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**SPECIAL EDUCATION
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ILLINOIS STATE BOARD OF EDUCATION

IMPARTIAL DUE PROCESS HEARING

[REDACTED]

) Case No.: 2011-0168

)

Student,

) IMPARTIAL DUE PROCESS HEARING
) DECISION AND ORDER

and

)

)

[REDACTED]

)

District.

)

Decision and Order

Jurisdiction

This matter is before the undersigned hearing officer for a due process hearing pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA 2004"). 20 U.S.C. 1400 et seq. (2004). This hearing officer has jurisdiction pursuant to 20 U.S.C. 1415 et seq. (2004), 34 CFR 300.532, 105 ILCS 5/14-8.02a and 8.02b et seq., and 23 Il. Adm. Code 226.600 et seq.

Procedural History

A due process complaint was filed by the student through his parents in this matter on November 11, 2010, which was received [REDACTED] on November 29, 2010 and forwarded to the Illinois State Board of Education where it was received on November 30, 2010.

The District's Response to the Due Process Complaint was filed on December 10, 2011. (PD 32). A resolution session was held on December 13, 2011 with the parties agreeing to continue the proceedings until after an IEP meeting which was scheduled for February, 2011. That meeting was convened over two days, February 9 and February 22, 2011.

Negotiations between the parties broke down and the case proceeded to prehearing conference. The prehearing conference was convened via teleconference on March 17, 2011. The prehearing conference report was issued on March 18, 2011.

Student was represented by [REDACTED] of the Law Offices of [REDACTED] and District was represented by [REDACTED] Due Process and Mediation throughout the proceedings.

The hearing was convened on June 1, 2011 at [REDACTED] and June 2 and 3 at [REDACTED] concluding at the end of June 3, 2011.

Issues Presented and Remedies Requested

The issues presented in the case are:

1. Whether [REDACTED] failed to provide timely, appropriate and comprehensive evaluations including but not limited to post-secondary transition assessment, which precluded the school district from developing and implementing an appropriate IEP thereby denying Student a free and appropriate public education for the two years prior to filing.
2. Whether [REDACTED] failed to identify the scope of Student's needs and design an IEP that appropriately and adequately addressed Student's educational needs for the two years prior to filing.
3. Whether [REDACTED] failed to provide an appropriate placement with sufficient educational supports in place for Student to make appropriate progress from 2009 to the present for the two years prior to filing.
4. Whether [REDACTED] failed to provide social work services and social supports thus denying Student a free and appropriate public education for the two years prior to filing.

Student's Requested Remedies

The remedies being sought by the parents are:

1. That [REDACTED] provide and pay for an out of district therapeutic day placement appropriate to address Student's educational needs.
2. That [REDACTED] provide compensatory education for all periods during the last 2 years prior to filing during which [REDACTED] failed to provide Student with a free and appropriate public education, including:
 - a. 80 hours of tutoring (1 hour a week, 40 weeks/year for 2 years);
 - b. 40 hours social work services, direct therapy and social skill groups (30 mpw, 40 weeks/year for 2 years)
 - c. Any other compensatory services the hearing officer deems appropriate.

3. That [REDACTED] provide an independent and comprehensive evaluation of Student's postsecondary transitional needs and reimburse the parents for any and all out of pocket expenses related to evaluations or assessments.
4. That the hearing officer order [REDACTED] to write a sufficient and appropriate IEP in light of the case study evaluation and undertake all necessary educational supports in his IEP.
5. That the placement provide the social supports necessary to provide Student with a FAPE.

District's Requested Remedies

The remedies being sought by the District are:

1. A finding that the District provided Student with a free, appropriate public education.
2. That the relief parents are seeking be denied.

Witnesses

Following are the witnesses who were present and offered testimony in this case:

1. [REDACTED] Case Manager/Counselor, [REDACTED] School
2. [REDACTED] Speech-Language Pathologist, [REDACTED] School
3. [REDACTED] Social Worker, [REDACTED] School
4. [REDACTED] General Education Social Sciences Teacher, [REDACTED] School
5. [REDACTED] Special Education Teacher, [REDACTED] School
6. [REDACTED] Principal, [REDACTED] Academy
7. [REDACTED] Social Worker, [REDACTED] School
8. [REDACTED] citywide school support teacher, low incident cluster programs (previously autism itinerant)
9. [REDACTED] School Psychologist, [REDACTED] School
10. [REDACTED] Learning Specialist/ Special Education Teacher, [REDACTED] High School
11. [REDACTED] Student Aide, [REDACTED] High School
12. [REDACTED] Social Worker, The [REDACTED] of [REDACTED] Schools
13. [REDACTED], Speech-Language Pathologist, [REDACTED] Public Schools
14. [REDACTED] Mother
15. [REDACTED] Father
16. [REDACTED] Student
17. [REDACTED] School Psychologist, The [REDACTED] Schools

Documents Offered Into Evidence

Both parties presented extensive binders of documents into evidence. The District submitted exhibits page numbered 1 through 670. Parents submitted exhibits page numbered 1-1067.

Additional exhibits entered into evidence were Hearing Officer Exhibits 1 (HSMP Service Logs) provided by [REDACTED] on the date of hearing and admitted without objection, and 2a-e documents provided by [REDACTED] also admitted without objection.

Burden of Proof

As the moving party, the parents have the burden of proof. *Schaffer v. Weast*, 126 S.Ct. 528 (2005).

Finding of Facts

Background and History

Student is a 15 year old student who just completed his freshman year at ██████████ high school in ██████████ IL. He was born prematurely at 24 weeks in 1996, spending his first three months of life at the NICU. Though he weighed 2 pounds 1 ounce at birth, he is described by parents as developing normally as a happy, laughing child. It wasn't until he was a toddler that parents began to notice some behaviors, such as an intolerance for clothing labels on his clothes. (PD 51). He is shy, quiet, has no friends outside school, and spends his time alone or with his family. He lives with his father, mother and sister in ██████████ (PD 54).

Student has been in the ██████████ Public School system his entire academic career. He attended ██████████ from kindergarten through eighth grade,

Social interactions were a concern for this child as early as preschool (PD 53). Student began receiving speech services as a kindergartener due to a stutter (PD 51), and was first tested for learning issues in 3rd grade (PD 53) when his parents noticed he wasn't interacting with other kids. In fourth grade, after an evaluation, student was found eligible for special education services under the categories of Learning Disability and Speech and Language.

Due to concerns about his social development, parents began to suspect autism. When they brought their concerns to the ██████████ principal, they were told they were opening a "Pandora's box." Ultimately student was tested and found highly probable to have autism on the ██████████ rating scale. (PD 52).

Lauren Leibovich, ██████████ case manager/counselor for five years had student on her caseload when he was in 5th or 6th grade at ██████████ school, and coordinated his IEPs. On the triennial psychological evaluation conducted in 2006 (PD 144), student was in 4th grade, and his eligibility was LD. Student's IQ of 86 at the time was below average and his reading and math were below grade level. (PD 145-146).

During junior high he exhibited anxiety, stress, shutting down, putting his head on his desk. He didn't understand what he was reading, had trouble with writing, didn't make friends, wasn't making eye contact, and still had problems with his speech, and the volume of his voice, as well as with organization.

In 2008, parents were concerned with middle school adjustment to changing classrooms, teachers and high school choices (PD 378-380). On the 12/09 IEP (PD 310) parents were concerned with the removal of autism services, since they didn't feel their son would get proper support in high school. They had an autism specialist for a period of time in junior high but were never told when those services were discontinued.

Another psychological evaluation was conducted in 2009. His KTEA II letter and word recognition score was 3.4, reading 2.1, math 2.5, still significantly below grade level. (SD 30E).

From 2008-09 student was eligible for special education under the primary category of learning disability and secondary category of autism. He received only group social work services that year despite parental concerns about his lack of socialization and his anxiety.

In 2009, in 8th grade, student was reintroduced to the general education setting in English and math without further evaluation. Early in 2009, the parents requested paraprofessional support for student to assist with his academic and social struggles; that support was not provided. In February, 2009, speech pathologist [REDACTED] recommended that student be dismissed from speech. On his next IEP in March, 2009, speech and language and autism itinerant services were provided as consultative only.

In April, 2009, an additional 15 mpw of social work services were provided, when student displayed "significant self esteem issues that negatively impact his academic functioning." In December, 2009, student continued to have primary eligibility of learning disability and secondary of autism. 15 mpw of social work services continue to be provided. (PD 1066).

[REDACTED] speech and language pathologist, has worked at Thorp 9 or 10 years, and known student since kindergarten. She has worked with 20 students with autism, and believed that behaviors student exhibited when she worked with him showed signs of autism even before he was diagnosed.

She conducted the PPVT on student, and testified that student was below average on receptive vocabulary and listening comprehension. Though she testified at hearing that student should have been referred for speech and language at the time, she didn't make that recommendation to the team and instead stated that his issues should be dealt with through accommodations in class, though she had no data to support that. In conjunction with the 3/27/08 IEP meeting, [REDACTED] testified that she switched her recommendation to consult only minutes because progress would plateau at times. I find this testimony not credible, since there is no evidence that student was plateauing at the time or not in need of speech and language services.

Though she testified that student was doing "better" over time, she had no data or documentary evidence to support her assertion other than the fact that the number of times he would put his head down and whisper seemed to her to decrease over time. She couldn't remember specifically observing student in class in 7th or 8th grade to know whether or not accommodations or modifications were working, and couldn't point to anything in her service logs to support her assertion that he was doing better and that he didn't need continued direct speech and language services.

[REDACTED] was student's social worker at [REDACTED] school his 8th grade year. She recommended social work services for his 12/09 IEP and 3/24/10 IEP because of his pragmatic speech/social communication issues. In the approximately six hours of direct service she provided, she saw some improvement in reciprocating conversations but not initiating. He couldn't sustain interaction for very long, and he still shut down.

When questioned as to whether any of the accommodations and modifications proposed in the IEP addressed social communication, [REDACTED] could not answer the question or find any documents to support that conclusion. (PD 319-322). [REDACTED] testified that she believed student needed social work in high school and that it was an error that it was omitted. She

testified she wasn't aware of the separate high school grid page, since that was the first year of [REDACTED] having the new computerized IEP system. (PD 267, 298).

[REDACTED] special education teacher the last 11 years, knew student in 8th grade; he was one of two students with autism. Concerns for his IEP (PD 310) were student initiating tasks, on task behavior, socialization with same age peers. She didn't see decoding as a need even though evidence suggests that student didn't demonstrate consistent strategies for sounding out words; further, no decoding assessment was done. (SD 33). And, though [REDACTED] testified that his fluency was very good, this is contradicted by the fact that fluency remained a goal on every single IEP developed for this student. (SD 58)

When questioned as to why some of the IEP goals had no benchmarks, (PD 336-339) [REDACTED] testified that it might have been a glitch in the new computer system from April, 2010, but that it didn't matter if the benchmarks and objectives didn't appear since she knew what student needed to work on. On cross-examination, however, she agreed that a teacher receiving that IEP at the new school would not have known how to implement it. Though she testified that 5 mpq to collaborate and consult was enough, she contradicted her own testimony, by stating that she provided more minutes than that on a regular basis.

She testified that by the end of the 8th grade, he didn't require as much individualized proximity or attention from her, and that a largely inclusion setting would work in high school because it was working for him in 8th grade. (SD 126), and that at the time he didn't need pull out or self contained class. Further she testified she would never recommend a class of one for student, and he benefitted from being in the general education setting.

[REDACTED] social worker, was at [REDACTED] from 2005-2009. She provided direct services to student in a small group setting. On his 3/27/08 IEP she wrote the social work goal, though she didn't remember it and didn't collect data. (PD 378). She remembered that he was quiet and his voice would change. Her memories of student were vague and largely dependent on reviewing her notes from the file, where she recalled working on social skills and anxiety. (PD 133-143). Because she had limited memory of student and her dealings with him, I find her testimony that her recommendation of 15 mpw social work services was appropriate at the time (SD 46) suspect.

The parents visited [REDACTED] several times before enrolling student, and spoke with principal [REDACTED] as well as [REDACTED] on numerous occasions regarding their son and his disabilities and challenges. They were told the school could accommodate their son so they decided to enroll him there. Student began at [REDACTED] on August 23, 2010.

He received [REDACTED] the first day and several more the first week for failure to complete homework. The parents continued to email, call and meet with staff regarding their concerns for their son. Parents admitted signing the Student and Parent Handbook for [REDACTED] (SD 347) which referenced the homework load, discipline and other policies.

UIC College Prep High School

Student began as a freshman at [REDACTED] High School in the fall of 2010. On the first day, he received a [REDACTED] for not completing summer homework. He got four more

██████████ that first week. ██████████ are a form of punishment for students who don't submit homework on time, which requires them to serve time after school to complete the work for up to half credit.

From the beginning, parents have been engaged and involved, communicating regularly with staff at Student's schools as well as district-wide support staff about their concerns regarding their son through email, voicemail, letters and face to face meetings. They provided their contact information and made themselves available to school staff. (PD 653, PD 657). School staff were responsive to parent concerns, making time to meet and discuss student, and following up via email. (PD 658-661, 667, 753).

Parents expressed concern within the first weeks of school about the school environment and pace of learning, (PD 54), and that student was not receiving the services he needed to be successful. ██████████ Learning Specialist, noted on 9/9/10 that the team decided student needed an aide. She began the process by writing a referral for an evaluation prior to the triennial evaluation in order to secure the aide. (PD 417). At that time, ██████████ did not have copies of prior evaluations from ██████████ only the current IEP. (PD 417).

Parents expressed concern that a reevaluation would be too stressful for student (PD 694-695), since he would get anxious when he was tested. The district agreed to move forward on getting an aide for student without the reevaluation. (PD 701), and she began providing services to student shortly thereafter. (PD 741).

They were concerned that their son was overwhelmed by the amount of homework assigned, and that he frequently had to stay up till midnight to complete it. (PD 54, PD 401, PD 704). Parents requested that student's homework be reduced, and this was agreed to. After the meeting, parents emailed school staff again on October 13 reiterating their desire that the homework be reduced. (PD 651). A reduction of 25% to 50% was discussed. (PD 651, PD 791-792). Even with the reduction in homework, when parents received his first report card, they were notified he was "at risk." (PD 651).

Principal ██████████ sent an email to the 9th grade staff at ██████████ regarding the student, expressing that the adjustments to grading and homework that parents were seeking "may not help him prepare for the rigors of college" and that "there isn't much more we can do but provide these services and hope to move him more towards independent learning over the next 4 years." (PD 815); those same concerns were expressed to the parents (PD 871).

Parents began to express their desire that their son be placed in a program that is less academically rigorous and more focused on social skill development. (PD 54). They also expressed concern over the discipline system at ██████████ including the ██████████ demerits and detentions student received. (PD 419-420, 681). In internal communications on this issue principal ██████████ tells his staff "We need to draw out boundaries somewhere." (PD 681).

Student received his first detention in September, and was suspended for a vulgar comment to another student made at the end of that same month. During October, student got two detentions and six more ██████████. In November, he received four ██████████ and another in December. Student also was suspended for five days in the fall, when he made a comment to another student in PE class which was found to be vulgar and considered to be sexually explicit.

Conflicting testimony about what was actually said and heard was elicited both in the record and in testimony at hearing. Parents testified that they weren't informed until 5 days after the incident happened that student was going to be suspended. (PD 417, PD 750, PD 769).

In January, student was punished for changing answers on a quiz as it was graded because he wanted to get an A, and also received another [REDACTED] February brought a detention and four [REDACTED] In March, he received 2 detentions and 3 LaSalle's. In April, he served another detention and two [REDACTED], and a detention and 5 [REDACTED] in May. (PD 414-420, 1067).

Demerits are given at [REDACTED] for a variety of infractions. Once a certain number of demerits are incurred, a detention is given. Student received demerits through the year for everything from being late, running in the hall, talking during silent advisory, talking during silent lunch, throwing a pencil, being off task and kicking a student under the table. (PD 404). During her testimony, [REDACTED] said she believed the fact that student was earning demerits for talking was "progress" for him, though she said he had to be punished for it because it was "against school policy."

In addition to concerns about homework and discipline, parents were concerned about his grades and testing. Parents notified [REDACTED] that student experienced test anxiety and nervousness. (PD 684, PD 687). [REDACTED] staff discussed test accommodations, but also expressed concern that in order to attend college he needed to have as few accommodations as possible. (PD 685).

From time to time, though, in addition to communicating behavior and other problems concerning student with parents, staff did communicate positive experiences with the parents, such as when student raised his hand in Algebra for the first time in class (PD 706) and when he had a great day in math (PD 788), when he participated well in a small group after school tutoring session. (PD 852) and raised his hand in biology (PD 855), as well as noting social improvements such as talking to peers in class and in the hall, and eating lunch with classmates. (PD 877).

[REDACTED] citywide school support teacher for the low incidence cluster was previously an autism itinerant. She graduated from [REDACTED] in 1995, with a degree in special education, and got her master's degree at Northern Illinois University in 2002. She taught for 10 years working with low incident autism instructional classroom teacher, and spent the last six years working as an autism support staff teacher. She is trained in TEACCH, a therapeutic methodology for working with autism, which focuses on consistent data collection.

Despite her insistence on the importance of data collection and data driven decision making, and her testimony that without data "it is just an opinion", [REDACTED] herself did not collect any data while evaluating student in December, 2010. Prior to her observation she reviewed student's LRE grid and modifications and accommodations on his IEP. During her observation she noted that student whispered in almost all his interactions with his aide.

[REDACTED] recommended the use of social stories, visuals and a token economy point system. HO 2A-D. She helped [REDACTED] develop a point system, which [REDACTED] implemented it at least between December 2010 and March 2011.

She agreed with the switch of primary disability from LD to autism. (SD 265). She also believed the more restrictive setting that was proposed was appropriate because though she thought it was important for students with disabilities to be with typical peers for socialization and modeling, she believed the pace of the classroom and curriculum were becoming more complex for student.

██████████ psychologist in 2009, has been at ██████████ for 10 years. She has evaluated somewhere around 50 or 60 students with autism. She evaluated student once, (SD 30E) administering the Kaufman test which found student's scores were well below average. She admitted decoding was a need for student and that you would write goals to address such needs.

██████████ was asked to compare a previous WASI (PD 145) with the WASI she administered. On the full scale IQ 2 years prior, student scored an 86, on Sternstein's he scored a 74. She testified that this could be due to the fact that the earlier evaluator only administered two subtests and she gave four. Student also had a WASI full scale IQ from 2004 of 70.

██████████ is a Learning Specialist/special education teacher at ██████████ School, serves 16 students with IEPs and has only worked with two students with autism. When student started out receiving F's in reading, math and language early in the year, they hadn't yet received the ██████████ file and in fact didn't receive it for several months, though they did have the IEP that was currently in place.

Kerr referred him for an evaluation to obtain an aide because he needed frequent verbal prompts and redirection. (PD 309) Parents didn't want him reevaluated (PD 684) because of his test anxiety. A one on one aide was ultimately assigned to student in October, 2010.

██████████ and the family worked closely together, she found the family cooperative and supportive and invested in their son's future and concerned about his grades and the pace of school and amount of work and homework at ██████████ College Prep High School. (SD 134). ██████████ helped student learn to be organized with his locker and binders, and taught him how to use his homework folder and agenda.

In preparing the new IEP, ██████████ testified that if there were goals he hadn't met from the prior IEP, she kept them the same. A new goal was developed to assist student in understanding what he was doing in assignments and tests. (SD 157). ██████████ testified that weekly quizzes were used to monitor progress on goals but there were none in the evidence presented at hearing. She also testified that mastery manager enabled her to check student's progress toward meeting standards, and that students themselves could access it; when student testified, however, he had no idea what mastery manager was.

██████████ testified that socially he was improving, citing the example of getting demerits for talking during silent lunch and silent advisory as improvement. She said the demerits had to be given because his behavior was against school policy even if that behavior demonstrated an improvement in an IEP goal. She agreed that with student's grades of mostly F's he would not get into college. (PD 468-472).

██████████ Student Aide, is in her second year at ██████████ College Prep. She has a bachelors in Business, and is pursuing a masters in special education. She has only worked with one student with autism, student in this case. She redirects and prompts him, provides

study guides, note cards and other accommodations and modifications. She testified that student is often at school till 5:30 or later.

From December through spring break, [REDACTED] implemented the token economy point system; though she testified she filled it out daily, she never showed it to parents. (HO 2a-d). She testified that student's grammar is improving but reading comprehension is not, that he is talking more with her and in group, and has even taken part in group presentations. [REDACTED] is concerned with student's independent living skills such as safely navigating and moving around on his own, managing money and riding the bus. (PD 52).

Student himself testified at hearing that he has a hard time understanding in school, and that sometimes it is hard to ask for help. He said he didn't know how he felt about school, or how long it took him to do homework. Student testified that he has friends in school, but that he likes to do things by himself. He says he's kind of good in writing but sometimes gets lost and has trouble getting his thoughts together. He doesn't go out without his parents. He said he has friends in school but doesn't go anywhere with them.

Educational Achievement and Grades

Early on, student was receiving F's in all his classes and was recommended for SPARC and SES tutoring after school. (PD 849). He was also enrolled in Math for Success. With a modified curriculum and modified grading scale, student passed all his classes first semester with the following grades:

Advisory: passing
Music: C+
English 1: C+
Personal Health: C
Algebra 1: D-
Early Collegiate Scholars: C
Physical Education 1: B+
Biology: B

Though final semester grades for second semester were not out at the time of this hearing, the current progress noted as of May 23, 2011 was as follows (PD 1056-1057):

Advisory: F
Chorus: D+
English 1: F
Biology: D
Algebra 1: F
Civics: C-
PE 1: A+
Personal Health: D

EVALUATIONS

Student has been evaluated on a frequent basis since at least 2002, undergoing many psychological, speech language, cognitive and academic assessments, among others. In spite of these assessments and numerous IEPs through the years, student today exhibits many of the

same challenges and deficits, such as difficulty staying focused, requiring frequent prompting, difficulty with both reading and listening comprehension, difficulty with writing, and difficulty with social interactions. (PD 43-47, 51, 603).

Student still exhibits negative behaviors in class such as ignoring his aide, refusing to work, not listening, and throwing things. His class work is impacted as a result. (PD 603, 614, 624).

Social Work Evaluation 2011

In the [redacted] Social Work Evaluation (Reevaluation) (PD 51-56) conducted by [redacted] on February 4, 2011, she notes parents concerns about the current school placement, student's stress level and anxiety, and that student needed more practice on social skills and independent functioning. (PD 51).

[redacted] interviewed [redacted] on 1/25/11, who believed student would struggle at [redacted] as the level of difficulty of the coursework increased (PD 52), and that he needs constant stimulation to stay on task, can't stay focused and needs redirection about every two minutes. (PD 53).

The Humanities teacher reported that student often circles answers without reading the questions. (PD 53). His choir instructor reported that he struggles with verbal instructions but that he accepts redirection well. (PD 53). [redacted] reported that student was exhibiting more social behaviors in and out of class, but that he would shut down when he was bored or tired. (PD 55).

She interviewed Student himself, who was able to answer straightforward questions, but had difficulty following questions if anything other than a simple sentence was asked. (PD 55). Parents reported that student needs constant prompting to continue with homework. (PD 55).

[redacted] reported that student has executive functioning difficulties, including with synthesizing ideas, making inferences and recognizing relationships, and that he has difficulty with organization. (PD 55). [redacted] recommended that student be provided clear, concise directions and breaking down concepts into small tasks; that his teachers modify the content and length of assignments and exams; and that he work with a one on one aide. She found that he would benefit from continued use of visual stimuli in class, and from continued social work services. She recommended work on independent living skills both at school and home. Because he continues to shut down when he gets overwhelmed, she recommended that he be able to learn at his own level and slowly progress over time. (PD 56)

Assistive Technology Evaluation (PD 57)

Student was referred for an assistive technology evaluation, which was conducted on 1/13/11. (PD 57-59). During testing, the evaluator found he read with poor to fair fluency and demonstrated fair word attack. He was able to answer four of ten questions about the passage. To assist with decoding, the evaluator recommended a speaking dictionary. (PD 61).

Asked to write a paragraph about his career aspirations, student wrote: "I want to own a place after high school, I want lots of video games." (PD 62). Because written expression, transitions and grammar were noted as areas of concern, a word prediction program called Co-Writer and Draft Builder as well as a talking word processing program were recommended. (PD 63).

Speech Language Assessments (PD 65-66; PD 126)

██████████ speech-language pathologist, evaluated student on 1/10/11. He noted pragmatic deficits as well as a reduced opening of his oral cavity which negatively impacted his articulation. He further reported that student speaks with soft vocal intensity reflecting his poor self concept with communication.

██████████ administered two tests: the WORD Test 2 (Expressive Vocabulary and Semantics) and the Peabody Picture Vocabulary Test 4th Ed. (PPVT). On the WORD test, Student scored a total score of 41 and standard score of 72 placing him in the 3rd percentile.

On the PPVT, Student received a standard score of 78, placing him in the 7th percentile. (PD 125), a similar result to that in the test administered by Shana Davis in 2009 where he scored a 74. In the summary, ██████████ noted that student has a communication impairment that adversely affects educational performance and that he was eligible to receive speech language services on a consultative basis to improve his pragmatic and receptive-expressive language skills. (PD 66).

On ██████████ 2009 evaluation, she reported that student had weakness in auditory comprehension and learning in testing and in class (PD 126), and that student engaged in behaviors like putting his head down and answering questions in a barely audible voice (PD 126). Though she found his articulation within normal limits, his auditory receptive language and vocabulary skills were moderately delayed and expressive language skills mildly delayed, and he sometimes used an almost inaudible volume. In spite of these findings, she recommended that he be dismissed from speech. (PD 126).

Psychological Evaluation (Report, Draft Report and Assessments (PD 67-123)

Records Review and Historical Data

██████████ reviewed prior evaluation data on student, and conducted assessments with student over four days of testing: 1/5/11, 1/10/11, 1/12/11, and 1/26/11.

She reviewed records from 2004, 2006, and 2009. In 2004 on the WISC-III, his verbal score was delayed (SS 59) and performance was low average (SS 86). His full scale score was borderline (SS 70). In 2006, he given the Woodcock-McGrew Werder Battery of Achievement, scoring at the fourth grade level for reading, mid second grade level for writing, and third grade level for math. (PD 144-155). His grades at the time were D's in reading, writing, speaking, and science and C's in listening, math, social science and conduct. His WASI full scale IQ score at the time was 70, (PD 145) with overall cognitive potential found to approximate the kindergarten level. (PD 151) when student was actually in 4th grade.

In 2009, on the KTEA-II (Kaufman Test of Educational Achievement-Second Edition) his overall reading achievement was in the lower extreme range, reading comprehension below average, math achievement lower extreme, spelling average, and his general intelligence was borderline. On the GARS (Gilliam Autism Rating Scale), student was found to have a high probability for having autism. Similarly, on the ADOS (Autism Diagnostic Observation System) I. Student was found to demonstrate characteristics along the autism spectrum.

2011 Psychological Evaluation

██████████ administered several assessments, including the Woodcock Johnson III (WJIII), parts of the KTEA-II, the GARS-II, Vineland-II, Bender-II, Woodcock Johnson Test of Cognitive Abilities-Third Edition (WJIII-Cog), Achenbach Youth Self Report (YSR), Achenbach Teacher Report Form (TRF), Behavior Rating Form of Executive Function (BRIEF), a student interview and observation.

On the WJIII-Cog, his general cognitive ability was measured in the low range (SS 78), and on the Vineland-II, student's overall adaptive behavior scored in the low range (SS 62) on communication, daily living skills and socialization. (PD 70).

On the GARS-II student's index was 74, scoring in the possibly to very likely displaying symptoms of autism. (PD 70).

Student completed the YSR, and compared to same age peers was found to be in the borderline clinical range for the number of sports, activities, and jobs or chores in which he participated. (PD 70).

On the BRIEF test for executive functioning, it was found that his overall executive functioning is elevated (Global Executive Composite). His ability to initiate, activate working memory, plan and organize, organize materials, and monitor progress on tasks are areas of concern. He has difficulty actively problem solving and difficulty initiating and completing homework and other tasks. (PD 71).

His intellectual ability was reported to be low or borderline. He had most difficulty with phonemic awareness tasks such as blending words and identifying words with missing sounds. Though she reported reading fluency was a strength for him, (PD 71) during her testimony, she admitted that the fluency scores were based on a sentence by sentence assessment instead of a paragraph or longer passage. He was noted to have more difficulty with reading comprehension and more complex multi step academic problems, as well as listening comprehension and oral expression.

██████████ recommended that student would benefit from participation in a social skills group, and from specific instruction on safety at school, home and in the community. She also recommended that a method such as TEACCH (Treatment and Education of Autistic and related Communication handicapped Children) should be implemented for student, and that executive functioning interventions should be implemented (PD 73, PD 944-945).

IEPs and IEP MEETINGS

FEBRUARY 9 and 22, 2011

This IEP was developed over two meetings, February 9 and February 22, 2011. Much of the Student's background was cut and pasted directly from the prior IEP into this one. As with prior IEPs, needs were apparent in math, reading, and writing as well as in other areas.

Though student is currently in Algebra I, under Academic, Developmental and Functional Needs, the author writes "He would benefit from a co-taught Pre Algebra class as Algebra seems to be a struggle for him and he has required several accommodations and modifications to his homework and assessments." (PD 159).

In writing, student has difficulty generating thoughts unless prompted, but benefits from graphic organizers, outlines, sentence starters and writing prompts. In humanities, he often answers without reading the questions and generally won't ask for help. In biology though he completes homework on time he struggles with class participation, and over time it is getting more difficult for him (PD 593). Though the author reports that student has good reading fluency, the testimony of Dr. Jones contradicted this assertion, as it seems to depend on the test given whether fluency is evident.

He needs various accommodations to access the curriculum such as the option to test in a separate setting, more time to respond and organize thoughts, record assignments in his agenda, verbalizing what is expected of him with his homework, use of graphic organizers, visual images, sentence starters, a calculator on math assignments, task analysis, scaffolded worksheets, verbal prompts, and copies of class notes. (PD 160). It is reported that decreasing the workload may lessen his anxiety. (PD 159)

Other accommodations and modifications are suggested for all subject areas including verbal directions, checking for understanding, extra response time, test one concept at a time, allow use of computer, visual cues and guides, motivation and verbal rewards; extra examples, embed choices, extra response time, concrete examples, use of calculator, walk by student's desk from every 2-3 to every 5 minutes, ask student to repeat directions, and reduced homework load by up to a 50% reduction. (PD 172-175).

Student works with a one on one paraprofessional throughout the day. Though student is to use an agenda to write assignments, the aide provides a typed list of classes and assignments, (PD 161) and provides verbal cues to remind him to write his homework in his agenda. In reading, student has difficulty focusing on the passage and on the question he is asked. He often writes an answer without completing the reading and needs to be redirected back to complete the reading and to read each question before answering. (PD 161).

Social communication continues to be a struggle, when he gets nervous he won't initiate or participate in conversations. He gets nervous on tests, and continues to shut down at times. (PD 162-163). Among other things, parents were concerned about the homework load, testing and grades. (PD 164).

On the "grid" or Justification of Placement in the Least Restrictive Environment, student's recommended plan was as follows: mathematics 300 mpw separate class, language arts/English/reading 300 mpw separate class, independent functioning 45 mpw separate class, social work 30 mpw separate class, writing 45 mpw separate class for a total of 720 mpw in a separate class. 15 mpw were designated for community based instruction on post secondary training, post secondary employment and independent functioning. (PD 203). Student would be in general education with accommodations and modifications for music, biological and physical sciences, speech/language and social sciences. (PD 203).

The general education setting full time with supplementary aides and services was rejected because it was attempted and found not sufficient to meet student's needs; similarly,

the general education with special education support 20% or less outside the general education class was rejected as not sufficient to meet student's needs. (PD 204).

On the Transition Service Plan (PD 208) for post secondary employment it is noted that based on a transition inventory student would like to work as an engineer, and plans to attend a two year college. It is also noted that student would like to start his own business, be an entrepreneur, an engineer or a game creator.

IEP Goals and Report Cards

Goals were written in math, reading, and writing. (PD 178-183, PD 184-185, 186-187). In math, according to IEP report cards, he was "making expected progress" understanding the information given (PD 475) on 2/11, but as of 3/11, student was found to not always underline information pertinent to the problem. (SD 408). Though the instructors noted that student was showing a lot of growth in Algebra as of 2/11 (SD 405) and 3/11 (SD 409), that supposed growth is contradicted by his grade as of May, 2011, which was an F.

In reading, goals were written regarding inferring the main idea of a read passage in a 5th grade level reading. (PD 184-185). According to IEP report cards, student was not making expected progress on this goal (PD 476) as of 2/11, nor 3/11 (SD 409). In writing, goals were to be able to write a three paragraph assignment in a well organized and coherent manner (PD 186-187). Student achieved his 2/11 benchmark on this goal. (PD 476) as well as his 3/11 benchmark. (SD 409).

On postsecondary training, student's IEP goal is to research two colleges he would like to attend, the program of interest, cost per semester and other information. (PD 188-189), According to IEP report cards, he was making expected progress on his benchmark (PD 476, SD 410) though no comments are provided as to what that progress is or how it was measured. Under post secondary employment, the author writes student has identified he would like to become an engineer and attend college. (PD 190), and goals were written for him to research two engineering jobs, and either job shadow, volunteer or research that job (PD 191). As of 2/11, he was making progress on this goal. (PD 476, SD 410), though no comments were written as to what the progress was or how it was measured.

In social work, goal was written for him to appropriately identify his emotions 80% of the time during social skills group. (PD 192-194). As of 2/11 he was making progress toward this goal. (SD 407) and as of 3/11 was able to appropriately identify emotions in sessions (SD 410).

A goal was written for student to write his assignments in his agenda for all classes, gather and pack the appropriate materials and verbally state what is expected of him regarding homework; (PD 195) and, as of 3/11 he was verbally stating what was required for algebra class (SD 410). Another independent functioning goal is for student to improve his social communication skills by participating in whole class and small group discussions. (PD 201). He was progressing on this goal as of 2/11. (PD 477).

A post secondary independent living goal was written which reads "presented in a situation where he does not know what to do, student will seek out assistance from an adult with 100% accuracy." (PD 197). On his 3/11 IEP report card, it is noted that student continues to work on asking for help when he needs it, though he is mainly seeking out his special education teacher or his aide. (SD 411).

In language arts/reading, a goal was written regarding reading a 3 paragraph passage and answering three questions about it. (PD 199). On the 3/11 IEP report card it is noted that student struggles to paraphrase what he has read but is able to paraphrase short reading passages. (SD 411).

March 24, 2010

This IEP was developed while student was still in 8th grade at [REDACTED]. He received specialized instruction in language arts reading and writing, and math, with most of his service minutes in an inclusion co-taught setting. He was working on interacting more with his peers as well as demonstrating independence with regard to recording homework assignments in his agenda, (PD 269) though Student was noted to need several verbal prompts to write down homework in his agenda. (PD 271). Testing was noted to make him extremely nervous. (PD 271). Parents were concerned with the removal or decreased level of supports from the autism department. (PD 273). And, though parents requested paraprofessional support, it was written on this IEP that student did not require it. (PD 275)).

His reading goal was to improve comprehension and fluency. (PD 281). Clearly, little progress was made, since improving fluency remained a goal in his next IEP. Similarly, little progress was made toward achieving his math goals given that he is currently earning an F in Algebra.

Social work goals of initiating conversations with peers, listening, asking questions and remaining on topic continue to be a challenge for student in the current school year. (PD 287).

A writing goal was to be able to compose well organized and coherent writing for specific purposes and audiences using self regulated strategy development and explicit instruction. (PD 290). According to IEP report cards, he was making expected progress on 2/10 and 4/10 reporting periods. (PD 480).

The transition goal was written that upon completion of high school student would enroll in courses at a four year college or university, focused on courses related to engineering. (PD 292). No data is provided, nor any assessments to show that pursuit of an engineering program is appropriate for someone with student's academic and intellectual background.

The "grid" or Justification of Placement in the Least Restrictive Environment provided for language arts 131 mpw direct services in regular class, 154 mpw direct services in regular class, math 232 mpw in regular class for a total of 517 mpw in regular class, and language arts 41 mpw in separate class, social work 15 mpw in separate class, for a total of 56 mpw. Speech consultative services of 15 mpq were also provided. (PD 295, 303).

A proposed high school grid was also required to be prepared. That provided for: math 225 mpw direct services in regular class, post secondary training and employment 10 mpw in regular class, for a total of 235 mpw in regular class, along with 225 mpw language arts in a separate class, totaling 460 mpw. (PD 296, 304). [REDACTED] testified that student's placement was no different from 8th grade to high school, yet offered no justification for the nearly 50% reduction in service minutes (SD 126) from one year to the next. [REDACTED] also admitted that student's issues with safety fell under the heading of independent living skills even though the

IEP noted that student had no need for IL skills. [REDACTED] also testified that no rationale was given for the decision not to offer paraprofessional support. (SD 40).

December 11, 2009

On this IEP student was found eligible under the categories of Learning Disability and Autism. (PD 310).

Goals were written for writing (to compose well organized and coherent writing); math (to describe numerical relationships using variables and patterns using task analysis, modeled problems, class notes and verbal prompting; and to solve and graph linear equations); and reading (to improve fluency and comprehension) [REDACTED] signed and dated a few of the benchmarks, but no signatures or explanations of progress are given on most of them. (PD 327, 329, 333, 335, 339).

Similarly, a social work goal was for student to initiate conversations with peers. (PD 331). Benchmarks were written but no data provided to measure progress. It appears as if someone signed the first benchmark date but that it was whited out. (PD 331).

On the EXPLORE test of college readiness, students scores were below the benchmarks needed in all subjects. (PD 349). In spite of these scores, it is recommended on this IEP that student should enroll in a college prep program for high school. (PD 348).

A Transition Service Plan was developed, but no assessments were conducted, benchmarks listed nor data collected. (PD 336-337, 347). Based on answers provided by the student, he indicated he'd like to work as an engineer, would like to attend a four year college and would also like to work part time in a game store.

April 15, 2009

Student's eligibility was listed as LD on this IEP (PD 370) on the cover page; however, in the disabilities section on PD 357 both autism and learning disability are checked off. Student reported he didn't have many friends and was afraid to make new friends (PD 353), was found to withdraw when nervous (PD 353), and his overall cognitive function was within borderline range (PD 353).

On the Summary of Special Education Services in the LRE, it is noted that student received 200 mpw reading in a regular class, and 200 mpw writing in a regular class as well as 200 mpw math in a separate class and 15 mpw social work for a total of 615 mpw special education services. (PD 364). Parents requested a paraprofessional in January, 2009 (PD 379); on the IEP however it is noted that paraprofessional support was not needed (PD 358).

Goals were written for social/emotional, math, reading, writing and speech language consult. (PD 361, 362, 363, 364). His 8th grade ISAT reflected below standard in reading, meeting standard in math, and writing at academic warning. (PD 450). His 7th grade ISAT reflected reading below standard, writing at academic warning. (PD 454). 94).

March 27, 2008

The March, 2008 IEP was considered during hearing for historical context and reference points; however, this IEP is not at issue in this hearing and was not being discussed for that purpose.

His eligibility was determined to be under the categories of both learning disability and autism. (PD 394). Student was noted to be easily distracted and lose concentration, have trouble putting ideas on paper, difficulty following multiple verbal requests and slow to switch from one task to another. (PD 395). He was described as having difficulty organizing his thoughts in a clear, cohesive and meaningful manner. (PD 387), and difficulty connecting meaning and answering comprehension questions. (PD 386). He was also shutting down, stuttering, and changing his voice at least once a day. (PD 385).

Student was receiving 600 mpw special education services in reading, writing, math and social work, with reading and writing provided in a regular class and math in a separate class.

██████████ Academy

██████████ is principal at ██████████ Academy, where she has been since the 1970s. She met student's mother in November, 2010, who told her that student had high functioning autism and learning disabilities. ██████████ serves students with both autism and learning disabilities. They have 100 students at ██████████ approximately 75% have IEPs. 64 students are currently in high school and about 80% of them have IEPs. There are 14 high school seniors currently. 4 will attend a four year college next year. Last year of 23 senior graduates 6 went to four year college. The majority of their graduates attend community college.

██████████ shapes the curriculum depending on the needs of the child, how they learn, how they process. They conduct evaluations, review evaluations and other information. They offer programs like Orton Gillingham, Lindamood Bell, Lexia, and Earobics. ██████████ has Kurzweil, Speaking Naturally, Draft Builder, Read Out Loud, Write Out Loud, Inspiration, Lexia and Solo. Solo supports literacy skills, Kurzweil is for students with reading disabilities and Lexia for comprehension. They have reading specialists on staff to work with students one on one. They do diagnostics, clinical diagnosis and other services for both students at ██████████ and others.

In a high school class there are 3 to 10 students along with at a minimum a teacher and an assistant. They have four OTs who aren't staff, a part time speech language teacher, a full time social worker and full time psychologist. At ██████████ they offer language development and social skills 24/7 which helps students with autism as well as other disabilities. They work on social language, how to communicate, have a conversation and make friends.

██████████ handles data collection for students with IEPs by taking probes every two weeks and charting progress. They conduct Woodcock Johnson every March or April testing on academic skills, as well as regular chapter, unit and other daily tests and quizzes. In terms of norm based or criterion referenced transition assessments, ██████████ conducts vocational assessments and a battery of psychoeducational testing. For the transition program, they offer some students a work study to get real world experience on the job, working with the public, with a job coach, etc.

Conclusions of Law:

Determining whether a student has received a FAPE begins with the two-prong analysis set out in *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982) ("*Rowley*"). First, the district must comply with IDEA's statutory procedures; second, it must develop an IEP reasonably calculated to enable the student to benefit from the special education and related services.

Once the school district has met these two requirements, the courts cannot require more; the purpose of the IDEA is to 'open the door of public education' to [disabled] children, not to educate a [disabled] child to her highest potential. *Board of Ed. Of Murphysboro Community Unit School Dist. No. 186 v. Illinois State Board of Educ.* 41 F.3d 1162,1166. (7th Cir. 1994).

Under IDEA and corresponding State Law, students with disabilities have the right to a free appropriate public education (FAPE). 20 USC 1400 et seq. FAPE means special education and related services that are available to the student at no cost to the parents, that meet the State educational standards, and that conform to the student's IEP. 20 USC 1401(9).

Failure to Evaluate

Under IDEA a district must assess a student in all areas of suspected disability using a variety of assessment tools and strategies to gather functional developmental and academic information to determine if the student has a disability. 20 USC 1414(b)(2)(A); 20 USC 1414(b)(3)(B).

The Supreme Court noted the importance of the child-find obligation when they noted that a "reading of the [Individuals with Disabilities Education] Act that left parents without an adequate remedy when a school district unreasonably failed to identify a child with disabilities would not comport with Congress' acknowledgment of the paramount importance of properly identifying each child eligible for services." *Forest Grove School Dist. v. T.A.*, 129 S.Ct. 2484, 2495 (2009).

A district must ensure that it recognizes a student's needs and completes a full and individualized evaluation. *Kevin T. v. Elmhurst Comm. Sch. Dist. No. 205*, 36 IDELR 153 (N.D. Ill. 2002). The failure to fully evaluate a student leads to inadequate programming. *Bd. of Educ. of Oak Park and River Forest High Sch. Dist. No. 200 v. Kelly E.*, 21 F.Supp. 2d 862, 875 (N.D.Ill. 1998).

In *Compton Unified Sch. Dist. v. Addison*, the school district was liable for failing to evaluate a student who failed every class, turned in work that was "gibberish and incomprehensible", sometimes refused to enter the classroom, colored with crayons at her desk, played with dolls in class, and urinated herself in class. The mother was reluctant to have the child evaluated. Instead of evaluating the student itself, the School District referred the student's mother to a third-party counselor and did not conduct an educational assessment. *Compton Unified Sch. Dist. v. Addison*, 598 F.3d 1181, page 2-3.

When a school failed to evaluate a student for autism despite the parents providing an evaluation from a doctor concluding that there was "an autistic component" that complicated the

Student's performance. The court concluded that "without evaluative information that [the student] has autism spectrum disorder, it was not possible for the IEP team to develop a plan reasonably calculated to provide ... educational benefit. *N.B.v. Hellgate Elementary School Dist., ex rel. Bd. of Directors*, 541 F.3d 1202 (9th Cir. 2008).

In *Kelly E.*, the court held that the failure of the school district to respond to the MDC recommendation that psychological testing be conducted to better assess Kelly's possible learning disability was not a "de minimis procedural violation" but a denial of FAPE.

Similarly, in the present case, despite evidence from a very early age that student had autistic like behaviors, and specific and significant deficits related to those behaviors in the areas of expressive and receptive language, auditory comprehension, reading comprehension, fluency, pragmatic language and others, district failed to properly evaluate student to properly determine the extent of his limitations and develop an appropriate plan to address those limitations.

An IEP Reasonably Calculated to Confer Educational Benefit

The second prong of *Rowley* provides that the IEP developed for a child with disabilities must be "reasonably calculated to confer educational benefit." *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982). The IEP should include the following information: (1) a statement of the child's present levels of educational performance, including how the child's disability affects the child's involvement and progress in the general curriculum; (2) annual goals and short term objectives for improvements; (3) a description of the specifically designed instruction and services that will enable the child to meet those objectives; (4) a statement of how the child's progress toward the annual goals will be measured." *Kevin T. v. Elmhurst Comm. Sch. Dist. No. 205*, 36 IDELR 153 (N.D. II. 2002).

Additionally, the student must receive more than a nominal benefit from specialized instruction and related services. *T.H. v. Bd. of Educ. of Palatine Comm. Consol. Sch. Dist.*, 55 F. Supp. 830 (N.D. Ill. 1999). *Rowley* does not mean that a de minimis benefit is sufficient. *M.C. v. Cent. Regional Sch. Dist.*, 81 F.3d 389,393 (3rd Cir. 1996).

"An IEP must respond to all significant facets of the student's disability, both academic and behavioral." *Alex R. by Beth R. v. Forerestville Valley Community Unit Sch. Dist. #221.*, 375 F.3d 603, (citing *CJN v. Minneapolis Pub. Schs.*, 323 F.3d 630, 642 (8th Cir. 2003)).

In accordance with *Rowley*, the regulations governing IDEA require that IEPs should be based on the child's unique needs and not on the child's disability. 34 CFR 300.300(a)(3)(ii). A student's intellectual potential must be considered in determining whether the student benefited from his educational program. *Kevin T. v. Elmhurst Comm. Sch. Dist. No. 205*, 2002 WL 433061 (N.D. III. 2002).

In *Kevin T.*, the court said that to determine if Kevin's IEPs were reasonably calculated to confer sufficient educational benefits, it must assess Kevin's intellectual potential, given his disability and then determine the academic progress Kevin made under the IEPs designed and implemented by the district. Though Kevin possessed average intellectual potential, his scores decreased on IQ and academic achievement from 1990 to 1999. Despite knowing of the decrease, the district did not review or revise his IEPs to address the academic difficulties.

Similarly, in *Nein*, 95 F.Supp 2d at 972, the student's IQ score dropped twenty points in three years but the district didn't make any changes to the IEP to address the change. The court held "that where a child with a severe learning disability but significant potential makes no transferable progress in three years and where there was no indication the public school was ready and able to change direction, the limit of due weight and judicial deference to school authorities have been exceeded." *Id* at 975.

In *Board of Education of Oak Park & River Forest High School District No. 200*, 21 F. Supp. 2d at 877, the court found the student's poor academic record indicated that the educational benefit she was receiving was minimal. Student had failed half her classes and except for passing several pass/fail classes and making one B she received Ds in the remaining half. The court agreed that the district failed to institute a "systematic and comprehensive plan to deal with the student's reading difficulties" and that "such a failure was manifested by the absence of any goals or objectives that specifically addressed these reading deficits." *Id*.

A school did not provide a FAPE by failing to update the IEP objectives in the area of math, written expression, and auditory processing skills despite the Student not progressing in these areas. The Court determined that "merely copying [the Student's] IEP from one year to the next regardless of progress is also unacceptable." *Draper v. Atlanta Independent School System*, 480 F.Supp 2d 1331, Page 12.

The District Court upheld a hearing officer's determination that the lack of baseline data resulted in a deficient IEP where the Present Level of Academic Achievement and Functional Performance was contradictory and did not provide concrete quantified data. *Woods v. Northport*, P. 27. Specifically, the IEP omitted information about the student's behavior, information from independent evaluators regarding recommendations for direct therapy, instructional material, and information regarding extremity range of motion, tripod grasp, and gait. *Id* at 14.

Likewise, an IEP that failed to contain "mastery dates", vagueness about the student's present level of performance, and lack of measurable goals did not provide an educational benefit. *Escambia County Board of Education v. Benton* p.11. The Court upheld the IHO's finding because "a program cannot possibly confer an educational benefit...if his teachers and parents do not know where they are trying to take [the student] and how they will know when he has arrived." P. 14. Furthermore, the mastery dates were especially significant because it prevented the IEP team from determining progress during the school year. The lack of data showing achievements of his benchmarks would make it "extraordinarily difficult for meaningful programs to be fashioned". P 14.

Similarly, in the present case, student's full scale IQ has dropped 12 points in the last two years. While District pointed out that it increased 16 points from the first WASI to the 2nd, this does not convince me that the 12 point drop in the last two years is insignificant or that it does not need to be addressed.

Additionally, there is a startling lack of data collection and nothing more than a collection of vague "he is doing better" statements to support the District's assertion that continued [REDACTED] is appropriate for this student.

Moreover, it is clear that while the staff at [REDACTED] are well meaning and their hearts are in the right place, they are utterly ill equipped to take this child where he needs to go. This conclusion is supported by the fact that [REDACTED] herself testified that student's IEP goals that haven't been met are merely cut and pasted into the next IEP instead of serving as points of discussion to determine what needs to be changed, analyzed or considered.

Finally, if nothing else, the very fact that this student's grades have completely regressed from one semester to the next and he is failing nearly all his classes, despite intensive modifications and accommodations and attempts to teach him make it clear that he is receiving no educational benefit in this setting. While he may be getting some limited socialization with his non-disabled peers, given the testimony that he has no friends and prefers to be alone or with his family, I cannot see that the possibility of socialization with his nondisabled peers can justify continued placement in this setting.

Least Restrictive Environment

The least restrictive environment ("LRE") provision provides that "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 not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." *Beth B. v. Mark Van Clay*, 282 F.3d 493, 496 (7th Cir. 2002). *see also Kerry M. v. Manhattan School District #114*, 2006 WL 2862118 (N.D. Ill. 2006); *Bd. of Educ. of LaGrange Sch. Dist. v. Ill. State Bd. of Educ.*, 184 F.3d 912, 915-16 (7th Cir. 1999)); *Bd. Of Educ. Of Chicago v. Ill. State Bd. Of Educ.* 46 IDELR 219 (ND IL 2006).

The LRE is the one that allows the disabled child to be educated with her nondisabled peers, known as mainstreaming, to the greatest extent appropriate. *Beth B. v. Mark Van Clay* 282 F.3rd 493, 496 (7th Cir. 2002).; *Casey K. v. St. Anne Comm. High School District 302*, 46 IDELR 102 (DC Central Dist. IL 2006). However, in determining placement "educators 'have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents'". *Beth B. v. Van Clay*, 282 F.3d 493, P. 5 (citing *Lachman v. Illinois State Bd. Of Educ.* 852 F.2d 290, 297 (7th Cir. 1988)).

The LRE requirement shows Congress' strong preference in favor of mainstreaming, but does not require, or even suggest, doing so when the regular classroom setting provides an unsatisfactory education. *Beth B.* 282 F.3d at 497. A disabled child may be removed from the regular classroom when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. *Id.* The IDEA requires mainstreaming to the maximum extent appropriate, not the maximum extent possible. *Id.* However, when a school district determines that public placement is appropriate, it does not need to consider private placement. *Hjortness by Hjortness v. Neenah Joint Sch. Dist.*, 507 F.3d 1060, Page 4.

In *Beth B.*, a student's placement in a regular education classroom was not appropriate despite the regular education classroom being a less restrictive environment. The Student had "virtually nonexistent" academic progress and was making limited developmental progress, despite being provided with aides, communication devices, computerized books, and an

individual curriculum. The court also noted that the proposed placement was at an acceptable point of the continuum of services because it would provide "reverse mainstreaming" opportunities, and that the placement also included "time spent with nondisabled peers in nonacademic classes." P. 5.

In *JW v. Fresno*, the parent was adamant that the student be placed in a mainstream school despite several members of the staff expressing concern about the placement. P. 4. The student was placed in a full-inclusion mainstream school, where he had academic difficulties. The parent then filed a due process request claiming that the placement was inappropriate. The District argued that the claim was barred because the Parent consented to the IEP. The Court held that the claim was not barred. However, when balancing the factors of the educational benefits of placement full-time in a regular class; the non-academic benefits of such placement, the effect student had on the teacher and children in the regular class, and the costs of mainstreaming Student" the court determined that on balance the placement was appropriate. The Court further noted that the "parent's insistence on mainstreaming at the time the IEP was made" supported the determination that the student was provided a FAPE. P. 15.

District argues that Student's LRE is at [REDACTED] with much of his day spent in pull out services largely by himself. This cuts against their very argument that socialization with nondisabled peers is a crucial and important element in his education.

Remedies

One of the remedies requested by student, and which a hearing officer is empowered to provide is compensatory education. "Compensatory education" is a "legal term used to describe future educational services" which courts award to a disabled student under the IDEA "for the school district's failure to provide a FAPE in the past." See *Kevin T.*, *infra.*; *Board of Education of Oak Park and River Forest High School District 200 v. Illinois State Board of Education*, 79 F.3d, 654 ("this authorization encompasses the full range of equitable remedies and therefore empowers a court to order adult compensatory remedies").

The compensatory education award ""should aim to place disabled children in the same position they would have occupied but for the school district's violations of the IDEA." *Reid v. Dist. of Columbia*, 401 F.3d 516, 523 (D.C. Cir. 2005) see *Petrina W* (approving of the analysis in *Reid*) p. 5. Designing [the child's] remedy will require a fact-specific exercise of discretion. *Id* at 524. "Just as IEPs focus on disabled student's needs, so must awards compensating past violations rely on individualized assessments". *Id.* The award of compensatory education requires a "flexible, individualized approach". *Petrina W.* p. 4. Furthermore, the inquiry must be "qualitative, fact-intensive, and above all tailored to the unique needs of the disabled student". *Branham v. District of Columbia*, 427 F.3d 7, P 2. Citing *Reid* at 524

When an IEP fails to confer some (i.e. more than de minimis) educational benefit to a student, that student has been deprived of the appropriate education guaranteed by IDEA. It seems clear, therefore, that the right to compensatory education should accrue from the point that the school district knows or should know of the IEPs failure. *M.C. and G.C. v. Central Regional School District*, 81 F.3rd 389, 397 (3rd Cir. 1996).

In determining the appropriate amount of compensatory education for a student who had been denied a FAPE for 27 months, the District Court noted that the Seventh Circuit had not

ruled on the issue of how to formulate compensatory education. *Petrina W*, P. 3. However, the Court rejected "rote, day-by-day formulas" for determining compensatory education awards. *Id.* at 4. The Court noted that the question was not how much compensatory education it would take to place the student at the functional level of a young adult, but rather the amount of assistance required to put the student back in the position she should have occupied if she had not been denied a FAPE. P. 5.

Likewise, an award of placement in a private school was not disproportionate for an 18 year old who was reading at a third grade level. *Draper v. Atlanta Independent School System*, 518 F. 3d 1275, P1. The award was not disproportionate because of the school district's failure to modify the student's educational program in spite of testing establishing that the placement was not appropriate, knowingly placing the student in classes in which he could not succeed, and failing to address the student's reading deficiency for half of the school year. *Draper v. Atlanta Independent School System*, 518 F. 3d 1275, P1 and P 10.

I find that because Student has been denied a free and appropriate public education in this matter that an award of compensatory education is appropriate to remedy such a denial.

It is Ordered That:

1. That [REDACTED] provide and pay for placement at [REDACTED] Academy or a similar private school with expertise in serving students with autism and learning disability beginning with the 2011-2012 school year.
2. That [REDACTED] provide and pay for transportation to and from such private school.
3. That [REDACTED] provide compensatory education for its failure to provide Student with a free and appropriate public education, including:
 - a. 40 hours of tutoring (1 hour a week, 40 weeks/year for 1 years);
 - b. 20 hours social work services, direct therapy and social skill groups (30 mpw, 40 weeks/year for 1 years)
 - c. 80 hours speech and language direct services (60 mpw, 40 weeks/year for 2 years)
 - d. Such compensatory education is to begin at the start of the 2011-2012 school year.
4. That [REDACTED] provide and conduct evaluations in the areas of speech and language, central auditory processing, and postsecondary transitional and vocational evaluations within 60 days of the date of this order.
5. That [REDACTED] convene an IEP team to write a sufficient and appropriate IEP in light of such evaluations no later than 14 days following the completion of such evaluations.
6. That [REDACTED] reimburse the parents for any and all out of pocket expenses related to such evaluations or assessments within 60 days of the date of receipt of expenses.

Right to Request Clarification:

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

Right to File Civil Action

This decision is binding on the parties unless a civil action is timely commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-8.02a(i), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision is mailed to the parties.

The undersigned Hearing Officer certifies that she served copies of the aforesaid Decision and Order upon Parents and District, through counsel, and the Illinois State Board of Education at their stated addresses by depositing same with the United States Postal Service at Chicago, IL via certified mail, with postage prepaid on June 13, 2011.

Dated this 13th day of June, 2011


LINDA MASTANDREA