

Case Number: 2010-0375

[REDACTED] vs. [REDACTED]

Hearing Officer: Stacey Stutzman

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]

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

Date and Timelines

Date of Written Request: 04/05/2010
Date of Pre-hearing Conf: 05/27/2010

Date of Hearing: 07/09, 7/13, 8/17/10
Date of Decision: 8/26/10

Summary of Decision

Parents who unilaterally placed Student, eligible for special ed due to a specific learning disability, in private school in November 2008, sought reimbursement of tuition they paid in 2008 and 2009, pursuant to a hearing request submitted on April 2, 2010. They also requested a year at the private school at District expense as compensation for the alleged lack of FAPE from April 2008 through part of November 2009. Their attorney advised the H.O. that they did not wish any other type of remediation in the event that they prevailed. Student's annual review IEP developed on February 4, 2008 did not require the use of any particular methodology and did not require ESY for Student. Only the implementation of the 2/08 IEP, not the development or appropriateness of it, was at issue in this hearing. The main argument made by Parents at hearing was that Student, who was adopted and came to the United States from an orphanage in Eastern Europe and was enrolled in his neighborhood school at age 6 ½, largely uneducated and without language, required instruction from curriculum marketed as multisensory by teachers specially trained in multisensory methodology. Parents called an IEP meeting in Fall 2008, at which time their consultant, who was familiar with the District's multisensory classrooms, asked District to assess Student for multisensory instruction. Prior to and while District was in the process of assessing Student pursuant to this request, the Parents were considering enrollment in the private school, and before the next IEP meeting held to consider a change in services and/or placement, Parents served notice that they were going to place Student privately, which they proceeded to do before the end of the first quarter. The IEP team met in November 2008, and Student's special ed teacher received training in *Wilson Reading System* instruction in December 2008, as the District preferred to keep Student in his neighborhood school as the LRE for him, but also had available and was willing to consider a self-contained multisensory classroom in another school in the District if Parents decided to return Student to the public school system, which they did not.

HELD: 1. District did not violate Student's right to FAPE from April 2, 2008 through November 7, 2008, at which time Parents' unilaterally removed Student from public school and placed him in a private school, and District is therefore not required to provide compensatory services to Student in the form of one year at the private school at District's expense.

2. The October 2, 2008 and November 21, 2008 revisions to the Student's IEP of February 4, 2008 did not violate Student's right to FAPE.

3. The least restrictive environment in which Student could have received a satisfactory education at the time of Parents' unilateral private school placement of Student was in the public school, as District recommended, and, since District had been providing Student with FAPE in the LRE and had appropriate public school placement options available to Student, District was not required to consider private placement, and it is not required to reimburse parents for the Parents' unilateral private placement under *34 CFR 300.148(c)(2006)*.

ORDERED: That Parents' requests for reimbursement of private school tuition and compensatory education in the form of one year at the private school at District expense are denied.

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)
) ISBE CASE NO. 2010-0375
)
) Stacey Stutzman
) Impartial Due Process
) Hearing Officer

This matter is before the undersigned impartial hearing officer for a due process hearing concerning Parents' request for Orders that District reimburse them in the amount of \$60,935 for tuition, related services, and transportation at [REDACTED] School for the 2008-09 school year beginning November 12, 2008 and for the entire 2009-10 school year and also for compensatory services from District in the form of one additional year at [REDACTED] School for alleged deprivation of FAPE during the 2007-08 and 2008-09 school years.¹ The hearing officer has jurisdiction to hear and decide this matter under 105 ILCS 5/14-8.02a(g)(2008). The parties have been informed of their hearing rights under 23 ILAC 226.625(2007) and 34 CFR 300.512(2006). The undersigned hearing officer has also advised the parties that there are and have been no conflicts which prevent her from conducting a fair and impartial hearing and rendering a fair and impartial decision in this cause.

Procedural History

Parents' attorney submitted Parents' request for due process hearing, dated April 2, 2010, to District's Superintendent, who received it on April 5, 2010. District forwarded the hearing request to the Illinois State Board of Education (hereinafter *ISBE*) on April 14, 2010. (See *District Request for an Impartial Due Process Hearing Officer*) District's counsel submitted a written response to the Parents' due process hearing request on April 15, 2010. *ISBE* assigned the matter to the undersigned hearing officer via its Special Education Database System (*SEDS*) on April 15, 2010, and the file was received via UPS on April 16, 2010. The resolution session was not held until May 11, 2010, by agreement of counsel for the parties.

The date for Pre-Hearing Conference established by *SEDS* was May 6, 2010. Parents' counsel requested a continuance of the Pre-Hearing to May 17, 2010. The parties then jointly requested that it be continued to May 27, 2010. Pre-Hearing Conference was held on May 27, 2010, and the Pre-Hearing Conference Report was issued on June 2, 2010. A Status Conference was held on June 23, 2010 regarding a list of issues for hearing submitted by Parents' attorney and agreed to by District's attorney on June 22, 2010. (See *Report of Status Conference* dated June 23, 2010) An Amended Pre-Hearing Conference Report was issued on June 23, 2010 to add the aforesaid June 22, 2010 *Parents' Issues and Requested Relief* to the report, and the Amended Pre-Hearing Conference Report is attached to the transcript and incorporated into the record in this matter as Hearing Officer Exhibit A.

At the time of the Pre-Hearing Conference, hearing officer offered available hearing dates beginning on June 10, 2010 and throughout the month of June. However, counsel for the parties requested 2 days for hearing and could not agree on any dates in June. The earliest mutually agreeable dates were July 9 and July 13, 2010.

Hearing was convened as scheduled on July 9 and July 13, 2010 at Student's neighborhood school. However, the parties were unable to present all of their witnesses and requested an additional day of hearing to be scheduled on August 5, to which hearing officer agreed, and then advised of their desire to change it to August 4, to which hearing officer agreed, and then requested to change it to August 17, to which hearing officer agreed in order to get the hearing completed, although the hearing would then not be completed within 30 days of the initial date of hearing as required by 105 ILCS 5/14-8.02a(g-55).

¹ See document entitled *Parents' Issues and Requested Relief* submitted on June 30, 2010. Parents' attorney confirmed to Hearing Officer and District counsel at the close of hearing that Parents do not desire an Order of any relief other than the reimbursement for the amount of tuition expended and compensation in the form of one year at Hyde Park Day School should they prevail.

Hearing was completed as scheduled on August 17, 2010. Due to the aforementioned continuances of the Pre-Hearing Conference and the Hearing, this Decision is not being issued within 45 days of the initiation of the 45 day timeline. It is being issued within 10 days of completion of the due process hearing.

On July 30, 2010 Parents' attorney submitted her *Motion to Strike* certain testimony of witness J.O., which was denied by Order dated August 3, 2010 and her *Motion to Receive the Transcript* of the hearing held on July 9 and July 13, which was granted by Order dated August 3, 2010.

In attendance at the hearing of this matter were Parents, their attorneys [REDACTED] and [REDACTED] and their legal assistant [REDACTED] and District's attorneys, [REDACTED] and [REDACTED]. District's Intern [REDACTED] was also present on July 9 and July 13 only. The District school Principal [REDACTED] was also present for portions of the hearing. The hearing was reported by [REDACTED] C.S.R., of [REDACTED] on July 9 and July 13 and by [REDACTED] C.S.R. of [REDACTED] on August 17, 2010.

A total of twelve witnesses testified during the three day hearing in this matter. The following witnesses were called to testify on behalf of both Parents and District: [REDACTED] District Principal of Student's neighborhood school; [REDACTED] Student's Special Education Teacher at the District neighborhood school; [REDACTED] District Case Manager; [REDACTED] District Assistive Technology Coordinator/Evaluator; [REDACTED] District Multisensory Coach/Teacher; [REDACTED] Student's 3rd Grade Teacher at the District neighborhood school; and **Father**. In addition, Parents called the following witnesses on their behalf: [REDACTED] Associate Executive Director of [REDACTED] School; **Mother**²; and [REDACTED] Parents' private Educational Consultant. District called [REDACTED] Student's 2nd Grade Regular Education Teacher at the District neighborhood school, and [REDACTED] District Special Education Administrator, to testify on its behalf.

The parties jointly submitted 167 pages of documents, hereinafter identified as J1-J167, for use at hearing and advised the hearing officer on the record at hearing on August 17 that they were stipulating to the admission of those documents. Parents submitted an additional 196 pages, and District submitted an additional 27 pages of documents for use at hearing. Parent documents are identified herein with a "P" and District documents with a "D" preceding the page number. In addition to the Joint documents referred to above, the following Parent and District documents were used at hearing: P2-9, 16-17, 20-34, 40-50, 52-99, 107-196; D1-20, 25-27.

Parents' attorney submitted copies of the following cases at the close of evidence: *John M. v. Board of Education of Evanston Township High School District 202*, 502 F.3d 708(7th Cir. 2007), *Board of Education of Township High School District 211 v. Ross*, 486 F.3d 267(7th Cir. 2007), *Evanston Community Consolidated School Dist. No. 65 v. Michael M.*, 356 F.3d 798(7th Cir. 2004), *Heather S. v. State of Wisconsin*, 125 F.3d 1045(7th Cir. 1997)³ *Kevin T. v. Elmhurst Community School Dist. No. 205*(N.D. Ill. 2002); *A.K. v. Alexandria City School Board*, 484 F.3d 672(4th Cir. 2007); *A.B. ex rel. D.B. v. Lawson*, 354 F.3d 315(4th Cir. 2004); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755(6th Cir. 2001); *Union School District v. B. Smith*, 15 F.3d 1519(9th Cir. 1992); *W.G. v board of Trustees of Target Range School District No. 23*, 960 F.2d 1479(9th Cir. 1992); and a *Stay Put Order* and a *Decision and Order* in Illinois due process hearing matters, 109 LRP 6675(2008) and 108 LRP 43065(2008).

District's attorney submitted copies of the following cases at the close of evidence: *School District of Wisconsin Dells v. Z.S. ex rel. Littlegeorge*, 295 F.3d 671(7th Cir. 2002), *Beth B. v. Van Clay et. al.*, 282 F.3d 493(7th Cir. 2002), *James and Le Anne D. ex rel. Sarah D.*, 642 F.Supp.2d 804(N.D. Ill. 2009); and *Nack ex rel. Nack v. Orange City School District*, 454 F.3d 604(6th Cir. 2006).

² Mother was not going to testify in the Parents' case, and she was not on Parents' witness list of June 30, 2010. However, she did testify for the purpose of refuting J.O.'s testimony relating to an alleged multisensory classroom observation by Mother on October 28, 2008. Mother was on District's witness list but was not called to testify by District in District's case.

³In their *List of Cases* Parents also cite *Heather S. v. Wise*, 125 F.3d 1045(7th Cir. 1997). Only one *Heather S.* case was included in the Parents' packet of cases, and this is assumed to have been a typographical error, as both have the same citation.

Issues Framed as Requested by Parents' Attorney⁴

1. Whether on and after April 2, 2008 District violated Student's right to a free and appropriate public education ("FAPE") by:
 - a. failing to properly implement the February 4, 2008 IEP including, but not limited to, failing to complete his assignment notebook on a daily basis and to provide his English Language Learner Instruction;
 - b. failing to recognize and address Student's need for related services other than consult nursing services; specifically, social work services due to his increasing anxiety related to school attendance and his social problems, as well as his need for occupational therapy services, and speech/language services;
 - c. failing to provide him with multisensory instruction; and
 - d. failing to provide him with Extended School Year services.

2. Whether District violated Student's right to a FAPE in the Fall of 2008 by failing to appropriately implement his February 4, 2008 IEP?

3. Whether the October 2, 2008 IEP was reasonably calculated to provide Student with FAPE due to the following violations by District:⁵
 - a. failure to review Student's speech/language issues and the private evaluation which had been provided to District at the beginning of the school year;
 - b. failure to draft appropriate goals;
 - c. failure to provide appropriate related services;
 - d. failure to discuss and address Student's needs in all classes;
 - e. reduction of language arts minutes;
 - f. failure to increase special education minutes;
 - g. failure to provide multisensory instruction;
 - h. failure to place Student in a placement that provided multisensory instruction throughout the day;
 - i. failure to provide Student with Special education instruction that was sufficiently intensive to meet his needs; and
 - j. failure to address Student's needs in the areas of listening and verbal expression?

4. Whether the November 21, 2008 IEP was reasonably calculated to provide Student with a FAPE due to the following violations by District:⁶
 - a. failure to place Student in a placement that provided multisensory instruction throughout the day;
 - b. failure to provide Student with special education instruction that was sufficiently intensive to meet his needs;
 - c. failure to provide appropriate related services, including more than 15 minutes per week of speech/language therapy; and
 - d. failure to consider the full continuum of appropriate placement options, including [REDACTED] School.

5. Whether [REDACTED] School is an appropriate placement for Student?⁷

⁴ Based upon the most recent statement of issues provided by Parent's counsel on June 30, 2010, which has eliminated issue no. 2 in the statement of issues submitted on June 22, 2010 and attached to the Amended PHC Report. Hearing Officer has not reworded the issues to suit her preferences for structure and grammar but has only removed the names of the Student and the District. Hearing Officer's determination of the Issues in this case were set forth in the original Pre-Hearing Conference Report in this matter but were subsequently rejected by Parents' counsel in lieu of her own statement of issues following receipt of the Pre-Hearing Conference Report.

⁵ The issue appears to be whether the IEP was *not* reasonably calculated to provide educational benefit due to the alleged violations.

⁶ See note at footnote 4 above.

⁷ Based on Parents' attorney's statement that Parents have waived any claims for prospective placement, it is presumed that the issue is whether Hyde Park Day School was the least restrictive environment in which Student could have received a satisfactory education from November 7,

Findings of Fact

The material facts relevant to the issues in this case based upon the evidence presented at hearing are as follows: Student is an 11 year old male who attends ██████████ School. He was born in Armenia, was abandoned twice by his biological mother, and spent 3 years in an Armenian orphanage, along with 2 older biological sisters, before he was adopted by Parents, who were residents of the District, and brought to the United States at age 6 years 8 months in late 2005. He barely spoke and was classified as “selectively mute” when Parents met him in 2004. When he came to the United States in November/December 2005 he was very quiet. He had just begun kindergarten level education in Armenia when he immigrated to the United States. He was at about a 3 year old level in the Eastern Armenian language and did not know English when he arrived at his new home. The family received support from a social worker, psychiatrist, and pediatrician specializing in international adoption. (Father)

Parents enrolled Student in the neighborhood public school, then currently attended by Parents’ older daughter, in the District, in late January, 2006. He was initially placed in first grade following some testing, but Parents had concerns about the first grade placement because Student did not even understand the difference between big and small, and Student was subsequently moved to a kindergarten classroom. (Father)

Student was provided with a section 504 plan On April 26, 2006. (J4-9) He was evaluated and determined eligible for special education and related services due to a specific learning disability on February 2, 2007, at age 7 years 11 months while in First Grade, and an initial IEP was developed for him at that time. The Parents’ private educational consultant, B.R., attended that IEP conference with them.(J57-80) Per the IEP that was developed at that time, according to the Stanford Binet Intelligence Scales, 5th Edition, Student was determined to have at least average cognitive ability, with a Non-verbal I.Q. of 95, a Verbal I.Q. of 90, and a Full Scale I.Q. of 92.(J59) According to the Kaufman Test of Educational Achievement, Comprehensive (*K-TEA*), Student was achieving below 1.0 (grade equivalent) in Math Applications, Math Computation, and Reading Comprehension, and was achieving at 1.3 (grade equivalent) in both Spelling and Reading/decoding.(J58)

One year later, when Student was in Second Grade, at age 8 years 11 months, an IEP was developed at his annual review on February 4, 2008.⁸(J87-102) At that time, per the IEP, according to the Peabody Individual Achievement Test (*Peabody*), Student was achieving as follows:

	<i>Standard Score</i>	<i>Percentile Rank</i>	<i>Stanine</i>	<i>G.E.</i>
<i>Reading Recognition</i>	110	75	6	3.1
<i>Reading Comprehension</i>	89	23	4	1.7
<i>Math</i>	100	50	5	2.4

The *Modifications and Accommodations* section of that IEP provided, inter alia, that “parents and teachers will monitor his assignment notebook.” Among the accommodations and modifications provided for in the IEP are: “Provide visual and verbal directions and ask Student to repeat his understanding of them; provide manipulatives and/or visuals for abstract math concepts when needed; and read and listen to stories on tape.”(J91) The IEP did not designate that Student’s teachers were to use “multisensory instruction” or any specific methodology for Student. (J87-102) It noted that Student is an *English Language Learner (ELL)*, needing accommodations to meet his linguistic and cultural needs and that he receives support from the ELL/ESL teacher on a weekly basis. Having begun the school’s ELL program at Level 1, he was, at the time of the 2/4/08 IEP meeting, at Level 3 as assessed by the ESL

2008 through the end of the 2009-10 school year and/or whether it is appropriate as “compensation” for deprivation of FAPE, as Parents seek only reimbursement for tuition they paid and compensatory service only in the form of placement at Hyde Park Day School.

⁸ Violations related to the IEP conference and development of the 2/4/08 IEP are not presented by Parents for consideration in this matter due to the applicable two year statute of limitations.

teacher in oral language, reading, and writing English.(J88, 89, 92) The IEP stated that Student did not require extended School year services (ESY). (J90) Student's placement at the neighborhood school, pursuant to the 2/4/08 IEP, required 450 minutes per week of specialized instruction in a separate classroom, including 225 minutes of instruction from the special education teacher in Language Arts and 225 minutes in Math, for which goals were included. He was also to receive consultative services from the school nurse. (J95)

The neighborhood school is a safe building. A total of 640 elementary age children, kindergarten through grade 8, were enrolled in the 2007-08 school year and 663 in the 2008-09 school year. Approximately 10 to 12 % of the student population have IEPs. [REDACTED] The Principal and the special education and regular education teachers who instructed Student in Second and Third Grades are appropriately educated, qualified, certified, and experienced for their positions. The regular education teachers collaborated with the special education teacher in the education of Student while he was in attendance at the school. All teachers were accessible to Parents and communicated with Mother on a regular basis. [REDACTED] There were 26 children in Student's Second Grade Classroom and 25 to 26 children in his Third Grade Classroom at the neighborhood school. [REDACTED] The neighborhood school ranked first in the state of Illinois for the Third Grade ISAT results in Math and eleventh in Reading for the 2008-09 school year. [REDACTED] It used the *Open Court* curriculum for Reading and [REDACTED] *Everyday Math* for its Second and Third Grade students in 2007-08 and 2008-09. [REDACTED]

[REDACTED] had approximately 16 to 17 children on her caseload in 2007-08 and approximately 19 in 2008-09. Student had no problem staying on task while in her classroom. She used *Reading Recovery*, which included writing activities, with him. Writing was informal. Research shows that a young child should not be pushed into writing. She used the [REDACTED] *Everyday Math* curriculum and supplemented it and adjusted instruction in accordance with Student's needs. In teaching Student, she used visual, auditory, some kinesthetic, and tactile techniques, including tapping. *Reading Recovery* works, and Student made great progress as shown by his quarterly test results and weekly charting of his work and the Peabody administered at the end of the year. She monitored Student's homework assignments. Mother communicated with her everyday regarding Student's assignments, and there was no issue as to Student not knowing his homework assignments. [REDACTED]

In the Spring of 2008, following the development of the aforesaid 2/4/08 IEP, Student continued his placement in [REDACTED] regular Second Grade classroom in his neighborhood school and received special education instruction from [REDACTED] in her Resource Room for Language Arts and Math pursuant to his IEP. [REDACTED] He received ELL support from the ESL teacher who left the neighborhood school staff in June, 2008 at the end of the school year. [REDACTED] [REDACTED] had a good working relationship and communication with Mother and she received no complaints from Parents regarding Student's education. Parents were always welcomed to her classroom, and Mother had been in her classroom. [REDACTED] Student met the quarterly benchmarks in Language Arts and Math for the quarter ending 6/8/08. [REDACTED] (J93-94) Student did not need extended school years services as discussed at his 2008 annual review meeting. However, if Parents had wanted it and asked for it, he could have received ESY. [REDACTED]

In September 2008 Student was placed in [REDACTED] Third Grade classroom and continued to receive special education instruction from [REDACTED] in her resource room pursuant to the 2/4/08 IEP. He was the only student with an IEP in [REDACTED] class that Fall. [REDACTED] implemented the accommodations and modifications in Student's IEP. He modified Student's assignments as needed and collaborated with [REDACTED] He broke down instructions for Student. Student would advise him when he didn't "get it." He supplemented the math curriculum with other resources. He instructed Student 1:1 and would pre-teach and re-teach concepts as needed. He used manipulatives and visual supports in addition to auditory instruction. He encouraged Student to "dig deeper." He redirected Student when he was off task. He maintained a website for his classroom to which Parents had access. [REDACTED]

[REDACTED] did not observe D.S.'s classroom before the October 2, 2008 IEP revision meeting. She visited his classroom on October 28, 2008 from about 9:20 or 9:30 to 10:20 a.m. During that time he was

doing a lesson review. The children read for 10 minutes individually, journaled for 10 to 15 minutes, and then [redacted] read to the children for 10-15 minutes. They then went to recess. [redacted]

A replacement for the ESL teacher was not found until October. [redacted] However, at that time, Student's English was good. He had no articulation problems and no accent. [redacted] He spoke English and understood what was going on in class. The short time without an ESL teacher did not impact Student's ability to be instructed. [redacted] Student met his quarterly benchmarks for Language Arts and Math for the quarter ending 11/08. [redacted] (J93-94) [redacted] was pleased that Student scored above the average for District third graders on the Benchmark Assessment administered in October 2008. [redacted] (D1)

While attending the neighborhood school, Student adjusted to school, was a friendly child, and got along with his peers. He did not have atypical social or behavioral issues at school. He showed no signs of anxiety in the classroom setting. He once expressed to his Second Grade teacher that he felt badly that he had so much and that his biological siblings who did not get to come to the United States had so little. [redacted]

Sometime after the beginning of the Fall term on September 9, 2008, [redacted] received from Mother a copy of a report of a private speech/language evaluation that had been conducted on July 19, 2008 and which referenced Mother as the informant and also referenced a report from District dated 2/7/07. [redacted] (P40-50) District received a written request for an IEP meeting from Parents dated September 17, 2008, and Mother signed a consent for a District speech/language evaluation on September 18, 2008. (J158, 103-104) An IEP meeting pursuant to Parent's 9/17/08 request was noticed on September 22 and convened on October 2, 2008. (J106-112) The stated purpose of the meeting, according to Parents' written request, was to review Student's IEP, with "particular interest in setting some additional goals (eg. *sic*) Listening, verbal and written expression, social studies, science." (J158)

During the Fall of 2008, Parents considered enrollment of Student in [redacted] school. They were concerned that Student had been assigned to [redacted] classroom for Third Grade due to D.S.'s "scary looks" and the fear that Student would misinterpret his facial expressions. (Father)

[redacted] is a retired special education teacher employed as an educational specialist for the [redacted] [redacted]. She acts as a liaison between medical personnel and families. Her job is to help families understand their children's educations. She reviews evaluations and educational documents such as IEPs, attends IEP meetings, does observations mostly in regular classrooms rather than special ed classrooms, and makes recommendations. She does not do evaluations or work directly with the children. She is not a speech/language pathologist or occupational therapist. She defines multisensory instruction as a method of instruction that uses a minimum of three sensory modalities-visual, auditory, tactile, and/or kinesthetic- simultaneously. Special education curriculum is not multisensory, according to [redacted] unless it is marketed as multisensory. *Wilson Reading System* is marketed as multisensory curriculum. [redacted]

[redacted] worked with Parents in 2006 but did not have contact with Student's family after Student's February 2007 initial IEP meeting until Mother called her in September 2008 and advised her that Student was struggling in Third Grade. She attended the IEP meeting of October 2, 2008 with Mother. Father did not attend due to his business obligations. [redacted], (Father) [redacted], the school psychologist, nurse, social worker, and speech/language pathologist attended as well. [redacted]; (J107) [redacted] provided team members with copies of her *Recommendations*, which included a recommendation for "observation and consultation from [redacted]..." and for a "resource teacher trained in Wilson Reading program...facilitated by calling [redacted]..." At the meeting, [redacted] asked that goals be added to Student's IEP for decoding and for written expression. District stated that the private speech/language evaluation, which B.R. had reviewed, would be discussed upon completion of District's speech/language evaluation. [redacted] (P175-178)

Student worked on writing in his regular education class and also with [redacted] in language arts in the resource room. He was doing well with his writing and enjoyed it. [redacted] However, because Mother wanted a specific writing goal, [redacted] wrote a goal for written expression and added it to Student's IEP in the area of Language Arts to address Student's "difficulty with sentence structure and paragraph development" and geared it toward what a third grade student should be able to do: "(Student) will compose an organized and coherent writing for a specific purpose with at least 75% accuracy." The quarterly benchmark for the then in progress first quarter of the school term required Student to "...write

at least two complete sentences with at least 5 words and a subject-verb agreement with at least 75% accuracy.” The quarterly benchmark for the 2nd quarter of the term and up to the February 4, 2009 annual review date required Student to “...write at least one paragraph with at least four complete sentences that relate to a given topic using a prewriting strategy with at least 75% accuracy.” [REDACTED] wrote the goal and was responsible for implementing it. Modifications and accommodations were also added to the IEP to assist Student with his writing. The Revision IEP called for 90 of Student’s 225 Language Arts minutes to be devoted to written expression. (J109, 111-112)

The reading comprehension goal from the 2/4/08 IEP was also included in the 10/2/08 revision IEP, although it did not need to be. [REDACTED] considers it an appropriate goal for Student. [REDACTED] also asked the District to assess Student for multisensory programs because she felt that he would benefit from multisensory instruction. She did not ask for placement in a multisensory instructional classroom at that time. She had visited a multisensory instruction classroom in the District with another family on March 25, 2008. She asked that [REDACTED] observe and test Student in regard to same. She had been previously advised by [REDACTED] in late 2007 that the procedure for placement in one of District’s multisensory instruction classrooms was 1) that [REDACTED] would observe and assess a student; 2) her observation and assessment would be discussed at an IEP meeting; and 3) a recommendation had to come at an IEP meeting. Because Mother was concerned about [REDACTED] teaching style, Mother and [REDACTED] met with the school Principal after the aforesaid IEP meeting to ask that Student’s classroom be changed. [REDACTED]

Following the October 2, 2010 IEP revision meeting, District’s speech/language pathologist reviewed the private speech/language evaluation report and tested and interviewed Student and issued a report of her findings, including scores from her own testing and from the private evaluation, dated November 13, 2008. (J114-117)

The IEP team agreed to follow up on B.R.’s recommendation to contact [REDACTED] for assessment of Student and to investigate training the resource teacher in Wilson Reading instruction for Student. [REDACTED] When first contacted by Mother and by District personnel some time after the October 2, 2008 IEP meeting, [REDACTED] who was then the Citywide Multisensory Coach in the District’s Office of Specialized Services, explained the procedures for such a placement. She reviewed Student’s records and observed him in his regular and special education classes. Finally, she conducted assessments of Student at the neighborhood school on November 7, 2008, the last day he attended public school. She was able to complete her assessment of Student at [REDACTED] School on November 20, 2008, but Mother had not advised staff that she was coming, Student was not feeling well, the room provided to her for testing was noisy, and Student had already been tested by the private school staff that same day. On the *Woodcock Johnson III Diagnostic Reading Battery (WJ III)*, Student scored at Age Equivalent 8-1 and Grade Equivalent 2.7 on Passage Comprehension. On the *Word Identification and Spelling Test (WIST)*, the following scores were reported:

	Age Based					Grade Based		
	AE	GE	%	SS	Rating	%	SS	Rating
<i>Word Identification</i>	6-7	2.3	16%	85	Blw Avg	30%	92	Avg
<i>Spelling</i>	<6-1	<2	3%	73	Poor	8%	79	Poor
<i>Sound-Symbol Knowledge</i>	<6-1	<2	6%	77	Poor	13%	83	Blw Avg
<i>Literacy Ability Index</i>	<6-1	<2	14%	84	Blw Avg	21%	88	Blw Avg

(J.O.;P183)

On October 17, 2008, Parents provided [REDACTED], the Associate Executive Director of [REDACTED] School, the names of Student’s public school teachers and gave permission for him to contact them in regard to Student. ([REDACTED]; J162). On October 27, 2008, Parents notified the District Superintendent in

writing that they intended to place Student at [REDACTED] School on November 12, 2008 and that they would seek reimbursement of costs attributable thereto from District for the reason that District had not provided Student with an appropriate education.(J163)

It was after the aforesaid notice of intent to do a unilateral private placement that [REDACTED] then made her October 28 visit to [REDACTED] classroom as scheduled "at the last minute" by Mother. She found [REDACTED] instruction on that day to be auditory only and observed Student being off task except that he was very interested when [REDACTED] used "great expression and different voices" while reading a book to the class. She did not observe him in [REDACTED]'s class because she prefers to do observations in the regular classroom and not in the special education classroom. [REDACTED] has visited 2 of the District's multisensory instruction classrooms and considers the teachers and the programs excellent. [REDACTED]

On November 14, 2008, District advised Parents that it would not fund Student's unilateral private placement, that a free appropriate education was available to Student at his neighborhood school, that an IEP meeting was scheduled for November 21, 2008 pursuant to the special reevaluation being conducted by the District, and that Parents had the right to file for a due process hearing. (J166)

Even though Parents had already moved Student to [REDACTED] School, District convened an IEP Revision meeting on November 21, 2008 to address the speech/language assessments and [REDACTED] assessment. The conference was attended by Mother and [REDACTED] as well as [REDACTED] the case manager/counselor, school nurse, and speech/language pathologist. (J118-127) Father did not attend due to business obligations.(Father) Changes to the 2/4/08 IEP were recommended based on the District speech/language evaluator's determination that Student demonstrated mild deficits in his receptive and expressive language skills and [REDACTED] determination that he had a deficit in encoding and decoding written text and a need for multisensory approaches to teaching language arts and math as well as all vocabulary. [REDACTED] added a goal for language arts in the area of decoding and encoding based on the results of her assessments and tied to Illinois State Goal #3 with use of an *Orton-Gillingham* research based approach. It included a quarterly benchmark ending 2/09, to be addressed by the special education teacher [REDACTED] (J119, 122) A speech/language goal was also added to address Student's use of classroom vocabulary, noting that his expressive and receptive vocabulary skills were within the average range when compared to his same aged peers, with a quarterly benchmark that he "explain how vocabulary from the classroom is similar and different, given cues, with 70% accuracy" ending 2/9/09.(J123)

Additional modifications and accommodations were listed for speech/language-language arts/math/science/social studies.(J121) His special education minutes were increased to 345 minutes per week for Language Arts in addition to the existing 225 minutes in Math. Speech/language therapy was added as a related service in the amount of 60 minutes per month. (J124)

The IEP could have been implemented either in Student's last agreed upon placement in neighborhood school, which District personnel felt was appropriate for him as the least restrictive environment, or in a self-contained multisensory classroom in another school in the District if Student were to return to the District and a more restrictive setting became warranted, although the children in those programs were more severely impaired than Student [REDACTED] was "conflicted" about removing Student from his neighborhood school into the more restrictive self-contained multisensory classroom environment in another school building. [REDACTED] felt that a multisensory classroom was the appropriate placement. [REDACTED] District staff believed that Student's needs could be met in his placement in the neighborhood school in the regular third grade classroom with pull out special education services from [REDACTED] who was scheduled to receive Wilson Reading System Training in December 2008. [REDACTED], a certified *Orton-Gillingham* and *Wilson* instructor, who is also trained in *Writing Destinations* and *Hands On Equations* was prepared to work with Student three times per week and to work with [REDACTED] until [REDACTED] was trained at the scheduled training in December 2008 and could take over. [REDACTED] was excited about the training, and the Principal was supportive of the training. [REDACTED] was trained in the *Wilson Reading System* in December 2008 as planned [REDACTED] District operated 7 elementary level multisensory instruction classrooms in various buildings in the 2008-09 school year. [REDACTED]

Most students in District who have learning disabilities are in their home schools or their schools of choice. The District's goal is to train more teachers in multisensory instruction and keep students in their schools rather than move them to more restrictive settings. The IEP team considered that Student had successes in his neighborhood school, including friends, activities, and engagement in science, social studies, and specials. Although the IEP team recommended that Student remain placed in the regular third grade classroom with pull out for 585 minutes per week of special education and related services, falling into the 21 to 60% category for removal from the regular classroom, as his LRE, a District multisensory classroom was a possibility if Student were to return to District and he were to then require a more restrictive environment. [REDACTED] J124)

[REDACTED] School is a private day school approved by the Illinois State Board of Education for students with learning disabilities. The tuition for a full year was \$32,100 for the 2008-09 school year and \$33,200 for the 2009-10 school year. The maximum number of students in attendance is 40. Students range in age from 6 to 13 in grades 1 through 8. There are 10 students with 2 certified teachers in each classroom. There are 4 classrooms. Support staff includes an occupational therapist, speech/language therapists, a part time social worker, and a technology person. Multisensory programs used for instruction include *Wilson* and *Slant*, which are *Orton-Gillingham* based, *Project Read*, *Lindamood-Bell*, and *LIPS*. Also used are *Step Up to Writing* and *Making Math Real*. Science and Social Studies programs are skill based. Programs are modified and adapted. Instruction is matched to a child's needs. Although all of [REDACTED] classes are multisensory, some are "not as multisensory." Student received *Wilson Reading* instruction beginning at Step 3 when he enrolled as a third grader, bypassing Steps 1 and 2 based on assessments of his skill level. He received *Step Up to Writing* instruction. The [REDACTED] Math materials were used for Student's math instruction. A program is a set of instructions that provides a basis for judgment. A teacher must decide what to do next. Individual Learning Plans (ILPs) were developed for Student at [REDACTED] School. District was not invited to attend those ILP meetings. [REDACTED] School does not allow its teachers and related service providers to testify at due process hearings. [REDACTED]

Father does not know where the contract Parents executed with [REDACTED] School for the 2008-09 school year is. Based on his examination of his bank statements, he wrote a check payable to [REDACTED] School in the amount of \$22,687 on November 3, 2008. Mother signed a contract for the 2009-10 school year on March 31, 2009 for \$33,200, calling for the payment of a \$4,000 nonrefundable deposit with the contract and \$29,200 on or before August 1, 2009. Father wrote a check payable to [REDACTED] School in the amount of \$4,000 on April 6, 2009 and for \$29,200 on August 7, 2009. Other checks payable to [REDACTED] School without notation as to their purpose include \$300 on April 3, 2009, \$3,200 on June 24, 2009, and \$1548 and \$60 on August 27, 2009. (Father; P191-196)

Conclusions of Law

At a due process hearing convened pursuant to the provisions of the Illinois School Code, it is incumbent upon the District to present evidence that it has provided or has offered to provide the student in question with a free appropriate public education in the least restrictive environment, in accordance with the stated issues in the case. *ILCS 5/14-8.02a(g-55)(2008)* The burden of persuasion, however, falls upon the party seeking relief, in this case, Parent. *Schaffer v. Weast*, 546 U.S. 49(2005)

An appropriate education, or FAPE, as it is commonly designated, is an education that is reasonably calculated to enable the student to receive meaningful educational benefit, as based on an individual education plan, or IEP, developed by an IEP team, including the student's parents. *Hendrick Hudson Dist. Bd. Of Ed. v. Rowley*, 458 U.S. 176 (1982) The school district is required to follow procedures that are designed to allow the parents to participate in the development of the IEP. The applicable procedures are set forth in *34 CFR 300.300-328(2006)* and *23 ILAC 226.110-350(2007)*. Procedural violations alone cannot be deemed a denial of FAPE unless the evidence proves that the violations impeded the student's right to FAPE, the parents' right to participate in the decision making process, or caused student to be deprived of an educational benefit. Otherwise, a hearing officer's

determination of whether FAPE was received must be based on substantive grounds. 20 U.S.C. 1415(f)(3)(E)(2007); 34 CFR 300.513(a)(2006)

It is the determination of the undersigned due process hearing officer that Parents have not proven by a preponderance of the evidence presented at hearing that District violated Student's right to a free appropriate public education during the period of time relevant to the issues in this case. There have been no procedural violations that have prevented Parents from participating in the development of Student's IEPs, that have denied Student an educational benefit, or that have otherwise impeded Student's right to a free appropriate public education. The evidence presented supports District's position that it did provide and offer to provide Student with a free appropriate public education in the least restrictive environment, including individual education plans that were reasonably calculated to enable Student to receive meaningful educational benefit and which were implemented by properly educated and certified instructors, but that Parents preferred to enroll Student in a private school at their own expense rather than maintain him in his public placement in spite of the provision of FAPE by the District.

All of the District personnel who knew and had worked with Student prior to his removal from his neighborhood school testified in support of District's position. They were asked to testify to events that occurred two or more years ago involving a student that they had not seen for almost two years. The brief testimony given by [REDACTED], who had just become Case Manager and filled in portions of the IEP at the November 21, 2008 IEP meeting, and of [REDACTED] District A.T. coordinator, was the only testimony that did not provide any pertinent information for use in this Decision. Of greatest value was the testimony of [REDACTED] who was knowledgeable and experienced in the area of multisensory instruction and the programs available in the District, who assessed Student to determine if he could benefit from multisensory instruction, and who was called to testify by Parents as well as District. She was an excellent witness who felt that it was important to keep children, including Student, in their neighborhood schools as long as it was possible to train teachers to deliver multisensory instruction, before moving them to a more restrictive self-contained classroom in another building. [REDACTED] was also an excellent witness in that regard, and the testimony of both was persuasive.

Additionally, the testimony of Student's neighborhood school Special Education teacher and his Second and Third Grade teachers, and, in some aspects, the Principal as well, was valuable and persuasive as to the appropriateness of the education and the neighborhood school itself that was provided to Student from April 2, 2008 through November 7, 2008, at which time the Parents removed Student from public school. In her closing argument, counsel for District asked this hearing officer to consider [REDACTED] demeanor in making her decision in this matter. Addressing counsel's request, [REDACTED] impressed this hearing officer as a serious, intelligent, well-educated man capable of teaching third grade students. He became irritated with counsel's questioning, which at times was argumentative, in the course of giving lengthy testimony. However, there was nothing about [REDACTED] demeanor that would cause his testimony to be discounted or deemed less than forthright. He did not come across as a scary or uncaring teacher.

Parents called only three witnesses in their case who were not District personnel: Father [REDACTED] and [REDACTED]. Father testified to Student's background in Armenia and to the checks that were written to [REDACTED] School. He was not involved with staff at the neighborhood school in regard to Student's public education during the relevant time period, and he did not attend the two revision IEP meetings that are at issue in this case. [REDACTED] was essentially acting as an advocate for Parents and was able to give testimony relating to the discussions that occurred at the two revision IEP meetings in October and November 2008 which she attended and at which she offered her recommendations. However, she has never evaluated or worked directly with the Student, and, although she made a brief visit to Student's regular education Third Grade classroom after Parents notified District of their intent to place Student privately, she did not visit Student's special education classroom. Finally, the testimony of [REDACTED], as the Associate Executive Director of [REDACTED] School, was relevant as to the characteristics of the private school into which Parents chose to place Student, but he has never evaluated or worked directly with Student either.

Discussion specific to each of the issues proposed by Parents for resolution by the undersigned hearing officer follows:

Parents' Issue No. 1

Whether on and after April 2, 2008 District violated Student's right to a free and appropriate public education ("FAPE") by:

- a. failing to properly implement the February 4, 2008 IEP including, but not limited to, failing to complete his assignment notebook on a daily basis and to provide his English Language Learner Instruction;
- b. failing to recognize and address Student's need for related services other than consult nursing services; specifically, social work services due to his increasing anxiety related to school attendance and his social problems, as well as his need for occupational therapy services, and speech/language services;
- c. failing to provide him with multisensory instruction; and
- d. failing to provide him with Extended School Year services.

Hearing Officer's Determination:

An appropriate education under the *Rowley* standard is discussed above in this Decision at pages 11 and 12. The development, review, and revision of an IEP for a child requiring special education must conform to the requirements of 34 CFR 300.324 and .328(2006).23 ILAC 226.220(2007) Accordingly, it must be reviewed at least once a year. 34 CFR 300.324(b)(i)(2006) The development and the appropriateness of the IEP prepared for Student at his annual review on February 4, 2008 are not at issue here. Rather, Parents allege in **Issue No. 1.a.** that aspects of Student's February 4, 2008 IEP were not implemented between April 2, 2008 and November 7, 2008, specifying only that District failed to complete Student's assignment notebook on a daily basis and that District failed to provide Student's ELL instruction.

First, the IEP did not call for District to complete Student's assignment notebook on a daily basis. It specified that *Parents and teachers would monitor Student's assignment notebook.* The teachers testified that there was not a problem regarding Student's homework assignments and that they had regular communication with Mother, who was able to contact by phone, text, and email during and after school hours. In addition, the Third Grade Teacher maintained a website for his classroom to which Parents had access. It is therefore concluded that Student was not deprived of FAPE due to District's failure to implement the part of the IEP relating to the Student's assignment notebook.

Second, in the case of a child with limited English proficiency, although the provision of ESL or ELL instruction itself is not an *IDEA* requirement, the IEP team *must consider the language needs* of the child as those needs relate to the child's IEP. 34 CFR 300.324(2)(ii)(2006) Student's February 4, 2008 IEP identified Student as an English Language Learner and noted his receipt of instruction from the ELL/ESL instructor. District personnel testified that the ELL instructor left the school in June 2008 at the end of the 2007-08 school year and that a replacement was not found until October 2008. However, there was further unrefuted testimony that in the Fall of 2008 Student spoke English, understood what was being said in the classroom, and that the lack of ELL support during the short period of time between the beginning of school in September and the hiring of a new ELL instructor did not prevent Student from receiving special education. Therefore, it is concluded that District did consider Student's status as an English Language Learner when it developed his IEP in February 2008, and that Student was not deprived of FAPE due to the brief lack of ELL support in Fall 2008.

In **Issue 1.b.** Parents allege that District violated Student's right to FAPE by failing to recognize and address Student's needs for the related services of social work, occupational therapy, and speech/language therapy. A child's IEP must be based on his most recent evaluation and include, inter alia, the related services he requires, if any, to make progress on his IEP goals and in the general curriculum and to participate with nondisabled peers. 23 ILAC 226.230(2007); 34 CFR 300.320(2006) However, the Student's IEP of February 4, 2008, the development and appropriateness of which is not at issue here as noted above, did not call for any of those services, and there was no testimony from any evaluator, instructor, or related service provider, District or private, that Student required occupational

therapy or social work services. Further, the testimony of Student's teachers was that Student did not exhibit anxiety or atypical social issues at school which might have required social work services.

In regard to speech/language services, according to the testimony at hearing, Student's teacher was given a copy of a private speech/language evaluation by Mother sometime after September 9, 2008. When a parent shares a private evaluation with a school district, the evaluation must be considered by the district in any decision made with respect to the provision of FAPE to the child. 23 ILAC 226.180(2007); 34 CFR 300.502(c)(1)(2006) District addressed the private report promptly by obtaining parental consent to conduct a special speech/language assessment and by convening an IEP meeting, pursuant to Parents' request, attended by the District speech/language therapist, and at which District advised that the team would reconvene to address the speech/language issue once the District evaluation was done. The evaluation was done, and the report of 11/13/08 included information from the private evaluation as well as the District's evaluation. At the IEP revision meeting on November 21, 2008, speech/language services were added to the Student's IEP per the District evaluator's recommendation. The Parents did not call the private speech/language therapist or the District speech/language therapist to testify at hearing. There was therefore insufficient evidence presented to allow a determination that speech/language services were required in any greater amount than called for in the November 21, 2008 IEP or that they should have been provided prior to the November 21, 2008 IEP. The preponderance of the evidence therefore does not support Parents' contention that Student was deprived of FAPE due to District's failure to provide Student with related services.

In **Issue 1.c.** Parents allege that Student was deprived of FAPE because the District did not provide Student with multisensory instruction. A student's IEP must include, inter alia, a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided him to enable him to work toward attaining the goals in his IEP and to make progress in the general curriculum and participate with his nondisabled peers. 23 ILAC 226.30(2007); 34 CFR 300.320(a)(4)(2006) Neither the IDEA nor the Illinois School Code require a school district to use multisensory instruction. So long as the IEP is designed to confer some meaningful educational benefit upon the child, the selection of instructional methods is left to the District in order to allow flexibility in the child's educational planning. *Beth B. v. Van Clay*, 282 F.3d 493(2002) The Student's February 4, 2008 IEP did not require the use of any specific methodology in instructing Student. Student's instructors were using peer reviewed and research based instructional materials, including *Reading Recovery*, University of Chicago *Everyday Math*, which was also used at the Parents' chosen private school, and *Open Court* reading curricula and providing Student with systematic instruction adapted to his individual needs in accordance with his most recent IEP. Per his IEP, modifications and accommodations appropriate to Student's individual needs were employed by his teachers. According to his teachers, Student was making progress, and he met his quarterly benchmarks in Spring and Fall 2008. The regular and special education teachers who were providing instruction to Student were all properly educated, experienced, certified, well qualified, and attentive to Student's needs. Furthermore, at the October 2, 2008 IEP revision meeting, when Parents' educational consultant recommended that District assess Student to determine if he could benefit from multisensory instruction and asked that Student be instructed by a resource teacher trained in *Wilson Reading*, the District promptly complied with her request by involving [REDACTED] and having [REDACTED] trained in *Wilson*. That it was not done instantaneously did not result in a deprivation of FAPE to Student.

In **Issue 1.d.** Parents allege a deprivation of FAPE because District did not provide Student with extended school year services in the Summer of 2008. A child's IEP must include a statement as to whether the child requires the provision of services beyond the district's normal school year (extended school year services or ESY) in order to receive FAPE. 23 ILAC 226.230(2007) Student's IEP of February 4, 2008 did not require ESY, and, as noted above, the propriety of that IEP is not at issue here. Additionally the testimony at hearing from the regular education and the special education teachers was that Student did not require ESY but that Student could have received it if Parents had wanted it for him.

Parents' Issue No. 2

Whether District violated Student's right to a FAPE in the Fall of 2008 by failing to appropriately implement his February 4, 2008 IEP?

Hearing Officer's Determination:

This issue is repetitive of Issue No. 1.a. above. As discussed above, the preponderance of the evidence does not support Parents' claim that District failed to appropriately implement Student's February 4, 2008 IEP in either the Spring or the Fall of 2008.

Parents' Issue No. 3

Whether the October 2, 2008 IEP was reasonably calculated to provide Student with FAPE due to the following violations by District:

- a. failure to review Student's speech/language issues and the private evaluation which had been provided to District at the beginning of the school year;
- b. failure to draft appropriate goals;
- c. failure to provide appropriate related services;
- d. failure to discuss and address Student's needs in all classes;
- e. reduction of language arts minutes;
- f. failure to increase special education minutes;
- g. failure to provide multisensory instruction;
- h. failure to place Student in a placement that provided multisensory instruction throughout the day;
- i. failure to provide Student with Special education instruction that was sufficiently intensive to meet his needs; and
- j. failure to address Student's needs in the areas of listening and verbal expression?

Hearing Officer's Determination:

A child's parent may request an IEP meeting to develop, review, or revise the child's IEP at any time. Within ten days after receipt of such a request, the district shall notify the parents of its agreement or refusal to convene the meeting. 23 ILAC 226.220(2007) According to the evidence in this matter, Parents requested an IEP meeting on September 17, 2008 to review Student's IEP with particular interest in setting some additional goals for listening, verbal and written expression, social studies, and science. Within 5 days the District noticed the requested meeting, acknowledging its agreement to Parents' request for a meeting, and the meeting was held 10 days later on October 2, 2008 per the notice. [REDACTED] presented her recommendations to the meeting attendees, a written expression goal was added to Student's IEP, and the team followed up by getting [REDACTED] and the District speech/language therapist involved to follow up and determine if further revisions of the IEP were needed. Under the applicable standard set forth in *Rowley*, the IEP resulting from the October 2, 2008 IEP revision meeting, according to the evidence presented, was not unreasonable. See *Wisconsin Dells v. Littlegeorge*, 295 F.3d 671(2002).

Specifically, in **Issue 3.b.** Parents allege a deprivation of FAPE due to the October 2, 2008 IEP's failure to draft appropriate goals. A child's IEP shall include a statement of measureable annual goals that reflect consideration of the State Goals for Learning and Illinois Learning standards and benchmarks or short-term objectives developed in accordance with the child's present levels of educational performance. 23 ILAC 226.230(1)(2007) [REDACTED] testified at hearing that the written expression goal that was added to Student's IEP at the October 2, 2008 IEP meeting at Mother's request was appropriate, and she did not testify that she or Mother complained of the goal as it was written prior to the filing of the due process hearing request in this matter. However, she testified at hearing that the present level of performance was not specific enough to allow progress on the goal to be measured. [REDACTED] testified that

Student was writing and was doing well with his writing, but that she wrote the goal because Mother wanted a writing goal and that she directed the goal toward what third graders should be able to do. The fact that she did not have a standardized test score or other objective baseline regarding sentence structure and paragraph development to put into the revision IEP for the requested written expression goal on October 2, 2008 does not render the goal unmeasurable or otherwise ineffective due to lack of specificity. At worst, it would constitute a procedural violation that did not result in the deprivation of FAPE. However, there was no testimony at hearing that the goal could not be implemented and progress on its quarterly benchmarks measured by [REDACTED]. See *James D. v. Aptakisik-Tripp*, 642 F.Supp.804(2009) At any rate, Student was removed from school less than 5 weeks after the goal was written before quarterly progress on it could be recorded. The preponderance of the evidence does not support an allegation of District's failure to draft appropriate goals for Student on October 2, 2008.

The allegations set forth in **Issues 3.a., 3.c., and 3.g.** have been sufficiently discussed under the determination of **Issues No. 1.b. and 1.c.** above. The October 2, 2008 revision IEP did not violate Student's right to FAPE for any reasons relating to the review of the private speech evaluation, failure to provide related services, or failure to provide multisensory instruction.

In **Issue No. 3.d.** Parents contend that the revision IEP of October 2, 2008 was not reasonably calculated to provide Student with FAPE because of a failure to discuss and address Student's needs in all classes. The evidence presented was that Parents requested the meeting "with interest in developing goals" in certain areas which they perceived were needed. Students teachers attended the meeting, and [REDACTED] made recommendations to staff including contacting [REDACTED] and [REDACTED] regarding multisensory instruction, which District did, and that she and Mother requested a written expression goal, which K.P. drafted. There is a lack of evidence to support Parents' contention that the resulting revision to the IEP was in any way unreasonable for the reason alleged here.

Issues 3.e. and 3.f. relate to the addition of the writing goal as a language arts goal without adding additional minutes in [REDACTED]'s resource class to work specifically on that goal. As [REDACTED] testified, she was already working with Student on writing as part of his language arts instruction in her resource class at the time the goal was written at Parents' request on October 2, 2008. Therefore, she simply showed an allocation of the existing minutes between the ongoing reading goal from the February 4, 2008 annual review IEP and the new writing goal. The fact that additional minutes were not added to the resource pullout time does not, under the facts in evidence here, render the October 2, 2008 IEP violative of Student's right to FAPE as not being reasonably calculated to provide Student with meaningful educational benefit.

Issue No. 3.h. charges that the October 2, 2008 IEP was not reasonably calculated to provide Student with meaningful educational benefit, or FAPE, as it is stated here, for the reason that it did not require placement of Student in a placement providing multisensory instruction throughout the day. The *IDEA* and the Illinois School Code specifically require that each special education student is to be placed in the least restrictive environment in which he can receive a satisfactory education, meaning that to the maximum extent appropriate, the placement shall provide the student with the opportunity to be educated with his nondisabled peers. *20 U.S.C. 1412(a)(5)(2005); 105 ILCS 5/14-8.02(d)(2008)* Reviewing courts have recognized lawmakers' strong preference for educating disabled children alongside their nondisabled peers. *Beth B. v. VanClay*, 282 F.3d 493(2002); *James D. v. Aptakisic-Tripp*, 642 F.Supp.2d 804(2009) Furthermore, the methodology to be employed in instructing special education students is left up to the District if it is done in accordance with IDEA's IEP provisions. See *Beth B. v. Van Clay*, id., and *34 CFR 300.320(a)(4)(2006)*

[REDACTED] testified that she did not ask for placement in a self-contained multisensory classroom at the IEP meeting on October 2, 2008. Rather, she asked that [REDACTED] be contacted regarding assessment of Student as a candidate for multisensory "instruction." The preponderance of evidence does not support the contention that Student's placement should have been changed on October 2, 2008 or even that Parents were seeking a change of placement on that date. Rather, the evidence shows that District had been implementing Student's IEP of February 4, 2008 and that it agreed to add a written expression goal to the IEP as requested on October 2, and that it agreed to consider a private speech/language evaluation

presented to it for the first time in the Fall of 2008 and conduct a special speech/language assessment for that purpose. The failure to change Student's placement on October 2, 2008 did not result in the IEP's failure to provide Student with FAPE as alleged.

In **Issue 3.i.**, Parents claim that the October 2, 2008 revision IEP was not reasonably calculated to provide Student with FAPE because it did not provide him with *instruction that was sufficiently intensive to meet his needs*. Perhaps this is in reference to the number of minutes of special education services or perhaps to the lack of the IEP's specification of multisensory methodology, which is likely, since Parents were already considering placing Student in a private school where there were only 5 students per teacher and 4 classrooms of students in the school building with the use of multisensory methodology in language arts at least. However, as addressed earlier herein, the District convened the IEP meeting at Parents' request, listened to Parents' advocate's recommendations, added a writing goal at Parents' request, and followed up with a speech/language assessment and [REDACTED] assessment to determine if Student would benefit from multisensory instruction, as [REDACTED] requested. Student's teachers testified that Student's needs were being met and he had met his quarterly benchmarks on his IEP goals at that point. Therefore, the preponderance of the evidence does not support the contention that the October 2, 2008 IEP was not reasonably calculated to provide Student with meaningful educational benefit as required by *Rowley* under the *IDEA* as the standard for FAPE.

Finally, as to **Issue No. 3.j.**, the preponderance of the evidence does not support the contention that District failed to address Student's listening or verbal expression and that the revision to the IEP of October 2, 2008 was therefore not reasonably calculated to provide him with FAPE. B.R. testified that she suggested to the IEP team that language based math should be avoided based on the private speech evaluation. As noted above, the District had already obtained Parents' consent to complete a speech assessment upon presentation of the private evaluation, and that assessment was completed in a timely manner and considered at the next IEP meeting on November 21, 2008.

Parents' Issue No. 4

Whether the November 21, 2008 IEP was reasonably calculated to provide Student with a FAPE due to the following violations by District:

- a. failure to place Student in a placement that provided multisensory instruction throughout the day;
- b. failure to provide Student with special education instruction that was sufficiently intensive to meet his needs;
- c. failure to provide appropriate related services, including more than 15 minutes per week of speech/language therapy; and
- d. failure to consider the full continuum of appropriate placement options, including Hyde Park Day School.

Hearing Officer's Determination:

First, in addressing Parents' two placement related allegations in **Issues No. 4.a and 4.d.**, each special education student is to be placed in the least restrictive environment in which he can receive a satisfactory education, meaning that to the maximum extent appropriate, the placement shall provide the student with the opportunity to be educated with his nondisabled peers. *20 U.S.C. 1412(a)(5)(2005); 105 ILCS 5/14-8.02(d)(2008)* To that end, each district is to have available a continuum of placement options beginning with the placement in which the student would be educated if he did not have a disability, i.e. the regular education classroom in his neighborhood school along with his typically developing, nondisabled, peers. *23 ILAC 226.300(2007); 34 CFR 300.115(2006)* He is to be removed from the regular classroom environment only if he cannot receive a satisfactory education therein, with the use of supplementary supports and aides, due to the nature or the severity of his disability. *105 ILCS 5/14-8.02(d)(2008)* To determine whether a child's placement in a regular school is appropriate, courts in this jurisdiction ask whether the education being provided there was "satisfactory", and, if not, "whether reasonable measures would have made it so". *James D. v. Aptakisik-Tripp*, 642 F.Supp. 804, citing *Board of Education v. Ross*, 486 F.3d 267 at 273(2007) Furthermore, a district is not required to offer parents a

variety of placement options and allow them to choose the one they prefer. Rather, among the available options on the continuum, the IEP team must choose the placement in which the IEP can be satisfactorily implemented. See *James D.*, id.

Student's placement in this case, as determined at his annual review on February 4, 2008, was in the regular Third Grade classroom in his neighborhood school with pullout special education services from [REDACTED] in her resource room, and the placement determination made at that time is not at issue here.

The meeting convened on November 21, 2008 was convened for the purpose of revision of Student's IEP upon completion of the District's speech/language assessment and [REDACTED] assessment of Student relating to the suitability of multisensory instruction for him. Parents had already removed Student from his public school placement and enrolled him in [REDACTED] School just prior to the end of the quarter two weeks prior to the meeting. [REDACTED] added a goal for language arts in the area of decoding and encoding, and the speech pathologist added an expressive language goal directed to use of classroom vocabulary based on her assessment.

On November 21, 2008, the IEP team discussed whether or not Student's placement in the neighborhood school should be changed to a more restrictive environment in order to meet his educational needs. There is no question that the District had available at that time multisensory classrooms in other buildings in the District, making those placements more restrictive for Student. And, as [REDACTED] and [REDACTED] testified, the students enrolled in those programs were more severely disabled than Student. Furthermore, [REDACTED] testified that she has visited the District's multisensory classrooms and found them to be excellent. [REDACTED], a trusted witness in this case who was called to testify on behalf of both parties, was "conflicted" about removing Student from his neighborhood school where he had had successes even though she felt, after assessing Student, that he would benefit from multisensory instruction, and so expressed her concerns. She testified that Student's IEP, including the revisions made on November 21 pursuant to her assessment and the speech/language assessments, could be implemented in the current neighborhood school placement with her supervision of the Student's teachers and with her direct service to Student, and with [REDACTED] to be trained in *Wilson Reading* the following month. The school principal was supportive of this plan, and [REDACTED] was excited about receiving the training. As a result, Student's placement was not changed at the November 21, 2008 IEP meeting. However, as [REDACTED] and [REDACTED] testified, the multisensory classrooms in the District were possibilities for Student's placement if his Parents ever returned him to the District and the IEP team determined that a more restrictive environment was required. There was no reason for the IEP team to consider placement of Student in a private therapeutic day school at District expense once they determined that his needs could be met in a less restrictive setting within the District, and it was not required to do so in order to comply with *IDEA's* FAPE requirements. Therefore the November 21, 2008 IEP did not fail to offer Student FAPE for either of these reasons.

As alleged in Issue 3.i. above in regard to the October 2, 2008 IEP revision, Parents once again allege, in **Issue No. 4.b.**, that the November 21, 2008 IEP was not reasonably calculated to provide Student with FAPE because it did not offer him "sufficiently intensive" instruction, which again has not been defined but which is presumably made in reference to the District's failure to agree to fund a private therapeutic day school placement at [REDACTED] School as the Parents had by then selected unilaterally. The preponderance of the evidence does not support Parents' contention that the IEP was not reasonably calculated to provide Student with meaningful educational benefit, especially in light of [REDACTED] added goal, the agreement to train [REDACTED], the additional accommodations, and the added speech/language services, all in response to the requests of Parents and their advocate.

In **Issue No. 4.c.**, the speech/language services added to the November 21, 2008 are alleged to be inadequate. However, Parents did not call either the District or their private speech/language therapist to contest the quality or quantity of services provided for in the IEP. The preponderance of the evidence therefore does not support Parent's contention that the November 21, 2008 was not reasonably calculated to provide Student with FAPE due to a failure to offer appropriate speech/language services. Nor does it support a finding that the IEP failed to offer FAPE due to the lack of any other unidentified "appropriate

related services". A discussion of this issue insofar as relates to provision of social work and occupational therapy services can be found in the determination and discussion under **Issue No. 1.b.** above.

Parents' Issue No. 5

Whether [REDACTED] School is an appropriate placement for Student?

Hearing Officer's Determination:

In reference to Parents' request for relief in the form of tuition reimbursement for the unilateral placement at [REDACTED] School, *IDEA* regulations provide that a hearing officer may require a school district to reimburse the parents of a child who previously received special education and related services from the school district for a private placement made by the parents without consent of or referral by the district if Parents provided the district with at least ten business days notice prior to removal of the child from his public school placement, and if she determines that the district had not made FAPE available to the child in a timely manner prior to the private school enrollment. If the determination is that FAPE had not been provided, then she must also determine that the private placement selected by the parents is appropriate. *34 CFR 300.148(c)(d)(2006)*

The only witness called by Parents to testify regarding [REDACTED] School was [REDACTED]. He is the Associate Executive Director of [REDACTED] School and the Principal of another of the school's campuses, not the one attended by Student. He was able to give a description of the private school's classrooms, staff, number of students in attendance, curriculum and instruction. It has a maximum of 40 students in attendance in 4 classrooms, all learning disabled. [REDACTED] did not assess or work with Student, and, according to his testimony, the staff who have worked with Student aren't permitted to testify at due process hearings. District, including the staff who had been working with Student, were not invited to participate in any meetings relating to the development of Student's ILPs.

As discussed under Issues No. 3 and No. 4 above, [REDACTED] School was not the LRE for Student in Fall 2008 when Parents placed him there unilaterally. District had been implementing Student's IEP in his neighborhood school, and, even with the IEP revisions made in response to Parents' request for speech/language services and multisensory instruction, the team determined that FAPE could be delivered to Student in his neighborhood school, or, if he were to return and require a more restrictive placement, in one of the District's multisensory programs in another District school. Parents did not challenge the IEP until submitting the due process hearing request in this matter in April 2010, after Student had been enrolled in [REDACTED] School for the 2008-09 and 2009-10 school years, when they sought to recover from the District the funds spent for their unilateral placement of Student.

[REDACTED] of the United States District Court for the Northern District of Illinois has provided a discussion of the law governing a parent's request for reimbursement for private school tuition, including *Burlington v. Dep't of Educ.*, 471 U.S. 359, 370(1985), in his decision in *James D. v. Aptakisik-Tripp*, 642 F. Supp.2d 804(2009). The *James D.* decision, argued by District in support of its position in this matter, is particularly compelling because it is on point with the facts of the case at hand. Parents in that case unilaterally enrolled their ten year old learning disabled child at [REDACTED] School when District offered an appropriate education in a regular public school with special education instruction and services. Parents subsequently sought reimbursement of the private school tuition in a due process hearing request. The court upheld the Impartial Hearing Officer's denial of the parents' request for reimbursement for the unilateral placement because the parents failed to prove that the District's IEP and placement based on that IEP was inappropriate. Because it has been determined that District **did** offer FAPE to Student in this case at all times relevant to the issues asserted by Parents, the determination of Hyde Park Day School's appropriateness need not be made in regard to the Parents' request for reimbursement.


Regarding Parents' request placement at [REDACTED] School at District expense as compensation for the deprivation of FAPE in this matter between April and November of 2008, the Seventh Circuit has determined that compensatory services are an allowable remedy in cases where a Student has been denied FAPE. See discussion of same in *Evanston v. Michael M.*, 356 F.3d 798(2004),

cited by Parents in support of their request. However, it has been determined that there has been no deprivation of FAPE that would warrant an order of compensatory services in this cause.

IT IS THEREFORE ORDERED:

That Parents' requests for reimbursement of private school tuition and compensatory services in the form of one year at [REDACTED] School at District expense are denied.

DATED: August 26, 2010


Stacey L. Stutzman
Impartial Hearing Officer

RIGHT TO REQUEST CLARIFICATION

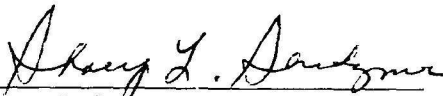
Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought,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

CERTIFICATE OF SERVICE

The undersigned due process hearing officer certifies that she served copies of the aforesaid Decision and Order upon Parents, Parent's counsel, upon District, through its legal department's representing counsel, and the Illinois State Board of Education at their respective addresses by depositing same with the United States Postal Service at Libertyville, IL, certified mail postage prepaid, on August 26, 2010 before 5:00 p.m.



Stacey L. Stutzman
Impartial Hearing Officer