

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

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AUG 12 2010

In the Matter of:

SPECIAL EDUCATION
SERVICES

[REDACTED] by his mother, D B-A)

and)

[REDACTED])
Local School District.)

ISBE Case No.: 2010 - 0429

W. David Utley
Impartial Hearing Officer

DECISION & ORDER

The Hearing in the above captioned matter took place on July 29, 2010 at [REDACTED] Academy of [REDACTED] Elementary School, [REDACTED]. At the commencement of the case, the parties were advised of their rights under Section 14.08.02 (a) of the School Code, 34 CFR 300.512 and 23 Illinois Administrative Code 226.625. The undersigned Hearing Officer has jurisdiction to hear and decide this case under 105 ILCS 5/14-8.02 (a) of Illinois School Code, 23 Illinois Administrative Code 226.600 et seq., and the Individuals with Disabilities Education Act 20 USC 1415. The Student was represented by his Mother and the School District was represented by [REDACTED] Schools Office of Specialized Services.

1. Procedural Issues

The Request for an Impartial Due Process Hearing was dated April 28, 2010. Hearing Officer received his notice of appointment on May 4, 2010 and received the initial file materials on May 6, 2010. On May 7, 2010, Hearing Officer wrote to the parties regarding scheduling a status conference to schedule an appropriate Pre-Hearing Conference date and Hearing dates as well advising the parties of the Rights of Parties to a Hearing pursuant to 34 C.F.R. § 300.512, 105 ILCS 5/14-8.02a, and 23 Ill. Adm. Code § 226.625. The parties had previously participated in a mediation session prior to the Due Process Request. A resolution session was held on May 19, 2010 but without success. The Initial Pre-Hearing Conference was set for June 4, 2010 but re-scheduled due to a conflict to June 9, 2010. Hearing dates of June 24 and 25, 2010 were set. The Five (5) Business Day Exchange of documents was set for June 17, 2010. Due to certain school district personnel unavailability, at the School District Request and the concurrence of the parent, the timeline for the hearing was extended and the Hearing was re-scheduled to July 12 and 13, 2010. On July 9, 2010, the School District advised that the handling attorney for the School District left the employ of the School District. In addition, neither party had exchanged documents or witness lists. As such, a status call was held late Friday evening and the parties agreed to meet on July 12, 2010 to discuss settlement. As such, and again at the School District request with the concurrence of the parent, a continuance of the Hearing of July 12, 2010 was granted. When no

settlement was reached, the Hearing Officer and the parties conducted an in-person additional Pre-Hearing Conference on July 12, 2010 and re-scheduled the Hearing for July 29, 2010 and August 2, 2010.

The parent called the following witnesses: [REDACTED] and the Student's mother. By agreement, the parent excused Ms. [REDACTED] and Ms. [REDACTED] and the School District excused Dr. [REDACTED]. The School District was unable to locate a [REDACTED] who is ever employed at [REDACTED] Academy of [REDACTED] Elementary School and he was not called as a witness.

2. Issues Presented

1. Whether the [REDACTED] Public Schools failed to provide a Free Appropriate Public Education (FAPE) by failing to implement the Student's IEP and provide services to the Student per the IEP of October 17, 2008.
2. Whether the December 02, 2009 IEP was appropriate for the Student and appropriately included transition services for the Student.
3. Whether the School District failed to implement the Student's IEP to allow accommodations and modifications relative to certain assessments to include the ISAT, Explore and [REDACTED] School.
4. Whether the School District proposed placement is the Student's appropriate LRE placement.

3. Relief Requested

1. Finding that [REDACTED] scholastic or [REDACTED] High School are not appropriate placements for the Student;
2. Ordering placement at either [REDACTED] High School or at [REDACTED] Private School;
 - a) Order the School District to provide transportation to the chosen school.
3. Ordering that the School District provide 45 hours of Catapult On-Line tutorial services;
4. Order the School District to update the Student's Permanent Record.

4. Findings of Fact

Disclaimer: Hearing Officer was not provided the transcript in this case and had no access to it as it has not yet been transcribed. The recitations of the facts of this case were gleaned from a review of the documents and the Hearing Officer's notes as to the facts elicited or facts that could have been inferred from the testimony of the witnesses herein.

A. Findings of Fact - Testimony

Deborah Brogan

1. [REDACTED] was the home room teacher for the Student as well as his Mathematics teacher in the Spring, 2009 and his Social Studies teacher during the 2009 - 2010 school year at [REDACTED] Elementary School.
2. The Student transferred to [REDACTED] in 7th grade on February 2, 2009.
3. She was not aware that Student had an IEP when he started in her class in early 2009 and was not aware that the Student needed to be tested with the Special Education teacher. She also agreed that the Student took the Benchmark test in a general education class, not with the special education teacher. The Student's mom made her aware of this.
4. Even though she did not initially know that the Student had an IEP, she performed specific modification's (including those for this Student which she later learned from his IEP) daily with all her students.
5. The Student's special education teacher was Ms. [REDACTED]. She would speak to her as to what she would need to do for the Student and what she could do better. These discussion would be informal. She would talk to her every week and at weekly grade level meetings. They would discuss different ways to assist the Student.
6. Her impressions of the Student were that he had high ability but lacked organizational skills. The Student's test result in math on the Spring 2009 I-SAT test [SD 3] was consistent with how he was performing in math in 7th grade. His performance in math was very high, within the top 5 % of all students.
7. In terms of his mathematics accommodations/modification, she would implement as necessary. As an example, he was allowed extended time on task even though the Student did not need this time to complete his work [SD 6].

Angela Robinson

8. [REDACTED] is the school counselor at [REDACTED] Elementary School.
9. She first learned of the Student when she was informed of his registration in February 2009. Usually, the clerk would notify her that a new student had an IEP but did not do so in this case. She didn't receive the Student's records until May 2009 at which time she realized that he had an IEP. During February thru May, all assessment tests including the Spring/March I-SAT test and Spring assessment (Benchmark) test were given in the Student's general education setting. Once she realized that the Student had IEP and received it, she made copies and walked it around to each teacher and explained that Student had IEP. The Student received supportive services from Special Education teacher once they became aware of his IEP.

10. An IEP is typically done for a student in October. By November, the Student still hadn't had his annual IEP meeting. She admitted to knowing that the Student needed to have annual review but only became cognizant of it in November. She had no reason why she overlooked this.

11. In 2009, the teachers no longer had to do handwritten cumulative student records/card as everything was to be computerized. However, she noticed that grades are missing on some of computerized records. She then informed the teachers that she wanted documentation in written format as to grades, etc. for each of the students. The teachers completed the handwritten cumulative student records/card (See PD 22 and 23).

12. In addition, the [REDACTED] was starting an electronic IEP around the time of the Student's December, 2009 IEP meeting. Due to problems with the system, she was not able to correctly input the transition plan at the meeting. When this happens, a statement is automatically generated indicating that an additional meeting was necessary as the transition plan wasn't complete. She talked to the Student's mother and told her that they would complete IEP and have it available the next day. In fact, they did complete it the next day. The parent was not present when the plan was completed.

13. She would start the enrollment process for high school in September. Her interest was in getting the Student into a good school.

14. His services under his December 2009 IEP are consistent with what the Student came in from [REDACTED] Elementary School, that is, consultative services for 10 mpm between certain teachers and the special education teacher. The IEP team thought that this would be adequate based upon the Student's needs. The parent never objected to this. The IEP team thought that the plan was appropriate to address the Student's needs. He was an able and capable person although he required some supervision regarding turning in assignments or getting work done. His IEP spoke to his ability to function well.

15. The Student's IEP can be implemented in regular [REDACTED] high school.

16. The Student's IEP required supervision but did not require supportive services.

Alice Evans

17. [REDACTED] was a Student's Special Education teacher at [REDACTED] Elementary School.

18. She did not have any direct services with the Student, only consultative services with the general education teachers.

19. In terms of why the IEP team reduced the Student's consultative services, she understood from the Student's teachers that the only issue with the Student was turning in assignments. He was also a bit too social in class. The Student felt that he was doing fine and did not express that he was having problems.

20. The Student's score in reading on the I-SAT test was 222. 226 was the score necessary to meet standards. [PD19] Based upon the I-SAT tests, the Student was below the standard in reading [PD 18 - 19]. She can't answer why the Student was not performing at level.
21. For the majority of his subjects, the Student was performing at grade level which was consistent with what teachers were reporting to her.
22. A report of the Student's general education teachers noted that the Student was doing average work which was consistent with his test scores.
23. The Student had no Special Educations goals for the remainder of 8th grade as the team felt that he was performing at grade level and no goals were needed. They felt that the amount of support recommended in the IEP was sufficient for the Student at that time as he seemed to be assimilating and the only issue was not turning in assignments on time.
24. She was responsible for implementing the IEP. She did offer additional time for testing but the Student finished testing within time.
25. Based on recent ISAT scores of 46 in reading, 72 in math and 21 in writing assignment, she doesn't feel that the IEP plan may still be appropriate for the Student.

Olivia Scott

26. [REDACTED] was the Student's reading/language arts teacher at [REDACTED] Elementary School from Jan 10, 2010 until the end of the school year.
27. She knew of the Student's learning disability and issues particularly with his reading and focus in classroom. She was aware of the IEP and implemented the Student's IEP. He was graded on a modified grading scale.
28. She had contact with Special Education teacher and would have discussed the Student. She did not believe that the Student was at grade level in reading and language arts. She communicated to Ms. [REDACTED] that the Student was performing below grade level.

Danielle Spicer

29. For the first two months of the school year 2009 - 2010, [REDACTED] was the Student's 8th grade reading and language arts teacher at [REDACTED] Elementary School.
30. She did tell the parent that the I-SAT and Benchmark tests were not given to the Student in separate class.
31. She would discuss instructional strategies for the Student with Ms. [REDACTED] at grade level meetings and departmental meetings.

32. She would use various type of modalities on assignments for the students in her room including the Student herein. These modalities would include small groups, partners, another teacher in the classroom, group rotation, computer and rotation throughout entire period. She knew that the Student had an issue with turning in assignments but she would not classify it as a problem

33. For his reading, she allowed a tutorial program for the Student called Read 180. This was given as a compensatory service.

Student's Mother

34. The Student developed exceptionally well until his transfer to [REDACTED] Elementary School.

35. She learned from Ms. [REDACTED] that the school did not know that the Student had an IEP from his prior school. She also notified Mr. [REDACTED] of his IEP and that the school was late in conducting the Student's annual IEP meeting in 2009 - 2010.

36. For high school, the Student was interested in architecture and/or law enforcement.

37. Ms. [REDACTED] the school counselor, was going to arrange applications and school tours of ACE Technical High School, South Shore Fine Arts High School and Gary Colmer High School.

38. She was concerned that the Student was not ready for high school. This is because his IEP was not implemented and no compensatory educational services have been offered.

B. Finding of Fact - Documents

December 2, 2009 IEP

39. This Student needed remediation in his writing skills. His reading Stanine of 5 on the I-SAT Spring 2009 test was below standards (SD 3).

40. The transition plan cannot be completed due to insufficient data. A new meeting will be scheduled within 15 school days to write the Transition Plan (SD 3).

41. There were no goals stated for the Student. The areas of need for accommodations and modifications included Language Arts/English/Reading, Mathematics, Biological/Physical Science, Social Sciences and Music (SD 4).

42. Accommodations and modifications for each of these subjects included verbal directions and clearly stated steps; asking the student to summarize information to check for understanding; providing extra examples when teaching new vocabulary/concepts; provide extra response time of one minute; extended time on task for completion of class assignments by 50%; extend time on task for completion of homework assignments by 50%; reinforced assignments with verbal instructions; explain directions and give concrete examples; maintain frequent eye contact; allow use of a tape recorder, computer, and/or calculator; ask the student to repeat back directions to confirm understanding; provide visual cues and guides; provide preferential seating with close proximity to

teacher; and provide motivation and verbal rewards on a daily basis. Other accommodations included peer tutoring; contacting parent and resource teacher when the student experiences difficulty; test with special education teacher in standardized tests; highlight text with keywords passages per concept; use a planner in order to help with organization; allow extended time for testing; summarize key points and have the student summarize them; use a modified grade scale for writing (SD 6 - 7)

43. The student will be provided 10 minutes per month consultation/collaboration between the special education teacher and the various general education teachers in Reading/Language Arts, Mathematics, Physical and Biological Sciences, Social Sciences and Music (SD 13).

44. His transition plan indicated that he was interested in completing a training/apprenticeship program in architecture. The IEP team provided a planned course of study from his freshman year through his senior year (SD 18).

October 17, 2009 IEP

45. Relevant information included the student's I-SAT Spring 2008 scores which showed his reading percentile at 37. His WIAT II achievement test showed a word reading assessment of 3.7 and his spelling of 3.8. Favorable commentary was made by the mother that she is happy with the programs at [REDACTED] and likes the fact that students are changing classes to help prepare for high school (SD 23).

46. The student's disability was classified as a learning disability (SD 24).

47. He was given only accommodations and modifications, no goals, in Reading/Language Arts, Mathematics, Physical Sciences, Social Sciences and Library (SD 25).

48. Accommodations and modifications for the student in the various areas noted above was that the student should attend after school tutorial programs for reading; contact between the parent and resource teacher when the student experiences difficulty; provide instruction to student using a variety of modalities including visual, auditory, tactile, etc.; allow extra time to complete assignments and subjects that require reading and/or writing for 15 to 20 minutes at a time; extend time for multiple choice questions 10 to 15 minutes; extra time for extended response and short answer questions 15 to 20 minutes; graphic organizers to help with comprehension; verbal and printed directions and have the student repeat for understanding; review student notes for accuracy; and have the student read aloud to increase fluency at least once a week. In addition, he was using a modified grading scale and was to read aloud all directions and prompts for clear understanding. He was allowed testing with a special needs teacher for standardized testing; was allowed extended time for testing and was to be read any direction or parts of the test allowed (SD 27).

49. The special education teacher was to consult with the Language Arts Teacher, the Mathematics teacher, the Biological and Physical Sciences teacher and the Social Studies teacher each 10 minutes per week (SD 28).

Other Documents

50. The student record review form noted that [REDACTED] received the student's IEP and distributed it to all the teachers on May 13, 2009 (SD 36).

51. A spring 2009 I-SAT achievement test noted his percentile in reading as 40 with a standard score of 222 which is below standards. In order to meet the standard, he would have needed a score of 226. His mathematics score was 241 and his Science score was 230 which both met standards (PD 18 - 19).

52. The student's grades for the 2008-2009 school year showed a "C" in reading at the eighth grade level, "C's" in listening, spelling, written comprehension, science, and social studies. He was given a "D" in mathematics (PD 22).

53. The elementary school progress report (computer generated) listed only scores in listening and speaking for the 2008-2009 school year at the Charles P. Caldwell Academy of Math and Sciences Elementary School (PD 23).

54. The student was shown as having left the [REDACTED] Elementary School and enrolled at the [REDACTED] Academy High School as of July 1, 2010 (PD 24).

55. [REDACTED] at [REDACTED] campus admitted the student as of March 30, 2010 (PD 26).

56. In the school year 2007 - 2008, the student receive special recognition from Catapult online relative to its tutoring program (PD 28).

57. A February 24, 2010 letter informed the student that he did not receive any offer pursuant to the selective enrollment high schools. It noted the student's selective enrollment entrance exam national percentile rankings as a 32 in vocabulary; a 36 in reading; a 31 in mathematics; a 26 in language; with total points of 290/900. The school choices referenced were [REDACTED] and [REDACTED] (PD 29).

58. A October 9, 2008 report of psychological evaluation (triennial) noted that the student had repeated the fourth grade. In March 2006, his special education minutes were increased to resource services and in the most annual IEP he was provided 200 minutes per week for language arts in a resource environment, 10 minutes a week for math, science and social science on a consultative basis and 30 minutes per week in a separate class for impulsive behaviors. His grade equivalent score word reading was 3.7 and his spelling grade equivalent score was 3.8. His reading comprehension grade equivalent score was 7.6 and his numerical operation score was 7.0 (PD 30).

59. The I-SAT scores (no date is shown nor were any interpretations of these numbers provided) was a 46 in reading; 72 in math and 21 in writing assessment (PD43).

5. Burden of Proof

The Supreme Court in *Schaffer v Weast*, 546 U.S.49 (2005) has held that the party filing the request for due process bears the burden of persuasion. “The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief” *Id.* at 537. However, per *Schaffer*, the states may, if they wish, put the burden on the school district.

“[T]he IDEA framework in Illinois provides that ‘the school district shall present evidence that the special education needs of the child have been appropriately identified and that the special education program and related services proposed to meet the needs of the child are adequate, appropriate and available’. 105 ILCS 5/14 - 8.02 (h) states only that a district's obligation is to present evidence, it does not place a burden of proof on the district. See *Schaffer*, *Id.* at 533-534 (distinguishing burden of production from burden of persuasion). As such, section 8.02(h) does not contain the explicit burden of proof language necessary to override the default rule the plaintiff, as a party challenging the IEP, bore the burden of proof.” *Kerry M & Kristine M v Manhattan Sch. Dist. # 114*, 106 LRP 58547, 46 IDELR 194 (7th Circuit, No. Dist. IL, 2006).

Putting it in different fashion, it is the parent's burden to present sufficient evidence to support the allegations that the school district failed in its obligation to provide the student with a free appropriate public education (FAPE) and such other relief sought.

6. Conclusions of Law

A. Whether the Chicago Public Schools Failed to Provide a Free Appropriate Public Education (FAPE) by Failing to Implement the Student's IEP and Provide Services to the Student per the IEP of October 17, 2008.

The starting point for any analysis regarding violations of IDEA is the Supreme Court's decision in *Bd. of Ed. v. Rowley*, 458 U.S. 176 (hereinafter *Rowley*). *Rowley* presents a two prong test relative to a student's Free Appropriate Public Education (hereinafter FAPE). The first inquiry (a procedural inquiry) under *Rowley* is whether or not the school district has complied with the procedures set forth in IDEA. Those procedures include having in affect policies and procedures for all children with disabilities residing in the state,... and who were in need of special education and related services are identified, located and evaluated... 34 CFR section 300.111. The second prong (a substantive inquiry) requires the District to provide an IEP that is calculated to allow the student to benefit from his educational experience. It requires more than a nominal benefit for this instruction. *T. H. v. Bd of Ed of Palatine Comm Consol. Sch. Dist.* 55 F Supp. 830 (N.D., Ill. 1999). An IEP needs to contain goals and objectives which are measurable *Independent Sch. Dist. No. 701, Hibbing Pub. Sch. v. J. T.*, 45 IDELR 92 (Minn., 2006). As noted therein,

“The instruction and services must meet the state's educational standards, must approximate the grade levels used in the state's regular education, and must comport with the child's IEP. *Id.* The objective of the criteria set out in federal law is ‘the achievement of effective results - - demonstrable improvement in the educational and personal skills identified as special needs -- as a consequence of implementing the proposed IEP.’ *Town of Burlington v. Dept. of Educ. for Com. of Mass.*, 736 F.2d 773, 788 (1st Cir. 1984) (citations omitted). In addition, states must

provide special education in the "least restrictive alternative." 20 U.S.C. 1412(5); 34 C.F.R. 300.552(d)."

In the instant case, the parent questions the school districts implementation of the October 17, 2008 IEP for the student. At the outset, it is important to note that the parents questioning of the implementation this IEP came about at the time of the student's transition from [REDACTED] Elementary School to [REDACTED] Elementary School.

The first issue raised by the parent was the failure of the school district to be aware of and provide the services that were contained in the October 17, 2008 IEP. The school district personnel as well as the attorney for the school district acknowledged that the [REDACTED] public schools and particularly the teachers at [REDACTED] school did not have the IEP when he enrolled and therefore did not implement it between the Student's enrollment in February 2009 and May 2009 [Findings of Fact 3, 9]. [REDACTED] initially learned of the student's enrollment at [REDACTED] school in February 2009. The school procedure was that the clerk will notify her if a new student has an IEP. Once she was advised of that, she would then look over the IEP and inform those to whom it was relevant. However, since the school clerk failed to notify her that this student had an IEP, she did not pursue this. It was not until May 2009 that they realized that the student had an IEP [Findings of Fact 10]. Most likely the parent had advised her of this [Findings of Fact 30]. As such, no consultative services for the student were done nor were the students testing, both for the March ISAT test or the spring assessment test (Benchmark), done in a separate classroom per the IEP [Findings of Fact 3, 9]. When she did become aware of the students IEP, she had it sent to her and made it available to each teacher. As such, the student did not receive services from February through May 2009 and his testing was not done in accordance with his IEP. Neither his spring ISAT test nor his Benchmark test were done in a separate classroom as specified in his IEP (See Issue # 3 below re: testing).

The student's grades [REDACTED] for the seventh grade (2008-2009) school year show only two scores: a D in listening and a C in speaking [Findings of Fact 53]. Ms. [REDACTED] noted that there was some difficulties in the transition to the computerized system which would account for not all test scores being recorded [Findings of Fact 11, 12]. However the cumulative card for the school year 2008 - 2009 showed him receiving a "C's" in listening, speaking, written comprehension, science, and social studies and a "D" in mathematics [Findings of Fact 52]. His 7th grade Spring 2009 results on the Illinois Standardized Achievement Test (I-SAT) noted the students reading score as 222 [Findings of Fact 51]. In order to meet standards, his score needed to be a 226 [Findings of Fact 51]. His mathematics score as well as the science score met the standards for the ISAT tests [Findings of Fact 51]. As such, even though his score was borderline in reading, his overall scores met the performance levels as measured by the ISAT test.

In terms of his instruction, although the school district has admitted that it did not implement the 2008 IEP between the period of February and May 2009, his home room teacher, Ms. [REDACTED] testified that, when reviewing the accommodation/modifications, she was doing these with her class. [Findings of Fact 4]. She would be doing these accommodations and modifications that were listed for this particular student with her entire class [Findings of Fact 4]. She also noted that she would speak informally with the special education teacher weekly at grade level meetings, in the hallways or at other meetings relative to each of the students in her class [Findings of Fact 5]. As Ms. [REDACTED] noted, the IEP did not provide any direct services for the student but rather provided only

consultative services between the special education teacher and the various subject matter teachers [Findings of Fact 9, 49].

Although there is an admitted procedural violations as to implementation of the Student's IEP between the months of February, 2009 to May, 2009, it is difficult to determine, particularly based upon the ISAT scores as well as the student's grade reports and the teaching modalities of the [REDACTED] staff, that the student's performance suffered as a result of this lack of implementation of his IEP.

It is true that a substantial denial of procedural safeguards that results or impacts in the parent's participation or the student's education which results in a loss of educational opportunity may be construed as a denial of FAPE. *Rowley*, *supra* at 206. "Procedural violations can be held to deny a student a FAPE only if they (I) impede the child's right to a free appropriate public education; (II) significantly impede plaintiff's opportunity to participate in the decision making process regarding the provision of a free appropriate public education to plaintiff's child; or (III) cause a deprivation of educational benefits" *James and Lee Ann D v Board of Education of Aptakasic-Tripp Community Consolidated SD # 102*, 52 IDELR 281, 109 LRP 45050 and 20 U.S.C. 1415 (f)(3)(E)(ii).

The fact that the district had a procedural violation under the IDEA does not necessarily mean that violation in any way impeded the student's learning or his ability to learn. Courts have noted that not all procedural errors result in a denial of FAPE. So long as this failure does not cause any loss of educational opportunity, this violation can be construed as *de minimis*. See, e.g., *Tennessee Dept of Mental Health & Mental Retardation v. Paul B.*, 24 IDELR 452 (6th Cir., 1996).

As noted above, based upon the student's grades, his standardized testing scores, etc., the failure of the School District to implement the IEP does not appear to have been a deprivation of any educational opportunity or benefits. Here, the failure of the school district to appropriately implement his 2008 IEP between February 2009 and May 2009 is, at best, a *de minimus* violation.

This issue is found in favor of the school district.

B. Whether the December 2, 2009 IEP was Appropriate for the Student and Appropriately Included Transition Services for the Student.

Applicability of the December 2, 2009 IEP. The Student's October 17, 2008 IEP (three-year triennial re-evaluation) noted his disability as a learning disability [Findings of Fact 46]. According to his teachers and his latest student assessments, he was performing at a seventh grade level [Findings of Fact 46]. However, the relevant information contained therein relative to his ISAT spring scores from when he was in the sixth grade showed his reading percentile as 37 and his math percentile as 67 [Findings of Fact 45]. As part of this triennial re-evaluation, he was evaluated by the school psychologist. On the Wechsler Individual Achievement Test, 2nd Edition (WIAT II), the student's Word Reading score was grade equivalent of 3.7 and Spelling equivalent of 3.8. His Reading Comprehension was a grade equivalent of 7.6 and in Mathematics, his numerical operations was a grade equivalent of 7.0 [Findings of Fact 45]. The Student's prior IEP increased his minutes to resource services and his then most recent IEP (presumably 2007) provided 200 minutes per week in language arts in a resource environment [Findings of Fact 45, 58][See PD3]. And yet, his 2008 IEP provided no justification or any reason for the reduction of these minutes.

Interestingly enough, especially in light of the test scores discrepancies, no annual goals were determined in the 2008 IEP for the student and only modifications and accommodations were provided in the areas of Language Arts/English/Reading, Mathematics, Biological and Physical Science, Social Sciences, and Library [Findings of Fact 47]. The accommodations for all of these areas were minimal including after school tutorial program if available, contacting the parent and the resource teacher when the student experiences difficulty particularly with missing assignments, failing grades etc.; providing instruction to the student using a variety of modalities; allowing extra time to complete assignments in subjects that require reading or writing; extended time for multiple-choice question test; extra time for extended response in short answer questions; use of a graphic organizer to help with comprehension; providing verbal and printed directions with the student repeating them for understanding; reviewing student notes for accuracy and reading out loud to increase his fluency in at least once a week [Findings of Fact 48]. Even in light of the discrepancies in his reading ability, the only service provided was that the resource teacher would consult with his various subject matter teachers for at least 10 minutes per week which amounts to 40 or 50 mpw of consultative services - not direct services [Findings of Fact 49]. As to testing, the IEP provided that the student should test with a special needs teacher for all standardized tests, was allowed extended time for testing and could have any directions or parts of the test read to him [Findings of Fact 48]. No direct services were provided. The student least restrictive environment (LRE) was the general education classroom [Findings of Fact 46].

For the December 2, 2009 IEP, more extensive classroom accommodations and modifications were set out for the student in Language Arts/English/Reading, Mathematics, Biology and Physical Sciences, and Social Studies [Findings of Fact 42]. Additionally, instead of the 10 minutes per week that the special education teacher was to consult with the general education teachers in Language Arts, Mathematics, Biology and Physical Sciences, Social Sciences and Music, the special education teacher at this point was to consult with each of these teachers 10 minutes monthly which equals a reduction of approximately 150 minutes per month [Findings of Fact 43]. So even though the student's accommodations increased, the services provided to the student decreased. This is especially troublesome in light of the various testing done as noted above including particularly the psychological assessment relative to reading and spelling [Findings of Fact 58]. Additionally, the student applied for certain selective enrollment high schools. His scores which were available to the school district in February 2010, noted that his ranking in terms of the national percentile rankings was the 32nd percentile in vocabulary, the 36th percentile in reading, the 31st percentile in mathematics, the 26th percentile in language for a total percentile to total population taking the test as the 28th percentile [Findings of Fact 57].

More recently, on the most current ISAT test, the student scored a 46 in reading, a 72 in math and 21 in writing assessment [Findings of Fact 59]. As Ms. Evans testified, the reading score is a below average score and raised concerns in her mind that the current IEP was not meeting the students reading needs. [Findings of Fact 25] Given the more reading intensive nature of the high school curriculum, the school district, having identified the student as having a learning disability particularly in the areas of Reading, Language Arts and English, needs to do more to assist this student in his area of disability.

The Student's scores, coupled with his grades, the psychological assessment and his teacher reports for reading, suggests that the student needs additional services relative to, at a minimum, reading.

The parent requested relief to include Captapult On-Line Tutorial Services. However there was insufficient testimony/information presented at the hearing as to how this service would help the Student and specifically what issues it would address to allow this relief.

This sub-aspect of issue B is found in favor of the student.

Transition Services: In addition, the parent questions the school districts transition services for the student. The IDEA, when re-authorized in 1990, added to the statutory requirements of an IEP, a transition statement. That re-authorization included for the IEP "a statement of the needed transition services for students beginning no later than age 16 and annually thereafter (and, when determined appropriate for the individual, beginning at age 14 or younger), including, when appropriate, a statement of the inter-agency responsibilities or linkages (or both) before the student leaves the school setting". When re-authorized in 1997, the new requirements included "beginning at age 14 and annually thereafter a statement in the IEP on transition needs related to courses of study"

Transition services are defined at 34 CFR 300.29. Transition services "... means a coordinated set of activities for a student, designed with an outcome-oriented process, that promotes movement from school to post school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation". As can be seen from this definition of transition services as well as the language of the Act, transition services are not directed to the student's transition from grade school to high school but were relative to his transition out of high school.

The school district had inquired of the student as to his vocational choices which at various times included architecture and law enforcement. The IEP team found that the student would not need any transition assessments in the area of employment, education, training and/or independent living skills. At that point, with the Student's main interest in the architectural field and/or law enforcement, the IEP team provided a planned course of study and post secondary outcomes to include either a training program or apprenticeship towards his career in architecture. The district suggested a educational plan including course work that would assist in making him successful in this field. As part of the IEP and in following the requirements of the IEP relative to transition services, the IEP team listed the Planned Course of Study for the student to include suggested courses from his freshman through his senior year [Findings of Fact 54] (See SD-18). Based upon the student's age and his movement from grade school to high school, the school district IEP team included the plan of study as required by the 1997 re-authorization to the IDEA. This is what the IDEA required and this is what the school district did. Therefore, there is no violation by the school district relative to the student's transition services.

This sub- aspect of issue B is found in favor of the school district.

C. Whether the School District Failed to Implement the Student's IEP to Allow Accommodations and Modifications Relative to Certain Assessments to Include the ISAT, Explore and Benchmark at Caldwell School.

As noted above in Issue # A, the school district personnel were not initially aware that the student had an IEP and the school district has admitted as much in the due process hearing. It is

undisputed that the student did not take the ISAT or other assessment tests pursuant to the IEP but rather was allowed to take these tests with the general education population (See Section 1 above). However, at this point in time, the student has graduated from [REDACTED] Elementary School [Findings of Fact 54]. From testimony adduced at the hearing, the modifications/accommodations for the various standardized testing including the ISAT and other test during the school year 2009 - 2010 were conducted pursuant to his IEP – that is, in a separate classroom with the special education teacher. His test scores for the spring 2009 ISAT test were basically normal with reading being four points below attaining or meeting standards [Findings of Fact 24]. So even without the accommodations specified in his IEP, the student did satisfactorily in his scores and performance levels. Whether his reading score would have been higher or not given the more restrictive testing environment stipulated by his IEP cannot be determined. For the semester, his grade was a C (See PD 22) in reading.

Although there was a conceded procedural violation, as noted above, not all procedural violations amount to a denial of FAPE. The school districts failure to implement the student's IEP as to standardized testing between February 2009 and May 2009 is also considered *de minimis*.

This issue is found in favor of the school district

D. Whether the School District Proposed Placement Is the Student's Appropriate Least Restrictive Placement (LRE).

The parent questions the school district's placement of the student for his high school career. [REDACTED] High School is the student's attendance area high school. Additionally, regardless of how it has come about, [REDACTED] Scholastic has also accepted the student for the 2010-2011 school year. The mother's concern as expressed throughout, in her due process request, in the various Pre-Hearing Conferences and at the hearing is a concern for what she believes is best for her student. She has noted on more than one occasion including this hearing that Bowen High School is on the No Child Left Behind list and has significant gang issues [Findings of Fact 49]. [REDACTED] allegedly also has concerns about gangs [Parent's Opening & Closing Statements]. As such, the mother has requested the school district both via a mediation as well as through this due process hearing to place her student at a facility which will meet his disability as well as provide him a career path in the area that he was interested. At the time that the teacher filled out the application for [REDACTED] the student's interest was architecture [Findings of Fact 44]. The parent had requested applications for and school visits, etc. to [REDACTED] High School (which provides construction and architecture related course work) and to [REDACTED] High School as schools which she believes could meet her student's needs [Findings of Fact 37] (SD 48).

Hearing officer's do have authority to issue placement in a specific facility when it comports with the special education needs of the student. However, it is axiomatic that IDEA has shown a preference for placements in the least restrictive environment (LRE). 34 CFR, Section 300.114 (2006) states:

“ 2) Each public agency must ensure that

- (i) To the maximum extent appropriate, children with disabilities including children in public or private institutions or other care facilities are educated with children who are non-disabled;
- (ii) Special classes, separate schooling, or other removal of children with disabilities from regular educational environment occurs only if the nature of the severity of the disability is such that education in regular classes with the use of supplementary aids or services cannot be achieved satisfactorily.”

The hearing officer does not doubt the sincerity of the student’s mother and, for that for the student. The mother wants what any parent would want, the best education for the student. However, as interpreted by the courts, the IDEA does not mandate the best education for the student. The purpose of the IDEA is to provide a basic floor of opportunity for students. Although the parent may want an optimal environment, or, put another way, the best environment for the Student, IDEA does not mandate that. What IDEA mandates as interpreted by *Rowley* is that the school district provide a “basic floor of opportunity” in the form of specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child. *Supra* at 201. The purpose is to “open the door of the public education..., not to educate a child to her highest potential. *Board of Education of Murphysboro Community Unit Sch. Dist. Number 186 v. Illinois State Board of Education*, 41 F 3 1162 (7th Cir, 1994) The IDEA maintains a strong preference in favor of educating the student in the less restrictive environment. Under 34 C.F.R. Section 300.550 (b) (2), a child may only be removed from a regular classroom if the nature of severity of the disability is such that education in a regular class with the use of supplementary aids and services cannot be achieved satisfactorily. Our Seventh Circuit has not yet adopted a specific test for determination of LRE because, as noted in *Beth B. v Van Clay*, 282 F. 3d 493 at 499, the IDEA provides enough of a framework. That case contemplates that to the maximum extent possible, a student must be mainstreamed.

Although the student herein has a learning disability and has been provided special education services pursuant to his IEP, there has been no suggestion and no testimony adduced at the hearing that the student needs any more restrictive educational environment than the general education classroom. This is not a case where the student has specific needs as identified through testing that mandate placement for specialized services to be a private therapeutic day school or a more restrictive residential placement. The student herein has done at least average work throughout his academic career [See his cumulative grade card (PD 22)]. Additionally, his testing has, for the most part, met expected standards [See ISAT spring 2009 scores (PD 18 - 19)]. The only area of a suspected disability not appropriately identified by the school district is a lower score in reading.

Typically, objective factors such as regular advancement through the grades, passing grades, etc. is one of the most common methods to show progress. See *Alex R. v. Forestville Valley CUSD*, 375 F. 3d 603 (7th Cir., 2004). More recently, the case law has expanded the standards as to “meaningful educational benefit” to something more than merely “minimal progress”. See *Todd v. Duneland Sch Corp*, 299 F 3d 899 (7th Cir., 2002). Here, the Student is making educational progress. His grade reports and standardized tests show that he is making progress. He has graduated from Charles P. Caldwell Academy of Math and Science Elementary School.

Based on the record in front of the hearing officer, the student does not qualify for a more restrictive environment than the general education population with supports, modifications and

accommodations. Unfortunately for the parent, all of the proposed placements – be it from the parent or the school district – meet the special education needs of the student [Findings of Fact 15]. Some of the schools may not be the most desirable for the student from the parent’s perspective. But that does not mean that the services that the student needs could not be provided at those facilities.

This issues is found in favor of the school district on the placement issue.

[To the extent that the parent has various options pursuant to her mediation agreement (which this hearing officer is not privy to) or under the No Child Left Behind (hereinafter NCLB) act, hearing officer strongly encourages the parent to pursue those options. As to the NCLB, the hearing officer’s authority under the IDEA does not extend to NCLB and the hearing officer can not grant any relief under the act. The Hearing Officer’s authority extends only to issues raised as to special education under IDEA. The District Court in the case of *In J. N. v Pittsburg City School Dist.*, 536 F. Supp. 2d 564 (W. D. Pa, 2008), affirmed the Appeal Administrative Review Board’s finding that a parent has no authority to seek review of a NCLB matter with an IDEA hearing officer.]

E. Whether the School District Is Required to Amend the Students School Records upon Request

The parent has requested the school district as part of the request for relief in this due process hearing to amend, correct or update the information in the student’s records. As was adduced at the hearing, the electronic cumulative record for the student [PD23] contains only two grades – one for listening and one for speaking. Ms. Robinson has testified that she requested the teachers to manually fill out the cumulative record card to reflect the student’s grades [Findings of Fact 11]. However this manual inputting of data as to the student’s grades is apparently not reflected in the computerized records.

At 34 CFR Section 300.618, Amendment of Records at Parents Request, the IDEA does provide the following:

“(a) a parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading ... may request a participating agency that maintains the information to amend the information.”

The parent maintains that over time she has requested this on more than one occasion and, as part of the relief requested in her due process request, has asked that the district to update the students records.

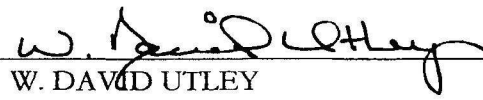
Based upon 34 CFR Section 300.618 noted above, the school district does have the obligation to amend the school record as requested or to refuse to amend the record as requested but then must advise the parent as to the parent’s right to a hearing under section 300.619. From what can be adduced at the hearing, and that information is very limited, the student’s record is incomplete as noted above and the parent has requested the district to amend the electronic cumulative record [See parent’s request for relief]. Based upon 34 CFR Section 300.618, hearing officer agrees with the parent that the school district has the obligation either to amend the requested record(s) or to refuse

to amend the requested record(s) with an appropriate notification to the parents of the parents hearing rights.

This issue is found in favor of the parent.

7. ORDER

- A. Any procedural violation by the School District relative to the implementation of the October 17, 2008 IEP is *de minimis*. The School District need not take any action relative to this.
- B. The School District failed to properly re-evaluate the Student for the December 2, 2009 IEP in the area of Reading/Language Arts/English.
 - (1) The School District is Ordered to convene an IEP team meeting within one (1) week of the start of school for the Student and provide specific reading goals for the Student to assist with his reading deficits as shown by the standardized testing and psychological assessment.
- C. The School District provided appropriate transition services in its December 2, 2009 IEP. The School District need not take any action relative to this.
- D. Any procedural violation by the School District relative to the implementation of the accommodations and modifications as to certain assessments including the I-SAT, Benchmark and Explorer between February 2009 and May 2009 are considered *de minimis*. The School District need not take any action relative to this.
- E. The School District's Placement for High School does not violate the Student's LRE. The School District need not take any action relative to this.
- F. Pursuant to 34 CFR 300.618, the School District is to amend the Student's records within fourteen (14) days or provide the appropriate notice pursuant to 34 CFR 300.619 to the Parent.
- G. The School District shall provide proof of compliance with this Order to the Illinois State Board of Education, Compliance Division, no later than September 30, 2010.


W. DAVID UTLEY
Impartial Hearing Officer
Dated this 8th day of August, 2010

Post Office Box 681487
Schaumburg, IL 60168
(847) 321-1044

RECEIVED

FINALITY OF DECISION

AUG 12 2010

This Decision and Order shall be binding upon all parties.

SPECIAL EDUCATION
SERVICES


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 party and to the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, Illinois 62777. **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 decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14.8.01 (I), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision was mailed to a party.

THE EFFECTIVE DATE OF THIS DECISION IS THE DATE OF RECEIPT OF ANY CLARIFICATION OF THIS DECISION. THE REQUEST SHALL OPERATE TO STAY IMPLEMENTATION OF THOSE PORTIONS OF THE DECISION FOR WHICH CLARIFICATION IS SOUGHT, PENDING ACTION ON THE REQUEST BY THE HEARING OFFICER, UNLESS THE PARTIES OTHERWISE AGREE. (105 ILCS 5/14-8.02)


W. DAVID UTLEY
Impartial Hearing Officer

Dated this 8th day of August, 2010

Post Office Box 681487
Schaumburg, IL 60168
(847) 321-1044

CERTIFICATE AND AFFIDAVIT OF DELIVERY BY MAIL

Under penalties as provided by law, pursuant to 735 ILCS 5/1-109, the undersigned certifies that he/she served the foregoing document by mailing a copy certified to the above named attorney(s) at the address(es) indicated above and to the Illinois State Board of Education, 100 N. First Street, Springfield, IL 62777-0001 by depositing the same in the U.S. Mail at the United States Postal facility at Schaumburg, IL on August 9, 2010.

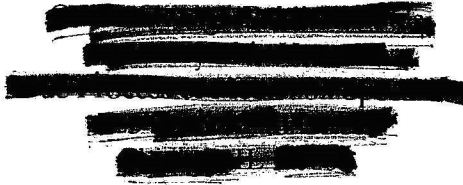


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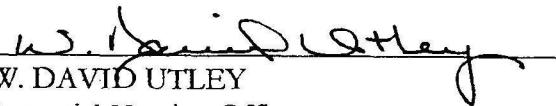
Via First Class Mail – Certified Only



Via First Class Mail – Certified Only

Illinois State Board of Education
Attn: Andrew Eulass, Esq.
Office of the Due Process Coordinator
100 N. First Street
Springfield, IL 62777-0001

Via First Class Mail – Certified Only


W. DAVID UTLEY
Impartial Hearing Officer

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