address problems which they do not understand.**” [Emphasis Added] *Bd of Educ. of Oak Park v. ISBE*, 21 F. Supp. 2d 862 (N.D. Ill. 1998). The School Code requires the District to present “evidence that it has properly identified and evaluated the nature and severity of the student’s suspected or identified disability ...and that it is providing or has offered a” FAPE. 105 ILCS 5/14-8.02a(g-55). The District needs only to suspect and the threshold for “suspicion” is relatively low and the inquiry is not whether or not student is actually eligible. *Dept. of Educ. v. Cari Rae S.*, 158 F. Supp. 2d 1190, P4 (D. Hawaii). The student must be assessed in all areas related to the suspected disability. In direct contravention of statutory language if district failed either to gather relevant information or to properly interpret the information it had. *NG*, 2008 US. Dist. LEXIS 25302, P15 (DC 2008). IDEA requires that a student be “assessed in all areas related to the suspected disability... the evaluation is sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified” 34 CFR § 300.304(c)(4) and (6). The Illinois School Code states, in relevant part, that a child is not eligible for special education “except with a **carefully** completed case study.” [emphasis added]. § 105 ILCS 5/14-8.02(b).

The Court in *NG v. DC*, 2008 U.S. Dist. LEXIS 25302, P16 (D.C. 2008) held that the school district failed the first prong of Rowley, whether the state followed the procedures laid out in the Act when the school district failed to gather “relevant functional, developmental and academic information that may assist in determining whether the

child is a child with a disability in direction contravention of the statutory language.” 20 USC 1414(c)(1)).

The Court in *Kelly E*, specifically stated that failure to evaluate is a denial of FAPE. 21 F. Supp. 2d 862 (ND Ill. 1998). This court quotes Rowley that “We therefore conclude that the basic floor of opportunity provided by the act consists of access to specialized instruction and related services which are individually designed to provide educational benefit...” In this instance, the district had evidence to suspect that the student was not evaluated appropriately to identify all his educational needs. The *Kelly E* court affirmed the HO’s decision that the district’s response to reading difficulties was inadequate and the district failed to conduct an appropriate evaluation of the student’s reading problems. *Id.* at page 10. Further, the testing that was completed showed areas that should be assessed and the district did not evaluate. Referral for OT for visual deficits, AT, written language, observation required for LD (34 CFR 300.310), reported attention and focusing, auditory processing concerns/SLP deficits such as the low listening comprehension, emotional, math reasoning scores obtained by the school psychologist. The district’s evaluation cries out for an IEE and complete revision of the student’s IEP as well as placement at [REDACTED]

The Court in *Edwin K. V. Gregory T. Jackson*, upheld the hearing officer’s order of reimbursement for IEE finding that the district had failed to identify all areas of disability and failed to provide FAPE as well the IEE provided “hitherto unknown” information regarding the student’s learning disabilities. 2002 US Dist LEXIS 11913, page 13, 37 IDELR 63 (N.D. Ill. 2002) (court ordered district to pay for CAPD assessment in addition to IEE). The Court in *Ind. Sch. Dist. No. 701 and Hibbing Pub. Sch. v. J.T.*, upheld the order of an IEE based on the findings that the district’s evaluation was inappropriate: the purpose of the evaluation should be to determine the student’s unique needs as related to his disability rejecting the district’s argument that the evaluation must only determine eligibility. 45 IDELR 92 (D.C. Minn. 2006). In *Hibbing*, the school psychologist stated that the district evaluation was “missing significant data and would not be adequate...” Page 10.

In the case at hand, the Parent avers in their written closing argument, that the school psychologist admitted that she did not complete the following: observation for Learning Disability, brief measure of intelligence, written language, spelling, attention and executive functioning, math reasoning, slow motor processing, emotional functioning, listening comprehension were not specifically evaluated. ([REDACTED] PD 237-8); [REDACTED] in her testimony identified that she believed all these areas were long standing deficits of the Student. School psychologist [REDACTED] statement that a 3 year re-evaluation does not require a full evaluation is contrary to IDEA and testimony of [REDACTED] 34 CFR 300.303; 300.304(c)(4) and 6; 300.305(a). IDEA also requires an observation for eligibility of learning disability which school psychologist [REDACTED] did not complete. 34 CFR 300.310.

[REDACTED] and [REDACTED] testified that if outdated assessments were utilized the results would be invalid. [REDACTED] testified that the revised assessments (PPVT and EVT) were available for 3 years, since 2007. [REDACTED] completed her assessment of the Student on February 2, 2009. The assessments she utilized are dated 1995 and 1997. All the districts speech assessments were 12 to 14 years

old. (PD 199 EVT; PD 211 OWLS; 228 PPVT). ██████████ stated there was some leeway for updated assessment, but updated assessments should be utilized as language usage and objects in our environment changes over time. In her testimony, ██████████ gave the example of a rotary telephone, saying that while that picture may have been included in an assessment from the 1990s, such a picture and example would not be relevant to test children today. She also expressed that national norms are also updated. ██████████ did not report any non standard assessments as required. See S. 226.110(h). IDEA requires the use of technically sound instruments. § 34 CFR 300.304(b)(3) IDEA requires measures are valid and reliable. § 34 CFR 300.304(c)(iii). Current language assessments must be utilized in order for assessments to be valid and reliable.

The Parent's attorneys reference also, Federal Commentary: "Section 300.304(c)(4) requires the public agency to ensure that the child is assessed in all areas related to the suspected disability. This could include, if appropriate, health, vision, general intelligence, academic performance, communicative status and motor abilities. *This is not an exhaustive list of areas that must be assessed...* if a child's behavior or physical status is of concern, evaluations addressing these areas must be conducted. No further clarification is necessary." 34 CFR Parts 300 and 301, 46642-3, issued August 14, 2006. (emphasis added). IDEA does not distinguish between initial evaluation and 3-year evaluation requirements. The District's psychologist did not complete a comprehensive evaluation for the student.

The Parent states, in written argument that the District is not excused in cases where it failed to identify and may not "await parental demands" before providing special instruction [emphasis added]. *Reid v. DC*, 401 F.3d 516, P2 (D.C. Cir. 2005); *Scott v. DC*, 2006 U.S. Dist. LEXIS 14900 (D.C. 2006) (no authority that parent must request an evaluation first); *Draper v. Atlanta Ind. Sch.*, 108 LRP 13764, P9 (11th Cir. 2008) (family is not blamed for not being experts about learning disabilities). The School Code places the burden on the District to show that it appropriately evaluated the student. § 105 ILCS 5/14-8.02a(g-55). State regulations require districts to document incomplete evaluations. See Section 226.110(i).

In accordance with the Illinois School Code, a child is not eligible for special education "except with a **carefully** completed case study [emphasis added]." § 105 ILCS 5/14-8.02(b). Here, there is substantial evidence that the district's evaluation was "far from the comprehensive evaluation that was supposed to be administered." *Draper*, 108 LRP 13764, P9 (11th Cir. 2008) (compensatory services awarded for a student 18 years who could read at only a 3<sup>rd</sup> grade level). Clearly, the district did not provide a carefully completed case study evaluation and therefore a violation of FAPE has occurred.

**ISSUE # 4: FAILURE TO DEVELOP AN INDIVIDUALIZE EDUCATION PROGRAM ("IEP") WHERE: PRESENT LEVELS OF PERFORMANCE ACCURATELY AND OBJECTIVELY STATE CURRENT ACADEMIC, FUNCTIONAL AND DEVELOPMENTAL SKILLS OF THE STUDENT; GOAL STATEMENTS ARE RESPONSIVE TO THE LEARNING IMPEDIMENTS OF THE STUDENT, OBJECTIVELY MEASURE STUDENT'S PROGRESS, AND ARE BASED ON ACCURATE PRESENT LEVELS OF PERFORMANCE; AND OBJECTIVES PROVIDE ACCURATE AND MEANINGFUL STRATEGIES FOR**

## IMPROVING THE STUDENT'S ACADEMIC, DEVELOPMENTAL AND FUNCTIONAL SKILLS.

### **IEPs did not provide FAPE.**

*Rowley* states that the IEP must be "reasonably calculated to enable the child to receive educational benefits." *TH v. Bd of Educ. of Palatine*, page 10 (N.D. Ill. 1999)(quoting *Rowley*, 458 U.S. at 206-207 (emphasis added by the court)). An appropriate public education under the IDEA is "one that is likely to produce progress, not regression." *Id.* at page 7. The student must receive more than a nominal benefit from specialized instruction and related services. *Id.* at page 7.

The IEP becomes the "governing document for all educational decisions concerning the child." *Bd. of Educ. of Community High Sch. Dist. No. 218 v. ISBE.*, 103 F.3d 545, page 2 (7<sup>th</sup> Cir. 1996). An IEP that does not allow a student to make adequate progress on measurable goals does not provide the student with meaningful educational benefit. *Florence County Sch. District. Four v. Carter*, 510 U.S. 7 (1993), affirming *Carter v. Florence County Sch. Distr. 4*, 950 F.2d 156 (1991). The focus is on "what was actually contained in the written IEP when determining the appropriateness of that IEP. *Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 768 (page 8) (6<sup>th</sup> Cir. 2001): see also *County Sch. Bd. of Henrico County v. ZP*, 399 F.3d 298, P6 (4<sup>th</sup> Cir. 2005)(focus on what was actually contained in the written IEP when determining the appropriateness of the IEP). S. 226.230 requires "...measurable annual goals that reflect consideration of the Sate goals for Learning and the Illinois Learning Standards..." IDEA mandates an individualized student program to meet student's unique needs. 20 USC § 1400(d)(1)(A); 34 CFR § 300.39(b)(3). A District's failure to provide a student with adequate present levels of performance and measurable IEP goals is a denial of FAPE. *Evans v. Board of Educ. of Rhinebeck Central Sch. Dist.*, 930 F. Supp. 83 (S.D.N.Y. 1996). *Heather S. v. Wisc.*, 125 F.3d 1045, page 11 (7<sup>th</sup> Cir. 1997) (IEP must be tailored to the student's unique needs; IDEA does not concern itself with labels, but FAPE). IDEA requires a great deal more than a negligible benefit. *Id.* Here, the District avers, there is no evidence that academic and speech language progress was made.

██████████ testified that, the District's 6/9/10 IEP appeared to rely on increased accommodations and modification rather than providing direct remediation of the Student's significant deficits. ██████████ opined that the Student required direct remediation, not an increase of accommodations.

The goals/benchmarks in all the IEPs were vague and un-measurable as was evident from testimony of not only the Parent's expert witness testimony but by District staff who were questioned by Parent's attorneys. The District's staff did not notice that the goals from the 1/13/10 IEP were repeated with a change of benchmark dates in the 6/19/10 IEP until it was brought to their attention. Speech language articulation goals that were immeasurable were repeated from 2/8/08 through 6/9/10 IEPs. School staff testified that the goals were immeasurable and they did not know how to measure the goals. ██████████ (Testimony). Present levels of performance addressing an objective level, baseline or starting point are missing from all the IEP goals during the statute of limitation period. *Escambia County Bd. of Edu. v. Jarred Benton*, 406 F. Supp. 2d 1248, page 18 (S.D. AL 2005) (upholding a hearing officer's decision that IEPs were improper due to vague,

immeasurable goals and untracked benchmarks that are “mushy, ambiguous, unquantifiable goals”; “vague and immeasurable objectives are the handmaiden of stagnation...”). At least one administrative law judge has suggested that a well-written IEP goal should pass the “stranger test.” Under this test, an IEP goal is appropriate if a person unfamiliar with the IEP would be able to implement the goal, implement the assessment of the student’s progress on the goal, and determines whether the student progress was satisfactory. *Mason City Community Sch. Dist.*, 46 IDELR 148, page 5 (SEA IA 2006). See also *Hibbing*, page 7, 45 IDELR 92: discussion on vague and immeasurable goals equally inadequate IEPs and denial of FAPE. None of the IEPs address the student’s deficits in time and money management as identified by [REDACTED] and [REDACTED]. (See PD 409, 411, 423). [REDACTED] and [REDACTED] could not understand what some of the goals and benchmarks were addressing. [REDACTED] testified that she could not understand some of the goals in the 2/2/09 IEP.

The testimony of experts [REDACTED] and [REDACTED] corroborated the fact that none of the IEPs from 2/2/08 through 6/9/10 address the student’s auditory processing disorder, fine motor deficits, sensory issues, visual processing, speech language deficits, academic deficits such as time and money management, organization and planning, attention and executive functioning. Upon questioning of school staff, all indicated that the auditory process per [REDACTED] was not addressed. The District OT had never met the student let alone evaluate him; the District, throughout the years, determined that no OT services were required.

On June 8, 2010, the District completed its own AT assessment. It is unclear why the District did this when they paid for an IEE. Despite two AT evaluations the district still did not determine appropriate AT for the student. *Kevin T*, 36 IDELR 153, page 10, failure to address AT services. [REDACTED] and [REDACTED] testified that the reading pen was not appropriate. [REDACTED] and [REDACTED] all testified for the student’s need for a lap top with appropriate software programs were required for the student for auditory processing interventions and homework. Assistive technology is part of the Student’s (1) special education; (2) related services; or, (3) supplementary aides and services. 34 C FR 300.105. The student’s IEP is vague on “computer and software application in academic classes.” Given this Student’s age and complexity of educational issues, specific programs should be identified and coordinated for success. Per 34 CFR 300.5, AT is used to increase, maintain, or improve the functional capability of a student.

The IEPs did not address the deficits found by the outside OT, CAPD, SLP and psychological evaluations—even the school psychological evaluation’s identified deficits that are not addressed in the IEP; reading comprehension, failure to make progress in math (PD 81), listening comprehension (PD 81), visual analysis and spatial orientation skills. (PD 84).

**ISSUE #5: FAILURE TO PROVIDE AN APPROPRIATE EDUCATIONAL PROGRAM/PLACEMENT BASED ON SCIENTIFIC, RESEARCH BASED EVIDENCE INCLUDING A CERTIFIED SPECIAL EDUCATION TEACHER, AND RELATED SERVICES AND ASSISTIVE TECHNOLOGY WITH SUFFICIENT INTENSITY TO MEET THE STUDENT’S EDUCATIONAL**

**NEEDS 2/16/08 TO PRESENT INCLUDING EXTENDED SCHOOL YEAR ("ESY") 2008 AND 2009 (AND 2010).**

Parent avers that the District did not provide an appropriate educational program/placement and therefore continues to deny a FAPE. The Student's Special education teacher, [REDACTED], testified that she did not have a reading program she utilized with the student and wished she did. The Student's speech-language deficits are significantly impaired based upon the long standing history of language deficits and objective assessment scores and the lack of staff recognition of these deficits and therefore providing for appropriate speech services for the Student. Yet, the District's response continues to be inadequate. The Parent concludes that Reavis School staff do not understand the Student's educational needs and do not know how to teach the Student. To exemplify this, insufficient speech services and lack of appropriate related services are indicated as follows:

- a) Speech language services (15 mpw 2/8/08, 2/2/09, 1/13/10; 30 mpw 6/9/10).
- b) OT services: no direct services or consulting services.
- c) AT services: none except 6/9/10 IEP, but not sufficient to meet student's needs.
- d) Social work services; none in any IEPs; through staff testimony, district purports to rely on outside agency.
- e) Behavioral interventions across all school settings; no assessment and Ms. Osgood reports interventions, but does not have a written plan for anyone else to implement in her absence or across all school settings.

While the District's staff that testified appeared genuinely concerned for the Student and in fulfilling their respective obligations as the professionals/paraprofessionals they were hired to be, there was an evident miscommunication between all staff involved with the Student that resulted in the lack of identifying an appropriate program and related services to be provided.

**ISSUE #6: FAILURE TO IDENTIFY IN A TIMELY MANNER AND THEN PROVIDE APPROPRIATE ASSISTIVE TECHNOLOGY IN THE CLASSROOM SETTING AND FOR ALL SCHOOL WORK INCLUDING TRAINING FOR STAFF, STUDENT AND THE PARENT FROM 2/16/08 TO THE PRESENT.**

The implementing Rules and Regulations of IDEA, Code of Federal Regulations, define Assistive Technology as follows:

**Sec. 300.6—Assistive Technology Service.**

"Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes—

- (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

- (a) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (b) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
- (c) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child. 34 CFR 300.6.

Sec. 300.105 Assistive technology.

- (a) Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in Sec. Sec. 300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's—
  - (1) Special education under Sec. 300.36;
  - (2) Related services under Sec. 300.34; or
  - (3) Supplementary aids and services under Sec. Sec.300.38 and 300.114(a)(2)(ii).
- (b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE. 34 CFR 300.105

Sec. 34 CFR § 300.304 Evaluation Procedures

“In evaluating each child with a disability under §§ 300.304 through 300.306, the evaluation is *sufficiently comprehensive* to identify all of the child’s special educational and related services needs, *whether or not commonly linked to the disability category* in which the child has been classified. [emphasis added] 300.304 (c)(6)

Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided. 300.304(c)(7)

The Parent points out that despite years of noting the Student’s shortcomings in fine motor skills and difficulties in written language, reading and math, the Student was not referred until March 9, 2010 and the District’s evaluation completed on June 8, 2010, the day before the June 9, 2010 IEP meeting, to consider outside evaluations including assistive technology. Expert testimony by [REDACTED] and [REDACTED] indicates that a reading pen and “Fusion” are not appropriate AT devices for the student. [REDACTED] while testifying, called reading pens “horrible,” for students and stated that no student should have to use a reading pen. Further, the district did not adequately address how the Student will complete homework and have access to the curriculum when he is still reading at an early 2<sup>nd</sup> grade level and going into 6<sup>th</sup> grade. [REDACTED] showed that the student could access with assistive technology at least at the 4<sup>th</sup> grade level per her AT assessment. (See PD 429). The independent evaluation found the Student able, with AT, to read two stories at 4<sup>th</sup> grade and was able to improve to 100%

and 83%. The District has appeared to either disregard, or simply ignore these additional independent evaluations in their proposing their recommendations for helping this Student. As a consequence, they have denied this Student FAPE.

**ISSUE #7 FAILURE TO ACCURATELY AND OBJECTIVELY REPORT TO THE PARENT THE LACK OF THE STUDENT'S PROGRESS IN THE DISTRICT OFFERED SERVICES AND PROGRAMS AND/OR IMPLEMENT AN APPROPRIATE RESPONSE TO THE STUDENT'S CONTINUOUS LACK OF PROGRESS 2/16/08 THROUGH THE PRESENT.**

Despite the special education teacher reporting "academic progress over the past three years has been slow (PD 237) and academic progress reported by his special education teacher has been *extremely poor*" (PD 238) the District did not write this in the 2/2/09 IEP, provide IEP report cards from certified school staff or a copy of the school psychological written report to the parent.

The District is required to provide an ongoing review of each child's performance and progress in order to make adjustment to the educational setting. 23 Ill. Admn. Code .226.100(a)(3). All the IEPs from 2/8/08 through 2/2/09 (PD 58-95) have a section to indicate end of year progress. PD 87 is the only goal sheet completed. It indicates that the student has met the goal. However, the goals in the 2/8/08 and 2/2/09 IEPs are not measurable and the student is unable to perform any of the benchmarks at the time of outside psychological assessment in March 2010 per the expert testimony of [REDACTED]. Either the student could not perform at such a level or the student has seriously regressed. PD 88-89 are blank without any indication of student's progress. Goals in the 2/2/09 IEP are blank; do not indicate progress on the goals sheets. (See PD 68-70). The IEP goals from the 1/13/10 IEP (PD 41-46) are repeats from 2/2/09 IEP and continued in the 6/9/10 IEP with the benchmarks changed. (PD 14, 18, 22). If the Student were making progress, the Parent queries, why were these goals continued? [REDACTED] testified that the student could not currently perform the benchmarks in the 2/8/08, 2/2/09, 1/13/10 and 6/9/10 IEPs.

The District produced two IEP report cards: (PD 160-1) (4/7 & 6/10/08) and (PD 2)(4 & 6/2010). PD 160-1 is signed by a speech paraprofessional which is prohibited by ISBE guidelines: "the paraprofessional **may not**: sign any document without the co-signature of the supervisor." (See PD 604). The District's speech pathologist, [REDACTED] had not reviewed the IEP report card on PD 2 bearing [REDACTED] name. [REDACTED] seemed unaware that the district was to provide written notice to the parent that a certified speech pathologist was not providing speech services. (ISBE PD 604). [REDACTED] opined that that the Student had made progress. Both she and [REDACTED] seemed unaware of other students' names referenced in the Student's progress notes. Upon questioning and review of the progress notes, [REDACTED] could not identify any notes indicating progress on the IEP goals for the Spring 2008 and 08-09 school year. Progress notes completed by [REDACTED] for 09-10 did not have progress notes indicating progress on IEP goals. The ISBE guidelines specifically state that as one of the speech paraprofessional's responsibility: "Documenting student performance and progress toward meeting established goals and objectives or benchmarks and reporting the information to the supervisor." (PD 604).

██████████ testified that she did not know she was to complete IEP report cards until just recently. The Parent did not receive the IEP report cards on PD 1-3 from school staff. From 2/2/08 to 6/15/10, the District has not produced any academic IEP report cards even though it is indicated on the IEPs. (PD 47 (section 13)), (PD 74 (section 16)), (PD 93 (section 16)). The court in *Escambia County Bd. of Edu. v. Jarred Benton*, held that the district's lack of indicating dates of mastery was a violation of requirement to monitor a student's progress. 406 F. Supp. 2d 1248, page 18 (S.D. AL 2005). Again, the district has not provided any IEPs that indicate mastery or IEP report cards. In the Student's case, the school psychologist completed an incomplete evaluation, but did identify deficits: word reading, reading comprehension, decoding and numerical operations. (PD 237). The school psychologist also noted that "academic progress reported by his special education teacher has been extremely poor." (PD 238). The District has failed to respond to the Student's lack of school progress except to keep him in the same failed educational program. "Congress did not intend that a school system could discharge its duty under the Act by providing a program that produces *some minimal academic advancement, no matter how trivial*. *County Sch. Bd. of Henrico County v. ZP*, 399 F.3d 298, P2 (4<sup>th</sup> Cir. 2005) (citing *Hall v. Vance County B. of Educ.*); *Ringwood Bd of Educ v. KHJ*, 2007 US App. LEXIS 28876, page 4 (3rd Cir. 2007) (IDEA "calls for more than a trivial educational benefit and requires a satisfactory IEP to provide significant learning, and confer meaningful benefit); *Kelly E* states that Rowley does not mean that a de minimis benefit is sufficient. Page 10. *Rowley* in footnote 28, states that "passing marks and advancement from grade to grade will be one important factor in determining educational benefit." In the instant case, the district has provided passing grades with significantly modified grading scales which render the student's grades meaningless. Student has been passed from grade to grade without making any academic and emotional benefit.

██████████ and ██████████ testified that the student did not make academic and speech language progress. (compare PD 237 to PD 420; PD 196 to PD 428). The District's failure to keep the Parent informed through the evidence and documentary evidence or lack thereof produced at the Hearing is well documented by the Parent. The District has denied this Student FAPE.

**ISSUE #8: FAILURE TO DEVELOP A TIMELY AND ADEQUATE FUNCTIONAL BEHAVIOR ANALYSIS AND BEHAVIOR INTERVENTION PLAN FOR THE STUDENT.**

Federal and State laws and regulations require that the District complete a sufficiently comprehensive evaluation to identify all of the child's special education and related services needs. State regulations mirror federal for evaluations. 34 CFR §§ 300.324(a)(3), 300.320(4)(ii) 23 Ill. Admn. Code. 226.110, Evaluation Procedures. The IDEA states that an "Evaluation means procedures used in accordance with §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs." 34 CFR § 300.15. One Federal District Court has stated that "[E]valuations must take into account a holistic perspective of the child's needs..." *Harris v. District of Columbia*, 50 IDELR 194, Page 4, 561 F. Supp. 2d 63 (D.C. 2008) (court overturned administrative hearing decision that Functional Behavioral Analysis ("FBA") was not an evaluation and determined the parent had a right to request an IEE). The court further opined that the FBA is essential to

addressing a child's behavioral difficulties, and, as such, it plays an integral role in the development of an IEP." *Id.* page 4. The Court also states that [T]he FBA's fundamental connection to the quality of a disabled child's education compels this Court's determination that an FBA is an "educational evaluation" for purposes of Section 300." *Id.* at pages 4-5. The *Harris* court also notes that the district did not complete a FBA for over two years and did not respond to the Parent's IEE request violating the clear mandate of IDEA and the Supreme Court as well as a constituting a "deprivation of FAPE" for the student. 50 IDELR 194, page 5 (DC 2008). See also *Danielle G. v. NYC*, 50 IDELR 247, Page 10 (E.D. N.Y. 2008) (holding that the district "was required to conduct an FBA to determine the factors that contribute to the [student's] interfering behaviors). A functional behavioral assessment is an evaluation by definition, per IDEA and OSEP/OSERS interpretive rulings as well as the August 14, 2006 commentary and court rulings. See also *DC v. CPS*, page 17 (SEA IL June 28, 2010) ("The functional behavior assessment is important because it enables the IEP team to understand "functions" of the behavior (e.g., escape, avoid an unpleasant task or situation) and is part of the IEP process that enables the team to develop a behavior intervention...that teaches and supports replacement behaviors...").

The Student's behavior affected all of his school settings; however, in the Student's case, no assessment was completed. ██████████ reported interventions took place, but does not have a written plan for anyone else to implement in her absence or across all school settings. She admits that based on her experience at the hospital data should be maintained on behaviors and the effectiveness of the interventions. ██████████ testified that the Student's behavior impeded his learning and that of others. She drew the conclusion by looking at the IEP section regarding FA/BIP that he should have a behavior assessment and plan. Ms. Block observed this and reported it on PD 390: The Student and his peer buddy were off task the entire project. ██████████ testified and reported this off task behavior during her observation of the classroom. (PD 418).

All IEPs from 2/8/08 through 6/9/10 indicate behavior issues: 1) 2/8/08 IEP: PD 95- has a short auditory attention span, is distracted easily and loses focus/concentration often, is frequently distracted by extraneous noises; 2/2/09 IEP: PD 58-peers tease him and he gets upset, (PD 61); 1/13/10 IEP; PD 34-struggles with inter-personal relationships...reacts quickly to negative peer behavior...trouble regulating his emotions..mood can be labile, often moving quickly between anger and playfulness, needs reminders to stay quiet in the hallways; 6/9/10 IEP: PD 7-same as 1/13/10 IEP, outbursts have decreased, difficult staying on task, easily distracted by peers even in a small group of 2-3 students, needs constant redirection to focus, requires intervening or redirecting for behavior, easily agitated by other student even when walking through the halls, PD 14-difficulty staying on task during class in both general education classroom and special education classrooms, highly reactive to peers, quick to react, both in anger and silly, struggles to stay on task and gets very little work done in the general education classroom even with frequent check-ins from the general education teacher, easily distracted by peers. It is evident from the testimony that this Student could benefit from a Behavior Assessment.

**ISSUE #9: FAILURE TO OFFER A COMPLETE CURRICULUM IN THE AREAS OF READING, LANGUAGE ARTS, MATH, SOCIAL STUDIES AND SCIENCE.**

34 CFR 300.39(a)(3) states:

(a) General. (1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including--

(3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction--

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

The Principal testified that the school did not utilize a curriculum in the areas of reading, language arts, math, social studies and science. ██████████ testified that she did not utilize a text book for science and social studies. ██████████ testified that she did not have a reading program for the Student, but wished she did. ██████████ stated that the Student was involved in 2 projects each for science and social studies for the entire 2009-10 school year. ██████████ reported that the student "was unfamiliar with many social studies and science concepts, which should have been mastered at this point in the [student's] educational career." (PD 422). District staff testified that they were aware of the student's science score on the Spring 2009 ISAT testing whereupon his science score was in the "academic warning" range. (PD 360). The Student has not been provided a complete curriculum based on specially designed instruction.

**ISSUE #10 Failure to identify and utilize effective teaching methodologies at a sufficiently intensive level that would enable the student to make progress commensurate with his cognitive skills.**

The District cannot articulate a specific methodology for reading, math and written language as in the *T.H.* case. *T.H. v. Bd. of Educ.*, 55 F. Supp. 2d 830 (N.D. Ill. 1999). The court held in *TH* that *Lachman* did not apply and Parent can request a specific methodology. *Id.* ("if the school district's IEP is not substantively appropriate, *Lachman* is irrelevant.") (citing Comm. Consol. School Dist. No. 21, 938 F.2d at 717). In the case at hand, the school psychologist did not know what methodologies were being utilized with the student. ██████████ testified that she wished she had a reading program for the Student. She used whatever she could find. She used some of the Everyday math, but did not think it was appropriate for all the math. She did not have a written language program. Per testimony of ██████████ and objective assessments utilized, the Student has "*at least average intellectual abilities*" and a full scale IQ score should be considered an underestimate of the student's true intellectual capacity as he has scores far above the

average and far below the average. (PD 421). Based on the Student's objective cognitive skills the District has not utilized effective teaching methodologies as the student is far behind his intellectual ability. None of the variety of methods/programs per [REDACTED] have proved to be effective in assisting the student to make progress. Compare WIAT-II academic scores from 2/7/06 (PD 296) to March 2010 WIAT II scores (PD 420) indicating the student has lost considerable academic skills. Also, PD 238 indicates "academic progress reported by his special education teacher has been extremely poor." When the district cannot articulate a particular methodology they prefer, the IEPs are inappropriate and the student has not made progress, the parent's request for a particular methodology is not barred. *TH*. Id. Page 6.

On PD 171, Read 180 scores indicate "Far Below" and Below Basic grade levels in performance. PD 188 indicates a fluency score in the 2<sup>nd</sup> grade for 6/8/10. PD 189, dated 6/8/10, indicates that the student has not learned basic vowel clusters.

**ISSUE #11: FAILURE TO PROVIDE 6 WEEKS OF ESY FOR SUMMER 2008, 2009, AND 2010.**

[REDACTED] testified that she did not make a determination at the 6/9/10 IEP regarding whether the Student should have received speech services during ESY 2010. [REDACTED] testified that the Student did not receive ESY services for the Summer of 2009. For the summer of 2008, the IEP only indicates 4 weeks of ESY services. (PD 84). [REDACTED] opined regarding The Student's need for ESY services and the intensity of the services require it. The IEPs for the entire statute of limitation period were inappropriate and therefore any ESY services would be inappropriate based on the faulty IEPs. [REDACTED] testified regarding the importance of ESY services for a the Student. Per testimony of [REDACTED] the [REDACTED] is ready, prepared and available to meet ALL [emphasis added] the Student's educational needs.

Concerning Least Restrictive Environment issues, the Seventh Circuit has opined that the LRE mandate was not developed to promote integration with non-disabled peers at the expense of other IDEA educational requirements including parent's rights and is applicable only if the IEP meets IDEA minimums. *Board of Educ. of Murphysboro Comm. Unit School Dist. No. 186 v. Illinois State Board of Educ.*, 41 F.3d 1162, 1169, P6 (7<sup>th</sup> Cir. 1994) The district must ensure that the placement it proposes will not be regressive for the student. *T.H. v. Bd. of Educ.*, 55 F. Supp. 2d 830 (N.D. Ill. 1999). In the instant case, the District has not offered to provide appropriate special education services and school placement for the Student. [REDACTED] and the Parent testified that [REDACTED] is an appropriate placement for children like the Student. Since the District has not offered any special education services, the Student's education needs like the student in *Murphysboro* is [REDACTED]. Testimony of [REDACTED] and [REDACTED] also testified that the student requires a smaller educational setting. (PD 413, 414).

As the attorneys for the Parent have appropriately indicated, as the 7<sup>th</sup> Circuit discussing in *Murphysboro* has stated, if the District has failed to offer FAPE and did not present any alternatives that would appear to appropriately address the shortcomings and

needs that this Student has displayed since Kindergarten, it then appears obvious that the only option is the alternative offered by the Parent, [REDACTED]. In the case at hand, the District has not offered any special education services/program that is appropriate for the student. See *IC v. CPS*, page 18 (SEA IL May 15, 2010) (“Where the educational program proposed by a school district is inadequate, and District does not present evidence of any appropriate alternatives, the only option is the placement proposed by parents, if evidence proves that their proposed placement can meet the child’s needs, even when it does not provide mainstreaming with typically developing peers.”).

The District has had the opportunity to provide FAPE since the Student was in Kindergarten. He has been eligible for special education services since the 1<sup>st</sup> grade. [REDACTED] and [REDACTED] opined that a school OT should have been a part of the Student’s evaluation and education process. [REDACTED] and [REDACTED] testified to the importance of the student receiving the FAPE as soon as possible as he has not had appropriate evaluations and services for five (5) years. [REDACTED] testified to [REDACTED] outstanding reputation in the community for providing the services that the Student requires for education. [REDACTED] testified that [REDACTED] would be appropriate based on her experience with students and [REDACTED] staff. The District’s attorney has taken the position that it has been placed in a position of being between “The Rock” and “Hard Place.” The analogy is explained further in the District’s written closing argument as follows:

“An IEP team holds an IEP meeting to address a Parent and advocates’ concerns, perhaps they add services, or change the special education minutes, or incorporate some recommendations from outside evaluations. . . In turn, that’s used against them to claim that the student should have had these services all along . . . which is faulty logic..

In the alternative, the team *declines* to make changes, sticking to their professional opinions and relying on the progress they have seen the student making over the months or years. . . then they are accused of denying a Parent’s meaningful participation or refusing to provide the child with FAPE, even though that certainly may not be the case.

If an IEP team utilizes social/emotional resources such as the School Based Health Center in this case rather than risking anxiety for a student who is already sensitive to being singled out by assigning a school social worker to him, but then they are accused of not addressing behavioral issues, even when those issues were minimal and have improved over time.

This case is an exceptional example of an exhaustive, yet recurring predicament . . . how to provide a child with a disability educational benefit in the Least Restrictive Environment, yet remain consistently responsive and accommodating to the requests and concerns of that child’s Parent, advocates, and attorneys. . . whether those concerns are reasonable or realistic.”

The arguments proffered by the District's attorney, although nicely posited, do not accurately reflect the consistently declining results this Student's progress has shown over the last 5 years of his educational experience in the District and the efforts the District has put forth to address the Student's needs. The District had an opportunity to view the Student's future education from another perspective when the most current IEP team was convened in June 2010. It could and should have looked more closely at the IEEs provided by [REDACTED] Psychological evaluation, [REDACTED] [REDACTED] Speech/Language and Assistive Technology evaluation, [REDACTED] Occupational Therapy evaluation, and [REDACTED] Central Auditory Processing Disorders evaluation. The testimony provided at the Hearing showed that the District appeared to have either ignored or passed lightly over the results and recommendation each IEE offered with respect to this Student's future educational programming and services. The June 2010 IEP did not contain any evidence that the IEEs findings and recommendations were considered by the IEP team and otherwise accepted in full or in part, rejected in full or in part, or a combination of both. While the District is certainly well within its legal rights and responsibilities to ensure that a child is served in the Least Restrictive Environment, it is not within its legal responsibilities to ignore the fact that a student can be served in a more restrictive setting especially if it is shown that the least restrictive environment is not working or addressing his needs. In the instant case the District has not acted quickly enough nor adjusted its planning for this student sufficiently to show progress. The student has been characterized as one who has reasonable intellectual ability that with the appropriate program and related services "can succeed." The evidence provided at Hearing has more than adequately demonstrated that the assessments, goals and benchmarks, and recommended services have not sufficiently addressed this Student's needs. The Parent has expressed her concerns consistently and regularly over the past 5 years to District staff, of her son's poor academic and emotional progress. She has been intricately involved, by her own testimony and the testimony of District staff, with her son's day to day progress. It wasn't until she sought legal assistance was she able to drive home the point that the District can and should do more to address the needs of her son. The District's concern of "utilizing social/emotional resources such as the School Based Health Center in this case rather than risking anxiety for a student who is already sensitive to being singled out by assigning a school social worker to him, but then they are accused of not addressing behavior issues, even when those issues were minimal and have improved over time" are, in this Hearing Officer's opinion, not consistent with the totality of evidence adduced at the Hearing. The evidence clearly showed that the Health Center social worker assigned to the Student, [REDACTED] had little to no communication with the Student's teacher(s) and other school staff. Besides the lack of collaboration, it was not evident that whatever services he was receiving from [REDACTED] simply were not addressing the recurring needs demonstrated by the student's IEPs.

The District argument continues:

"When [the Parent] uncharacteristically allowed her attorneys to do the talking for her at the June 2010 IEP meeting, the IEP team was again put between a rock and a hard place. . . do everything the Parent and her attorneys wanted and possibly avoid a hearing, or stick to what they thought was best and right for the Student and write the IEP they truly knew was appropriate and reasonable for the Student. If they tried to

address the Parent, [REDACTED] would talk. . . if they asked questions, they were directed to the IEEs. Well, the team continued their practice of courtesy and professionalism. They met the Parent halfway – clearly willing to try something new – providing different approaches based on their experience and incorporating some recommendations from the IEEs . . . further, they assigned a dedicated aide to the Student to provide more assistance in his general education and special education settings. That placement alone is more restrictive than the Student’s prior placements, but again, the team was willing find a reasonable path between the rock and the hard place. One thing remained clear and certain to [REDACTED] [REDACTED], and [REDACTED] --- the Student certainly did not need to be segregated from his non-disabled peers in order to make progress and receive benefit from his educational program.

First and foremost, the District avers, the IDEA mandates that children should be educated among their non-disabled peers to the maximum extent possible. The statute and regulations stress that specific interventions and evaluation procedures must occur before a student is determined to be eligible for special education and related services.

The District strongly advocates for keeping the Student in the “status quo”: “Essentially, and contrary to what Parent’s Counsel and their band of recurring so-called experts, special education is not a prize. . .it’s not a reward that children and Parents are entitled to. You would never know that from the Parent’s case-in-chief, however.”

The District provides it’s legal rational as justification for its past and proposed future actions by stating:

“When Congress reauthorized the IDEA in 2004, it restated its findings with regard to educating children with disabilities and concluded that educating children with disabilities can be made more effective by a number of factors. . .but one of the most captivating findings is this:

By “providing incentives for whole-school approaches” and “positive behavioral interventions and supports. . .to **reduce the need to label children as disabled in order to address the learning and behavioral needs of such children.**” 20 USC 1400(c)(5)(F)”

While the District’s position may correctly fall within the language of the law especially when it comes to making sure that LRE considerations are undertaken when first determining the appropriate placement and related services of a student identified in need of special education services, the District appears to overlook the fact that each and every case involving a student with a disability is to be treated separate and looked upon individually on a case by case basis. The Student, in this case has made little or no progress over the years spent at his home school, Reavis. The District has not been undertaken “complete and full evaluations utilizing up to date assessment materials and as a consequence of IEPs developed do not contain appropriate goals and benchmarks and the recommendations flowing from these IEPs are therefore flawed. It is not a

question left up to interpretation. The assessments performed and the IEPs written over the years have not worked. The District staff who testified, although appearing well intentioned and concerned, appear to lack the requisite knowledge of alternatives that may be tried or recommended to address the needs of this particular Student. The Hearing Officer will not speculate what may be behind this obvious gap, however, in this particular instant and with this particular Student, the District's efforts have been few in comparison to the well documented academic and emotional shortcomings this Student has demonstrated since his attendance in the District's determine "LRE" placement. More is needed. More can be achieved and absent any showing that the District has an appropriate placement with the requisite related services this Student needs, the Parent's request and placement recommendation at the [REDACTED] a private therapeutic day placement, is appropriate.

With respect the District's defense of its methods of academic and other related service interventions, its attorney states:

"There is no one method, intervention, or strategy that guarantees success. IDEA recognizes this concept. The 7<sup>th</sup> Circuit and other Courts recognize it. And [REDACTED] definitely recognized it.

In the [REDACTED] and [REDACTED] cases, the 7<sup>th</sup> Circuit reminds us that a state-proposed IEP that meets substantive requirements cannot be defeated merely because the Parent believes a better educational program exists for his or her child. It should be reminded that the **Primary Point** that has held fast over the years and among the federal circuit courts, is the concept that "the measure and adequacy of an IEP cannot be judged exclusively in hindsight because is a "snapshot" that must take into account what was and was not objectively reasonable when the snapshot was taken. That word "snapshot" appears endlessly in case law. . . . it should not be overlooked – it suggests the importance of time lapse b/w an IEP and a DP hearing and what may or may not have occurred in the school setting and a student's life. Yet another reason why the courts emphasize deference to educational policies and standards of local school districts. *Lachman v. ISBE*, 852 F.2d 290, 296 (7th Cir. 1988); *Bd. Of Educ. Of Comm. Cons. S.D. No. 21 v. ISBE and Brozer*, 938 F.2d 712 (7th Cir.1991).

Turning to 2 other 7<sup>th</sup> Cir cases, the courts remind us that the *Rowley* standards were intended to provide school districts with flexibility in educational planning because of the countless opinions among experts and evaluators regarding what program or methodologies are "best" . . . . that is why deference is provided to state and local school officials regarding matters of educational policy and methods, and also why *Rowley* warns courts to avoid imposing their view of preferable educational methods upon responsible authorities.

There is no requirement to utilize outside resources or experts in educational planning, and there is no requirement for Parent training in educational planning *Beth B. v. Lake Bluff*, 282 F3d

493 (7<sup>th</sup> Cir 2002), *Wisc. Dells v. Littlegeorge*, 295 F3d 671 (7<sup>th</sup> Cir 2002).”

The District, again, states the proper legal authority in defense of its threshold obligations. It fails, however, to recognize its own shortcomings in assuring this particular Student’s right to receive a Free Appropriate Public Education. The Student has been involved with the District from pre-k, through 5<sup>th</sup> grade. The District’s effort appears, through the evidence presented during the course of a 6 day hearing, to be best described as the “trial and error” method. How long must a consistent pattern of academic decline be demonstrated, particularly with a student who has been assessed by an independent evaluator as a student that “has average intelligence” before the conclusion is reached that something is not working in educating this Student? This is not merely a case of the Parent’s belief that there is a better educational opportunity for her child, it is a documented fact that what has thus far been provided, is not working. The fact that the Parent has sought out legal assistance in order to convince the District that, what she has known all along and has been stating consistently in IEPs meetings and other opportunities she has had with her frequent visits to the school and discussions with administrative and school staff, is not be disregarded as just a belief. The record demonstrates in this case that the Parent’s beliefs are well founded and supported by the IEEs findings and recommendations.

The District defends its efforts by pointing out the meaning of and IEP. Its attorney states:

“The *O’Toole* case provides an excellent analysis of an IEP, stating that an IEP is a program consisting of 2 portions: - the written IEP document. . . AND . . . the subsequent implementation of that document. Thus when a H.O. evaluates the appropriateness of an IEP from the perspective at the time it was crafted, he should keep in mind that implementation of the actual program is “an ongoing dynamic activity which obviously must be evaluated as such.” There was an abundance of testimony regarding teaching strategies and credible methodology that were implemented for the Student. . . *Molly O’Tolle v. Olathe Dist. Schools Unified School Dist. No. 233*, 144 F3d 692, 701-02 (10<sup>th</sup> Cir. 1998). Further, at the time of the *O’Toole* case, the existing commentary of the Federal Reg’s stepped further into IEP analysis and opined that the goals and objectives were not intended to be as specific as the goals and objectives that are normally found in daily, weekly, or monthly instructional plans. (cited in *O’Toole*)

In discussing the requirements behind Measurable Annual Goals (300.320(a)(2)) the Dept of Ed. opines that special education and related services that are based on peer-reviewed research are only necessary to the extent practicable, and if no such research exists, the service may still be provided, IF the IEP team determines that such services are appropriate (whether or not ██████████ thinks they are). This is “an IEP Team decision.” 71 FR 46665.

The Dept of Ed also provides guidance regarding instructional methodologies . . . specifically, the Dept states that nothing in the IDEA

requires an IEP to include specific instructional methodologies. The dept concluded that it could not interpret the law to require that all elements of a program provided to a child be included in an IEP. In fact, the Dept's long-standing position on including instructional methodologies in a child's IEP is that it is an IEP Team decision. Therefore, the IEP Team determines whether or not specific methodologies are necessary for a child to receive FAPE, and that such instructional methodologies *may* be addressed in the IEP.

The [REDACTED] staff observed the Student's progress as they got to know him better . . . as they learned what he responded well to and what he did not respond well to. They tried classroom strategies and programs, including the Read 180 program that [REDACTED] even endorsed – but when that was not working to the level that the team had hoped for, and since the program would not continue, they revised the Student's IEP in June. . . cooperating with a number of suggestions and requests from the Parent's attorney and the IEEs. What [REDACTED] knew and demonstrated is that it is reasonable to modify a child's general education environment and try new strategies out when the old ones are not working . . . to adapt and modify as the child develops and matures. Children are not static and IEPs are not static. In fact, IEPs are not required to guarantee success or progress. As the Courts have emphasized over and over, the free appropriate public education proffered in an IEP need not be the best possible one, nor one that will maximize the child's educational potential; The only piece that must be maximized is a child's integration and education among his or her non-disabled peers.

***Evans v. Millard SD, 841 F2d 824 (8<sup>th</sup> Cir 1988)*** As *Evans* pointed out, There is no guarantee that the programs proposed by the District would have accommodated a particular student, however the SD “should have the OPPORTUNITY, and to an extent [has] a DUTY, to try [ ] less restrictive alternatives before recommending a more restrictive placement.” (at 832)

The District's arguments fail to recognize that the District's IEPs over the years did not meet the minimal threshold of assuring that the Student's needs were being properly addressed. (see above findings of facts). The numerous attempts the District had to modify, adapt, accommodate and recommend appropriate services for this Student fell far short. This is so obvious from the facts and documentation presented throughout the Hearing that it begs the question of how much time must a District be given before it must be determined that its efforts to date are not working? It should have been obvious, given the testimony and review of District generated IEPs over the years, that it was not meeting minimum standards in the development of its IEPs.

The District provided, in written closing argument, a response to its obligation regarding consideration of the Independent Education Evaluations Ordered by the Hearing Officer. The District's attorney states:

"The courts have made it clear that the District is under no obligation whatsoever to incorporate and implement an IEEs recommendations into a student's educational program. In *T.S. v. Ridgefield*, 10 F3d 87, the Parent argued that because only 2 IEP team members were provided with a submitted IEE before the IEP meeting and because the IEE was not discussed at any length, it was not "considered" by the team within the meaning of the federal and state regulations. Parent also argued that all members of an IEP team must be provided with a copy of the IEE in order for the team to "consider" it. In the T.S. case the 2<sup>nd</sup> Circuit emphasized the plain meaning of "consider" (and it should be noted that an IEP team in Illinois need only "consider the results" of an IEE. (23 Ill Admin. Code §226.180(d)). The Court cited Webster's meaning of "consider," which is "to reflect on: think about with a degree of care or caution." As such, the Court stated that "nothing in this definition suggests that every member of a body must read a document in order for the body collectively to "consider" it. Additionally the Parent's interpretation of the term would assign greater weight to an IEE than to other information presented to an IEP.

Even other circuits have given an even more limited reading to the term "considered" in this context. The First Circuit stated in *G.D. v. Westmoreland School District*, 930 F.2d 942, 947 (1st Cir. 1991), that the regulatory requirement for an IEE to be "considered" by a public agency does not mandate "that there be substantive discussion" of the IEE. And the Eighth Circuit indicated in *Evans v. District No. 17*, 841 F.2d 824, 830 (8th Cir. 1988), that an IEE had been adequately "considered" when it was read by the public school's director of special education. (from the T.S case)

The 2<sup>nd</sup> Circuit also pointed out that the Parent could have also invited the individual who prepared the IEE to the meeting where the report was discussed, but she did not. Parent's counsel in this case would prefer you to believe that it is the IEP team's duty to invite [REDACTED] and [REDACTED] to the June 2010 IEP meeting, but that is simply not true. The Parent has a right to invite whatever advocate or carefully selected evaluator that she wants to . . . and in this case, none of the evaluators were in attendance. Further, all IEEs were reviewed by either one or all members of the IEP team, some IEEs were discussed with the service providers supervisors, and all were "considered" at the June 2010 IEP meeting. But again, the Parent's attorneys would like to convince you this was not enough and that because the team, a team who knows the Student well every day of the school week, did not incorporate all IEE recommendations, they denied The Student FAPE. Well that, quite frankly is not only unfair, but it is absurd."

The District's recitation of case law and recognition that the District is under no obligation to incorporate and implement an IEEs recommendations are noted. Further, the District attempts to shift the responsibility of "inviting" the independent evaluators to the IEP meeting to the Parent, especially, it is presumed, since the Parent is and has been

represented by legal counsel who did attend the last and current IEP meeting in June 2010. While this last option may have merit in light of the Parent's having legal representation, the issue of IEEs has been the center of the controversy since this case's inception. The District may have been better served by taking note of the possible "issues" relating to its evaluations of the Student and taken the "cue" that more may be needed. Shifting the burden on the Parent to have initiated having the independent evaluators attend the meeting in light of legal counsel on her behalf being involved is a matter for debate; what's not a matter for debate, however is the fact that the District does not appear to take seriously the fact that IEEs have been Ordered and the recommendations offered.

The District also provided, in written closing argument, its perspective relative the inspection and review of the Student's education records. The District's attorney states:

"The IDEA requires an agency to inspect and review any education records relating to their child that are collected, maintained, or used by the agency upon written request by the Parent or her representative. There's even a right that the District has to charge the Parent a small amount per page for copies of records. However, there is no ongoing obligation to offer or give a parent student records when that written request is absent. Additional, the Commentary to the Federal Regulations points out that IDEA does not establish a timeline for providing a copy of evaluation reports or eligibility determination . . .the commentators pointed out that this was best left to State and local discretion. 71 FR 46645

The point is meaningful participation in an IEP meeting (NOT meaningful cross exam and attorney opportunity), and the [REDACTED] staff testified that allowing the Parent meaningful participation was certainly an ongoing practice of theirs, especially with the Parent – the IEP certainly cannot be held accountable for what the Parent did NOT request or did NOT say."

The evidence presented throughout the course of the Hearing clearly demonstrates that the District has failed to provide the Parent with the necessary and required student records during his educational experience in the District. Most notably, student report cards and student progress notes. The Hearing Officer does not draw any conclusion other than if the requested records existed, they were not provided. An internal review of the District's record keeping policies as well as collaboration with legal counsel involved in Due Process Hearings may be warranted.

Lastly, the District provided, in written closing argument, its view and comparison regarding 'disability and label' Its attorney stated:

Another distraction Parents' counsels attempt to utilize are labels such as Central Auditory Processing Disorder, Sensory-motor integration. . . . [REDACTED] demonstrated that you need not have a specific label to provide effective intervention strategies. As Hearing Officer Utley stated in the J.H. Case, "Even if the District had failed to identify a specific disability, this is not in and of itself the crucial inquiry. As the 7<sup>th</sup> Cir noted in **Heather S**, "the IDEA concerns itself not with labels but with whether a

student is receiving a free and appropriate education". Parent's counsel would have you believe that not only is a specific methodology required to provide The Student with FAPE, but that it must be done at a specific school. If this were the case, the whole meaning of LRE would be thwarted. This suggestion quite frankly mocks the IDEA and boldly slaps LRE in the face. As long as the IEP developed by the District is reasonably calculated to allow The Student to receive some educational benefit, hearing officers and courts are instructed to look no further. As stated in the 7<sup>th</sup> Circuit in *Heather S.*:

**"The issue is whether the District's placement was appropriate, not whether another placement would also be appropriate, or even better for that matter. The School District is required by the statute and regulations to provide an appropriate education, not the best possible education . . . or the placement that the parents prefer." *Heather S. v. Wisc.*, 125 F.3d 1045 (7<sup>th</sup> Cir. 1997).**

The 7<sup>th</sup> Cir also stated in *Heather S* that since the issue is the appropriateness of the educational program offered by the school district, evidence of the appropriateness of an alternative educational program proposed by the parents is "legally irrelevant." Rather, the courts "must defer to the judgment of education experts who craft and review a child's IEP so long as the child receives some educational benefit and is educated alongside his non-disabled classmates to the maximum extent possible." *Sch. Dist. of Wis. Dells v. Z.S.*, 295 F.3d 671, 676-77; *Rowley*, 458 US 176 (1982); *Littlegeorge*, 295 F3d 671; *Heather S.*"

The Hearing Officer does not believe the issue centers on what "labels" can be attributed to the Student in order to establish that he receives appropriate programming and/or services. On the contrary, if the District had been more attentive to its own processes in this matter, perhaps they would have come to the realization that more should be being done to accurately identify this Student's particular needs. The documentary evidence provided through the District's own IEPs and assessments, compared to the testimony and reports generated by the independent evaluators, clearly establishes that the District do more.

In support of the provision of compensatory services to the Student, the Parent's attorneys state the following:

"The IDEA regulations recognize compensatory education services awards. 20 USC § 1415(i)(2)(C)(iii). 34 CFR 300.151(b)(1). Courts have long recognized compensatory education as necessary to ensure a student's right to FAPE, and that Congress certainly did not intend to limit that right to children whose parents could "front" the costs of alternative services. *Meiner v. Missouri*, 558 IDELR 123, 800 F.2d 749 (8<sup>th</sup> Cir. 1986). The Seventh Circuit affirmed Judge Julia Quinn Dempsey's order of compensatory OT services for a student in elementary school in *Evanston Community Consolidated Sch. Dist. No. 65 v. Michael M.*, 356

F.3d 798 (7<sup>th</sup> Cir. 2004). The Seventh Circuit states that "Compensatory services are well-established as a remedy under the IDEA." An award of compensatory education is appropriate under IDEA for an inappropriate education in addition to residential placement. *M.C. v. Central Regional Sch. Dist.*, 81 F.3d 389, P6 (3<sup>rd</sup> Cir. 1996); *Edwin K.*, 37 IDELR 63, P16 (N.D. Ill. 2002)(enlarged IHO's compensatory social work services to the entire period of time not provided); *Reid*, 401 F.3d 516, P6 (D.C. Cir. 2005)(ordinary IEPs need only provide "some benefit," compensatory awards must do more-they must compensate"); *Draper*, 108 LRP 13764, P9 (11<sup>th</sup> Cir. 3/6/08)(upheld District Court award as "reasonably calculated to provided educational benefits that likely would have accrued from special education services the school district should have supplied in the first place"); *Kevin T.*, 2002 U.S. Dist LEXIS 4645, Page 10 (N.D. Ill. 2002)(2002 U.S. Dist. LEXIS 4645)(award of 2 years beyond graduation for denial of FAPE).

Parent agreed to participate in an IEP meeting the District convened on June 9, 2010. The District had the opportunity to address the IEEs and revise the student's IEP including the recommendation for placement at the [REDACTED]. The District did not have all staff present to review IEEs (District audiologist for CAPD and AT representative for AT reports). Further, the District did not address the documented lack of progress in the District's special education programs. The District recommended the same special education program for 2010-11 which has not been an effective program for the student in the past."

In this case, it is without question, that the Parent has more than adequately sustained its burden of proof and demonstrated the District's failure to ensure FAPE for this Student. Furthermore, had the District been more diligent in its attempts to ensure that proper and meaningful assessments were being performed as well as IEPs reasonably calculated to address the student's properly identified needs, the Student would have been, for all intents and purposes, better able to achieve in accordance with his identified "average intelligence." Instead, it appears that the District has allowed this Student to academically decline over the past several years under the incorrect presumption that the LRE requires it. Making up for this decline, is precisely what compensatory education is designed to do. Compensatory education is an appropriate remedy in this case and is certainly justified given the proved facts on the part of the Parent.

### ORDER

1. The District is to place the student immediately at the [REDACTED] and to provide transportation as the Student requires this LRE setting in order to benefit from a public education. As per [REDACTED] testimony at Hearing, [REDACTED] starting date begins on August 25, 2010 therefore, placement and related transportation services must occur as soon as practicable but not less than seven (7) days from the date of this Order.

2. The District was previously Ordered to fund the Parent's IEEs on June 19, 2010.
  - a) The District is to reimburse [REDACTED] for her evaluation and any other independent evaluators whose reimbursement is outstanding within 30 days of this Order.
3. A Behavior Assessment is Ordered completed by an independent evaluator at District expense upon the Parent's submission of 3 names for the District to choose the evaluator. The assessment must be completed within 45 days of this Order. Upon submission of the requisite billing documents required by the District, the District shall reimburse the independent evaluator within 30 days of completion of the independent evaluation or receipt of the independent evaluators billing documents whichever occurs first.
4. A Health/Nursing evaluations is Ordered to be completed by an independent evaluator at District expense upon the Parent's submission of 3 names for the District to choose the evaluator. The assessment must be completed within 45 days of this Order. Upon submission of the requisite billing documents required by the District, the District shall reimburse the independent evaluator within 30 days of completion of the independent evaluation or receipt of the independent evaluators billing documents whichever occurs first.
5. The District is to provide all of the Student's records maintained by the District regardless of the form and including, but not limited to, all IEP report cards, 2009-10 progress reports, emails from staff, sign in sheets for student records, etc. within 45 days of order.
6. The District is to convene an IEP at the [REDACTED] to develop an appropriate IEP for the Student utilizing the Parent's obtained IEEs and any District evaluation results.  
The following must be included:

- (1) The District shall review all evaluation results and recommendations and have appropriate staff in attendance at the IEP meeting;
- (2) The District shall develop an IEP with individualized and measurable goals/objectives and accurate present levels of performance based upon the Student's eligibility and identified educational needs including appropriate modifications/accommodations;
- (3) The District shall identify all direct and related services based on scientific researched based evidence including, but not limited to:
  - a) psychological or social work services individual and group (30-60 mpw),
  - b) speech/language (60-90 mpw) direct services,
  - c) CAPD (auditory processing) remediation and interventions (30 mpw 3 times a week coordinated with after school program);
  - d) OT direct services (40 mpw direct and 30 mpm consult).
- (4) The District shall provide appropriate assistive technology per [REDACTED] recommendations (PD 432-Lexia and Earobics; PD 433-Solo 6 program downloaded on lap top) including classroom implementation and training to student, parents and staff as required. A lap top computer shall be provided the student for school work to be performed at school and at home.
- (5) The District shall provide compensatory services as stated in Paragraph No. 7 below;
- (6) The District shall identify the [REDACTED] placement as the LRE as a separate day school. The [REDACTED] can provide a program that can immediately begin and includes such services as a specialized intensive private LD program at the for children with severe learning disabilities; dyslexia/language disorders that has appropriate methodology based scientific, research based evidence such as Orton

Gillingham, Wilson or other multi-sensory, sequential systematic intensive reading program.

7. The District is to provide compensatory services for its failure to provide an appropriate evaluation and IEPs including appropriate placement in a since February 2008. The compensatory services shall include:

- (1) 1:1 tutoring services beyond the regular school day by a certified special education teacher trained in scientific research based interventions for non-readers at [REDACTED] for the next two school years including ESY 2011 and 2012, the period determined to be that which the Student was denied FAPE for 60 minutes per session, twice a week, including transportation;
- (2) 1:1 speech language services beyond the regular school day by a certified speech pathologist 60 mpw, 1 time at [REDACTED] for the next two school years including ESY 2011 and 2012, including transportation;
- (3) [REDACTED] recommended compensatory services for the student to address auditory processing: direct individualized therapy; 30 minutes 3 times a week; computer assisted would be after school day and 90 minutes direct during and after school day; combination of during and after school.
- (4) Additional assistive technology to assist the student in all academic areas placed on a lap top computer with appropriate program interventions to enable the student to complete homework (Earobics, Lexia, Solo 6-Write:OutLoud, Co-Writer, Draft Builder, Kurzweil for Windows (and scanner) and Start to Finish books or other such type of books) at district expense including lap top; [REDACTED]  
[REDACTED] and [REDACTED] all recommended a lap top computer; and,

(5) The District shall reimburse the parent, upon proper submission of invoices from the providers, the actual out of pocket costs including transportation costs and preparation for testimony, the Parent may have incurred for the following evaluators for their time that each evaluator can document that directly related to the evidence and testimony provided at hearing that was completed between the date of filing the parent's DPCN and the date of testimony, including: [REDACTED]

[REDACTED] and [REDACTED]

8. Within forty-five (45) days of receipt of this Order, [REDACTED] shall submit proof of compliance to:

ILLINOIS STATE BOARD OF EDUCATION  
PROGRAM COMPLIANCE DIVISION  
100 NORTH FIRST STREET  
SPRINGFIELD, ILLINOIS 62777-0001

**Right to Request Clarification:**

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party(s) 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.

Dated this 23rd day of August, 2010.

  
HARRY A. BLACKBURN  
HEARING OFFICER

**CERTIFICATE OF SERVICE**

The undersigned Hearing Officer certifies that he served copies of the aforesaid Decision and Order upon Parents and District, through counsel, and the Illinois State Board of Education at their stated addresses by depositing same with the United States Postal Service at Joliet, IL via certified mail, with postage prepaid before 5:00 p.m. on August 23, 2010.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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

before 5:00 p.m. on AUGUST 23, 2010.



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