

Case Number: 2011-0176
[Redacted] vs. [Redacted]
Hearing Officer: [Redacted]

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

Impartial Due Process Hearing Decision Cover Page

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District Name [Redacted]

Phone: 847-755-6600

Superintendent [Redacted]
Address [Redacted]
Represented by [Redacted]

Parent Name [Redacted]

Phone: [Redacted]

Address [Redacted]
Represented by [Redacted]

Date and Timelines

Date of Written Request: 12/07/2010
Date of Pre-hearing Conf: 01/25/2011

Date of Hearing: 03/08/2011 to 3/8/2011 12:00:00 AM
Date of Decision:

Summary of Decision

The Parent submitted a request for a due process hearing on December 6, 2010. The complaint alleged that the District had denied the Student FAPE by failing to provide her with an IEP that sufficiently challenged her in the areas of reading, writing and spelling. Notably, the Parent conceded that her daughter had made progress during the relevant time period, but asserted that her progress was attributable to her private tutors, not the District. The Parent also alleged that the District had violated FAPE by evaluating the Student without obtaining consent. The hearing officer ruled that the evidence demonstrated the District had provided the Student with IEP's that were reasonably calculated to enable the Student to receive educational benefit, that the Student, in fact, made progress, and that the Parent had failed to show that the Student's progress was attributable to the efforts of her private tutors. Next, the hearing officer also ruled that the District had not evaluated the Student without consent, but in response to a request by the Parent, had conducted a screening of the Student, which did not require written consent by the Parent.

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

Township HSD 211

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-) **ISBE CASE NO. 2011-0176**
-)
-) [REDACTED]
-) Impartial Due Process
-) Hearing Officer

Decision and Order

This matter is before me pursuant to the Parent's due process complaint alleging that the District failed to provide her daughter, [REDACTED] with a free appropriate public education. (FAPE) I have jurisdiction to hear and decide this matter pursuant to 105 ILCS 5/14-8.02(a) et. seq., and 23 Illinois Administrative Code §§226.600 et. seq. For the reasons stated below, I find in favor of the District on each issue.

PROCEDURAL HISTORY

The Parent, representing her daughter's interest *pro se*, submitted a request for a due process hearing on December 6, 2010. The District filed a Notice of Insufficiency on December 9, 2010. In it, the District asserted that the Parent's due process complaint failed to meet the requirements of 34 C.F.R. 300.508(b) by failing to provide a description of the nature of the problem of the child. I issued an order denying the District's Notice of Insufficiency and motion to dismiss on December 16, 2010. The District responded to the Parent's complaint on December 17, 2010.

The parties participated in a resolution conference on December 21, which was unsuccessful. On January 3, 2011, we held a status call in which we agreed that the pre-hearing conference would take place on January 18, and the hearing would take place on February 22, 2011. A Notice of Pre-Hearing Conference which confirmed the dates for the pre-hearing conference and hearing was sent on January 3, as well.

The pre-hearing conference took place on January 21 due to the Parent's illness on the 18th. We were unable to finish the pre-hearing conference on the 21st and, therefore, concluded on January 25, 2011. After allowing the parties an opportunity to provide comments to a draft report, I provided them with my pre-hearing conference report on February 5, 2011. The hearing took place on February 22 and 23, 2011 as planned, but we were unable to finish. We agreed to continue on March 8, and the hearing concluded on that day.

Issues Presented:

The Parent alleges that for the period beginning in December 2008 to December 2010, the District failed to provide her daughter with a free appropriate public education (FAPE). Specifically, the Parent alleges the District consistently failed to recognize [REDACTED] potential and, as a result, the District :

1. Failed to provide [REDACTED] with appropriate reading instruction.
2. Failed to provide [REDACTED] with appropriate instruction in written communication and spelling.
3. Violated the procedural requirements of FAPE by conducting an evaluation of the Student without obtaining the Parent's consent.

Request for Relief:

The Parent requests that the District be required to provide [REDACTED] with two additional years of education at the [REDACTED] School as compensation for its alleged violations of FAPE.

FINDINGS OF FACT

[REDACTED] is a 21 year old student with epilepsy who has attended [REDACTED] for the last eight years. (See [REDACTED] Testimony) [REDACTED] is a school that provides educational services to students with significant

[1]

cognitive, orthopedic, communication, sensory and/or behavioral impairments. [REDACTED] receives special education services at [REDACTED] pursuant to a primary disability classification of OHI (other health impaired) and a secondary classification of speech and language. (See, e.g., 4/21/08 IEP, HX 15). According to her most recent psychological evaluation, [REDACTED] demonstrated significant delays in intellectual functioning, academics, perceptual-motor skills, social emotional and behavioral functioning. (1/31/03 Psychological Educational & Speech/Language Report, HX 13) Overall, her scores in these areas indicated that she functioned in the 3-4 year age range. (*Id.* at 14) The examiners, however, stressed that the results were a "minimal estimate" of [REDACTED]'s abilities since children with multiple needs typically do not perform well in formal testing situations. (*Id.* at 12) The report also noted that [REDACTED] had shown "definite growth" in her cognitive and academic functioning, since the last three year evaluation. (*Id.* at 13) In testifying about this report, the Parent stressed her belief that the results were not a true picture of [REDACTED]'s abilities. Indeed, the Parent feels so strongly about this, that she has refused since 2003 to allow the District to do any further cognitive or standardized academic testing of [REDACTED]. [REDACTED] also believes the 2003 report caused

[2]

[REDACTED] and [REDACTED] staff to conclude that [REDACTED] is incapable of learning. (See [REDACTED] Testimony) District personnel who testified at the hearing, however, stated that [REDACTED] is capable of learning and that she has made educational progress during the period at issue. (See, e.g., [REDACTED] Testimony)

While the 2003 evaluation may have failed to specifically pinpoint [REDACTED] abilities, the evidence presented at the hearing nevertheless confirmed that [REDACTED] functions significantly below the level of her nondisabled peers in every way. [REDACTED] for example, is nonverbal. She communicates to a limited degree through sign language. Her proficiency with sign language was a matter of dispute at the hearing. The evidence, however, showed that, at best, [REDACTED] spontaneously communicates some of her basic needs and wants. (See HX 26 at 65) She is capable of signing 2-4 words when communicating routine phrases, but she relies primarily on identifying and labeling at the single word level. (*Id.* at 68) Similarly, [REDACTED] one of [REDACTED]'s private tutors, testified that [REDACTED] responses to questions are limited to 1-3 word communications. (See [REDACTED] testimony) In addition, both [REDACTED]'s one-to-one interpreter, [REDACTED] testified that [REDACTED] often simply repeats a sign over and over, and that her signs can be hard to understand. (*Id.*, [REDACTED] Testimony)

Likewise, [REDACTED] a [REDACTED] neurologist, testified that while [REDACTED] is able to learn, her ability is limited. In [REDACTED] opinion, [REDACTED] will not become verbal. He also testified that he would expect [REDACTED]

cognitive impairments to hinder her academic progress in the classroom. This is in part due to the fact that [REDACTED] condition can cause her to be less available at times to learn. When asked, [REDACTED] agreed that acquisition of life skills and vocational training are important for [REDACTED] because she's approaching the time when she will need to have some "limited" vocational abilities. Lekah did not believe, however, that focusing on those skills means that [REDACTED] reading instruction should be discontinued. [REDACTED] (Testimony)

Testimony from [REDACTED] an experienced school psychologist and the current Assistant Director of Special Education for District [REDACTED], was consistent with [REDACTED] observations. [REDACTED] has been [REDACTED] District [REDACTED] case manager since the fall of 2009. In that position, [REDACTED] has reviewed [REDACTED] educational file, attended her IEP meetings, conferred with [REDACTED] teachers and observed the Student. Like the 2003 examiners, [REDACTED] stressed that standardized measures are of limited value with a student like [REDACTED]. Nevertheless, based on her knowledge of [REDACTED] believes [REDACTED] performance at [REDACTED] has been consistent with the results of the 2003 psychological evaluation which showed her to be functioning in the 3-4 year age range.

Throughout the period at issue, [REDACTED] has received specialized instruction pursuant to her individualized education plans.

The 2008-09 School Year

The first IEP relevant to this case was written on April 21, 2008. (HX 15) According to the IEP, the [REDACTED] [3] [4] Parent, [REDACTED] service providers and a District representative were in attendance. (Id. at p. 699) The team created eight goals for [REDACTED] that addressed reading comprehension, word identification, writing, math, social skills, pre-vocational and life skills. With respect to the goals relating to reading and writing, only the word identification goal was in effect during the relevant time period. The team revised the goals relating to reading comprehension and writing in November 2008.

In describing her present level of performance (PLP) for word identification, the team stated that [REDACTED] had increased her list of reading words from 32 to 75 words. (Id. at p. 704) The [REDACTED] admits any additional baseline information such as the grade level of the words, or whether the list was tied to a particular reading series. The reading goal itself is measurable and requires [REDACTED] increase her ability to read 60 new words from a variety of lists/materials presented with 80 percent accuracy on 3/5 trials. (Id.) A progress report sent to the Parent indicates that [REDACTED] had added 55 new words by the end of October 2008. (Report on Goals and Benchmarks, HX 47, p. 3)

At the Parent's request, the team held another IEP meeting on November 4, 2008. (11/4/08 IEP, HX 43) At the meeting, [REDACTED] expressed her concern that "Milestones," [REDACTED] reading program, was too easy for her. The Parent particularly wanted the team to consider new ways of teaching [REDACTED] reading comprehension. (Id. at 17) The team responded by writing a new reading comprehension goal for [REDACTED] which required her to answer who/what questions. According to the statement of [REDACTED] PLP, [REDACTED] was able to answer questions in the Milestones and Edmark reading series with 55 percent accuracy. (Id.) The team wrote a comprehension goal that required [REDACTED] to increase her correct responses to 70 percent accuracy when given a single sentence written with words from her reading series. (Id. at 18)

[REDACTED] occupational therapist, reported that [REDACTED] had made good progress on her IEP goal of printing her first and last name. Thus, the team also wrote a new writing goal for [REDACTED] that required her to print the first 10 upper and lower case letters of the alphabet when given verbal and visual cues. (Id. at 19)

Finally, the notes of the meeting indicate that [REDACTED] requested that, "the [REDACTED] team use the chips from the Visual Academics program to work on spelling." (Id. at 17) Visual Academics is intended to be a reading and math program for students with special needs. It includes a spelling component that utilizes

colored chips. The program was designed by [REDACTED] who testified by telephone at the hearing, asserted that she has used the program successfully with over 200 students since 2002. She offered no empirical data, however, to support that assertion. When asked about her qualifications to design a reading program, [REDACTED] described herself as a curriculum adaptation specialist. She conceded, however, that her only formal training is as a visual artist. She has no training or certifications in curriculum adaptation. Nor does she have any training or certifications in the field of education. Further, the program is not based on any peer-reviewed research or scientifically based instructional practices. [REDACTED] Testimony)

In 2007, Mrs. [REDACTED] contacted [REDACTED] and asked her to test [REDACTED] using the Visual Academics program. [REDACTED] who also has no training or background in educational assessment, did so and reported to [REDACTED] that her daughter was an "amazing student." ([REDACTED] Testimony) The Parent subsequently requested that the District purchase the Visual Academics program to use with [REDACTED] at school. [REDACTED] Testimony) While the District agreed to purchase some of the materials, it never relied on the program as a primary method of reading instruction for [REDACTED]. Rather, some of the materials were used to supplement

[REDACTED] reading instruction. (See Visual Academics-Timeline, HX 28) [5] Moreover, while there was testimony that staff used the chips during spelling instruction, (See [REDACTED] testimony) none of [REDACTED] reading goals required that the Visual Academics program be used.

Three weeks after the November 4 meeting, the team reconvened to allow the Parent to introduce [REDACTED] home tutor, [REDACTED]. (11/25/08 IEP Conference Summary Report, HX 44) Mr. [REDACTED] gave a report of his activities with [REDACTED] which included reading the Milestones stories and answering who/what

[REDACTED] questions related to the stories. [6] At this meeting, the Parent once again expressed her concern that the Milestone series was too easy for [REDACTED]. [REDACTED] teacher at the time, responded that a new story was introduced weekly, and other supplemental materials were used with her, as well. (HX 44 at 30) The team did not change or add any new IEP goals at that time.

The team met again on April 2, 2009 to conduct an annual review of [REDACTED] progress on her IEP goals, and to write a new IEP for the coming year. (4/2/09 IEP, HX 16) One of the attendees to the meeting was

[REDACTED] [7] [REDACTED] testified that, with respect to [REDACTED] progress on her word identification goal (on the April 2008 IEP), the team concluded that she had exceeded her target goal of 60 words by recognizing 90 new words. This finding was memorialized as [REDACTED] present level of performance for the fluency goal in her new IEP. (See *Id.* at 39) In reading comprehension, [REDACTED] exceeded the goal of 70 percent accuracy, by responding to who/what questions with 100 percent accuracy. (*Id.* at 33.) In writing, [REDACTED] had made progress on her goal of learning to print letters of the alphabet by printing most of the upper and lower case letters of the alphabet, but with inconsistent legibility. (*Id.* at 45)

After assessing her progress on the previous IEP goals, the team turned its attention to writing new goals for [REDACTED]. Prior to the meeting, [REDACTED] had submitted her written suggestions for [REDACTED] goals, which the team took into account. (*Id.* at 35-36) [REDACTED] testified that with respect to reading, the team felt that the primary focus should be on helping [REDACTED] to increase her reading fluency, i.e., identifying words in text as opposed to simple sight word identification. ([REDACTED] Testimony) Thus, the team wrote an IEP goal for [REDACTED] that required her to increase her reading fluency by 20 words each quarter. (*Id.* at 39) The team also wrote a writing goal for [REDACTED] that required her to progress beyond copying letters to copying words from a printed list of menu/shopping choices with 80 percent legibility in 4/5 trials. (*Id.* at 45) The team chose not to write another comprehension goal for [REDACTED] at that time. While [REDACTED] had mastered the previous comprehension goal, the activity, according to [REDACTED] relied heavily on matching rather than independent reading comprehension. (See, e.g., HX 14) The team felt it necessary for [REDACTED] to increase her reading fluency before she could progress to more challenging comprehension tasks. ([REDACTED])

Testimony)

During the meeting, ██████ requested that ██████ be allowed to visit ██████ for two hours a week. ██████ is a school for deaf children, and Mrs. ██████ thought ██████ could benefit from observing other students who use sign language. The team was uncertain whether this would be an appropriate activity for ██████. ██████ suggested that ██████ a deaf education teacher for ██████, observe ██████ and report back to the team. ██████ Testimony) ██████ agreed to the observation. (Mrs. ██████ Testimony; See also HX 16 at 33)

- ██████ Observation

██████████ has been a hearing itinerant teacher at ██████ for nearly 9 years. She has additional teaching experience that she obtained prior to her current position. ██████ testified that she is certified by the state to teach elementary education and deaf education. Her current responsibilities include overseeing the education of 30 deaf and hard of hearing students in the District. ██████ testified that she was asked to observe ██████ to assess the Student's ability to use sign language. She had not met ██████ prior to conducting the observation, but she was aware that ██████ was cognitively delayed and was not deaf. ██████ also knew that the Parent did not want a formal assessment of her daughter. (██████████ Testimony)

██████████ first observed ██████ on April 15, 2009 for approximately thirty to forty-five minutes in ██████ classroom. In a report of the observation, ██████ noted that ██████'s interpreter, ██████, used basic signs to communicate the teacher's spoken messages to the students. ██████ Report of Observation, HX 25) While ██████ was attentive to her interpreter, ██████ did not see ██████ initiate expressive signs to communicate with her interpreter. Rather, ██████ simply repeated ██████ signs. (*Id.* at 589) ██████ also observed ██████ read a short story and complete a vocabulary activity with the interpreter's guidance. (*Id.*)

On May 14, ██████ returned for a second observation that lasted from 15 minutes to a half-hour. ██████ Testimony) Since she had not seen ██████ use sign language spontaneously in the classroom, this time, she took ██████ to a quiet place and presented various activities (through ██████ interpreter). (HX 25 at 589) Specifically, ██████ was shown pictures and asked to show their sign representation. According to ██████, ██████ performed the task with 90 percent accuracy. Next, ██████ was given pictures and asked to point to the appropriate picture when it was signed to her. She responded with 80 percent accuracy. Third, by signing and verbalizing, and then just signing, ██████ asked ██████ to perform several tasks. ██████ did not respond unless ██████ modeled the action. With modeling, ██████ performed with 50 percent accuracy. Finally, ██████ asked ██████ to give her various tasks to perform, such as picking up a pencil or moving a book. ██████ did not respond to this task. (*Id.*)

██████████ concluded that ██████ benefitted from the use of sign language, but that she didn't spontaneously use sign language. She recommended several strategies to enhance ██████ knowledge and use of sign language. (*Id.* at 590) She also concluded that it would not be appropriate for ██████ to attend Hersey. (*Id.*) When testifying about her recommendation concerning ██████, ██████ stressed that ██████ would not have benefitted from exposure to ██████ students because they use a different form of sign language that ██████ would not have understood. ██████ believed that ██████ ability to understand the ██████ students would have been further hindered by the fact that she relies on spoken communications to enhance her understanding, but the students at ██████ who, unlike ██████ are deaf -- do not speak. ██████ Testimony)

The team met on June 5, 2009 to discuss ██████ report. (6/5/09 Conference Summary Report, HX 26) Mrs. ██████ participated by telephone. She disagreed with ██████ conclusion that ██████

did not spontaneously use sign language. (*Id.* at 60) [REDACTED] agreed to revise the report to specify that [REDACTED] did not spontaneously use sign language "during her observation." (*Id.*) The team, however, did not question [REDACTED] recommendations. [REDACTED] made clear that the District had concluded that participating in a program at [REDACTED] would not meet [REDACTED] educational needs. (*Id.*)

During the same time period, the District completed [REDACTED] three year reevaluation. (5/8/09 Review of Existing Data Summary Report, HX 24) The team met on June 11, 2009 to review the results. Since the Parent would not consent to additional standardized testing, the report of [REDACTED] cognitive skills was based on record review of past psychological testing, a classroom observation, and a teacher interview. (*Id.* at 83) Similarly, the report of [REDACTED] academic achievement was based on her classroom performance. (*Id.* at 82) In relevant part, the report noted that [REDACTED] uses signs spontaneously in the classroom to communicate her basic needs and wants. She is able to follow routine directions, and has an extensive signing vocabulary for labeling activities. She requires prompts or modeling to respond to more detailed communication, however. (*Id.* at 83) The examiner further concluded that most of the time, [REDACTED] signs a single sign and relies on her interpreter to expand her idea. (*Id.* at 84) With respect to reading, the report noted that [REDACTED] had a reading word base of approximately 90 words during that reporting period. (*Id.* at 82) The examiner concluded that [REDACTED] continued to demonstrate "educational needs of an extensive level of support and assistance to function successfully in the educational environment." (*Id.* at 84) Based on the report, the team agreed that [REDACTED] should continue to receive special education services at [REDACTED] School to address her significant needs. (*Id.* at 91-92)

In the summer of 2009, the Parent hired [REDACTED] to tutor [REDACTED] who testified by telephone at the hearing, has been a certified deaf education teacher for 5 years. She worked as a full-time classroom teacher for the 2009-10 school year. Prior to that, she was a classroom aid for three years. Though she is not certified as a sign language teacher, [REDACTED] understands sign language. [REDACTED] testified that she tutored [REDACTED] in reading and handwriting for 1-3 hours a week for three months. In reading, [REDACTED] focused on sight word recognition by presenting [REDACTED] with flash cards of Dolch sight words. For fluency and comprehension, [REDACTED] read stories from the SRA reading instruction series, and from a workbook purchased by the Parent. ([REDACTED] Testimony)

During her tenure with [REDACTED] sought to objectively measure the Student's progress. She included the results of her assessments and additional observations in a report that she prepared on August 8, 2009. (8/3/09 [REDACTED] HX 21) Specifically, [REDACTED] reported that she assessed [REDACTED] sight word skills on May 5, 2009. At that time, [REDACTED] identified 73 percent of the 40 Dolch pre-primer

[8] words. (*Id.*) When she retested [REDACTED] on July 20, [REDACTED] was able to identify 78 percent of the pre-primer words. (31/40 words) This time, she also tested [REDACTED] ability to read additional words, and found that [REDACTED] was able to identify 35 percent of the Dolch primer sight words, and 27 percent of the Dolch first grade sight words. (*Id.*) Ms. Toronyi also assessed [REDACTED] fluency. Her report notes that [REDACTED] appeared to benefit when reading stories in repetition. (*Id.*) For example, after reading the same story in the SRA series for three weeks, [REDACTED] increased her word recognition from 40 to 48 words (out of 49). (*Id.*) When completing comprehension questions from the workbook purchased by the Parent, [REDACTED] consistently answered 2 out of 4 comprehension questions correctly. [REDACTED] noted that [REDACTED] had trouble with inference questions, and looked to [REDACTED] for cues when choosing an answer. (*Id.* at p. 2) Notably, the report fails to specify the reading level of the SRA series and the workbook.

During her testimony, [REDACTED] stated that she believed [REDACTED] made progress over the course of the summer. She was unwilling to agree, however, with the Parent's suggestion that [REDACTED] "caught on quick." She noted that when she provided [REDACTED] with the Dolch sight word lists, the Parent seemed to be unfamiliar with Dolch words. When asked, [REDACTED] did not know whether the Milestones series ([REDACTED] reading program at school) incorporates Dolch words. Then, when shown an example of a Milestones story, [REDACTED] confirmed that the story contained several Dolch sight words. (See Milestones story, "The

Dog has Fun,” HX 4) Finally, when asked, [REDACTED] agreed that it would be evidence of progress if AG advanced from reading pre-primer words, to primer and first grade words. [REDACTED] testimony)

The 2009-10 School Year

In the fall of 2009, [REDACTED] began attending the CBT (community based training)/Transition program at [REDACTED] (See 9/3/09 IEP, p. 106, HX 17) Within days of the start of school, the team held an IEP meeting to discuss [REDACTED] proposed program, as well as other issues. The meeting was once again well attended by Mrs. [REDACTED] and school staff. Notably, [REDACTED] was accompanied by counsel. The District’s attorney also attended the meeting. (*Id.* at 103) The meeting got underway with [REDACTED]’s teacher, [REDACTED], providing an overview of the transitional program and [REDACTED] individual schedule. (*Id.* at 106)

The discussion then focused specifically on [REDACTED]’s reading program. [REDACTED] explained that [REDACTED] program was multifaceted, including community-based reading activities, Milestones, the Edmark Program, as well as some Visual Academics. It was noted that [REDACTED] then current Milestones book was on a first grade level. [REDACTED] stated that she wanted [REDACTED] to read and comprehend for pleasure and information. She wanted [REDACTED] to be pushed more in reading. (*Id.* at 106) Here, the District offered to administer a psychological evaluation to identify [REDACTED] cognitive strengths and weaknesses as they related to reading. The Parent declined the offer, but did agree to allow [REDACTED] to administer curriculum based measurement (CBM) probes to provide more precise information concerning [REDACTED] reading level. (*Id.*)

Next, the team discussed revising several of [REDACTED] IEP goals. They agreed to write a new reading goal based on the results of the CBM’s, which would focus on fluency. The Parent also requested that the team add a comprehension goal that would focus on who, what, when, where. With respect to writing, it was requested that [REDACTED] required to write with 85 percent legibility rather than the 80 percent legibility that was specified in her April 2009 IEP. The team also agreed that [REDACTED] would continue to reinforce spelling as part of [REDACTED]’s reading instruction. (*Id.*) They did not, however, write a separate goal for spelling.

After a few weeks of correspondence between counsel for the Parent and the District, the parties agreed to several revisions of [REDACTED] IEP. (See 9/23/09 [REDACTED] letter to [REDACTED] IX 29, 10/4/09 [REDACTED] letter to [REDACTED] HX 30; 10/14/10 [REDACTED] letter to [REDACTED] HX 32) In particular, [REDACTED] reading fluency goal was revised. Her present level of performance established that, when reading a first grade passage of 120 words, [REDACTED] read an average of 48 words correctly. The goal required her to improve her performance by reading 96 words correctly in a passage of 120 words. (10/27/09 IEP Amendment, p. 150, HX 33) The team also added a comprehension goal that required [REDACTED] improve her ability to independently sort pictures of people and objects (who and what), from 10 percent accuracy -- her PLP -- to 70 percent accuracy. (*Id.* at 165) Finally, the writing goal was revised to require [REDACTED] copy functional words with 90 percent accuracy. (*Id.* at 157)

As noted above, [REDACTED] was [REDACTED] teacher during the 2009-10 school year, and has continued in that role to the present. She has been a special education teacher for 17 years and has taught at [REDACTED] for the last three years. She testified generally about the transition classroom, and more specifically about [REDACTED] progress in that class.

According to [REDACTED] the transition class is for students aged 18-21. Its focus is to help students prepare for life after they leave public school. To that end, the class includes community-based instruction, and training in life and vocational skills. The students receive academic instruction that focuses on functional skills, such as reading safety related signs, recipes, making change, as well as functional skills connected with the work place. Currently there are seven students in [REDACTED] class, with three certified classroom aids and one assistant.

[REDACTED] testified that [REDACTED]’s adjustment to the transition class was “fine and great.” To familiarize herself

with [redacted]'s educational needs, [redacted] reviewed [redacted]'s prior IEP's and work portfolios. She also consulted [redacted] longtime interpreter, [redacted]. [redacted] did not agree that [redacted] transition to her class was hindered when [redacted] previous teacher, Mr. [redacted] left [redacted] School. She denied telling the Parent that

[redacted] [9] Mr. [redacted] had destroyed [redacted]'s charts. [redacted] testimony)

[redacted] schedule at school has been consistent for the last two years. (See, e.g., [redacted]'s 9/21/10 daily schedule, [redacted] 42, p. 357; See also [redacted] Individual Daily Schedule, HX 5) The day begins with homeroom, where the class focuses on the calendar and work readiness issues. During the course of a day, [redacted] also participates in an in-school job, community-based instruction, workshop and reading. The in-school job, such as working in the cafeteria, provides [redacted] with an opportunity to learn and practice work skills. [redacted] is given intense supports at the beginning of a job. The supports are withdrawn as she learns the job and becomes familiar with the routine. [redacted] stressed that [redacted] is very happy when she is working, and likes the idea that she's doing a good job. [redacted] Testimony) Another important component of [redacted]'s day is community-based instruction. Students visit various destinations in the community to practice such skills such as shopping and making choices. (Id.)

As stated above, all of the students, including [redacted] receive instruction in functional academics. [redacted] however, receives additional academic instruction in reading from [redacted] pursuant to her IEP. This academic component was added to [redacted] instructional plan at the Parent's request. [redacted] Testimony) [redacted] testified, however, that the primary focus of [redacted] curriculum is the acquisition of functional and transition skills -- not the acquisition of academic skills like those of [redacted]'s typically developing peers. [redacted] Testimony)

[redacted] [10] The September 3, 2009 IEP was the first of AG's IEP's that [redacted] implemented. As discussed above, the reading goal focuses on improving [redacted] fluency. During the hearing, the Parent asked a number of questions about the goal. In particular, the Parent queried whether [redacted] stated PLP (48 out of 120 words), referred to the total number of words that [redacted] could identify at the time. [redacted] explained that the PLP referred to the number of words [redacted] read correctly when reading a passage of 120 words. She stressed that it did *not* mean that [redacted] only knew 48 words at the time. [redacted] [11]

[redacted] uses a variety of materials in her reading lessons with [redacted] including the Milestones and Edmark reading programs, which are both researched based. She also teaches Dolch words since they are a key component of the Milestones series and supplements her reading instruction with some materials from the Visual Academics program. When reading from the Milestones series, [redacted] testified that [redacted] progresses from one story to the next as she masters the words. [redacted] noted that [redacted]'s comprehension of the stories is not commensurate with her fluency. While [redacted] reads at the first grade level, her reading comprehension is at the pre-primer to primer level. [redacted] testimony) [redacted] also incorporates spelling into her lessons with [redacted] spelling for [redacted] however, is limited to matching. This is of some benefit to [redacted] since improving her matching skills assists in her vocational training. But [redacted] stressed that [redacted] has no phonemic awareness and cannot do other types of spelling activities. Indeed, according to [redacted] the primary reason [redacted] receives spelling instruction is to accommodate the Parent's request. (Id.)

[redacted] testified that [redacted] has made progress in reading fluency, though it has been inconsistent. On average, [redacted]'s ability to read text has increased by 5 words per quarter. [redacted] testimony is supported by [redacted] quarterly benchmark reports. (See 9/3/09 Goals and Objectives Benchmarks, [redacted] 3; 4/29/10 Annual Review, [redacted] 0) For example, while [redacted] was able to read 48 words correctly at the beginning of the 2009-10 school year, she averaged 63 out of 120 words by April 9, 2010. [redacted] 8 at 296) In addition to increasing her ability to read words in text, [redacted] also has made progress by mastering more Dolch sight

words. According to [REDACTED] was able to read the pre-primer list of Dolch sight words when she began the transition program in the fall of 2009. [REDACTED] has since mastered the primer list and is currently reading words from the first and second grade list. [REDACTED] Testimony; See also, 4/29/10 Report of Goals and Objectives, [REDACTED] 9, p. 311)(PLP states that by 4/29/09 [REDACTED] consistently identified Dolch pre-primer, primer and some first grade words)

The team met on April 29, 2010 to conduct an annual review of [REDACTED] IEP goals and to write new goals for the 2010-11 school year. (HX 10, HX 18) As noted above, on her fluency goal, [REDACTED] had an average of 63 words correctly in 120 words of text. On several occasions, she was able to read 70 or more words correctly. This was still short of her goal of 96 words, however. Thus, the team decided to continue to work to with [REDACTED] improve her fluency when reading at the first grade level. They made the goal slightly more challenging by requiring [REDACTED] to read 100 words out of 120, rather than 96 as was the case in the previous IEP. (HX 10 at 193)

[REDACTED] did meet her comprehension goal by sorting who/what pictures with 70 percent accuracy. (HX 18 at [12] 309) The April 29, 2010 IEP does not appear to include an additional comprehension goal. Ms. [REDACTED] testified, however, that she and [REDACTED] work on comprehension using the Milestones workbooks. [REDACTED] Testimony)

In writing, [REDACTED] reported to the team that [REDACTED] had met her goal of copying words from a nearby model with 90 percent accuracy. [REDACTED] Testimony, HX 18, p. 301) The team wrote new writing goal for [REDACTED] that required her to copy a list of numbered words and short phrases on lined paper with 80 percent legibility and accuracy. At the hearing, [REDACTED] testified that this goal was more difficult than [REDACTED] previous goal. Indeed, [REDACTED], stated that throughout the period at issue, each of [REDACTED] IEP goals has been progressively more difficult than the previous goal. Specifically, in the last two years, [REDACTED] has progressed from printing her name, to copying words close, to copying words at a distance. [REDACTED] believes this has been good progress for [REDACTED] (testimony)

- **Ms. Felix**

During the time that [REDACTED] has been a student in [REDACTED] transition class (the fall of 2009 to the present), [REDACTED] a private tutor hired by the Parent, has worked with [REDACTED] at home. On at least two occasions, January 5, 2010 and April 29, 2010, [REDACTED] accompanied Mrs. G. to IEP meetings where she reported to the team about her activities with [REDACTED] (See 1/5/10 IEP, HX 9 p. 168; 4/29/10 IEP/Annual Review, HX 10, p. 190) During the April 29 meeting, [REDACTED] provided the team with a written report of her thoughts and observations. [REDACTED] My Notes and Thoughts, HX 12) [REDACTED] testified at the hearing about her experiences tutoring [REDACTED]

[REDACTED] who is deaf and communicates through sign language and speaking, studied deaf education in college but did not graduate. She has worked as a deaf services coordinator for the Center for Independent Living. She testified that she once taught reading to a class of deaf students, but has no formal teaching experience. [REDACTED] is the first student she has tutored individually. [REDACTED] testimony)

When [REDACTED] first began working with [REDACTED] in August 2009, the two met approximately 6 hours a week. (See HX 9 at 168) About 4 months ago, she increased her time with [REDACTED] 15 hours a week. (Felix Testimony) During their sessions, the two work on reading comprehension, vocabulary or word identification, math, writing and increasing and improving [REDACTED] sign language skills. (HX 12) From time to time, [REDACTED] takes [REDACTED] into the community to practice various life skills. She also helps [REDACTED] with skills around the home, such as cleaning her room and vacuuming. [REDACTED] Felix agrees that it is very important for [REDACTED] to acquire life skills and to learn to socialize. (Felix Testimony)

As noted, [REDACTED] prepared a written report that she shared with [REDACTED] IEP team on April 29, 2010.

(HX 12) She testified that the team listened and requested a copy of her report. In the report, [REDACTED] described her reading activities with [REDACTED]. They included reading stories from the Milestones series, and from a "Dick and Jane" book that Felix selected. In describing [REDACTED]'s progress, Ms. Felix observed that [REDACTED] "doing great in Milestones," and that she reads one story a week and does 3 workbook pages. (*Id.* at 659) In the Dick and Jane book, [REDACTED] observed that [REDACTED] had improved her reading and confidence, and that she sometimes answers questions about the pictures with 1 or 2 word responses. With respect to vocabulary (word identification), [REDACTED] described an activity where she presented [REDACTED] with flash cards of words and asked [REDACTED] to sign the words. [REDACTED] also voiced the word and asked [REDACTED] to hand her the correct card. (*Id.* at 661) In describing [REDACTED]'s performance, [REDACTED] stated that [REDACTED] had done a "great job" on lists 1-3 and that they were moving on to lists 4-6. (*Id.* at 661) Notably, as with the other reading activities, the report fails to quantify [REDACTED]'s performance in objective terms. [REDACTED] also failed to identify the source of the lists of vocabulary words. Examples of [REDACTED]'s work introduced at the hearing, however, indicate that [REDACTED] vocabulary words likely included community signs, Dolch words, words from the Dick and Jane stories and calendar words. [REDACTED] work samples, HX 6) In writing, [REDACTED] reported that she helped [REDACTED] to write her letters correctly. She also noted that [REDACTED] had a hard time reading capital letters. (*Id.* at 661) [REDACTED] concluded that [REDACTED] is "far behind in her education," but that in the past 7 months [REDACTED] had "improved so much." (*Id.* at 662)

In her testimony at the hearing, [REDACTED] again stressed her belief that [REDACTED] has made good progress in their home tutoring sessions. Indeed, [REDACTED] believes that [REDACTED] learning things at home that she hasn't gotten at school. [REDACTED] also asserted that, while she has attended IEP meetings to share information about her progress with [REDACTED] the school hasn't followed up with her. In response to questioning, however, [REDACTED] conceded that she has never observed [REDACTED] at school and doesn't know what [REDACTED] reading level is. Further, [REDACTED] agreed that [REDACTED] teacher, has come to the home to observe [REDACTED] working with [REDACTED]. Moreover, when it was suggested that [REDACTED] had sent [REDACTED] several emails that had gone unanswered, [REDACTED] conceded that she lost her password and has been unable to retrieve her emails.

The 2010-2011 School Year

[REDACTED] has continued to attend the transition class during the current school year. She will age out of the program when she turns 22 on June 25, 2011. Her transition to a post-secondary program was the primary focus of a meeting that was held on October 10, 2010. (10/5/10 Transition/IEP Meeting, HX 27) During the meeting, the team discussed two programs that may be appropriate for [REDACTED] when she leaves [REDACTED] school -- [REDACTED]. Mrs. [REDACTED] had observed both programs, and notes of the meeting indicate that [REDACTED] was impressed with [REDACTED]. (*Id.* at 247A) The team also discussed possible sources of funding for [REDACTED] or other programs. It was noted that a pre-admission screening, which includes a psychological assessment, is required in order to apply for DHS funding. [REDACTED] stated that the District was willing to complete the psychological assessment and other elements of the screening at District expense. Mrs. [REDACTED] expressed concern that psychological testing would not show [REDACTED] true potential. [REDACTED] staff who attended the meeting reassured Mr. [REDACTED] that decisions about admissions are not based solely on the basis of a psychological evaluation, but that staff also would complete several observations of [REDACTED] both at [REDACTED] and at [REDACTED]. (*Id.*) Notes of the meeting include several recommendations for next steps, including that the Parent would work with the District and a representative of Community Alternatives Unlimited to complete the pre-admissions screening. [REDACTED] also planned to tour other facilities and tour [REDACTED] with [REDACTED]. The team agreed to meet again in January 2011 (*Id.* at 248)

Notably [REDACTED] did not voice any concern during this meeting that [REDACTED] was not ready to begin attending an adult program. Rather, notes of the meeting indicate that [REDACTED] believed that [REDACTED] would be able to make a quick transition with visual supports and the support of her tutor, [REDACTED]. (*Id.* at 248) [REDACTED] agreed that the transition would be quick, but stressed [REDACTED]'s need to become familiar with the new staff. She recommended that [REDACTED] staff accompany [REDACTED] to her new program and gradually withdraw

as [REDACTED] became familiar with the new staff. (*Id.*) In her hearing testimony, [REDACTED] reiterated her belief that [REDACTED] has the skills to succeed in a post-secondary program. Indeed, [REDACTED] believes it would be a disservice to [REDACTED] to have her remain at school because she is very happy when she is working. [REDACTED] (Testimony) Similarly, [REDACTED] testified that [REDACTED] has made reasonable educational progress at [REDACTED] based on her cognitive profile. [REDACTED] also believes that [REDACTED] has the skills to succeed in a post-secondary program. Moreover, based on her observations of [REDACTED] [REDACTED] also stressed that [REDACTED] is happy when working and performing life skills. ([REDACTED] testimony)

Not long after the October 10 meeting, the Parent sent an email to [REDACTED] principal requesting two additional years of school for [REDACTED]. (*See* Notes of 11/16/10 IEP Meeting, p. 256, HX 37) The team convened to respond to the email and to discuss the Parent's concerns. During the meeting, [REDACTED] voiced her concern that the District had failed to sufficiently challenge [REDACTED]. (*Id.* at 257-58) She specifically cited the District's failure to implement a spelling goal that she had requested. (*Id.* at 258) [REDACTED] also reminded the team that she had paid for someone to demonstrate Visual Academics. (*Id.* at 257) Though it was not a focus at the hearing, [REDACTED] also expressed concern that [REDACTED] was dependent on her one-on-one interpreter. (*Id.*) While she agreed that [REDACTED] has made progress, she attributed [REDACTED] progress to her tutors and home programming. (*Id.* at 257) Notes of the meeting indicate that staff members responded to the individual concerns raised by [REDACTED]. They also provided her with a progress chart, which was intended to provide examples of [REDACTED] progress since the beginning of the 2009-10 school year. (*Id.* at 263) The chart compares [REDACTED] PLP's to her goal progress for each of her IEP goals, i.e., reading, math, communication, workshop, vocational, and fine motor. (*Id.* at 263) Finally, [REDACTED] made clear that the District did not agree that compensatory services were warranted for [REDACTED]

The Parent filed the due process request that is the focus of this hearing on December 6, 2010. The parties held a resolutions session on December 21, 2010, but were unable to reach common ground. (*See* 12/21/10 Notes of Resolution Session, HX 35)

CONCLUSIONS OF LAW

The Individuals with Disabilities Education Act (IDEA) establishes that all students between the ages of 3 and 21 are entitled to a free appropriate public education. (34 C.F.R. §300.301) A free appropriate public education is an education "specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction." *Board of Educ. v. Rowley*, 458 U.S. 176, 188-89 (1982). In *Rowley*, the United States Supreme Court set forth a two pronged test to determine whether a school district has offered a student FAPE. The first inquiry is whether the school district has complied with the statutory procedures required by IDEA. (20 U.S.C. 1401 et seq.) Under IDEA, a procedural violation cannot be deemed a violation of FAPE unless it has impeded a child's right to a free appropriate public education, significantly impeded the parents' right to participate in the decision making process, or caused a deprivation of educational benefits. *Id.* at § 1415 (f)(3)(E)(2007)

The second, or substantive prong of the *Rowley* test is whether the district has developed an IEP reasonably calculated to enable the child to receive an educational benefit. *Rowley*, 458 U.S. at 206-07. To meet this requirement, *Rowley* establishes that a school district must 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. *Id.* at 201. A district is not required, however, to provide services sufficient to maximize a student's potential. *Id.* at 198 In determining whether District 211 has met the requirements of FAPE, the burden of proof rests with the party seeking relief. *Schaeffer V. Weast*, 546 U.S. 49, 62 (2005) Here, that is the Parent.

As set forth below, by applying the law to the facts of this case, the evidence shows that throughout the period at issue, the District provided [REDACTED] with IEP's that satisfied the substantive requirements of FAPE,

[13]
including in the areas of reading, written language and spelling. Likewise, the evidence further demonstrates that the District complied with the procedural requirements of FAPE when it conducted an observation of [REDACTED] to determine if it would be appropriate for her to attend Hersey School for 1-2 hours a week.

Whether the District Denied AG FAPE by Failing to Provide Her with Appropriate Instruction in Reading, Writing and Spelling?

[14]

The Parent contends that the District committed a substantive violation of FAPE by failing to provide [REDACTED] with IEP's that enabled her to make reasonable educational progress in reading, writing and spelling. Notably, though [REDACTED] accuses the District of denying her daughter FAPE, she concedes that [REDACTED] as, in fact, made educational progress during the relevant time period. She attributes [REDACTED] progress, however, to the instruction that [REDACTED] has received from her tutors -- not to the District. Indeed, [REDACTED] asserts that District staff believed [REDACTED] could not learn and, therefore, failed to challenge her. [REDACTED] Testimony) The District's failures, according to [REDACTED] are evidenced by the District's refusal to adopt Visual Academics, a program that the Parent recommended, as its primary reading program for [REDACTED]. In addition, the Parent asserts that [REDACTED] progress was hindered by the District's delays in implementing goals and providing materials for [REDACTED].

First, as noted above, in order to meet the substantive requirements of FAPE, the District was required to provide [REDACTED] with IEP's that were "reasonably calculated to enable [her] to receive educational benefits." *Rowley*, 458 U.S. at 206-07. An IEP meets that standard, "when it is 'likely to produce progress, not regression or trivial educational advancement.'" *Alex R., ex. Rel. Beth R. v. Forestville Valley Community Unit School Dist. # 221*, 375 F.3d 603, 615 (7th Cir. 2004)(quoting *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 248 (5th Cir. 1997)) The degree of progress required by IDEA depends on the Student's abilities. Under *Rowley*, "while one might demand only minimal results in the case of the most severely handicapped children, such results would be insufficient in the case of other children." *Alex. R.* 375 F.3d at 615

In *Jaccari v. Bd. of Educ. of the City of Chicago*, 690 F. Supp. 2d 687 (N.D. IL, 2010), as here, the court considered whether a school district had met the substantive requirements of FAPE by providing a cognitively impaired student with an IEP that was reasonably calculated to enable the student to receive educational benefit. To answer that question, the court considered five factors: 1) the child's potential; 2) whether his IEP's were tailored to his unique needs; 3) whether his IEP's provided access to specialized services; 4) whether they addressed disability-related disruptive acts; and 5) whether the child achieved progress during the relevant time period. Those factors and the relevant evidence are considered below.

- **Child's Potential:**

Determining whether the District has complied with the substantive requirements of FAPE must be judged in relation to [REDACTED] potential. (*Id.* at p. 9)(citations omitted) As a threshold matter, the evidence clearly showed that [REDACTED] is a student who can learn. Moreover, contrary to the Parent's assertion, District staff recognized that fact and provided [REDACTED] with learning opportunities. (*See, e.g.* [REDACTED] and [REDACTED] Testimony) [REDACTED] however, is a student with significant impairments in all areas of development. Indeed, [REDACTED] has attended [REDACTED] school, a school for students with severe impairments, for the last 8 years. The Parent presented no evidence to indicate that she believed [REDACTED] as an inappropriate placement for [REDACTED]. To the contrary, the Parent is seeking an order that would allow [REDACTED] continue to

attend ██████ two additional years.

The most recent psychological evaluation of ██████ which was administered in 2003, indicated that ██████ exhibited significant delays in all areas tested, including ██████ cognitive, academic and communication skills. (HX 13 at 14) Overall, the report indicated that ██████ who was 13 at the time, functioned in the 3-4 year age range. (*Id.* at 13-14, ██████ Testimony) The Parent correctly pointed out that the examiners considered the evaluation to be a minimal estimate of ██████ true capabilities. ██████ neurologist, Dr. ██████ and Ms. ██████ agreed with that observation. Nevertheless, both ██████ and Ms. ██████ testified that ██████ cognitive skills are limited. ██████ an experienced school psychologist, testified that ██████ performance at ██████ during the period at issue is consistent with the results of the 2003 psychological evaluation. Dr. ██████ testified that he would expect ██████ limitations to hinder her performance in the classroom, and her ability to acquire vocational skills.

█████'s communication skills also are severely delayed. All agreed that she is non-verbal and that she relies on sign language to communicate. While there was some dispute about her fluency with sign language, at best, the evidence showed that ██████ communication skills are quite limited. She spontaneously communicates some of her basic needs and wants. (HX 26 at 65) Though she is capable of signing 2-4 words when communicating routine phrases, she relies primarily on identifying and labeling at the single word level. (*Id.* at 68) Similarly, ██████ one of ██████ tutors, testified that ██████ responses to questions are limited to 1-3 word communications. (Toronyi Testimony) Both Ms. Toronyi and her one-to-one interpreter, ██████ testified that ██████ often simply repeats a sign over and over, and that her signs can be hard to understand. (*Id.* ██████ Testimony)

With respect to academics, the evidence indicated that ██████ functions in the pre-kindergarten to first grade range. This was demonstrated by the stated levels of performance in ██████ IEP's, as well as through the testimony of ██████ and ██████ Curriculum based reading probes administered by the District also show ██████ reading fluency to be at the first grade level. (See HX 17, p. 106, 110) Significantly, despite the Parent's argument that ██████'s tutors provided her with greater challenges, evidence presented by ██████ tutors showed that they also worked with her on skills in the pre-kindergarten to first grade range. ██████ for example, testified that she and A ██████ worked on the pre-primer list of Dolch words. Likewise, Ms. ██████ testified that she read "Dick and Jane" stories with ██████ and worked on Dolch words.

In short, the preponderance of the evidence indicates that ██████ potential is significantly below average.

- **Whether AG's IEP's were tailored to meet her unique needs:**

Consistent with the requirements of *Rowley*, the next factor is whether ██████ IEP's were tailored to meet her unique needs. Here, the evidence strongly supports the District. Specifically, each IEP meeting throughout the period at issue was well attended by a group of professionals from various disciplines who participated in creating ██████ goals and benchmarks. Equally important is the fact that the Parent was an integral member of the team, who attended each IEP meeting and regularly offered specific requests or suggestions concerning goals and instructional materials for ██████ In each IEP, the team created measurable annual goals and quarterly benchmarks, which were tailored to AG's level of performance in reading, math, communication, fine motor, workshop and vocational skills. (See generally, HX's 15, 43, 16, 17, 10) These goals were regularly revised when AG achieved them or in response to the Parent's request. (See, e.g., HX 43 at 17, HX 33) That the team met more than 10 times during the period at issue further demonstrates that the District was committed to addressing AG's unique needs.

- **Access to Specialized Services**

This factor is not in dispute. As noted, for the period at issue, ██████ has been a student at ██████ school, a

school that provides specialized services to students with severe impairments. In addition to the specialized instruction and training that she receives in [REDACTED] transition class, [REDACTED] so receives services from a one-to-one sign language interpreter. She is the only hearing student at [REDACTED] School to receive that service. [REDACTED] also receives occupational therapy and speech and language therapy.

- **Addressed Disability-Related Disruptive Acts**

[REDACTED]'s behavior is not at issue in this case.

- **Progress**

The final factor to be considered is [REDACTED] progress. While an IEP must be examined at the time of its implementation, whether a student achieved progress under an IEP can shed light upon whether the IEP was reasonably calculated to confer an educational benefit. (*Jaccari*, 690 F.Supp. 2d at ___) Here, the evidence demonstrates that [REDACTED] made progress in both reading and writing during the relevant time period.

In reading, the first relevant IEP included goals for word recognition and comprehension. With respect to word recognition, the goal required [REDACTED] to increase her ability to recognize words from approximately 40 to 60 new words. (HX 15 at 704) [REDACTED] not only met that goal, but she exceeded her target, by recognizing 90 new words. (See HX 16 at 39) In response, the team created a more challenging goal that focused on [REDACTED]'s reading fluency skills. Specifically, the goal stated that, when given a passage of 120 words at the first grade level, [REDACTED] would read 96 words read correctly. (progressing from a baseline of 48 words) (HX 17 at 110) Though [REDACTED] did not meet the goal, she did make progress by reading an average of 63 words correctly. (HX 19 at 311) [REDACTED]'s teacher continues to work with [REDACTED] daily to increase her fluency. See *O'Toole By and Through O'Toole v. Olathe Dist. Schools Unified School Dist. No. 233*, 144 F.3d 692, 707 (10th Cir. 1998) (student's failure to master IEP goals does not compel conclusion that IEP was not reasonably calculated to provide a FAPE, particularly where the student made progress towards achieving those goals). The most recent fluency goal requires [REDACTED] to read 100 words correctly out of a first grade passage of 120 words. (HX 10 at 193) In addition to reading fluency, [REDACTED] has also made progress in her ability to read Dolch sight words. She has progressed from the pre-primer level to the first grade level and is currently working on words at the second grade level. (Paisley Testimony; See also, 4/29/10 Report of Goals and Objectives, HX 19, p. 311) (PLP states that by 4/29/09 AG consistently identified Dolch pre-primer, primer and some first grade words) When asked, [REDACTED], one of AG's private tutors, agreed this was evidence of progress. [REDACTED] Testimony)

According to the evidence, [REDACTED] reading comprehension skills are at the pre-primer level -- below her fluency skills. (See, e.g., [REDACTED] testimony) Her ability to comprehend what she reads is so delayed that in the April 2, 2009 IEP meeting, the team decided not to include another comprehension goal at that time, and to focus on improving [REDACTED] fluency instead. ([REDACTED] testimony concerning the April 2, 2009 IEP meeting) At the Parent's request, the team agreed to incorporate a new comprehension goal

[15]

into AG's IEP the following September. (HX 17 at 106) While the comprehension activities have out of necessity been rudimentary -- requiring [REDACTED] to match words and sort cards in response to who/what questions -- [REDACTED] has made progress on the goals. During the 2008-09 year, for example, she increased her ability to circle the correct word in response to a who/what question to 100 percent accuracy from 55 percent. (HX 16 at 33) The following school year, [REDACTED] comprehension goal required her to independently sort pictures of people and objects (who and what), with 70 percent accuracy. (HX 33 at 165) Starting from a baseline of 10 percent accuracy, AG met that goal by performing at 78 percent accuracy. (HX 18 at 309)

The evidence also indicates that [REDACTED] has made progress in writing. Because of her limited skills, writing for [REDACTED] has focused on learning to copy letters and words. According to her IEPs, as well as the testimony of [REDACTED] the occupational therapist, [REDACTED] has progressed from learning to copy her name, to copying the letters of the alphabet, to words close up, to words at a distance. ([REDACTED] testimony, HX 43 at 19, HX 16 at 45, HX 10 at 203)

[REDACTED] IEP's have not included a goal for spelling during the period at issue. While the Parent raised the issue of spelling in her due process complaint, she presented no evidence at the hearing to support a finding that the District had failed to provide [REDACTED] with appropriate instruction in spelling. In contrast, the District, through the testimony of [REDACTED] provided evidence that AG does not have the requisite skills, such as phonemic awareness to learn to spell in a conventional sense. Nevertheless, the team has sought to accommodate that Parent's request that [REDACTED] be taught spelling. (See, e.g., HX 17 at 106) Ms. Paisley testified, for example, that she performs matching activities with [REDACTED] that offer a focus on spelling.

The Parent does not deny that [REDACTED] has made progress on her IEP goals during the relevant time period. She argues, however, that [REDACTED]'s progress is attributable to her tutors -- not the District. As a threshold matter, the legally relevant question is not whether [REDACTED] actually made progress, but whether the District provided her with IEP's reasonably calculated to confer educational benefit. *Murphysboro*, 41 F.3d at 1166. The evidence described above demonstrates that the District met that requirement. In any event, the evidence does not support a conclusion that [REDACTED] tutors have been primarily responsible for her progress. While Ms. [REDACTED] objective data indicates that [REDACTED] made progress in reading, it was modest. After working with [REDACTED] for two months on a list of 40 Dolch pre-primer words, for example, [REDACTED] had progressed from identifying 73 percent to 78 percent of the pre-primer words -- a gain of two words. Her report indicates [REDACTED] made similar progress in reading fluency. (See HX 21) Indeed, when asked, [REDACTED] refused to agree with the Parent's suggestion that [REDACTED] had "quick progress." ([REDACTED] Testimony)

Although [REDACTED] appears to be a committed tutor, and has spent more time with [REDACTED] than [REDACTED] did, there is less evidence that [REDACTED] has made progress in her sessions with [REDACTED] in her report and in her testimony, [REDACTED] offered little, if any, quantifiable, objective data concerning [REDACTED] progress. [REDACTED] who is not trained as a teacher, simply observed that [REDACTED] was "doing great in Milestones," and that [REDACTED] had done a "great job" on her vocabulary lists. (HX 12) While she asserted that the Milestones series is too easy for [REDACTED] she conceded that she doesn't know [REDACTED] reading level. She also conceded that the Milestones series has many levels. Similarly, though [REDACTED] claimed that [REDACTED] has made more progress at home than at school, she agreed that she has never observed [REDACTED] the school environment. Finally, after asserting that the District has failed to communicate with her about [REDACTED] (at the Parent's request), she did not deny that [REDACTED] had sent her several emails, but conceded that she has lost her password.

Likewise, there is no evidence to support the Parent's claim that the District hindered [REDACTED] progress through its delays and its refusal to adopt Visual Academics as its primary reading program. To the contrary, with respect to Visual Academics, the evidence supported the District's decision not to use the program. IDEA requires that, to the extent practicable, a school district must provide a student with special education services and supplementary aids that are based on peer-reviewed research. 20 U.S.C 1414(d)(1)(A)(i)(IV) The Visual Academics Program falls far short of that standard. The program was developed by [REDACTED] who conceded that she has no training in education. Though she calls herself a curriculum adaptation specialist, she further conceded that she has no training or certifications in that field. In contrast, both of the reading programs that the District uses with [REDACTED] Milestones and Edmark, are research-based reading programs. (See [REDACTED] Testimony)

Nor did the Parent present any credible evidence of delays by the District in implementing [REDACTED] IEP's. Though she claimed for example, that the District delayed sending home a copy of the Milestones series,

the evidence actually showed that Parent did not immediately respond to the District's inquiries about whether she wanted a copy of the Milestones program. (See 6/18/09 Nowak email to Mrs. G., HX 31) During the hearing, the Parent made other general claims of delay by the District, but these claims were unsupported by any evidence.

In sum, the evidence demonstrated that [redacted] made educational progress in reading and writing during the period in question, and that her progress was not primarily attributable to [redacted] tutors. Accordingly, when considering this factor along with the others above, I find that the District met the requirements of FAPE by providing [redacted] with IEP's that were reasonably calculated to enable her to receive educational benefit.

WHETHER THE DISTRICT DENIED THE STUDENT FAPE BY ADMINISTERING AN EVALUATION WITHOUT THE PARENT'S CONSENT?

The Parent also contends that the District violated the requirements of FAPE by administering an evaluation to [redacted] without Mrs. G.'s consent. This allegation specifically refers to [redacted] observation of [redacted] to determine whether it was appropriate for her to attend [redacted] School for 1-2 hours a week. As described in the findings of fact above, [redacted] first observed [redacted] in her classroom for 30-45 minutes. [redacted] returned a second time for 15-30 minutes. In her second visit [redacted] [redacted] took [redacted] to a quiet room and conducted a series of informal, non-standardized activities with [redacted] to better assess the Student's ability to communicate through sign language. Mrs. [redacted] readily admits that she requested that [redacted] be allowed to visit [redacted] and gave her oral consent to the District for [redacted] to observe [redacted]. She maintains, however, that [redacted] second visit was not an observation, but an evaluation, to which she did not consent.

IDEA requires a school district to obtain informed consent from a parent before conducting an evaluation of a child. 34 C.F.R. §300.300. Consent means that the parent has been fully informed of all information relevant to the activity for which consent is sought, and agrees in writing that the activity be carried out. 34 C.F.R. §300.9 Here, though the evidence is inconclusive, it is apparent that [redacted] was not informed that [redacted] observation of [redacted] would include removing [redacted] from class to conduct several one-to-one activities. Clearly, [redacted] did not provide written consent for this activity to occur. The critical question then, is whether [redacted] second session with [redacted] was an evaluation that required the Parent's consent.

According to IDEA, an evaluation is a procedure used to determine whether a child has a disability. 34 C.F.R. §300.15 Additionally, the Office of Special Education Programs (OSEP) has opined that an evaluation to determine whether a student's services should be increased or decreased is generally considered an evaluation under IDEA, and requires written parental consent. *Letter to Sarzynski*, 51 IDELR 193 (May 6, 2008) In contrast, a screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not an evaluation. (34 C.F.R. at §300.302)

The difference between an evaluation and a screening is not always obvious. OSEP's *Letter to Torres*, 53 IDELR 33 (April 4, 2009) is instructive here. In *Torres*, a student was referred for a speech and language screening by an RTI team. The writer inquired whether pulling the student out of class to perform the screening was considered an evaluation that required consent. OSEP responded, "Nothing in IDEA... prohibits a State or LEA from ...implementing policies to temporarily remove a student from his or her classroom for purposes of administering screening instruments to determine appropriate instructional strategies for the student." (*Id.*) In other words, according to OSEP, removing a child from a classroom

to perform screening activities does not require parental consent.

Considering the evidence in this case in light of IDEA's legal requirements, and OSEP's interpretations, I find that Ms. Kowalczyk's second visit with █████ constituted a screening for which consent was not required. Specifically, █████ did not conduct an evaluation of █████ because her sessions with the Student were not to determine if █████ was a student with a disability, or whether her services should be increased or decreased. Rather, █████ interactions with █████ constituted a screening because they were to determine whether it would be an appropriate instructional strategy to allow █████ to attend █████ for 1-2 hours a week. That █████ pulled █████ out of the class to conduct the screening is irrelevant.

Assuming *arguendo*, that the District evaluated █████ without obtaining consent, the District's actions would have constituted a procedural violation. As noted above, a procedural violation cannot be deemed a violation of FAPE unless it has impeded a child's right to a free appropriate public education, significantly impeded the parents' right to participate in the decision making process, or caused a deprivation of educational benefits. *Id.* at § 1415(f)(3)(E)(2007) Here, no evidence was presented to indicate that █████ screening impeded █████'s right to FAPE, or caused a deprivation of educational benefits. Indeed, the evidence showed that during her initial classroom observation, █████ did not observe █████ engage in any spontaneous sign language. Relying on that information alone would have immediately precluded █████ from attending █████ therefore, chose to perform some informal activities with █████ in an effort to obtain a more complete picture of the Student's signing skills. Finally, the District's failure to obtain consent before █████'s second meeting with █████ did not significantly impede █████'s right to participate in the decision making process. To the contrary, █████ was simply gathering the necessary information to allow the District to respond to the *Parent's request* that █████ be allowed to attend █████

Accordingly, I find that the District did not deny the Student FAPE by administering an evaluation without the Parent's consent.

Pursuant to the above findings of fact and conclusions of law, it is hereby ordered:

The Parent's request that the District be required to provide █████ with two additional years of education at the █████ school as compensation for its alleged violations of FAPE is denied.

DATED: March 18, 2011

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Kristine L. Anderson
Impartial Hearing Officer

RIGHT TO REQUEST CLARIFICATION

Either party may request clarification of this decision by submitting it in writing to the undersigned Hearing Officer within five days of receipt of this decision. The request for

clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party and to the Illinois State Board of Education. The right to request such a clarification does not permit a party to request reconsideration of the decision itself, and the Hearing Officer is not authorized to entertain a request for reconsideration.


RIGHT TO FILE A CIVIL ACTION

This decision shall be binding upon the parties unless a civil action is commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-8.02a(i)(2004), 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.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the aforesaid Decision and Order was transmitted electronically to the parties and by certified U.S. mail on March 18, 2011.

DATED: March 18, 2011.


Kristine L. Anderson
Impartial Hearing Officer
P.O. Box 7065
Evanston, IL 60204

[1] School is run by the [redacted] a special education co-op in which [redacted] 211 participates.

[2] As I did not have the transcript of the hearing while writing this decision, in citing the witnesses' testimony, I am unable to provide transcript page numbers.

[3] The evidence indicated that all of [redacted] IEP meetings were attended by the required participants.

- [4] Both the Parent and the district numbered the pages of their exhibits. I will refer to those page numbers in my decision for ease of identification.
- [5] The District apparently prepared the timeline for use at the hearing. The document provides citations to support the time entries. Moreover, since the Parent introduced the District's timeline, not the District, I did not question the document's reliability and allowed it to be introduced into evidence.
- [6] That Mr. ██████ used the Milestones program at this early date is notable (and somewhat puzzling), because the Parent asserted at the hearing that ██████ progress was hindered by the District's delay in providing the family with access to Milestones for home instruction.
- [7] ██████ is currently the Director of Special Education for District ██████. At the time of this meeting, however, ██████ was the ██████. While in that position, she routinely attended ██████ IEP meetings and communicated with the Parent.
- [8] Though not stated in her report, a simple calculation shows that to be 29 words.
- [9] Though Mrs. ██████ and Mr. ██████ disagreed on this point, both appeared to be credible in their positions. I determined it was unnecessary to resolve this evidentiary dispute, however. ██████ testimony about the other steps she took to familiarize herself with ██████ convinced me that ██████ was adequately prepared for ██████ transition to her class.
- [10] To be precise, the April 2, 2009 IEP was in effect at the start of the school year. School had only been in session for a few days, however, when the team agreed to revise that IEP on September 3rd. ██████ testimony)
- [11] The Parent's questions on this point were quite repetitive and left the impression that the Parent did not understand -- or refused to acknowledge the difference between measuring a student's fluency and word recognition skills.
- [12] In reviewing the April 29, 2010, it appeared a page with an additional goal may have been missing from the exhibit. The IEP indicates that there are seven goals, but only six appear in the exhibit.
- [13] The Parent's complaint did not include any allegations that the District committed procedural violations of FAPE in crafting ██████'s IEP's. During the hearing, the Parent did raise a question concerning the District's procedures for maintaining its copies of ██████ quarterly progress reports. The question, however, simply focused on the fact that, in previous years, the reports were maintained by the Student's case manager, not in the District's main files. More importantly, the evidence showed that the District did send ██████ regular quarterly reports of ██████'s progress. (See, e.g. Goals and Objectives Reports, HX 47) Indeed, Mrs. ██████ presented no evidence to the contrary.
- [14] Whether the District provided ██████ with FAPE in these academic areas is stated as two issues in the Issues Section of this decision (p. 2). I have addressed them together because the same legal analysis applies.
- [15] That some of ██████ IEP goals were included at the Parent's request, rather than at the request of a staff member is not evidence that the District failed to challenge ██████. To the contrary, the team's willingness to incorporate IEP goals at the Parent's suggestion shows her meaningful participation in the process.
- [16] Even if the Parent's assertion were true, the District was not required to provide the Parent with a copy set of the Milestones program, nor do ██████ IEP's indicate otherwise.