

Case Number: 2010-0381

[REDACTED] vs. [REDACTED]

Hearing Officer: Stacey Stutzman

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

JAN 03 2011

Impartial Due Process Hearing Decision Cover Page

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

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

Parent Name [REDACTED]
Address [REDACTED]
Represented by pro se (attorney [REDACTED] withdrew from representation on 9/13/10)

Date and Timelines

Date of Written Request: 04/06/2010
Date of Pre-hearing Conf: 08/02/2010

Date of Hearing: 12/13/2010 to 12/13/2010
12:00:00 AM
Date of Decision: 12/30/2010

Summary of Decision

Student is an 11 year old student in 6th grade at a public magnet school. She has received special education services due to a learning disability since 2008, and prior to that she received speech therapy due to a speech/language impairment. Student's Parent was represented by counsel who prepared the hearing request in this matter, dated March 30, 2010, and who participated in the Pre-Hearing Conference but withdrew the night before the case was scheduled for hearing on September 13, 2010. Parent was given time to secure new counsel but chose to proceed pro se and represented herself at the due process hearing on December 13, 2010, having eliminated from her final witness list all of the witnesses previously identified by her attorney, except for herself. Prior to hearing, the parties participated in state sponsored mediation and an IEP meeting. Parent advised that the issues remaining on the date of the hearing included whether District violated Student's right to FAPE when 1) it failed to conduct a sufficiently comprehensive evaluation to identify all of Student's special education and related services needs from September 2008 to the present time; 2) it terminated Student's speech/language therapy in December 2008 without proper assessment and notice to Parent and failed to provide any further speech/language services thereafter, and 3) it refused to provide door-to-door home to magnet school and back transportation with a bus aide for Student under the IDEA from September 2008 to present, which Parent contended was required due to Student's ADHD and executive functioning disorder, as subsequently diagnosed by a private evaluator in April of 2010. As relief at the time of hearing, Parent requested reinstatement of speech/language services, door-to-door transportation with a bus aide, reimbursement for the cost of transportation, reimbursement for the cost of independent evaluations, and compensatory speech/language services and tutoring.

HELD: For Parent on Issues 1 and 2 and for District on Issue 3. The preponderance of evidence proved that District's evaluation was inappropriate and the IEEs were appropriate and that Student's programming based on the District's evaluation was insufficiently intensive and comprehensive. However, there was insufficient evidence to support Parent's contention that Student's ADHD and executive functioning deficits require door to door special transportation and a bus aide.

ORDERED: 1. That District shall reimburse Parent in the amounts of \$420 for private psychological and speech evaluations.

2. That District shall provide Student with direct speech/language therapy as a related service as part of her IEP ; and

3. That District shall provide ESY services and pay for private tutoring and speech/language therapy in compensation for the deprivation of FAPE from 2008 to present.

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)
) ISBE CASE NO. 2010-0381
)
) Stacey Stutzman
) Impartial Due Process
) Hearing Officer

This matter is before the undersigned impartial hearing officer for a due process hearing concerning Parent's request for Orders that District provide Student, who is eligible for special education and related services due to a learning disability, with direct speech/language services and door-to-door transportation with a bus aide to and from her home to the magnet school she attends, that District provide compensatory speech/language therapy and tutoring, and also that District reimburse Parent for transportation costs and for the costs of independent psychological and speech/language evaluations. 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

Parent was represented by an attorney at the outset of this case, and the attorney submitted Parent's request for due process hearing, dated March 30, 2010, to District's Superintendent, who received it on April 6, 2010. The hearing request alleged violations of Student's right to a free appropriate public education for multiple reasons, including assessment and programming, dating back to the Spring of 2008, and the prayer for relief included, inter alia, a request that District pay for independent educational evaluations in areas of identified need, including academic and speech/language assessments. District forwarded the hearing request to the Illinois State Board of Education (ISBE) on April 14, 2010. (See *District Request for an Impartial Due Process Hearing Officer*) District's counsel submitted a brief letter to Parent's counsel dated April 19, 2010, wherein he stated that he was declining to respond to the allegations in the Parent's hearing request because the IEP of January 27, 2010 constituted "... prior written notice as to the issues raised in the complaint". He offered to convene a resolution session on April 22 or 23, 2010.

ISBE assigned this matter to a previous hearing officer via its Special Education Database System (SEDS) on April 15, 2010. That hearing officer scheduled the Pre-Hearing Conference for May 7, 2010 in a Notice of Pre-Hearing Conference dated April 20, 2010. However, it did not proceed as scheduled, and no Order was entered continuing it to another date¹. The parties did not participate in a resolution session or a mediation in lieu of resolutions session during that period, nor did they provide the former hearing officer with signed waivers of the resolution session. The original hearing officer was recused from this case on July 6, 2010, at her request, and the undersigned hearing officer was notified of her appointment on July 6, 2010 via SEDS, at which time she telephoned and emailed attorneys for both parties in an attempt to schedule the Pre-Hearing Conference. The file materials from the previous hearing officer were provided to the undersigned on July 19, 2010.

On July 7, 2010, one day after appointment to the case, the undersigned hearing officer received a warning from ISBE that the Pre-Hearing Conference had not been held. At that time, SEDS indicated that

¹ Email correspondence in the file provided by the former hearing officer indicates that there were difficulties communicating with the attorneys for the parties and that the attorneys had difficulty communicating with each other, that a an IEP meeting and/or resolution session had originally been scheduled for April 27, but it did not proceed, that District's attorney requested a continuance to May 14, Parent's attorney requested a continuance to May 25, although no new date was ever established, and that by June 21, 2010, the parties still had not met to discuss settlement, at which time the hearing officer advised the attorneys that she was seeking recusal due to her decision not to renew her contract with ISBE.

11 warnings had been sent to the previous hearing officer. Therefore, upon the request of Parent's attorney and the failure of the attorney for the District to respond to email or phone calls, an Order was entered on July 12, 2010 scheduling the Pre-Hearing Conference for August 2, 2010. The Pre-Hearing Conference was held as scheduled on August 2, 2010. Counsel for District did not request a continuance nor did she participate in the conference or submit witness and document lists. The Pre-Hearing Conference Report dated August 2, 2010 is attached to the transcript of this hearing and incorporated into the record in this matter as *Hearing Officer Exhibit A*. A copy of the report was provided to both parties' attorneys on August 2, 2010. It was provided to Parent by this hearing officer, at Parent's request, on September 28, 2010 via email. At the time of the hearing, Parent stated that she had not received a copy of the Pre-Hearing Conference Report. Another copy was provided to her by the undersigned on December 13, 2010 prior to beginning the due process hearing.

Hearing was scheduled to proceed on September 14, 2010, pursuant to the request of Parent's attorney at the time of the August 2 Pre-Hearing Conference. However, per Order dated September 14, 2010, it was continued to September 28, 2010, when Parent's attorney sought the continuance and then withdrew from representation of Parent on September 13, 2010. Per Order dated September 28, the Hearing was continued upon joint request of the parties to October 26, 2010 to allow time for settlement negotiation and possible mediation. It was continued to November 16, 2010 and then to December 9, 2010 due to joint requests based on mediation by Orders dated October 26, 2010 and November 16, 2010. It was continued from December 9, 2010 to December 13, 2010 at the request of District counsel at a status conference on December 2, 2010, with agreement of Parent, by Order dated December 3, 2010.

The parties reported that they participated in state sponsored mediation on October 26, 2010 and on December 2, 2010, and that mediation resulted in IEP conferences being held on November 19, 2010 and December 2, 2010.

Hearing was convened as scheduled on December 13, 2010 at 8:30 a.m. at Student's school of attendance. This Decision is not being issued within 45 days of the initiation of the 45 day timeline due to the above described postponements. It is not being issued within 10 days of completion of the due process hearing due to the granting of this hearing officer's requests for extensions of time in its preparation from December 23, 2010 to December 31, 2010. This Decision was completed and submitted on December 30, 2010.

In attendance at the hearing of this matter were Parent, representing herself, and District's attorney, [REDACTED]. Accompanying Parent was her friend, [REDACTED], and also in attendance during parts of District's witness testimony was the Assistant Principal of the school, [REDACTED]. The hearing was reported by [REDACTED].

Parent testified on her own behalf. Parent rested her case at the conclusion of her own testimony. She was also called to testify by District. Additional witnesses called to testify on behalf of District were the following District employees: [REDACTED] Case Manager [REDACTED], Special Education Teacher; and [REDACTED] Speech/Language Pathologist. District rested its case at the conclusion of the testimony of the aforesaid witnesses.

Parent submitted 111 pages of documents for use at hearing. District submitted 167 pages of documents for use at hearing.² Documents used and put in evidence at hearing included: P1-72, 76-111; and D1-21, 25-30, 41-82, 84-86, 89-90, 92-96Y, 99-103, 106, 109-110, 114, 117.

Neither party submitted copies of legal precedent in support of their respective positions.

² Parent documents are preceded by a "P" and District documents by a "D" herein. District documents include a notification numbered 62a and an IEP numbered 96A-96Y.

Issues³

1. Whether District violated Student's right to a free appropriate public education during the period from September 2008 through the present time by failure to conduct adequate assessments of all areas of potential disabilities, with the result that student's educational program for this period did not address, or addressed inadequately, her learning impediments, communication impairments and behavioral management?
2. Whether District violated Student's right to a free appropriate public education with regard to the provision of speech/language therapy:
 - A. by terminating Student's speech/language therapy at the December 8, 2008 IEP meeting without appropriate assessment of her need for same;
 - B. without providing Parent with notice prior to the meeting that termination was to be considered at the meeting;
 - C. and by failing to provide Student with direct speech/language therapy as a related service since termination of the service on December 8, 2008?
3. Whether District violated Student's right to a free appropriate public education by failure to provide Student with door-to-door transportation between her home and her school of attendance and with a bus aide due to her disability from September 2008 to the present time?

Statement of Facts

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 female of average intelligence who is enrolled in the 6th grade at a District magnet school pursuant to a program under *No Child Left Behind* that allows her to attend the magnet school instead of her neighborhood school. [REDACTED] Parent; P81) She attends the general education program with typical peers and is pulled out for learning disability resource services based upon her eligibility for special education under the *IDEA* as a child with a learning disability, which eligibility was determined at a conference held on December 8, 2008, midway through Student's 4th grade year at the magnet school. [REDACTED]; D41-61)

The IEPs developed for Student in the District, dated May 16, 2007 and May 30, 2008, called for 120 minutes per month of speech/language therapy due to a speech/language impairment. The Modifications and Accommodations to be provided Student in her 2007 IEP included provision of a clear speech model and positive feedback for correct production of the /r/ sound.(Parent; P4-17) However, speech/language therapy was not provided in the IEP developed on December 8, 2008 or in the IEP of December 8, 2009/January 27, 2010. [REDACTED] D41-61) Student's most recent IEP of December 2, 2010, developed in the course of these proceedings, calls for 30 minutes per month of consultation/collaboration between the speech therapist and the special education teacher, but no direct speech/language services. [REDACTED]; D96-T)

Formal assessments of Student's cognitive ability, academic achievement, and visual motor integration were performed prior to the eligibility conference held on December 8, 2008.(D25-30) The

³ Prior to the beginning of hearing, Parent identified the following as issues she wished to have resolved at hearing following completion of state sponsored mediation and IEP meetings in December. Issue No. 1 is Issue No. 1.a. from her former attorney's Due Process Hearing Request of March 30, 2010 and Issue 1.A. from the Pre-Hearing Conference Report. District counsel objected to Parent's desire to retain this issue on the grounds that she had released some of the witnesses on her list because she believed she would only have to address "speech and transportation". Hearing Officer advised District counsel that she could elect to call any witnesses she wished from her witness list if she desired to do so to address all issues.

evaluation did not include formal assessment of receptive and expressive language by a speech/language pathologist, nor did it include formal assessment of Student's adaptive behavior and attention, although the psychologist reported that Student "clearly has difficulty maintaining focus and concentration." The Domain Sheet prepared prior to the evaluation called for assessment of Student's social/emotional status, as there was no existing information regarding how the environment affected her educational performance, including her adaptive behavior and independent functioning, and the eligibility determination includes a note that Student and Parent were interviewed regarding social/emotional status. (D20, 25-30, 43-44; [REDACTED])

The District provides bus transportation for Student, as for her typical peers, pursuant to its *NCLB* Options Program parameters, from Student's neighborhood school to the magnet school and from the magnet school to her neighborhood school daily [REDACTED]. Parent has requested that District transport Student to and from her home to the magnet school with a bus aide. In asking the District to provide same as part of Student's IEP, she has cited the unsafe neighborhood in which Student waits for the bus, sexual harassment of Student on the bus by an older male student in October 2007 and June 2008 when Student was 8 years old, and Student's inability to use proper judgment, based on reduced problem solving skills in the current bussing situation. (Parent; [REDACTED], P67, 104-107; D114, 117) However, the IEPs developed for Student from December 2008 through December 2010 reflect that Student is not eligible for special transportation. (D59, 82, 96-W)

Student moved to Illinois from Kentucky with her mother in 2006. (Parent) Student received evaluation and early intervention in Kentucky due to an expressive language delay and mild articulation problems. On September 5, 2005, at the end of Student's kindergarten year in Kentucky, a conference was held to discuss assessments of Student's communication, including receptive and expressive language and speech assessments, and to revise her IEP. It was noted that she had mild articulation errors of /R/ and /TH/ which could slow progress in spelling, reading, and writing if not corrected. Testing reportedly put her in the average range for expressive and receptive language at that time, with above average paragraph comprehension. It was also noted that Student had difficulty focusing and staying on topic in small or large group activities. The kindergarten teacher noted that Student was at the level of her peers in most academic areas but was very challenged to stay focused on task to the point of not doing her work. (Parent; P1-3)

On May 16, 2007, at the end of 2nd Grade at Student's previous public school in the District, an IEP was developed calling for 120 minutes per month of Direct/Consultative speech/language services due to a primary disability of Speech Language Impairment. (D1-14; P4-15) The goal in that IEP was for the production of /r/ and /r/ blends with 80% accuracy. (P4; D7) The IEP did not require transportation for Student due to her disability at that time. (P15; D12) Student transferred to the magnet school in 2007 for her 3rd grade year. (Parent)

2008

A speech/language goal dated May 30, 2008 was submitted at the end of Student's 3rd Grade year, pursuant to a conference convened for the stated purpose of Student's 3-year evaluation that was attended by the Case Manager, Parent, and the Speech/Language Pathologist at the magnet school.⁴ Student's Primary Disability at that time, as listed on the conference sign in sheet, was "SPL-1". (P17) The aforesaid speech/language goal was developed for implementation by the speech/language pathologist effective from May 30, 2008 to May 30, 2009 with speech/language services in the amount of 120 minutes per month. The goal sheet included the following entry for Student's Present Level of Academic Achievement and Functional Performance:

⁴ District did not include any documentation relating to the 3-year evaluation or the 5/30/08 IEP in its disclosure packet, and District counsel advised the hearing officer during the due process hearing that District has been unable to find a report of speech language assessment for the triennial evaluation referred to here. Parent provided a 2 page document consisting only of a sign -in sheet and a speech/language goal sheet for that date.

(Student's) voice, fluency, expressive and comprehensive language skills are generally within normal limits with the exception of the /r/ sound. While great progress has been made with (Student's) accurate production of this sound in the initial, middle and final positions of words, she continues to have difficulty in blends (i.e., kr, gr, br, etc.)

The measurable annual goal developed for Student was: "(Student) will produce the /r/ sound in blends with 90% accuracy in conversational speech. Topic maintenance skills will also be monitored." Accompanying the aforesaid goal were 3 quarterly benchmarks relating to production of the /r/ sound in blends with 90% accuracy, to be assessed weekly by observation and charting of progress. The boxes to be checked as to whether Student "Meets" or "Does not meet" those benchmarks for 11/2008, 02/2009, and 05/2009 are blank on Parent's copy of the goal sheet.⁵ (P17)

Student was placed in an accelerated classroom for 4th grade in Fall 2008, although not because of her academic profile. [REDACTED] In September 2008 Parent asked the Case Manager how to get help for Student because she was having difficulty with all the homework being assigned to her. (Parent) Parent was given a consent for a *Special* evaluation which she signed on September 22, 2010. She believed that Student was being assessed for a Section 504 plan to supplement her speech therapy. (Parent; P43) A Domain Sheet dated September 22, 2010 identified all listed domains as relevant to the assessment of the Student, with the exception of Motor Abilities. Pursuant to same, Student was to be given psychological and achievement assessments, social assessment, and vision and hearing screenings, and a medical history was to be obtained from her health care provider. The notations regarding *Communication Status* were as follows:

<i>EXISTING INFORMATION ABOUT THE CHILD</i>	<i>ADDITIONAL EVALUATION DATA NEEDED</i>	<i>SOURCES FROM WHICH DATA WILL BE OBTAINED</i>
<i>Currently receives S/L services</i> Review of most recent S/L assessment	review of most recent assessment	-records review -parent interview -student observation

(emphasis added)(D20)

The classroom teacher signed a Student Referral form requesting an *Initial Full and Individual Evaluation*, noting Parent as the referral source, which signature is dated November 16, 2008. On that form, the teacher wrote:

(Student) has only been with me for 4 weeks. Conferring with the third grade teacher and my observations, (Student) has troubling (sic) completing task and staying focus (sic) on task. Sat with groups, sometimes had to separate her from group, because she is easily distracted. Instructions has (sic) to be repeated several times, before she starts work. Extra examples also has (sic) to be given step by step to make sure she understands. (Student) needs continuous monitoring throughout the coarse (sic) of the day. She struggles daily with her academics, especially in the areas of reading.

⁵ As noted in footnote 4 above, District did not produce a copy of this document.

The Referral form stated that Student had an *identified disability of speech language for which services are being provided*. Student's Illinois State Achievement Test Scores put her in the 15th percentile for reading and at the 4th percentile for Math, and the Score/Grade Equivalent for the "Dibbles" (sic)⁶ is noted as "Intensive." Her grades at that time were noted as Fs in Reading, Mathematics, and Written Language, and a D in Spelling. The teacher further noted that "(Student) appears to always want to learn."(D15-17)

The school psychologist assessed Student on October 9, 2008, observed Student in the classroom for 45 minutes on October 20, 2008, and issued a report of her assessment, which is signed but undated.(D25-30) In her report, she noted the classroom teacher's reports, including that she "sometimes has to repeat directions four or five times" and that Student "responds inappropriately to some questions" and that she "often needs extra examples in order to understand directions." She also noted Parent's report that medical problems resulted in Student's poor attendance at school in first and second grades and that Student had been diagnosed with an inner ear disturbance in one ear by an audiologist. During the psychological testing, Student was noted to have "often introduced extraneous and sometimes superfluous information when answering questions."(D25)

The psychologist administered and reported Student's scores on the Developmental Test of Visual Motor Integration (*VMi*) for the purpose of measuring Student's fine motor skills, the Wechsler Intelligence Scale for Children-Fourth Edition (*WISC-IV*) to measure Student's academic potential, including subtests of verbal comprehension, perceptual reasoning, working memory, and processing speed. She administered the Kaufman Test of Educational Achievement-Comprehensive (*KTEA*), including math, reading, and spelling subtests, to measure Student's academic achievement.(D27-28)

The *WISC-IV* revealed Student's full scale I.Q. as 87, in the low average range, and a verbal I.Q. of 95, in the average range. It also revealed composite scores of 82, low average, for perceptual reasoning, and 91 for working memory and 94 for processing speed, in the average range. Student's scaled scores on the Block Design and Matrix Reasoning subtests of perceptual reasoning and on the letter-numbering sequencing subtest for Working Memory were 6s, below average. The remaining subtest scores were in the average range.(D28)

On the *VMi*, Student's Standard Score was reported as 75, in the 5th percentile, an age equivalent of 5 years 11 months.(D28) The psychologist classified Student's fine motor skills as "borderline" based on this test, but did not refer Student for an occupational therapy assessment.(D29) The Domain sheet had not deemed motor skills as relevant to Student's evaluation. It was noted that Student wears eyeglasses. (D20, 25,29)

The school psychologist reported Student's summer 2008 ISAT scores as a percentile rank of 49 in reading, but the Eligibility Determination information dated 12/8/08 that reported it as 29. She reported a percentile rank of 7 in Math.(D26) The school psychologist reported deficits in all areas of academic achievement, with Standard Scores of 85 to 89, Percentile rankings of 16 to 23, and Grade Equivalents at the 2nd Grade Level, including Composite Scores of 2.2 in Reading and 2.6 in Math. It was concluded, inter alia, that Student's "inability to decode words interfered with her ability to comprehend passages".(D27) Her report recommended special education services "to remediate processing and academic deficiencies." (D29)

The District's evaluation of the student did not include the administration of any behavior rating scales or other such formal standardized behavioral assessments. It was reported at the eligibility conference that she could benefit from social work services in the amount of 30 minutes per month to "help ease any transitions" attributed to the cultural differences between Kentucky and her present residence. (D25-30; D41-61)

█ began working as a speech pathologist at Student's school in mid-October 2008, and Student was assigned to her caseload at that time. She was not working at the school on September 22, 2010 and did not participate in the preparation of the Student's Domain Sheet to determine what assessments were to be done for the *Special*, or *Initial*, Evaluation. Student only received 15 to 30 minutes of consultative and group speech/language services in September 2008 before █ was assigned to the school. She

⁶ It is assumed that this is a reference to the early literacy assessment referred to as *DIBELS*

received only 30 minutes of direct group service in October 2008, which service was provided by P.O. on October 28, 2008, and she received 120 minutes in November 2008 from [REDACTED]; P24) P.O. addressed the goal and benchmarks prepared by the former speech therapist regarding the production of /r/ blends. In a progress report dated 11/10/08 for the first quarter of the school year, she reported that Student had "met her benchmark goal of producing /r/ blends in words and phrases with over 90% accuracy." Although the first 2 quarterly benchmarks accompanying the annual goal in question called for Student to perform the tasks referenced in the benchmarks during 3 consecutive therapy sessions, [REDACTED] had only seen Student twice, on October 28 and November 4, 2010 before issuing the aforesaid progress report, and there is no record of Student's performance on her benchmarks by any therapist prior to [REDACTED] viewed Student's tendency to go off topic as an "attentional" issue, not a speech issue. She saw no need to address anything other than the May 30, 2008 goal regarding /r/ blends. [REDACTED]; P17, 24; D102)

[REDACTED] assessment of Student for the Fall 2008 Evaluation was "informal." Although the Domain Sheet of September 22, 2010 called for her to review Student's most recent speech/language assessment, which should have been performed and reported for the alleged triennial evaluation meeting of May 30, 2008, there was no previous assessment in Student's records for her to review. Rather than perform a formal assessment in the absence of one to review, she met with Student on December 8, 2008, the date of the eligibility IEP conference, conversed with Student, and determined that Student had met all of the benchmarks accompanying her /r/ blend goal. She did not administer any formal standardized assessments of Student's expressive or receptive language prior to the December 8, 2010 eligibility conference or prior to terminating Student's speech/language services on December 8, 2008. [REDACTED]; P24)

An IEP meeting was convened on December 8, 2008 and was designated as an *Initial Eligibility Conference*. (D41) No written notice of the meeting or its purpose, was provided to Parent, but Parent was present at the conference, believing it to be a 504 meeting to get Student academic support due to her difficulties in school. Her concerns were noted regarding Student's academics, her speaking/language difficulties, her physical and emotional sensitivity, and Parent's desire for Student to receive more 1:1 support. (Parent; D47)

The Eligibility Determination notes addressing the findings of the evaluation in the various Domains were completed by the clinicians either before or at the meeting. [REDACTED] D43-44) According to the *Results of the FIE* section of the *Eligibility Determination*, a complete vision examination and a complete audiology exam were recommended at the time of the meeting. (D43) The summary of Student's academic performance noted her second grade level achievement scores on the *KTEA* in Math, Reading, and Spelling, that her misspellings were usually fairly significant, and that she had an inability to decode words, limiting her comprehension.(D43) It further noted Student's *WISC-IV* results as average verbal comprehension, working memory, and processing speed and low average perceptual reasoning and full scale intelligence, and borderline fine motor skills per the *VMI*.(D44) Student's Spring ISAT scores were reported as PR 15 in Reading and PR 4 in Math. The Summer ISAT scores were listed as a PR 29 for Reading and a PR 7 for Math.(D47)

In determining Student to be eligible due to a Learning Disability, it was reported by form that Student had "a significant discrepancy between her achievement commensurate with her age and ability in the areas of basic reading skill, reading comprehension, math calculation, and math reasoning. The areas of oral expression, listening comprehension, and written expression were not checked as discrepant or otherwise deficient.(D45)

P.O. recorded on the eligibility sheet at the conference held on December 8, 2010 that she was not recommending any further speech/language services for Student. Under *Communication* on the *Eligibility Determination* Sheet, she wrote in handwriting as follows:

(Student) displays adequate receptive/expressive language skills per 5/08 speech/lang assessment.(emphasis added) She displays adequate articulation and fluency during conversation. (Student) does continue to use a louder voice quality, however, it is not distracting or harmful to her (unreadable) She does display intonation

patterns that are within normal limits, however, she (unreadable) does display mild, flat intonation. Inconsistent during conversation. At this time, speech/language services are not recommended due to the lack of a speech/language delay/disorder.

As there was no 5/08 assessment for her to review, she had not in fact reviewed it as stated. (D44; Parent) filled out an *Exit Worksheet* dated 12/8/08 stating that dismissal of Student from speech services was based on Student having met all targeted speech and language goals/benchmarks and on Student having been “assessed in 5/08 and speech/language skills were deemed to be within normal limits for her age” (D109) She also completed a *Termination Summary* dated 12/8/08 referring to testing performed in 5/08 wherein Student’s receptive/expressive language skills “appeared to be within normal limits.” She noted that Student’s “oral expression and auditory comprehension during conversation was age appropriate at this time.” (D109-110)

Student’s eligibility for special education was designated as “LD II”. (D41) The need for a functional analysis and behavior intervention plan was rejected, noting that Student’s behavior “was not a concern.”(P52; D49) It was determined that specialized instruction and/or related service was necessary in Language Arts, Math, and Social/Emotional, and that accommodation or modification was needed for Language Arts, Math, Science, Social Science, and Social/Emotional. A typed list of modifications and accommodations to assist Student in the general education curriculum was included in the IEP.(D51; P53) No special instruction, service, accommodation or modification was deemed necessary for Student’s Independent Functioning or Speech/Language.(P51; D49) The IEP form included a section directed toward the need for Compensatory Services. It asked whether “...special education services were interrupted, delayed or not provided?” and included boxes to check for answers yes or no, but neither was checked. Instead “N/A” was typed in. In the space where the form questions the “Impact” of any failure to provide services, “N/A” was again typed in.(P60;D59)

IEP goals typed and brought to the meeting included one goal addressing Student’s needs in Language Arts/English/Reading and one addressing Mathematics, both noting her below academic and grade level test scores. The goals themselves did not address Student’s level of performance as stated. Rather they required Student to read and perform math tasks with “75% accuracy”, without any indication of her beginning “percentage of accuracy.” Although she was achieving at a second grade level, the goals did not call for her to progress to any higher grade level. (D52-53)

The social worker also submitted a goal addressing Student’s difficulty adjusting to the urban culture as compared to rural Kentucky, noting that Student is “somewhat naïve and sensitive.”(D54) The IEP provided 200 minutes of direct/consultative service from the Special Education Teacher in Language Arts/English/Reading and 200 minutes in Math in a separate classroom. The IEP document is unclear as to whether these were weekly or monthly minutes, indicating “weekly” under the cumulative minutes but “monthly” where it designated the total amount of special education and related services. It also provided for 30 minutes per month of social work services. (D55) Modified criteria were provided for grading Student in all academic subjects, wherein she would receive an A for a score of 75-100, a B for 65-74, a C for 55-64, and a D for 45-54. A grade of F is not noted for this adjustment in assessing Student’s performance.(D58)

The IEP stated that Student did not require transportation as a result of her disability. The form used does indicate that transportation can be provided for a student who has sensory needs, significantly reduced problem solving skills, or who is required by the District to attend a school other than one’s attendance area school to receive special education, among other justifications.(D59)

On the *IEP Summary Sheet*, every single one of the twelve listed “Learning Characteristics” was checked for Student, including:.....

- *Has difficulty following directions*
- *Processes information slowly*
- *Has a short auditory attention span*

- *Is distracted easily and loses focus/concentration often*
- *Spells poorly*
- *Has trouble putting ideas on paper*
- *Has difficulty understanding concepts*
- *Has difficulty following multiple verbal requests*
- *Is frequently distracted by extraneous noises*
- *Is disorganized and often misplaces things*
- *Has difficulty copying from the board*
- *Is slow to switch from one task to another*

Additionally, every one of the 14 items listed as a Modification or Accommodation for Instruction and Assessment is checked, with the exception of maintaining frequent eye contact, native language support, ESL, and provision of motivation and verbal rewards.(D60)

Finally, the placement determination indicated that placements considered, in the following order, were Regular Education with Supplementary Aides and Service, rejected because Student's "skills are below age & grade level;" Instructional Setting, rejected for the reason that Student's skills, although below age and grade level, "are not so far behind as to require all day intense services to make gain with her academic subjects"; and, finally, Resource Setting, accepted because it would allow Student to receive "more individualized attention while remaining with typical peers and participating in the fourth grade curriculum. A handwritten entry noted that social work services would be provided outside of the classroom. .(P57; D56)

The *Conference Recommendations* of December 8, 2008, which were typed and presented to Parent at the conclusion of the meeting, stated only that Student was eligible for special education and related services as listed on the IEP due to "LD II Resource Setting." The form did not indicate that a change in eligibility was required, nor that a change of special education or related services was required, nor that the Student would receive the special education and related services listed on the IEP, although those choices were available for checking on the form. Parent signed the form on December 8, 2008 waiving the 10 day waiting period for the IEP to be implemented. (P63; D62) Parent was not verbally advised during the meeting that Student's speech/language services were being discontinued. She was provided with a copy of the IEP at the conclusion of the meeting on December 8, 2008. Her understanding was that it was a 504 plan created at her request to supplement, not replace, Student's speech IEP.(P.C., Parent; D59)

2009

The L.D. Resource Teacher issued 3 very brief Progress Reports in Spring 2009 on January 28, April 1, and June 5, 2009. Boxes were checked indicating that services were provided and that IEP benchmarks were being met. No specific information was included in the reports regarding Student's academic progress. The teacher noted that Student would do better if she had more confidence in herself. (N.F.; D99-101)

Parent was not physically present for the annual review IEP meeting convened on December 8, 2009, midway through Student's 5th grade year, but was contacted for same by telephone. [REDACTED] Student met the benchmarks for the two annual Math and Reading Comprehension goals written on December 8, 2008.(N.F.; D52-53)

A typed IEP dated December 8, 2009, called for the continuation of Student's special education eligibility due to a Learning Disability. (D63-83) Regarding Student's Academic Needs, it noted the following:

.....
(Student) struggles with her academics. She has a difficult time in reading and math....she gives 100% all the time and always tries. She has good fluency and vocabulary skills....she struggles with comprehension and she is

extremely slow to complete her assignments, she is too dependent on her teachers (even though she knows how to do something she still won't proceed (sic) without the approval of her teacher or she is constantly asking if she is doing the work correctly even though she knows she is). In math her teacher indicated that her strength is that she listens well and always tries. She has a good understanding of multiplication, division, addition, and subtraction.... she has a difficult time with problem solving, fractions, decimals, measurement, time, algebra, and geometry....she is slow to complete any assignment and is dependent on her teacher too much.

The IEP provided only the following comment under *Curriculum-based Assessment Results*:

In her classes (Student) does well with her current accommodations and modification created for her. She benefits from individualized and small group instruction and while testing in all subjects."

It made no reference to Student's grades or the basis of the above statement in reference to any of her academic classes at the time of the conference.⁷ It provided the following *District/State Test Results*:

*Learning First Reading 2009: 8 out of correct 45....
Learning First Mathematics 2009: 20 of correct 45.
ISAT Spring 2009: Reading Percentile: 44,
Math Percentile: 56, Science Percentile 29.*

(D66)

The 12/8/09 IEP called for special education services in the form of direct instruction in a separate class for 400 minutes per week, 200 for Language Arts and 200 for Math and for accommodations in Science and Social Science,⁸ without provision of any related services.(D79) It included one goal for Language Arts and one goal for Math, both to be implemented by the special education teacher.(D75-78). Student was deemed not eligible for special education transportation. The modified grading system established in the 2008 IEP was to be continued.(D80) The decision regarding Student's need for extended school year services was deferred until April 15, 2010.(D81)The form stated that Students attending their neighborhood schools were expected to "walk to school except in unique circumstances", and that, where transportation is deemed a necessary related service, "almost all children will be able to travel with non-disabled children". (D82)

The present level of performance provided for the Language Arts and Math goals stated that "according to recent test data (Student) is performing below academic and age level." She was noted to be below standards on the ISAT for Reading. The Reading goal called for Student to "comprehend a broad range of reading materials with 75% accuracy" and is accompanied by 3 quarterly benchmarks directed toward reading comprehension. (D75-76)

The present level of performance accompanying the Math goal does not reference the ISAT Math score but the Reading and Science percentiles. The Math goal calls for Student to "demonstrate knowledge and use of numbers and their representations in a broad range of theoretical and practical settings. She will compute and estimate using mental mathematics, paper-and-pencil methods, calculators, and computers. (Student) will measure and compare quantities using appropriate units, instruments and methods with 75% accuracy."(D77-78)

⁷ Nor were report cards reflecting Student's grades in her general ed classes for this period put in evidence.

⁸ This appears to be in contradiction of the lists provided as accommodations and Modifications elsewhere in the IEP at D70-71 for Math and Language Arts.

The placement determination was "General education with special education support 21-60% of the school day outside of the general education setting, accepted for the reason that "Option was determined appropriate to meet student needs."(D79)

2010

On January 11, 2010, Parent wrote a letter to the Case Manager in confirmation of a conversation the week prior. Therein, she expressed concern that Student was not receiving speech and language therapy and that her reading benchmark assessment was an 8 out of 45 and her private testing from [REDACTED] revealed that Student was reading at a 3rd grade level although in 5th grade. She asked that Student's speech therapy be reinstated ASAP. Next, she expressed concern that Student had received several D's and an F on her progress reports but that none of the teachers had been talking to her about Student's lack of progress. Finally, she stated that transportation should be provided to Student due to reduced problem solving skills. (Parent; [REDACTED] P67; D114) A conference was noticed on January 13 for January 27, 2010 for the purpose of discussing Parent's concerns. [REDACTED] D84) On January 27, 2010 the Case Manager prepared a Referral for a speech/language assessment. On the Referral form, she noted Student's grades on the modified grading scale, including A's in Reading and Social Studies, C in Written Language, no grade in Spelling, and F's in Math and Science. Student had been absent only twice during the school year. Behavior was marked "N/A". Student was noted to have difficulty staying organized, completing assignments, and missing writing assignments down. She was reported to lack self-confidence. [REDACTED] D85-86) Parent signed a consent for a speech/language assessment on January 27, 2010. (D89)

In January Parent asked Student's teachers to help her in getting Student to turn in all of her homework also offered to modify the homework when she determined that it was not being modified pursuant to the IEP. In response, the math teacher and the homeroom/social studies agreed to try to work with Parent. However the writing teacher responded that Student "must accept the responsibility for paying attention in class...and must complete all home and classroom assignments" and complained to the Principal on March 10, 2010 that she was being asked to "perform duties that go well beyond the boundaries of our occupation and well beyond the boundaries of her IEP." The writing teacher requested that a meeting be scheduled with all of the teachers to discuss their "proper course of action." (Parent; P99-100) On March 23, 2010, the Case Manager noticed a conference for April 6, 2010 with Student, Parent, the Principal, and Student's teachers for the purpose of discussing Parent's concern that Student was not receiving accommodations as written in her IEP. It did not proceed. [REDACTED] D92)

In the meantime, as noted in the procedural history section of this decision above, the District having not reinstated speech services as requested or performed the assessment per the Case Manager's referral, Parent retained an attorney who submitted a request for due process hearing dated March 30, 2010, received by the District on April 6, 2010, including a request that District pay for IEEs of Student. District counsel did not respond to the request for IEE by either agreeing to it or by requesting a due process hearing to confirm the appropriateness of its own evaluation of Student. (See *Procedural History above in this Decision at page 3*)

Parent subsequently obtained an independent speech/language evaluation of Student on April 28, 2010 from a private certified speech-language pathologist. Student was 10 years 7 months of age at that time and in Grade 5 at the magnet school. A report of that evaluation dated May 5, 2010 was provided by Parent to her former attorney when she received it.⁹ (Parent; P70-71) According to the report, Parent advised the evaluator that Student had difficulty finding words to express herself and used words incorrectly in speech. Student reported that she had difficulty remembering her words when trying to tell a story. The private evaluator administered the *TOLD-4*, which measures components of spoken language, and reported the following scores, while noting that average standard scores are between 7 and 13:

⁹ Because Parent's attorney withdrew from representation on September 13, 2010, there is no record to show whether or not she provided copies of the IEEs to District before her withdrawal from the case.

<u>Subtests</u>	<u>Scaled Scores</u>	<u>Percentile</u>
<i>Sentence Combining(SC)</i>	5	5
<i>Picture Vocabulary(PV)</i>	8	25
<i>Word Ordering(WO)</i>	7	16
<i>Relational Vocabulary(RV)</i>	4	10
<i>Morphological Comprehension(MC)</i>	10	50
<i>Multiple Meanings(MM)</i>	6	9
 <u>Index Scores</u>		
<i>Listening (PV+MC)</i>	94	35
<i>Organizing(WO+RV)</i>	76	5
<i>Speaking(SC+MM)</i>	74	4
<i>Grammar(SC+WO+MC)</i>	84	14
<i>Semantics(PV+RV+MM)</i>	75	5
<i>Spoken Language(all subtests)</i>	77	6

Based on her testing, the independent evaluator described Student's performance as poor overall, with a relative strength in listening skills, in that Student could identify if language is grammatically correct and can point to a picture of an item when given an abstract phrase describing the item. Student exhibited poor expressive language skills, marked by limited expressive vocabulary, difficulty manipulating words and sentences to be grammatically correct, and word finding challenges. Deficits on the sentence combining, relational vocabulary, and multiple meanings subtests were consistent with word retrieval difficulties, indicating a lack of ability to effectively express her thoughts as the result of expressive language deficits. She recommended that Student receive 60 to 120 minutes per week of speech/language therapy to address expressive language deficits impacting Student's academic abilities. She also recommended further neuropsychological testing to assist in serving Student.(Parent; P70-71)

██████████ conducted a speech/language assessment of Student on April 22, 2010, pursuant to the consent for evaluation signed by Parent on January 27, 2010. (██████████ D94-96) She administered the Goldman Fristoe Test of Articulation (*GFTA*) and the Oral and Written Language Scales (*OWLS*). She did not report scores on the *GFTA* but reported normal articulation skills but for a slight distortion of the /s/ phoneme, which she attributed to an overbite. On the *OWLS*, she reported as follows:

Listening Comprehension
RS 66 SS 90 %ile 25 Stanine 4 Test Age Equivalent 8-10

Oral Expression
RS 60 SS 87 %ile 19 Stanine 3 Test Age Equivalent 8-4

Oral Composite
RS 177 SS 87 %ile 19 Stanine 3 Test Age Equivalent 8-6

Regarding the above results, ██████████ noted that (Student) displays **low, average** (emphasis added) *receptive and expressive language abilities*. She displayed difficulties maintaining focus and attention during more structured academic tasks. It should also be noted that when tasks became more challenging she had difficulties staying still in her chair, and asked to leave several times.... She concluded that Student did not have a communication impairment or disorder that adversely affected her educational performance or her ability to benefit from special education and that Student did not need speech/language therapy. Under additional comments, she referred to Student's "**low average**" (emphasis added) receptive and expressive

language abilities [REDACTED] D94-96) This assessment was not reviewed at an IEP conference until November 19, 2010. [REDACTED] D96-X)

On April 12, the Case Manager noticed a conference to review Student's "recent special evaluation" and to reconsider or change Student's IEP. [REDACTED] D93) That meeting did not proceed because the District's lawyer advised that because the request for due process had been received, the lawyer needed to attend the meeting. The Case Manager provided the lawyer with three potential meeting dates, but he said none were workable. She gave him 2 or 3 more dates, but he did not call her back by the end of the school year. [REDACTED]; D93)

At Parent's request, Student was evaluated for possible Attention Hyperactivity Deficit Disorder (ADHD) and learning disabilities by a neuropsychologist at the University of Illinois Chicago Office of Applied Psychological Services on May 5, 12, and 20, 2010. In addition to intake interviews with Parent and Student, the following tests were administered:

Behavior Rating Inventory of Executive Functioning-Parent
Child Behavior Checklist Ages 6-18-Parent Form
Child Depression Inventory (CDI)
Conners 3-Parent
Conners 3-Student
Conners Continuous Performance Test-II
Multidimensional Anxiety Scale for Children (MASC)
Wechsler Intelligence Scale for Children-IV
Woodcock-Johnson Test of Achievement-III

(P80-81) An eleven page report of the aforesaid evaluation, including test results and a detailed interpretation of same, was issued on July 15, 2010. (P79-91) The evaluator noted in the report that it is preferable to have a teacher's report to corroborate self-reported and parental reports of ADHD symptoms. However, Parent and evaluator were unable to get Student's teacher to agree to complete the necessary assessments after multiple attempts. (Parent; N.F.; P84)

According to the aforesaid evaluation, Student has average intelligence, with abilities evenly developed across the four domains, including a Full Scale I.Q. of 94, a verbal I.Q. of 96, and index scores for Perceptual Reasoning, Working Memory, and Processing Speed of 96, 97, and 94 respectively, all within the average range of cognitive ability.(P81-83)

On the Woodcock-Johnson test of achievement, Student scored at or above the mean score of 100 in Story Recall (SS 100, %26) and in Math Calculation (106, %65) but below the mean in all other subtests of Oral Language, Reading, Math, and Written Language. Her Oral Language Standard Score was 90, percentile 26; her Broad Reading Score was 84, percentile 14; her Broad Math was 88, percentile 22; and her Broad Written Language was 86, percentile 17. The evaluator concluded that, with scores in the bottom 25% of her peers, Student meets the *IDEA* criteria for specific learning disabilities in math problem solving, basic reading skills, reading comprehension, and written expression.(P83-84)

The evaluator used the Conners and the BRIEF to assess Student for ADHD and executive functions, a collection of processes responsible for guiding and managing cognitive, emotional and behavioral functions, particularly during problems-solving tasks, which are often impaired in children with ADHD.(P84-88) According to the results, Student met the criteria for ADHD-combined type. The BRIEF also suggested some deficits in executive functioning, including the ability to manage her behavior appropriately, and metacognition, the higher ordered thinking involving the ability to plan ahead to complete tasks, use effective study strategies, and sustain effort, consistent with the ADHD diagnosis. (P84-90)

The Diagnostic Impressions from the independent psychological evaluation were: *Attention Deficit Disorder-Combined Type; Reading Disorder (per IDEA criteria); Mathematics Disorder (per IDEA criteria); and Disorder of Written Expression (per IDEA criteria)*(D90) Among the recommended interventions were private or school based one-on-one tutoring daily for one hour at a time. (P91)

Parent paid \$120 for the independent speech/language assessment and \$300 for the independent psychological assessment of Student. (Parent; P108-109) She provided District counsel with copies of her IEE reports in September 2010, when counsel advised Parent that she did not already have them. (Parent) [REDACTED] reviewed the speech/language IEE in September 2010 when she received it from the Case Manager. It did not cause her to question her own assessment. [REDACTED]

In October 2010, Parent provided Student's teachers with a note from Student's psychiatrist, dated October 5, 2010, advising them of Student's diagnoses of ADHD, and Reading, Mathematics, and Written Expression Disorders. (Parent; P92) At that time, Student was receiving F's on spelling tests and incomplete homework. She was leaving out nouns and verbs, vowels and consonants in her written work. It was not acceptable to Parent, and she advised the teachers of same. The teachers, who had previously been reluctant to work with Parent, were receptive to her concerns after she provided the doctor's note, and subsequently indicated agreement to use a form proposed by Parent to send home to Parent daily in an effort to get homework completed properly. (Parent; P95-98, 101-103)

Pursuant to state sponsored mediation in which the parties participated in this matter, as noted in the Procedural History section of this Decision, an IEP conference was convened on November 19 and December 2, 2010, and an IEP developed for Student at that time. (D96-B-96-Y) Parent submitted a dissent for attachment to the IEP. (Parent; P111) The typed IEP meeting notes referenced the IEP team's consideration of [REDACTED] 4/22/10 speech/language evaluation and the reports of the independent speech/language and psychological evaluations previously submitted by Parent. (D96-X)

The Case Manager completed a referral for an assistive technology evaluation of Student pursuant to the determination at the aforesaid IEP meeting that Student requires assistive technology to access the curriculum. [REDACTED] (D96I; P93-94) That referral notes age appropriate cognitive abilities, and an expressive language age of 8 years 4 months and receptive language age of 8 years 10 months as of April 22, 2010. It is also noted that "written expression is a difficult task." [REDACTED] (P93-94)

The recently developed IEP, which maintains Student's eligibility due to a learning disability, does not reference the *WISC-IV* or the *Woodcock Johnson* scores nor any of the diagnoses of the independent psychological evaluator, including the Disorder of Written Expression and ADHD, or the scores or results of either the independent or the school speech/language evaluations in the sections relating to Student's Academic, Developmental and Functional Needs, her Communications Needs or in her Present Levels of Performance for her two academic goals. (D96F-96G, 96O-96R) It notes current grades of B in Reading and Writing and A in Math on the modified grading scale set forth in the 2009 IEP, wherein a score of 75% or above is an A and of 65% to 74% is a B. (D96F; D80) It also provides Student's Spring 2010 ISAT scores putting her below standards for her expected grade level in both Reading (Scale Score 197, NPR 32, Stanine 4) and Math (Scale Score 200, NPR 13, Stanine 3). (D96F-96G) It provides Student's Fall 2010 *Scantron* data indicating a reading rate of only 75 words per minute, although an earlier note in this IEP under her *General Academic Needs* state that "according to her reading teacher (Student) is able to read fluently the 6th grade material", further indicating that "comprehension of the material is a concern."¹⁰ (D96F, 96G) The *Scantron* data provided puts Student at a 4th grade level of performance in areas related to language arts and mathematics, although she is an 11 year old 6th grader. (96G) Student's special education resource teacher attributes these results to Student's being a "poor test taker." She does not know what would have to be done to enable Student to perform at her grade level. [REDACTED]

It is noted under the heading of *General Academic Needs* that Student "rarely volunteers a response during reading lessons" and that she "usually receives coaching from her teacher or her reading partner", and that she has "difficulty with writing and connecting examples from text for an extended response." (G96-F) Yet, under the heading of *Communication Needs*, no mention is made of the Stanine Scores of 3 in Oral Expression on the OWLS testing administered by P.O., nor of the results of the TOLD-4 administered by the independent evaluator regarding Student's word retrieval and expressive

¹⁰ Fluency is a measure of being able to read **with understanding**. A child has to be able to read quickly enough to understand what he has read. At the grade 6.5 level, the average rate for reading with understanding (i.e. *fluency*) is 177 standard words per minute.

language deficits, nor of the independent psychological evaluator's diagnoses of a Disorder of Written Expression. Rather, it refers, inter alia, to her articulation and ability to "communicate her needs."(D96-G)

Parent's concerns about Student's academic development and her needs relating to ADHD and speech/language issues and her desire for door-to-door transportation with bus aide are recorded in the IEP. (D96-G)

Student's identified needs for specialized instruction in Language Arts and Math from the special education teacher are addressed in the IEP, again, with one goal each, accompanied by "quarterly" benchmarks that are dated February, April, and June 2011, although the IEP indicates that implementation begins on December 2, 2010 and ends on November 19, 2011. (D96-O-96-R) In Language Arts, Student's Present Level of Performance notes her ISAT and *Scantron* Scores putting her at the third to fourth grade level of academic achievement and below standards for her grade level.(D96-O) The goal to address her needs is: "(Student) will improve her comprehension to a **late elementary** (emphasis added) school level by comprehending a variety of different genres (Poetry, short stories, long passages, etc.) **and by improving her writing skills** (emphasis added) with 83% accuracy." The accompanying benchmarks call for her to "read and interpret poetry,... predict, draw conclusions, and summarize short stories and long passages ...to help improve her comprehension,... and connect her ideas to that of the author by responding to text to text, test to self, and text to world to help her comprehension using grade level materials with 83% accuracy."(D96-0-96-P)

The Present Level of Performance for Student's new Math goal also references her below standards ISAT results and 4th grade level math skills per the *Scantron* data. The annual goal requires Student to "improve her understanding of number sense and her understanding of measurement on her grade level with 83% accuracy." (D96-Q)

In spite of the diagnoses and the recommendations of the independent evaluators, the 2010 IEP reflects a reduction of resource time from the previous 400 minutes per week to 300 minutes per week, 150 for Language Arts and 150 for Math, even though writing has been added in to the tail end of Student's reading comprehension goal and the IEP acknowledges that she is performing at third and fourth grade achievement levels while half way through sixth grade and her semi-annual goals are seemingly for her to reach grade level in Math and "late elementary school level" in language arts.(D96-T) The IEP does include long typed lists of Accommodations/Modifications for all general academic classes and an indication that a referral for an assistive technology evaluation was made on December 2, 2010. (96-J-96-M; D96-I) It also calls for the speech pathologist to consult/collaborate with the special education teacher 30 minutes monthly to provide... "strategies to increase (Student's) attention and understanding" relating to directions, questions, and instruction and to provide the teacher with "a variety of grade level vocabulary words that will increase and improve her oral expression and written expression."(D96-T)

Student's ADHD is addressed in the new IEP by way of a Social/Emotional goal requiring her to "analyze how making use of school and community supports and opportunities can contribute to school and life success, specifically utilizing the school agenda book and properly taking home homework 5 out of 10 times." The first benchmark only requires her to properly take home homework 2 out of 10 times, which would seemingly require her to do so only once a week. The IEP provides for 15 minutes per week of social work services toward implementation of this goal. (D96-S, 96T) It also calls for the social worker to consult/collaborate with the special education teacher for 15 minutes per month.(D96-T)

In determining Student's placement, the current IEP reflects consideration of only two educational settings: General education full time with aides and services, rejected as not sufficient or appropriate to meet Student's academic needs or to allow her to achieve academic success; and General education with special education support 20% or less of the school day outside of the general education setting, accepted because it "was determined appropriate to meet student needs."(D96-T)

As in past IEPs, Student was deemed not eligible for special education transportation. It was the opinion of the IEP team that Student's disability does not prevent her from using the same transportation as her typical peers on the grounds that she has no cognitive impairment, a belief that she processes

appropriately, and that she is able to navigate around the building to get from Point A to Point B. [REDACTED] D96-W)

Student was determined not eligible for extended school year services in spite of her current performance at the third to fourth grade level, but no discussion as to the reasoning is provided in the IEP.(D96-V)

Parent disputed information on the 12/2/2010 IEP in a written dissent dated 12/7/2010. She expressed concerns regarding what she perceived as the IEP's failure to acknowledge and appropriately address Student's learning style, her Written Expression Disorder, and her needs as related to expressive and receptive language skills and ADHD as well as the need for Parent to be kept informed of Student's homework assignments and progress. She stated therein that she did not see a need for speech/language consultation because it could not benefit Student. (Parent; P111)

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 falls upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49(2005) In this case the burden is upon District to show that it's evaluation of Student has been appropriate and that it therefore should not have to reimburse Parent for the independent psychological and speech evaluations she obtained in Spring 2010 per her request of March 30, 2010. *Board of Education of Murphysboro v. ISBE*, 41 F.3d 1162(7th Cir. 1994) Although District counsel did not respond to the request for IEE by submitting District's own request for due process hearing, his failure to do so does not permit District to shift the burden to Parent. The burden of persuasion falls upon Parent in regard to her contention that the District violated Student's right to FAPE when it terminated Student's speech/language therapy and deemed Student ineligible for special transportation.

An appropriate education, or FAPE, as it is commonly designated, is an education that is reasonably calculated to provide the student with 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)*; and *see Hjortness v. Neenah*, 507 F.3d 1060(7th Cir. 2007) In determining whether a district has complied with *IDEA's* substantive requirement, the educational benefit provided to the child must be considered in relation to the child's intellectual and academic potential. *Jaccari J. v. City of Chicago*, 54 IDELR 53, (N.D. Ill. 2010), *Kevin T. v. Elmhurst*, 36 IDELR 153 [REDACTED] Ill. 2001)

Regarding the issues proposed for resolution herein, it is determined as follows:

Issue No. 1: Whether District violated Student's right to a free appropriate public education during the period from September 2008 through the present time by failure to conduct adequate assessments of all areas of potential disabilities, with the result that student's educational program for this period did not address, or addressed inadequately, her learning impediments, communication impairments and behavioral management?

HELD: For Parent.

The preponderance of the evidence supports Parent's position that District failed to perform an evaluation of Student between September 2008 and the present time that was sufficiently comprehensive to identify all of her special education and related services needs, specifically her ADHD with executive functioning deficits, disorder of written expression, and expressive language deficits, and that Parent's independent psychological and speech/language evaluations are appropriate. The lack of appropriate evaluation resulted in an educational program that was not sufficiently comprehensive or intensive to allow Student to make the progress she should have made, considering her cognitive abilities and her efforts, had she been appropriately and timely evaluated and her needs addressed accordingly, now leaving her with achievement at third and fourth grade level while halfway through her sixth grade year. Therefore, an educational benefit was denied, and, ergo, FAPE was denied.

A full and individual evaluation is one that provides for the assessment of a child in all areas of suspected disability and which uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining whether the child has one or more of the qualifying disabilities under the IDEA and also to provide the appropriate educational programming for the child in the event that he is eligible for special education and related services. The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. *20 USC 1414(b)(2004); 23 ILAC 226.110(2007); 34 CFR 300.15, .304, .305(2006)*

The IDEA identifies 13 disabilities as the basis for eligibility for special education, including, inter alia, specific learning disability, speech or language impairment, and other health impairment due to attention deficit hyperactivity disorder. *23 ILAC 226.75(2007); 34 CFR 300.8(c)(2006)* It also identifies a number of related services that are to be provided if necessary to allow a child in need of special education to benefit from special education, including speech-language pathology services. *23 ILAC 226.75(2007); 34 CFR 300.34(2006)*

The inadequacy of the District's speech/language assessment will be discussed fully under Issue No. 2 below. The District's psychological evaluation of Fall 2008 failed to include the administration of any standardized measures, including behavior rating scales, which would have identified Student's ADHD. The District further failed to assess and identify Student's Disorder of Written Expression. Without appropriate assessment, Student's program could not be designed to address her actual individual needs, and the lack of appropriate assessment therefore denied her a free appropriate public education with the result that Student, who has average cognitive abilities and tries to succeed, continues to perform at a third to fourth grade level while halfway through sixth grade due to the documented impact of her disabilities on her classroom performance and her ability to complete homework assignments. Each of the three IEPs developed for Student since her learning disability was first identified in mid-fourth grade, at which time she was already two years delayed in her academic performance and failing in school, have included only two academic goals, one for Math and one for Language Arts, no direct speech/language services, and a laundry list of accommodations which have not been adhered to by the general education teachers in spite of Parent's best efforts to help them understand Student's needs. Her most recent IEP, developed with the benefit of appropriate independent evaluations recommending additional tutoring in the amount of 1 hour a day and up to 2 hours per week of speech/language therapy, have instead reduced her special education resource instruction by 100 minutes while setting goals for her to reach grade level performance by June. It appears that writing was added to the end of the reading comprehension goal in lieu of developing a separate writing goal when the IEE revealed a disorder of written expression. The District's failure to conduct a comprehensive evaluation of Student constitutes a procedural violation which deprived Student of educational benefit in that her IEP did not include the identification of her disorder of written expression and ADHD, and her expressive language deficits. The resulting program did not address the unique educational needs related to same by notifying her teachers of their existence and providing sufficiently intense instruction and related services to address them.

If a parent disagrees with the school district's evaluation of her child, she has the right to request an independent educational evaluation at public expense. An IEE, or a private evaluation, as it is known,

provides a parent with the opportunity to obtain her own evaluation of her child to counteract the evaluation obtained by a district when she suspects that the district's evaluation has not discerned the true identification or nature of a student's disabilities and/or his resulting needs. The school district has the option of initiating an impartial due process hearing within 5 days of parent's request to show that its evaluation is appropriate if it chooses to stand by its evaluation rather than fund the requested IEE. 20 USC 1414(a)(2004); 105 ILCS 5/14-8.02(b)(2008); 23 ILAC 226.180(2007); 34 CFR 300.502(2006) Evaluations obtained by a parent and shared with a district must be considered by the district in any decision made with respect to the provision of FAPE and may be presented as evidence at a due process hearing. 34 CFR 300.502(c)(2006). Illinois law requires the district to notice an IEP meeting to consider a report of evaluation obtained at private expense within ten days of parent's request to consider it. 23 ILAC 226.180(d)(2007)

The independent evaluations presented to District by Parent and used as evidence at hearing in this matter were performed by qualified professionals using appropriate assessment tools and methods. School personnel declined to participate in the psychologist's administration of behavior rating scales.

Even assuming that Parent's former attorney did not provide District's attorney with the independent evaluations secured by Parent before she withdrew from representation, Parent still provided those evaluations to District's attorney in September 2010, and [REDACTED] acknowledged that she reviewed the speech IEE in September. No IEP meeting was convened to review the IEEs until November 19. Parent had to provide the diagnoses of Student's ADHD and learning disabilities, including the disorder of written expression, directly to Student's teachers herself in October when she became concerned about Student's spelling tests and written work. No evidence was presented at hearing as to why the IEEs, like [REDACTED] assessment, were not considered any earlier than November 19, 2010. It is likely that the delay is attributable to agreement between the parties, since they jointly requested delays in the due process hearing to negotiate and mediate in October and November.

It is also important to note, in relation to the evaluation of Student's speech and language, as discussed under issue number 2 below, that when a parent signs a consent for an assessment to be performed by school personnel, the determination of any eligibility, or lack thereof, must be determined at an IEP meeting to be completed no later than 60 school days following the date of the written consent. In this case, Parent signed consent for a speech evaluation on January 27, 2010 after asking on January 11 that Student's speech services be reinstated "ASAP." The assessment was not done until April 22, 2010, and the IEP meeting at which it was considered was not convened until November 19, 2010, which date is clearly beyond the deadline for completion. Because [REDACTED] was not going to recommend any speech services for Student based upon her assessment anyway, albeit erroneously, the procedural violation itself did not deprive Student of FAPE. However, it was reasonable for Parent to request and secure an IEE when no meeting had yet been held to review a District assessment to which she had consented in January and no report of that assessment had been provided to her prior to the performance of the IEE on April 28.

The IEP team did use information from the IEEs at the 2010 IEP meeting as evidenced by its addition of a social/emotional goal referencing the ADHD diagnosis directed toward getting Student to write her homework in her agenda book, the addition of "writing" to Student's reading comprehension goal, and the addition of 30 minutes per month for the speech therapist to provide vocabulary words to the resource teacher to address Student's expressive language deficits. Although, it did not heed the IEE recommendations for tutoring and direct speech services, and it actually reduced Student's resource time by over 1 ½ hours per week.

Issue No. 2. Whether District violated Student's right to a free appropriate public education with regard to the provision of speech/language therapy:

- A. by terminating Student's speech/language therapy at the December 8, 2008 IEP meeting without appropriate assessment of her need for same;**
- B. without providing Parent with notice prior to the meeting that termination was to be considered at the meeting;**

C. and by failing to provide Student with direct speech/language therapy as a related service since termination of the service on December 8, 2008?

HELD: For Parent.

The preponderance of the evidence supports Parent's contention that she was not given notice that the IEP team would be considering a change of Student's eligibility or that it would be considering the termination of Student's speech/language services at the IEP meeting convened on December 8, 2008. Without knowledge of same, she could not participate effectively in the meeting, which constitutes a denial of FAPE. Additionally, the evidence favors Parent's position that the assessment used as a basis of the termination of speech/language services on December 8, 2008 was inappropriate. Finally, in addition to the aforesaid procedural violations which resulted in a deprivation of FAPE, the preponderance of the evidence supports a finding that District engaged in a substantive violation of Student's right to FAPE by its failure to provide Student with direct speech/language therapy as a related service since December 8, 2008.

As set forth under *Issue No. 1* above, a special education evaluation must be sufficiently comprehensive to identify all of a child's special education and related services needs. 34 CFR 300.304(c)(6)(2006) The Domain Sheet completed on September 22, 2010 assumed that an appropriately comprehensive speech/language assessment had in fact been performed in May 2008 and that review of that assessment would form the cornerstone of the Fall 2008 evaluation of Student's communication needs. In fact, there was no District evaluation of Student's expressive and receptive language for the speech therapist to review. There was no evidence of any assessment Student's expressive and receptive language performed by District since she arrived in the District, and it appears likely that the May 30, 2008 goal sheet was prepared without an actual current assessment of her receptive and expressive language. The absence of any previous assessment alone should have triggered a thorough formal assessment, especially in light of Student's academic performance and the red flags regarding her attentional problems, as language issues frequently accompany both learning disabilities and ADHD. [REDACTED] determination that Student had met her /r/ blend goal and the conversation she conducted with Student on December 8, 2008 did not constitute a sufficiently comprehensive assessment of Student's communication needs and for her need for speech/language services to allow her to benefit from special education due to a learning disability. Student was therefore denied speech/language therapy and deprived of an educational benefit, which constitutes a violation of FAPE.

A school district is required to notify parents in writing at least 10 days prior to any *proposal* to change Student's special education identification or services. The purpose of such notification is to allow the parent to participate effectively in the discussion of her child's special education programming. 23 ILAC 226.520, .530(2007); 34 CFR 300.503(2006) No written notification of the December 8, 2008 IEP meeting was presented by District as evidence at hearing. Although the box checked saying that notice was sent on the IEP document itself, there is no way of knowing what it might have stated if it were in fact sent. Parent did attend the meeting with the belief that a section 504 plan was being prepared to assist Student and that it was in addition to the speech IEP already in effect at that time. In this case, District argued that the IEP document itself given to Parent at the conclusion of the December 8, 2008 IEP meeting sufficiently advised Parent that Student would no longer be identified as having a speech/language impairment and that she would no longer receive speech/language therapy. However, even the *Conference Recommendations* do not tell Parent that a change of eligibility is required or that Student's related service of speech therapy is being discontinued. The Case Manager testified that the various clinicians entered their summaries onto the *Eligibility Determination* form "before or at the meeting." Although she also said that reports were read out loud at the meeting, the evidence does not include an actual report of a speech/language evaluation. Therefore, although Parent might be at fault for not immediately reading the IEP document given to her **after** the meeting and seeking clarification as to what it meant in terms of the previous IEP regarding speech/language eligibility and services, the evidence supports her contention that she was not notified of the proposal that Student's speech eligibility and services would be terminated on December 8, 2008. As such, she was at a disadvantage at the

meeting and the lack of prior notice prevented her from participating effectively in the determination to terminate Student's services. It therefore constituted a violation of FAPE.

The speech and language IEE performed on April 28, 2010 as well as Student's OWLS scores on [REDACTED] assessment of April 22, 2010 in conjunction with the information provided in Student's IEPs which evidence the impact of her communication deficits on her educational performance prove that Student needed and continues to need the related service of direct speech/language therapy in order to benefit from her special education programming. Parent's testimony in regard to Student's word retrieval problems was credible and was supported by the low scores on the TOLD-4. [REDACTED] testimony in this matter was not credible. It appears that she was trying to fudge on the fact that she never reviewed a previous District speech/language assessment before terminating Student's services and also in her attempt to indicate to this hearing officer that stanine scores of 3 were within the average range, classifying them in her report as "low, average" and then on the 2010 IEP conference notes as "low average" when, on a standard of nine (i.e. stanine), scores 7, 8, and 9, are above average, 4,5, and 6 are in the average range, and 1,2, and 3 are below average. She also attempted to dismiss her own findings that student's language skills were at the level of an 8 year old child when Student was tested at age 10 years 7 months. Her attempt to discredit the IEE due to its reporting of scaled scores in the results was not compelling.

Issue No. 3: Whether District violated Student's right to a free appropriate public education by failure to provide Student with door-to-door transportation between her home and her school of attendance and with a bus aide due to her disability from September 2008 to the present time?

HELD: for District.

The preponderance of the evidence does not support Parent's contention that Student requires special transportation as a related service from her home to school and back with a bus aide in order to benefit from her special education.

State and federal special education laws require the provision of related services, including special transportation, when necessary to allow a disabled student to benefit from her special education. *23 ILAC 226.75(2007); 34 CFR 300.34(2006)* Parent's concerns regarding the crime in area where the school bus picks her up and drops her off at her neighborhood school as well as Student's interactions with children who might take advantage of her in some way on the bus are certainly understandable from the standpoint of a parent of a disabled child or any parent for that matter. However, the concern regarding sexual harassment by another Student in 2007-08 was addressed and resolved long ago, according to the evidence presented by Parent, and the IEP team's determination that Student could get to school to receive her special education by means of the regular bussing provided to typical peers was not refuted by the evidence presented at hearing, although it would be preferable for the District to have included notation of any discussion regarding the need for transportation in the IEP documents themselves, rather than simply indicating that Student was not eligible for it.

Regarding the relief requested by Parent

Before beginning the hearing in this matter, Parent was asked what relief she was currently seeking in the event she were to prevail at hearing on any of the above issues, and she advised that she did not want an Order of a private school placement as indicated by her lawyer's hearing request and the Pre-Hearing Conference Report. Rather, she specified the desire for reinstatement of direct speech and language services, provision special transportation, reimbursement for IEEs and transportation costs, and compensatory tutoring and speech/language therapy to make up for the deprivation of FAPE due to inadequate evaluation of Student since Fall 2008.

A great deal of thought has gone into the following Orders in an attempt to provide remedies that are commensurate with the District's violations and to best assure that Student will receive the programming necessary to right the wrongs committed by the District. In doing so, it is noted that

Student did make progress in some areas when skills were targeted by the L.D. Resource teacher, but the special education programming was not intensive or comprehensive enough to sufficiently address Student's needs, due to an insufficiently comprehensive evaluation, and considering Student's academic potential. Those needs were already magnified in the Fall of 2008 by their lack of timely identification by the District in years leading up to the Fall 2008 evaluation. Had Parent desired it, a more restrictive educational setting, including possible private placement, where Student could receive more intensive 1:1 and multisensory instruction and services and the benefit of computer software tailored to her unique needs, would have been ordered. The IEP team reduced Student's special education resource minutes substantially at the December 2010 IEP meeting. The current resource teacher testified that she does not know what can be done to get Student's achievement to grade level, and the speech therapist's testimony evidenced her lack of understanding of the language service needs of this Student due to her ADHD and learning disabilities. There is a lack of trust between the Parent and the District at this point in time which appears to affect the staff's desire to appropriately program for Student. It is further acknowledged that the scheduled A.T. assessment will most likely result in a determination that there is computer software available to address Student's language issues, and that it can be best used to help Student in conjunction with individual language therapy.

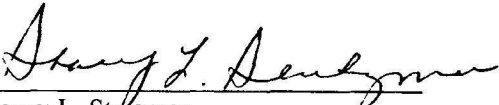
The Orders below are crafted in accordance with the evidence presented at hearing. Insofar as the compensatory relief is concerned, the Order is designed in an effort to place Student in the position she would have occupied but for the District's violations. See *Reid v. Dist. of Columbia*, 401 F.3d 516 (D.C. Cir. 2005) The Northern District of Illinois has indicated a preference for *Reid's* flexible, individualized approach to the determination of compensatory education. *Petrina W. v. City of Chicago Dist. 299*, 53 IDELR 259(N.D. Ill. 2010)

IT IS THEREFORE ORDERED:

1. That District shall reimburse Parent in the amount of \$420 for the independent psychological and speech/language evaluations she secured and provided to the District no later than February 1, 2011.
2. That District shall provide Student with direct speech/language therapy in the amount of 30 minutes per week, in addition to the consultative services already included in the IEP, to begin on or before January 14, 2011.
3. That District shall provide the following in compensation for its failure to provide an educational program sufficient to address Student's individual needs from Fall 2008 to the date of this Decision as the result of an insufficient comprehensive evaluation of all of Student's special education and related service needs:
 - A. District shall pay for 1 hour per week direct individual speech/language therapy and 4 hours per week of direct individual tutoring to be provided outside of school hours by a qualified provider/agency selected by Parent to begin no later than January 14, 2011 and end no earlier than June 17, 2011;
 - B. That District shall provide Student with extended school year services designed to address her individual needs in preparation for her seventh grade school year in the summer of 2011;
4. That District shall convene an IEP meeting before January 14, 2011 for the purpose of amending Student's IEP to reflect:
 - A. The testing results and recommendations of the independent psychological and speech/language evaluations provided to District by Parent;
 - B. The addition of direct speech/language therapy per Order No. 2 above;
 - C. The compensatory educational services to be paid for by the District per Order No. 3.A. above; and
 - D. The extended school year services to be provided pursuant to Order No. 3.B. above.

5. That District shall provide proof of compliance with above Orders to the Illinois State Board of Education, Program Compliance Division, 100 N. First Street, Springfield, IL 62777-0001 on or before February 4, 2011.

DATED: December 30, 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 Parent, District, by and through its 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 December 30, 2010 before 5:00 p.m.



Stacey L. Stutzman
Impartial Hearing Officer