

Case Number: 2010-0287

vs. [REDACTED]  
Hearing Officer: Michael Risen

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]  
Superintendent [REDACTED]  
Address [REDACTED]  
Represented by [REDACTED]

Phone: [REDACTED]

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

### Date and Timelines

Date of Written Request: 02/16/2010  
Date of Pre-hearing Conf: 04/23/2010

Date of Hearing: 5/25/10-6/15/2010  
Date of Decision: June 22, 2010

### Summary of Decision

The Parent prevails in a due process complaint notice (DPCN) brought by the Parent. The Parent sought placement in a private therapeutic day program, an array of independent evaluations, participation by the Student in a summer camp and compensatory education. The Parent provided evidence and testimony that proved that the District failed to meet the tests of both prongs of Rowley, including five procedural errors and that the IEP's developed by the District over the past two years failed to demonstrate that any of the Student's IEP's provided at any time over the period covered by the statute of limitations any educational benefit to the Student. In all issues, the Parent was able to meet and sustain her burden of proof and persuasion at hearing. The Parent was represented by counsel.



included an initial letter to the Parties from the hearing officer detailing the appointment of the hearing officer, hearing officer jurisdiction, and other pertinent information needed by the Parties, as well as, information related to the rights of parties related to hearings, the required disclosure list, sample parent and district witness/document lists, a form detailing suggestions for stipulations of fact, and the format for both the Pre-Hearing Conference and the Hearing Format. On February 25, 2010 via electronic mail, the Hearing officer received the District's response to the Due Process Complaint Notice (DPCN). A continuance was then requested by the District. After completing the resolution session on March 11, 2010, the parties requested a continuance to allow the District to complete a triennial evaluation of the Student. The continuance was granted and the Prehearing Conference (PHC) was rescheduled and completed on April 23, 2010 at 9:30 AM via teleconference. The Parent filed a motion on April 11, 2010 to compel certain records from the District and the District filed a response to the motion on April 14, 2010. In a three page decision sent electronically to the parties on April 15, 2010, the hearing officer granted the Parent's motion to compel records and ordered the District to comply and provide the requested records by 5:00 PM on April 16, 2010.

### **PREHEARING CONFERENCE AGREEMENTS**

On April 23, 2010 a prehearing teleconference was completed. Participating in the teleconference was [REDACTED] for the District and attorney [REDACTED] for the Parent. The following items were agreed to at the Pre-Hearing:

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

- 8) By agreement of the parties, the five business day rule deadline was set at 5:00 PM on May 18, 2010.
- 9) The Parties agreed that written briefs would not be filed at the close of the Hearing.
- 10) The Parties agreed the Student is a resident of the District.
- 11) The Parties agreed that the Student was attending school at [REDACTED]
- 12) The Parties agreed the Student's primary eligibility as listed on the Student's most recently agreed to IEP was Other Health Impairment (OHI) and Emotional Disability.
- 13) The Parties agreed the Student is a student with a disability eligible for programs and services as stipulated by the Individuals with Disability Education Act (IDEA).
- 14) The Parties agreed that the issues identified herein were the only issues in this DPCN and that they contained no insufficiencies.
- 15) Hearing dates were set for May 25, 28 and June 14 and 15, 2010.

### **ISSUES PRESENTED**

The Parties agreed the following thirteen (13) issues were the issues and proposed remedies that were identified and agreed to as the issues to be resolved in this DPCN:

1. Evaluation – There are two distinct issues:
  - a. Did the District fail to conduct adequate and timely assessments of all areas of potential disabilities, including: cognitive skills, academic skills, communication skills, assistive technology needs, and potential central auditory processing deficits?
  - b. Did the District fail to develop an effective functional behavior analysis?
2. Services – There are five distinct issues:
  - a. Did the District fail to provide essential related services in the areas of assistive technology, speech and language, adequate intensity of social work, despite evidence of impulsivity and behavioral difficulties that interfere with the student's education, and occupational therapy?
  - b. Did the District fail to provide the Student with a functional behavior intervention plan?
  - c. Did the District fail 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?
  - d. Did the District fail to provide the Student with appropriate modifications in areas of reading, language arts, math, social studies and science, with the result that the Student did not make academic progress?

- e. Did the District fail to provide the Parent with accurate and objective progress reports addressing respective goals?
3. Placement – There are seven distinct issues that address whether or not the current IEP fails to provide:
- a. Statements of present levels of performance that accurately and objectively state the Student's skills and functional levels;
  - b. Goal statements that are vague and not measurable, and where the goals set an increase in skill level, fails to provide a goal that is commensurate with the Student's potential for development;
  - c. A transition plan that provides adequate support for the Student: the plan does not address:
    - i. Student strengths and weaknesses;
    - ii. Potential courses of study and a process for reviewing and confirming student's interests and aptitudes;
    - iii. Development of communication and self-advocacy skills;
    - iv. Additional resources and supports to be accessed through the school district and through community resources, respectively;
  - d. Strategies to address attentional and organizational limitations of the Student;
  - e. Identification of research-based methodology that is required to remediate student's reading and math skills;
  - f. For authorization for extended school year services, despite substantial evidence that the Student is severely delayed in basic academic skills?
  - g. Recognized deficits in areas of attention, social/emotional fragility and executive functioning problems?
4. Identification of proposed remedies
- a. Direct that the District pay for independent educational evaluations in areas of identified need including cognitive and academic skills, assistive technology; social assessment; concerns regarding attention and impulsiveness; and occupational therapy to address organizational deficits;
  - b. Direct that [REDACTED] pay for a comprehensive vocational assessment by a certified vocational rehabilitation counselor;
  - c. Direct that [REDACTED] place student at [REDACTED], or other ISBE approved private therapeutic day school in the [REDACTED] area, at the option of the Parent;
  - d. Direct [REDACTED] to offer related services in sufficient intensity to allow student access to educational opportunity, including:
    - i. At least 60 mpw of social work and or psychological services;
    - ii. Assistive technology services, as may be recommended by independent evaluation;
    - iii. Occupational therapy services to address organizational concerns, as recommended by independent evaluator;
    - iv. Speech language services as may be recommended by an independent evaluator;
  - e. Direct that [REDACTED] develop an effective functional behavior analysis and behavior intervention plan;
  - f. Direct that [REDACTED] develop an appropriate transition plan based on assessments related to employment, education services for loss of FAPE during the past two years:

- i. Tutoring two hours per week after regular school hours by a certified special education teacher with training in whichever reading remediation methodology is used for the Student during the regular school day, until the Student graduates or his IEP team determines that additional support is not needed; and such tutoring to continue for up to one year after graduation if the Student is enrolled in post-secondary education or vocational training program;
- ii. An additional 60 minutes per week of social work services for two years;
- iii. Payment for a sports camp to build self-esteem, for a period of 4 weeks for the summer of 2010, 2011 and 2012; payment to include fees for camp and transportation – the Parent agreed, but has not yet provided, possible camps and estimated costs for the requested fees and transportation. Parent will need to provide this information to the District and hearing officer by the close of the fourth day of the hearing or it will not be considered as possible relief should the Parent prevail by meeting her burden of proof.
- g. Direct [REDACTED] to convene an IEP meeting that will consider results of evaluations and implement the foregoing relieve; and
- h. Other relief that may be determined after the receipt of additional school records or other evidence introduced at hearing.

### **PARENT'S POSITION**

The Parent's position, as stated during the opening statements, is that the Student is a sixteen year old freshman who has led a challenging life while being raised by his paternal grandmother. The Student has experienced multiple, significant medical challenges including: premature birth, exposure to drugs & alcohol prenatally, seizure disorder and a focal resection venus angioma or a bulge in the brain. The Student also experienced complications from this treatment and spent two (2) months in the hospital. The Student has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), demonstrates significant behavior problems and is taking depacote for the seizure disorder, respiradol for the behavior issues, and aderal for the ADHD. The Student is described as extremely shy and functioning at the first grade level. The Parent believes the Student has a learning disability in addition to the OHI and emotional disability. Records will reflect the Student is functioning at the 1<sup>st</sup> grade level in writing, reading and math and that the Student's IQ scores have dropped over time. The records will also reflect this year is the first time the Student has been examined for speech and language and found to be normal and that this finding is inconsistent with other assessments. Records will also reflect the Student was eligible for Assistive Technology and only recently received the necessary equipment. Finally, the records will reflect that there

have been numerous and repeated recommendations for the Student to attend a therapeutic day school and that there is overwhelming support for this aspect of the Parent's position.

### **DISTRICT'S POSITION**

The District acknowledged that these proceedings (due process hearings) should be an opportunity for truth seeking exercises. The District maintains that it has provided FAPE at all times. The District asserts that the Student's attendance is so poor that it makes it nearly impossible to determine progress by the Student. The District asks the question: When does the District's responsibility end and the Student and Parent's responsibility "kick" in? The District asserts that all goal statements and transitions were adequately addressed. The District reminded the hearing officer of the *Scaffer v. Weast* decision whereby it was decided the plaintiff carries the burden of proof and persuasion in such proceedings. The District believes that a placement in a therapeutic day school is unwarranted and that the main challenge in this case is the student's consistent tardiness and absenteeism and that this undermines the district's ability to provide educational benefit for the Student.

### **FINDINGS OF FACT**

- 1) There were twenty-eight (28) witnesses who testified during the four (4) days of hearing.
- 2) A written transcript of the hearing was taken, but was not available for the writing of this decision.
- 3) There were two volumes of bound exhibits submitted, one by the Parent and one by the District.
- 4) The Parents' documents as submitted were numbered as PD 001 – PD 673.
- 5) The District's documents were numbered SD1-SD298. After the hearing concluded, an email was sent by the District with several emails about the Student attached. These documents are also incorporated herein as part of the District's documents and are numbered SD 299-SD306.
- 6) Additionally, the Hearing officer submitted exhibits consisting of 185 pages and marked as "JG HO 0001 – HO 0185." The exhibits from the hearing officer were documents representing the various email and USPS communications between the parties as well as motions or objections and subsequent rulings on both that occurred prior to the hearing.

7) The Student is a male who was born on March 23, 1994. The Student celebrated his 16<sup>th</sup> birthday this past spring and is currently in the ninth grade in special education.

8) The document identified as PD-001 reflects the most recently completed IEP for the Student and is dated April 20, 2010. The Document identified on page SD3 reflects a completed IEP and it reflects the Student has been identified by the District as a student eligible under the IDEA since at least December 18, 2006. The Student's primary eligibility as identified in PD-001 was "OHI" and "Emotional Disability."

9) The first witness to testify was [REDACTED] who identified herself as the current case manager for the Student. She testified she has had 10 years of experience in that job category. She also testified she did not meet the Student until just a few months ago in February of 2010. She testified that she found the Student's grandmother to be cooperative and supportive and she described the Student as "quiet and withdrawn." [REDACTED] testimony was otherwise unremarkable.

10) The next witness called was [REDACTED], Assistant Principal of [REDACTED]. [REDACTED] testified that the protocol for handling absenteeism is to have the teacher call home, administer consequences to the Student if attendance does not improve, have the service provider and case manager call home and if there is still no improvement, develop a plan for the Student. [REDACTED] also testified he did not know the Student personally and would not recognize him in the hallway. When asked if he had any communication with staff about the Student, he responded "no." When asked if he recalled any discussion about placement of the Student during the most recent IEP meeting, he responded that the team recommended therapeutic day school for the Student. When asked how the Student could be present during school but not attend some classes, [REDACTED] testified there were many exits in the building and Students could leave for a period and then return for other classes. When asked by the District on cross-examination how clear his memory was about the discussion related to therapeutic day school, he indicated it was not that clear. This testimony seemed curious as he did not hesitate on his response on this topic when asked on direct examination and the meeting occurred only six weeks prior to his testimony. [REDACTED] concluded his testimony by indicating the school can only do so much to resolve student attendance issues. For the most part, the testimony of this witness was not otherwise informative.

11) Next to testify was [REDACTED] who is a social worker for the District who has been with the District for seven years and a social worker for 22 years. [REDACTED] testified

she has worked with the Student since the fall of 2009. She had the Student working on eye contact with others, communicating more effectively about his feelings, and was concerned he lacked skills related to peer relationships. When asked about his absenteeism, she responded she was aware that he was having issues with “cutting” classes. She thought Algebra was one of those classes because he was having difficulties in that class. She acknowledged that the School had not designed any specialized program to address the Student’s attendance issues this year. The rest of her testimony was not otherwise informative.

12) The next witness to testify on Day 1 of the hearing was [REDACTED] who is the Student’s current special education teacher and has had five years of experience. [REDACTED] testified that she could not recall when she was assigned as the provider for this Student. [REDACTED] testified that she has 12 to 15 students on her case load. She recalls first seeing the Student in February of 2010. When asked if it was possible the Student had been assigned to her earlier and she did not know it, she testified that it was possible. When asked about the Student’s quarterly progress reports for the current school year, she testified she could not recall if she had seen any. When asked about the Student’s progress as reported at PD446 – the witness testified that the referenced document was the Student’s progress report for Quarter 2 of the fall of 2009 and that it reflected the Student had failed all classes. The following line of direct examination was very relevant: “Did you complete IEP progress reports for the First Quarter for the Student.” “No.” The first semester? “There should be.” Did you check to see if one was completed? “No.” Is there a procedure for placing progress reports in the file? “Yes.” Is there an IEP semester report for the Student? “No.” Do you know why? After a long pause, [REDACTED] testified “No.” When did you first talk to the Student? Again a very long pause “I don’t remember.” Are you ordinarily expected to interact with the students on your list? “Yes.” How? “They are in my classes.” Was the Student in your class? “No.” How could you interact with him then? “I tried to find him.” Then when asked if she talked with any of the Student’s other teachers or looked at any of his records she testified that “She could not recall.” This portion of the testimony is described herein because it is the finding of this hearing officer that [REDACTED] did not have a solid grasp on the issues confronting the Student, did not demonstrate she took steps to understand the Student’s needs, and did not provide evidence through her testimony that she was meeting the Student’s needs as his service provider. She testified the Student’s present

level of functioning as a sixteen year old freshman was a grade equivalent of 1.8 in reading, 1.4 in written expression and 1.4 in spelling as reflected on PD 020 and yet the Student was placed in English I at the high school. When asked whether or not the IEP discussed the Student's placement on 4/20/2010, she testified yes and when asked if she had an opinion as to the Student's placement at that meeting she replied: "I don't remember my views at the time." It is the finding of the hearing officer that this witness was avoiding providing consistent candid responses depending on the information being sought at the time. When asked if the Student began showing any progress after the conclusion of the 4/20/10 IEP, she testified he was not in either academics or attendance. As a result, this witness was not very informative other than to say she began to confirm questions previous witnesses caused as to the efficacy of the program the District had designed for the Student in terms of any documentable educational benefit being provided by the Student's previous or current IEP's.

13) The next witness to testify was [REDACTED] the student special advocate for the [REDACTED]. [REDACTED] described his role as that of a school counselor. When asked if he knew the student he testified "only a little." He also testified that if the Student was cutting classes it was easy to do as there were over 1000 students and only 10 security guards. The witness testified that he remembers discussing the Student's attendance problems but does not remember much more than that. He also testified that he had not been assigned to work with the Student. Again, the testimony of this witness raised more questions about what the District was providing for the Student than it answered relative to the issues in this DPCN.

14) Next to testify was [REDACTED] pediatric neurologist with the [REDACTED]. [REDACTED] The witness testified he has been providing ongoing medical care since the Student was an infant. He testified he last saw the Student in October of 2009. [REDACTED] indicated the Student's diagnosis included seizure disorder, mild cognitive delay, ADHD, and behavioral difficulties. He testified the Student's seizures were well controlled medically but some of the Student's episodic behavioral issues could be fairly significant. [REDACTED] also testified regarding a neuropsychological exam (PD 369 – PD 374) completed on 9/5/2008 by [REDACTED] PhD and Associate Professor at [REDACTED]. This assessment used the following tests with the Student: BASC-2; BRIEF, D-KEFS; WISC-4; and Woodcock-Johnson Tests of Achievement. The WISC-4 reflected a Full Scale IQ of 56, which falls in the mildly impaired range.

This was further supported by the evaluators comments found on PD 372 that reflected: "He showed little variability across cognitive domains." The examiner also recommended that the Student receive assistance from a 1:1 aide in the classroom and "individual resource tutoring" (PD 372). The Woodcock Johnson reflected the Student was achieving at the second grade level while in the seventh grade or the severely impaired range. Scores for the BRIEF and D-KEFS were not reported, but their implications were discussed in the report. When asked under direct examination what his recommendations were for the Student, [REDACTED] recommended placement in a therapeutic day school due to the Student's long-standing history of behavioral outbursts and the fact the Student has experienced several in-patient and out-patient admissions due to his behavioral issues. [REDACTED] also testified he believed the Student would benefit from a summer program in the community similar to a summer camp. The District asked [REDACTED] if he understood the difference between a clinical diagnosis and a diagnosis of cognitive delay and [REDACTED] responded he was not aware there was any difference. When asked if [REDACTED] had participated in the Student's most recent IEP meeting he replied he had not. He also testified that he had not seen any recent [REDACTED] psychological and that he did not know whether or not the Student's behavior had improved since he saw him in October, 2009. This witness was determined to be credible and provided important information relative to the issues in this DPCN. In particular, this witness' testimony and the information found at PD 369-PD 374 was informative to issues 1.A, 2.C,D and 3.A., F., and G.

15) The next witness to testify was [REDACTED] the regular education social studies teacher at [REDACTED]. The most significant testimony of this witness was that the Student was placed in her regular division classroom for all of the first semester and part of the second semester. She testified her classroom consisted of "30+" students during the time the Student was in her classroom. While she testified there was a co-teacher for special education in her classroom, she also testified the Student was "failing,...he sat away from other students,...did not interact with others." She testified that the Student was transferred from her class in early March, 2010. She also testified she did not know who the Student's service provider was during either the first semester or at the time the Student was transferred. Findings related to this witness's testimony include that the Student was placed in a regular division classroom containing a

significantly large student to teacher ratio despite evidence that the Student needed a smaller class setting.

16) The next witness of the hearing was [REDACTED], a special educator for 31 years. The significance of this witness' testimony was the fact that she testified she saw no need to work with the school's administration regarding concerns about the Student's attendance. She had a Student with an IEP assigned to her special education classroom who was having attendance issues and she could not articulate anything she might do about the problem. She seemed resigned to accepting that there was no way to assist the Student. One part of her testimony was striking when she was asked what she had tried in terms of the Student's attendance issues and she responded that she would see the Student in the hallway and instruct him to come to class and the Student would simply walk past her and keep going. She indicated she just accepted this behavior. When asked if she had an opinion that she expressed at the 4/20/2010 IEP meeting regarding her recommendations for the Student, she responded that it was difficult to form an opinion since the Student was absent "1/2 the time." The findings related to this witness' testimony is that the witness as the Student's special education teacher failed to meet her responsibility to insure the Student was in class whenever he was in school and that she failed to even attempt (even though in her testimony she acknowledged the Student was failing all classes) to design a program that might better provide the Student with the opportunity to receive educational benefit.

17) The next witness to testify was [REDACTED], nurse at [REDACTED]. While the nurse's testimony would be characterized as very credible, there was nothing in the testimony that was illuminating related to the 13 issues in the DPCN.

18) The next witness was [REDACTED], the regular division biology teacher. This witness also confirmed the Student was in his regular division biology class. He testified that the Student failed in all aspects, demonstrated little interest or effort, had attendance problems, and would generally keep to himself with few if any friends. [REDACTED] testified the Student could not read at all and that he found it unusual that the Student was in his regular division biology class when he was such a delayed reader. The finding related to this witness is that fact that the Student was clearly placed in a regular division classroom that was inappropriate when considering the Student's most recent IEP at the time.

19) The next witness to testify was [REDACTED] the regular division PE teacher at [REDACTED]. She testified the Student was placed in her regular division health class that had 30+ students in it. [REDACTED] testified she was unsure if she had seen a copy of the Student's IEP. She testified she utilized a textbook in her health curriculum but that she did not know the reading level of the text or of the Student. [REDACTED] testified that she signed into the Student's regular IEP meeting as the regular division teacher despite the fact that she also testified that she did not know anything about the Student's present level of performance in reading as "it was not her area."

20) [REDACTED] nurse also testified but did not provide any testimony or evidence relevant to the 13 issues in this DPCN.

21) The next witness to testify was [REDACTED] AT evaluator for [REDACTED]. When asked when she was first referred to consider the Student, she testified in late April as part of a due process case. When asked to describe her evaluation, she testified that she had been directed to complete the assessment the day before the 4/19/10 meeting and that she met with the Student for 45 minutes to one hour in between the Student being tested by the [REDACTED] psychologist.

22) The next witness to testify was [REDACTED] school psychologist. She provided testimony relative to the last triennial evaluation completed for the Student that would have informed instruction and placement decisions from 4/24/07 through the IEP completed on 4/20/10. Her report was found at PD 269-PD271. The test was completed when the Student was in the seventh grade. Achievement test results from the Kaufman Test of Educational Achievement reflected the Student's scores as:

Word Recognition	K.11
Reading Comprehension	1.4
Math Computation	2.4
Spelling	1.2

On PD 270 under "Interpretation," the witness notes that "limited testing was administered due to his noncompliance with prescription eye glasses." When asked under direct examination whether or not any steps were taken to address this non-compliance the witness testified "no." Of significance here is the fact that the Kaufman scores obtained were very similar to the Woodcock Johnson scores achieved during the administration completed by the [REDACTED] personnel. Additionally, the

achievement scores reflect the Student still achieving at a kindergarten to second grade level even though his placement was in the seventh grade.

23) The first witness to testify on the third day of hearing was the Parent's expert witness, [REDACTED], a licensed clinical neuro psychologist with pediatric training in her residency. [REDACTED] testified she completed a very comprehensive record review. Her overall impressions included that the Student had a complex medical history, suffered from seizure disorder, and that he had experienced complicated surgeries. She also reported that a student whose neuropsychological reports reflect what the Student's reflect should be expected to make slow, but steady progress. Instead, she found the Student had not made any progress at all. She recommended that the Student's needs would be best served in a therapeutic day school (TDS) where the small class size would enable the staff to better understand his medical needs because the medicine the student is taking can reduce his learning capacity and this could be better monitored by the TDS faculty. She also indicated that his psychiatric hospitalizations support the appropriateness of a TDS placement. Finally, she testified that the Student's records reflect that the current program has resulted in no positive response for the Student. She also testified that she had concerns with some of the protocols used and completed in the most recent psychological completed by [REDACTED]. In particular, the RIAS (Reynolds Intellectual Assessment Scales) fails to assess processing speed. She testified this is important because processing speed is important when considering school-based learning. Additionally, she testified that measuring processing speed for this Student was of additional importance due to the medication prescribed for the Student. She also testified regarding her concern that the Kaufman scores did not include an assessment for oral language which she testified is an important correlation to reading skills and needs to be considered when programming for students with low reading achievement. Finally, she expressed concern that the testing did not include any assessment of phonological processing which she indicated is important to know when considering plans for teaching the student. [REDACTED] also pointed out errors in the examination completed by the [REDACTED] psychologist as reflected on PD 550 where the examiner did not properly interpret the basal of three items correct thus counting 1-29 as correct when they indeed could have been incorrect. She also testified PD 575 was scored incorrectly for initial capitalization when the Student wrote "the" and should have written "The." [REDACTED] testified that the record review suggests that errors in written expression are severe enough to warrant

instruction from programs like Wilson or Orton-Gillingham, AT programs in keyboarding skills and “a dire need” for remedial instruction as the Student has not gained one year in achievement in the past seven years of programming. [REDACTED] also recommended the Student receive programming for community support that might involve sports or even associations like those with epilepsy. Under cross-examination, [REDACTED] testified that when a student has a learning disability that goes untreated, scores for that student can actually go down. When asked if the Student could make progress in a self-contained classroom in the high school, she responded the record reflects the Student has not made any gains in the last seven years of similar programming. When asked about the impact of the Student’s poor attendance on his academic progress, she testified this demonstrates a need for a more comprehensive approach and that when students are programmed for properly, attendance tends to go up.

24) The next witness was [REDACTED] psychologist. [REDACTED] testified the Student was absent the first time she came to examine him and was not able to meet with him until April 19, 2010. When asked under direct examination about the lack of testing for processing speed and the use of the RIAS instead of the WISC-4, she testified that processing speed is not a factor in overall intelligence which is measured by the RIAS. When confronted with the issue of inconsistent scores she was asked to consider whether it would have been useful to use the WISC-4 to try and find a correct score she responded: “No – I don’t think so.” When asked about the criticism for not using a test that measures phonological development, she responded “He is too old for that.” Interestingly, [REDACTED] testified that she examined the Student even though she knew that she could not be at his IEP meeting the next day. As a result, a different psychologist would attend in her place and only be able to interpret the written results and not comment on the Student’s level of participation during testing. It was also interesting that [REDACTED] knew she would not be at the IEP meeting but also did not see a need to issue any written recommendations as a result of her recently completed report. When asked if she found any record of chronic absenteeism at the elementary level for anything other than valid medical reasons, she indicated there was not. The finding with this witness was that she was unable to impeach the testimony of [REDACTED].

25) The next witness to testify was [REDACTED] psychologist [REDACTED]. She testified her role was to attend the 4/20/10 IEP meeting for [REDACTED]. Her function was to read the report completed by [REDACTED] and she did so at the IEP meeting on 4/20/10. She

could not recall if she discussed the report with [REDACTED]. She could not recall when she received the report, whether she was told to attend the IEP meeting, whether or not she had seen the previous IEP, whether or not reading was discussed at the 4/20/10 IEP meeting, or whether or not she made any recommendations related to the Student's reading, or any recommendations related to appropriate services for the Student, appropriate placement, attendance, or for that matter, any recommendations at all. She also testified that she did not examine the Student's file prior to the IEP meeting, talk with any of his teachers or any other staff at [REDACTED] about the Student, and that she viewed her role as to simply read the report into the record of the IEP meeting. Finally, she testified that she signed in as participating in the placement discussion but was unable to recall any discussion related to the recommendations for the Student's placement. In fact, when asked if she could recall anything that she recommended to the IEP team on behalf of this Student, she responded "No." It is the finding related to this witness that the District failed to meet its statutory obligation to have in attendance at the 4/20/10 IEP meeting a person knowledgeable about assessments and evaluation.

26) The next witness to testify was [REDACTED], the case manager for the Student when he attended [REDACTED] elementary school. The most significant aspect of her testimony related to the IEP dated 2/17/07 which would have informed instruction and programming for the Student through the end of the 2008 school year. She testified that she signed in on the IEP dated 2/17/07 as the case manager, district representative, and evaluation representative. When asked about her capacity as evaluation representative and ability to perform that function during the IEP team meeting, she testified that it should have been the psychologist. When asked what her discretion was to commit district resources as the district representative she testified she had no authority or discretion to commit to anything on behalf of the district. She further testified that the teams are limited in their authority to discuss or recommend therapeutic day placement and if teams want to consider such placement, they would need to wait until an administrator could be called into the meeting. It was not clear whether this means the meeting would need to be adjourned to another time or not, but it is certainly feasible that such would be the case. The findings related to this witness are that the District did not meet their statutory obligations to provide an evaluation representative and a district representative as part of the IEP team for this Student on 2/17/07 and therefore all subsequent IEP decisions are tainted by this error.

27) The next witness was [REDACTED] speech and language pathologist for [REDACTED]. Of significance from her testimony was the fact she testified that she violated best practice by using outdated tests to examine the Student on 4/19/10. She testified that the copyright on the OWLS assessment that she used was 1995 and the copyright on the assessment known as CREVT was 1994. When asked why best practice protocols were not followed, she testified lack of funding prevents following best practices. Further, this witness testified that she did not use a test for phonological processing because she was pressed for time and that she did not record the student's responses on the form as required by protocol but rather it is her practice to underline them on the protocol sheet. When asked why she did not fill in parts of the protocol sheets at PD 410 and PD 411 she did not provide a reason. The findings for this witness is that all testing completed by this witness relative to this Student and the issues identified in this DPCN are not relevant, valid or reliable.

28) The next witness to testify is [REDACTED], special education teacher at [REDACTED] elementary school while the Student was in attendance. She testified the Student was retained in the 8<sup>th</sup> grade but the IEP team was not involved in the decision to retain the Student. When asked why the Student went to regular eighth grade science and social science, she responded it was to prepare him for high school. She also testified she participated in the 2/17/07 IEP meeting. She acknowledged that she agreed with the statements made under "Language Arts" on PD 0040 that indicates the Student cannot read without help, becomes very frustrated when he does not understand a passage and then sometimes "shuts down," and struggles with writing, in that, "conventions and spelling is a struggle...he does not write with voice or clarity. Poor decoding skills definitely impede progression at grade level." When asked if a student described herein should be expected to function in regular high school biology and social science her response was he did well in eighth grade when he had the help of an instructional teacher's aide. This testimony is in conflict with the record reflected at PD 512. This document is the Student's [REDACTED] cumulative record card and reflects the Student earned a "D" in social science and an "F" in science during his second time in the eighth grade. If this information were truly considered when making high school placement decisions, it is not reasonable to conclude that the Student would receive educational benefit from a placement in a regular science and social studies classroom after doing so poorly in eighth grade while receiving the assistance of a teacher's aide.

29) The last witness called on Day 3 was [REDACTED], a certified rehabilitation counselor brought in as an expert by the Parent. His private practice includes working with schools and students who have an IEP to develop effective transitional plans. He testified he completed a record review of the Student at the request of the Parent. When asked what his overall impression was from the review he responded that the Student had multiple disabilities and the most unique challenge for the Student was that he had not made any progress for at least the last three years. The records suggest the Student is still a non-reader. When asked if he had any concerns regarding the Student's most recent transition plan in his IEP (PD054-056) he responded he had several. First, he noted that the goal at PD 054 is not achievable in that the Student is a non-reader and would not be able to complete the steps necessary to achieve the goal. In addition, he noted there is not a statement indicating how the goal would be measured to determine accomplishment. I find both of these concerns legitimate based upon a review of the written goal at PD 054 and the nature of the quarterly benchmarks which are actually written as additional goals and not measurement statements that are quantified. Another concern was the lack of any training written into the transition plan (PD 034). [REDACTED] testified that the Student's record of academic achievement suggests a need for additional training in the transition plan, this statement by the witness is also found to be factual based upon the content of the transition plan in the 4/20/10 IEP. Additionally, [REDACTED] recommends that the Student's academic record suggests a need for an emphasis on training for independent living skills and that this is not addressed in the current IEP or the transition plan (PD 034). This is also found to be a true statement. Another concern found at PD 034 by [REDACTED] was the plan to prepare the Student to take the PSAE. [REDACTED] noted that the Student's IEP suggesting preparation for the PSAE would lead him to conclude there would be an emphasis on college prep types of classes when the Student's academic record suggests this would be inappropriate. In light of the evidence that indicates the Student's achievement ranges from Kindergarten level to second grade, this concern is found to be factual. [REDACTED] recommends a plan be fashioned that would include training on daily living skills, communication and social work group experiences, and the use of a job coach would be "very appropriate." Included in recommended daily living skills, [REDACTED] suggested transportation training, money handling, and the completion of a functional vocational evaluation. [REDACTED] also recommended the school look to link the Student with ORS STEP counseling program. When asked if he knew of the

programs at the [REDACTED] he responded he did and that he believed [REDACTED] would be an appropriate placement for the Student because of his need across all domains. He also testified that [REDACTED] emphasizes work experiences and that the program has in-house and community resources for students. [REDACTED] also testified that the Student would benefit from having a formal vocational assessment completed since the Student has never had one and the purpose of such an assessment is to channel the Student towards a more realistic job goal. On cross-examination, the District focused again on the attendance problems exhibited by the Student, which indeed are significant and problematic for the Student's future success. When asked if this record caused concerns with the likelihood of success if the Student were placed somewhere like [REDACTED] [REDACTED] testified it did not as he believed that programs that are properly designed are likely to increase student participation and attendance. This statement is also found to be accurate.

30) The first witness to testify on Day 4 of the hearing was [REDACTED] a licensed speech and language pathologist with 26 years of experience who was hired by the Parent to complete a record review of the Student. When asked during direct examination his overall assessment of the speech and language evaluation completed by the [REDACTED] on 4/19/10 (PD 316) he testified he would reject the assessment and look to have a more comprehensive assessment. He testified the report on PD 316 had "too many procedural and administrative errors" to be acceptable. He had a similar finding of the test of articulation located at PD 409. He testified that pp. PD410-PD 411 were left blank and should have been completed because they measure speech sound production and connected speech and are more appropriate for his age. He further testified that an error was noted on PD 412 that was actually a dialectical issue and should not have been counted as an error by the examiner. For these reasons, he indicated this test was not reliable or valid and should be rejected. This statement is found to be accurate and factual due to the failure to account for dialectical considerations, the misleading use of test age equivalency and percentiles, and the failure to administer the more appropriate pages to measure speech sound production and connected speech. [REDACTED] also confirmed the earlier testimony of the [REDACTED] speech and language pathologist [REDACTED] [REDACTED] who testified she did not follow best practices due to financial issues and time constraints. [REDACTED] indicated that the use of the test of receptive and expressive language known as the CREVT found at PD 401 rendered the results invalid and

unreliable and should be rejected since the copyright on the test used was 1994 and the most recent copyright for the CREVT is 2002. Additional concerns included the issue admitted to by [REDACTED] that she underlined responses rather than writing down the Student's actual responses. [REDACTED] testified this violates testing protocol. Additionally, [REDACTED] testified the examiner should not have started at the beginning of the test, but rather should have begun at the point that was equivalent to the Student's chronological age. The witness testified that this error can result in unnecessarily fatiguing the Student. The witness testified that these issues cause him to reject this assessment and this is found to be a factual assertion by the witness due to the aforementioned statements. In regards to the assessment labeled the OWLS for spoken language and comprehension and speech production, [REDACTED] testified to a number of errors made by the examiner. In fact, [REDACTED] testified that the errors made were "upsetting" to him. The witness testified that item #60 at PD 393 was scored incorrectly. The Student used the word as directed in both instances but was given credit for only one correct usage. This statement is found to be factual. Conversely, item #65 at PD 394 was given full credit even though the witness testified the Student's response as recorded was unclear and should not have been counted as fully correct. This statement is also found to be factual. Due to these errors, [REDACTED] testified the results of the OWLS should be rejected. The hearing officer agrees with this conclusion. [REDACTED] testified that research supports an association of speech and language disorders with mental illness. As a result, he recommends the Student have further testing in the areas of phonemic awareness and pragmatics or the ability to use language in social settings. When asked on cross whether or not the witness rejects the tests in part or in whole, the witness testified "in whole." This is also determined to be a factual statement by the hearing officer.

31) The next witness to testify was [REDACTED], Camp Director for [REDACTED]. [REDACTED] testified via telephone and affirmed that the camp is designed to enroll students with disabilities from ages 9 and up. The camp is open Sunday through Friday and is located north of [REDACTED]. [REDACTED] testified that her understanding of the Student reflects that she believes he would benefit from participating in the programs at [REDACTED].

32) The next witness to testify was [REDACTED] who was the case manager for the Student during the period the Student experienced significant episodes of absenteeism

due to medical reasons. As a result, she did not know the Student well and her testimony was not informative.

33) The next witness to testify was [REDACTED], school counselor at [REDACTED] elementary school. Much of the testimony of this witness was non-responsive. Several inquiries from the Parent elicited responses like "probably," "don't know," "not sure," or simply "no." Hence, this testimony was not informative to the issues in this DPCN.

34) The next witness to testify was [REDACTED] grandmother and legal guardian of the Student. When asked about her overall concerns she testified that her grandson still "cannot read or write." When asked about the Student's retention in eighth grade and whether or not the IEP team met to change his IEP as a result of the retention she testified they did not. Since the IEP completed on 4/20/10 now calls for ESY this summer, [REDACTED] was asked if she had been contacted yet by [REDACTED] regarding starting ESY which begins the week of June 21, 2010. She said she had not been contacted and further testified that she went up to the high school to discuss what she needed to do to have the Student enroll in ESY and they indicated that they had no record of the Student being eligible for ESY. When asked to describe the Student's overall experience in high school she testified that at first the Student was excited about going to high school. She testified that after school began, the Student began coming home with a "sad face" and indicating the work was too hard for him. When [REDACTED] contacted the school to ask for an IEP meeting to address the issues raised by the Student she indicated the meeting was delayed because "someone had left." When asked if she had received any quarterly progress reports from [REDACTED] high school, she testified she had not. In previous testimony from the Student's high school teachers, this is confirmed that quarterly progress reports were not found in the Student's records. When asked if she knew why the Student was having attendance problems she indicated he was "cutting" classes and hiding in the washroom because he was embarrassed that he could not do the work. [REDACTED] testified the school conducted an IEP meeting on 3/11/10 to change the Student's programs and work assignments. When asked if this was implemented she testified that the Student was being given the same work that he could not do previously. When asked if the Student was receiving benefit from the AT computer recently given to him, [REDACTED] testified he tries to use but that he does not know how to use it properly. She also testified that the Student does not have many friends and is teased because of a scar on his head from his surgery and because he is a non-reader who cannot keep up with his peers.

35) The next witness to testify was the Student. Impressions from his testimony confirm that the Student is quiet and shy and that he appears to have limited abilities in social communication strategies and skills. The rest of the Student's testimony was not informative of the issues in this DPCN.

36) The final witness to testify was [REDACTED] principal of [REDACTED]. [REDACTED] testified that she completed a record review of the Student's history at [REDACTED]. She testified she holds certificates in LD, administration, elementary education and LBSI with a Master's Degree in reading. She testified that her review reflected that the Student was essentially functioning at the first grade level and needed an intense level of services that her program could provide. She testified that she believed the Student's current goals were limited and that he would benefit from a major emphasis on reading, writing and spelling. One of the areas of particular potential for the Student was the fact the school has a separate transition department. The Student would be placed in a class of 4-5 students with a teacher and two assistants in the classroom. One of the advantages of the program as seen by the witness was the fact the bus would pick the student up each day at his door, thus having a direct impact on the Student's attendance issues. Additionally, [REDACTED] testified that she makes a concerted effort to make sure each Student feels welcome at the school and provides work that is designed at the Student's current level of functioning. When asked about a Student known as [REDACTED] the witness testified that [REDACTED] had similar attendance issues as the Student in this DPCN and after placement at [REDACTED] is now on target to graduate high school this year.

#### DISCUSSION AND CONCLUSIONS OF LAW

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

educational opportunity then there has been a denial of the law's requirement for FAPE. This first test of Rowley provides for relief only when the procedural violations result in substantial harm to the student (*W.G. v. Board of Trustees*, 960F.2d 1479, 1484 (9<sup>th</sup> Circuit 1992)). In the instant case, six procedural errors were committed by the CPS such that when one examines all of them in their entirety, the sum of the impact adds up to a denial of FAPE for the Student. One recent procedural error of consequence was failure to provide a regular education teacher at the 4/20/10 IEP meeting consistent with 23 Illinois Admin Code Part 226.210 a) which states in part: "the general education teacher who serves as a member of a child's IEP team shall be a teacher who is, or may be, responsible for implementing a portion of the IEP, so that the teacher can participate in discussions about how best to instruct the child." The regular education teacher who signed into the aforementioned IEP was [REDACTED] PE teacher, who testified she did not even know the reading level of the text she used in health as "that is not my area." In addition, she testified she was unsure if she had ever even seen a copy of the Student's IEP prior to coming to the IEP meeting and she further testified that she did not know anything about the Student's present level of performance. As a result, the District failed to provide the required regular education teacher capable of discussing how best to instruct the child. The second procedural violation involved the District's failure to meet IDEA regulations 300.321 (a)(5) which requires the District to have in attendance at the IEP meeting "an individual who can interpret the instructional implications of evaluation results." [REDACTED] had one of their psychologists [REDACTED] conduct the assessment of the Student and then another [REDACTED] attend the IEP meeting. As detailed in the Findings of Fact [REDACTED] was so unfamiliar with both the Student and the Student's background and testing, that she saw her only function at the IEP was to read the psychological testing results into the record of the IEP. Her testimony indicated she had no recommendations, made no recommendations, and could not even remember the discussion regarding recommendations. Clearly this fails to meet both the spirit and the letter of the law as defined in the IDEA. The third procedural error involved the use of the special educator for the IEP developed on 2/17/07 as the LEA representative, special education teacher and the evaluation representative. The testimony of [REDACTED] reflects that she signed into the aforementioned IEP representing all three requirements. However, she testified she had no authority to commit the District to any resources the IEP might decide as necessary for the Student as required by 23 Ill Admin Code Part

226.210 (d). She also testified that she should not have been the district's evaluation representative but rather that should have been the psychologist, the fourth procedural error committed by the [REDACTED]. The fifth procedural error involved the process of evaluation completed by the speech and language pathologist whose procedural and administrative errors were enumerated in the findings of fact. These errors are a violation of the IDEA regulations section 300.304 (c)(1)(v). A sixth procedural error was when the [REDACTED] failed to evaluate the Student in all required areas consistent with IDEA Regulations 300.304 (c)(4) when the [REDACTED] failed to evaluate the Student for Occupational Therapy. The District asserted that the Parent failed to provide a signed Physician's signed authorization requiring such an assessment. However, the District provided no evidence that such authorization is required by law nor did the District produce evidence that the Parent was ever informed of such a requirement. The Parent submitted evidence (225 ILCS 75/3.1) that reflects the District could have completed this evaluation without a physician's referral but failed to do so.

The second prong of the Rowley test is to determine whether or not the individualized program developed through such procedures is reasonably calculated to enable the Student to receive educational benefit. Because the aforementioned six procedural errors have so tainted the decisions of the IEP teams who have met and considered the programs and services for this Student, it is not possible to determine whether or not such flawed IEP's were designed to convey educational benefit. However, it is important to note in this decision that the Student was subjected to a number of flawed recommendations and decisions related to his educational programming, that had there been no procedural errors, the Parent would have met her burden of proof on the second prong of Rowley as well. For example, the evidence is clear that the Student has not made any progress since first being placed in special education as of March 21, 2002 (PD 250). It is worth noting that on the issue of educational benefit, a cornerstone of the Rowley decision, the [REDACTED] psychological completed on March 11, 2002 when the Student was then eight (8) years old, the KTEA scores for the Student were: "Math - 1.0, Reading - <1.0, Spelling - 1.0" (PD 275). When compared with the test given by the [REDACTED] (PD 371) and the most recent [REDACTED] psychological found at PD 266 there is no substantial difference. The Student continues to function at an overall grade equivalent of first to second grade while at the chronological age of 16 and a grade level placement of ninth grade. There is

absolutely no evidence that the programs and services provided by the [REDACTED] for the past eight (8) years have provided this Student with any semblance of an educational benefit. Therefore, the District has failed to meet the second prong of Rowley as well.

### **Burden of Proof**

In conclusion, it is the finding of this hearing officer that the preponderance of the evidence presented at hearing on behalf of the Student was consistent, connected and convincing. Therefore, as required under *Schaffer v. Weast*, 546 U.S. 49, 62 (2005), it is the ruling of the hearing officer that the Parent met her Burden of Proof in this DPCN. Further, the hearing officer concludes that the evidence submitted by the District was not convincing, and in some cases, detrimental to the District's assertion that attendance problems of the Student were the primary cause of the Student's lack of educational progress. Therefore, in respect to the issues presented in this case, the hearing officer rules in totality for the Parent as follows:

1. Evaluation – There were two distinct issues:
  - a. The District failed to conduct adequate and timely assessments of all areas of potential disabilities, including: cognitive skills, academic skills, communication skills, assistive technology needs, and potential central auditory processing deficits.
  - b. The District failed to develop a functional behavior analysis.
2. Services – There were five distinct issues:
  - a. The District failed to provide essential related services in the areas of assistive technology, speech and language, adequate intensity of social work, and occupational therapy, despite evidence of impulsivity and behavioral difficulties that interfere with the student's education.
  - b. The District failed to provide the Student with a functional behavior intervention plan.
  - c. The District failed 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.
  - d. The District failed to provide the Student with appropriate modifications in areas of reading, language arts, math, social studies and science, with the result that the Student did not make academic progress.
  - e. The District failed to provide the Parent with accurate and objective progress reports addressing respective goals.
3. Placement – There were seven distinct issues related to the current IEP:
  - a. The District failed to provide statements of present levels of performance that accurately and objectively stated the Student's skills and functional levels;
  - b. The District's goal statements were vague and not measurable, and failed to provide goals that were commensurate with the Student's potential for development;

- c. The District failed to design a transition plan that provides adequate support for the Student: the plan does not address:
  - i. Student strengths and weaknesses;
  - ii. Potential courses of study and a process for reviewing and confirming student's interests and aptitudes;
  - iii. Development of communication and self-advocacy skills;
  - iv. Additional resources and supports to be accessed through the school district and through community resources, respectively;
- d. The Student's IEP failed to provide strategies to address attentional and organizational limitations of the Student;
- e. The Student's IEP failed to identify or articulate the appropriate research-based methodology that is required to remediate student's reading and math skills;
- f. The Student's IEP failed to provide authorization for extended school year services until this upcoming summer and still failed to provide the Parent with timely and accurate information to enroll in ESY once it was finally identified in the most recent IEP, despite substantial evidence that the Student is severely delayed in basic academic skills.
- g. The Student's IEP failed to recognize deficits in areas of attention, social/emotional fragility and executive functioning problems.

**ORDER:**

The District is hereby ordered to complete the following:

- A. Pay for independent educational evaluations as selected by the Parent in the following areas of identified need: cognitive and academic skills, assistive technology; social assessment; concerns regarding attention and impulsiveness; and occupational therapy to address organizational deficits; to be completed no later than August 31, 2010
- B. Pay for a comprehensive vocational assessment by a certified vocational rehabilitation counselor as selected by the Parent; to be completed no later than August 31, 2010.
- C. At the start of the 2010-2011 school year, insure that the Student's IEP reflects that the LRE for the Student is the [REDACTED] or other ISBE approved private therapeutic day school in the [REDACTED] area, at the option of the Parent. Student is to attend [REDACTED] until graduation from High School. Student is to attend [REDACTED] on a regular basis and follow all rules related to unexcused absences. If [REDACTED] records 15 or more unexcused absences during the Student's first school year, [REDACTED] is to promptly notify [REDACTED] and the District's obligation to continue funding any aspect of this order that has not yet been implemented at the time of this notification of the Student's truancy will be immediately suspended at the sole discretion of [REDACTED]. If [REDACTED] records 5 unexcused absences during the second year of attendance, the same shall apply. If the [REDACTED] records any unexcused absences during the Student's third year of attendance, or thereafter, then the District will be relieved of all responsibility as identified herein at the sole discretion of the District.

D. At the beginning of the 2010-11 school year and going forward until the Student graduates, provide the following related services and have same reflected in the Student's IEP:

1. 60 mpw of social work and or psychological services as determined by the staff at [REDACTED]. Such services to be provided by staff at the [REDACTED] or similar program; should such services be above and beyond the normal services provided by the Academy, such services are to be paid by [REDACTED] upon proper billing from the Academy;
2. Assistive technology services, as recommended by the required independent evaluation, should such services be above and beyond the normal services provided by the Academy, such services are to be paid by [REDACTED] upon proper billing from the Academy;
3. Occupational therapy services to address organizational concerns, as recommended by the required independent evaluator, should such services be above and beyond the normal services provided by the Academy, such services are to be paid by [REDACTED] upon proper billing from the Academy;
4. Speech language services as recommended by the required independent evaluator; should such services be above and beyond the normal services provided by the Academy, such services are to be paid by [REDACTED] upon proper billing from the Academy;
5. Pay any costs incurred by [REDACTED] that are documented as over and above their normal costs that are necessary to develop an effective functional behavior analysis and behavior intervention plan for the Student while at [REDACTED];
6. Pay for an independent evaluation by a certified rehabilitation counselor to complete an occupational assessment that will drive the development of the Student's transition plan that should emphasize training for independent living skills, daily living skills, and communication and social work group experiences, and/or other areas as identified by the required independent evaluator. Costs of any services recommended by the completed evaluation that are over and above the normal costs and services provided by the [REDACTED] shall be paid by the [REDACTED].

E. To make up for the loss of FAPE during the past two years, [REDACTED] is also ordered to provide the following as compensatory education while the Student is attending [REDACTED]

- a. Tutoring two hours per week outside of regular school hours by a certified special education teacher with training in whichever reading remediation methodology is used for the Student during the regular school day until the Student graduates. Such

tutoring is to continue at District expense for up to one year after graduation if the Student enrolls in and participates in post-secondary education or vocational training program. Scheduling of training shall be made in agreement with the Parent and any transportation needs related to the tutoring shall be provided by the [REDACTED]

- b. An additional 60 minutes per week of social work services for two years, to be provided by staff at the [REDACTED] such services, if over and above the reasonable and customary services provided by the Academy, shall be paid by [REDACTED] upon submission of proper documentation;
- c. Payment for participation and transportation to and from [REDACTED] [REDACTED] for a period of 4 weeks each summer for the summers of 2010, 2011 and 2012; payment to include fees for the four weeks of camp participation and residence (if appropriate) and transportation
- d. Once all of the foregoing is in place and ready for implementation, [REDACTED] is to convene an IEP meeting and must incorporate all of the foregoing (A-E) into the Student's IEP.
- e. [REDACTED] is also ordered to reimburse the Parent, upon proper submission of invoice from the providers, the actual out of pocket costs 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]

#### **RIGHT TO REQUEST CLARIFICATION**

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

#### **RIGHT TO FILE A CIVIL ACTION**

This decision shall be binding upon the parties unless a civil action is timely commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-

8.02(i), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision is mailed to the parties.

*D. Michael Risen*

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D. MICHAEL RISEN  
HEARING OFFICER

ENTERED: June 23, 2010

**CERTIFICATE OF SERVICE**

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

[REDACTED]

and

[REDACTED]  
(Certified USPS only)

[REDACTED]

and

[REDACTED]  
Illinois State Board Of Ed  
100 N. First St.  
Springfield, IL 62777-0001  
(first class and email only)

before 8:00 PM on June 21, 2010

*D. Michael Risen*  
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