

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

RESOLVED

JUN 20 2011

SPRINGFIELD

Student

vs.

Case No. 2011- 0177

CPS

School District

ANN BREEN-GRECO, Hearing Officer

DECISION AND ORDER

This matter is before the undersigned Hearing Officer for a due process hearing concerning the Parent's assertion that the District denied the Student a free, appropriate, public education (FAPE). The Hearing Officer has jurisdiction to hear and decide the matter under 105 ILCS 5/14-8.02a, 34 C.F.R. 300.506-509, 23 Ill. Admin. Code 226 Subpart G, and the Individuals with Disabilities Education Act, as amended, 20 U.S.C. 1415 et seq. ("IDEA"). The parties were informed of their rights pursuant to these statutes.

BACKGROUND

The Student is currently in high school with an eligibility of Learning Disabled. Concerned about her son's lack of progress, Parent requested an independent educational evaluation. The District filed for due process and subsequently the Parent filed for due process. Parent asserts a denial of FAPE and seeks private placement with assistive technology (AT) and compensatory education. Parent completed a private educational evaluation. The evaluators' reports were considered by the District IEP team but the matter was not resolved. The pre hearing was held and continued. After the continued pre hearing, a Hearing Notice and Pre Hearing Conference Report were issued. The hearing was held May 17, 20, 24, 25, and 27. At hearing, the District withdrew its due process hearing request, accepted the evaluators' reports and agreed to fund the private educational evaluation, and agreed that a therapeutic day school is the appropriate placement for the Student. Nonetheless, the District declined to offer a specific location for the placement. The parties agreed to file closing statements. The statements were timely filed, the the record was closed, and the decision is due on June 14.

ISSUES AND RELIEF REQUESTED

As issues, Parent asserts that the District's actions constitute a:

- (1)** Failure to provide a complete copy of all student records in a timely manner pursuant to IDEA, FERPA and state law;
- (2)** Failure to provide an appropriate, comprehensive and individualized evaluation in a timely manner in order to adequately identify the nature and extent of the Student's disabilities from December 12, 2008, through the present including, but not limited to: psychological-cognitive, academics, speech/language, central auditory processing, visual processing-fine/gross motor skills (OT), AT, sensory, behavior, attention deficit, executive functioning, adaptive, vocational and other areas based on independent educational evaluations (IEEs). Childfind, 34 C.F.R. sec. 300.111, 34 CFR Sec. 300.301, 34 CFR Sections 300.305, 300.310; Request for IEE, 23 Ill. Admin. Code 226.180;
- (3)** Failure to develop an IEP that provides: an appropriate educational program/placement based on an appropriate evaluation and scientific, research based evidence including all related services and assistive technology with sufficient intensity to address the Student's educational needs December 12, 2008, to close of hearing including ESY 2009 and 2010 (34 CR Sec. 300.35, 300.39(a); 34 CFR Sections 300.6, 300.105) and develop IEPs where present levels of performance accurately and objectively state current academic, functional and developmental skills of the Student; goal statements are responsive to the learning impediments of the Student and objectively measure Student's progress; and lists objectives that provide accurate and meaningful strategies for improving the Student's academic, developmental and functional skills including an appropriate transition plan. 34 CFR Sections 300.320(a)(2); 300.324;
- (4)** Failure to provide a placement in the LRE: Learning Disability therapeutic day placement such as Acacia Academy to address significant reading, writing and math deficits;
- (5)** Failure to accurately and objectively report to the Parent the lack of the Student's progress in the District's offered services and programs and/or implement an appropriate response to the Student's continuous lack of progress December 12, 2008, through the present. 34 CFR Sec. 300.320(a)(3). The District did not regularly provide IEP progress reports or update the IEP as required by IDEA to address the Student's continued lack of progress;
- (6)** Failure to provide social work services listed in the Student's IEPs;
- (7)** Failure to conduct an adequate functional behavior assessment (FBA) in order to develop an appropriate behavior intervention plan (BIP) or appropriate response to address suspensions and attention issues. 34 CFR Sections 300.324(a)(3), 30.320(4)(ii);
- (8)** Failure to follow proper discipline and misconduct procedures under state and federal law. Parent is still requesting discipline reports relating to discipline;

(9) Failure to provide an appropriate vocational/transition assessment and develop an appropriate transition plan based on the Student's significant learning needs;

(10) Failure to provide six weeks of ESY for summer 2009 and 2010 (and 2011). 34 CFR Sec. 300.106.

Parent as relief seeks:

(1) An interim order compelling the District to provide all Student records and if necessary a final order indicating denial of FAPE and compelling the District to provide the remaining Student records.

(2) Order requiring the District to fully fund the IEE.

(3) Placement at [REDACTED] Academy and if a placement is not available at the time of the hearing decision, placement at the [REDACTED] School. Parent states that these are the only two therapeutic day high schools in the Chicago land area that provide educational services for students with the primary disabilities of severe learning disabilities and severe speech language impairments. Parent requests [REDACTED] as the closer location. Parent defines the placement as a therapeutic day program [REDACTED] that: 1) primarily serves severe learning disabled students in a small school and nurturing environment; 2) certified by ISBE for speech language impairments; 3) primary reading program for learning disabled students is Orton-Gillingham based reading program that is systematic, explicit, sequential and researched based phonics program with explicit instruction in letter-sound relationships taught in a clearly defined and logical sequence to a level of automaticity; 4) school staff experienced in implementing this type of systematic, explicit, sequential and research based programs; 5) staff are experienced in remediation for students with severe/significant speech language impairments per certification from ISBE; 6) staff are experienced in addressing severe auditory process deficits; 7) staff are experienced in implementing written language interventions; 8) school has psychologist, social worker, speech pathologist and occupational therapies; and, 9) staff experienced in implementing assistive technology and written language remediation/interventions as well as math remediation.

(4) Order the District to convene an IEP to develop an appropriate IEP for the Student based on the recommendations of the outside evaluators assessment results. a) the District to review all evaluation results and recommendations and have appropriate staff at the IEP meeting. Parent requests that the recommendations of the IEE providers be implemented. b) The District to develop an appropriate IEP with individualized and measurable goals/objectives and accurate present levels of performance based on the Student's eligibility and identified educational needs including appropriate modifications/accommodations; c) the District to identify all direct and related services based on scientific research based evidence including, but not limited to psychological and speech/language direct services, central auditory processing (CAP) interventions, OT direct services and learning disability services with appropriate individual and group services across all educational settings; d) the District to provide appropriate assistive technology as recommended by the experts including classroom implementation and training to the Student, Parent, and staff as required; e) the District to provide compensatory services as stated in No. 5 below; f) See No. 3 above: least restrictive environment (LRE) determination is

a therapeutic day school [REDACTED] for student with severe learning disabilities and severe speech language impairments, including ESY 2011 and 2012; g) vocational services and appropriate transition plan including academic instruction necessary to meet goal; and, f) implement other Hearing Officer ordered relief based on findings.

(5) Parent requests compensatory education services of sufficient duration and intensity to restore the Student to the position he would have attained had the District provided him with FAPE during the period he was deprived of FAPE. Subject to evidence submitted at hearing, the Parent currently believes that the following represents compensatory education services necessary to meet this standard: a) 1:1 tutoring services beyond the regular school day by a certified special education teacher trained in scientific research based interventions such as Wilson Reading program for (but not limited to) 60 minutes per session, twice a week for the period denied FAPE; 1:1 speech language services beyond the regular school day by a certified speech pathologist 60 mpw, 1 time a week for the period denied FAPE; and 1:1 OT services beyond the regular school day by a certified OT 60 mpw, 1 time a week for the period denied FAPE; b) additional assistive technology to assist the student in all academic areas placed on a lap top computer with appropriate program interventions to enable the Student to complete homework (Earobics, Lexia, Write:OutLoud, Co-Writer, Draft Builder, Kurzweil for Windows (and scanner) and Start to Finish books or other equivalent type of books), other appropriate AT identified by experts; c) additional vocational services as appropriate; and, d) all other relief as appropriate based on the IEE findings and recommendations.

(6) Other Hearing Officer relief in order to provide the Student with FAPE. Hearing Officer has authority based on the Illinois School Code to order services and placement necessary to provide FAPE.

(7) Parent requests reasonable attorney fees in order to settle this matter. Parent is reserving her rights under IDEA and District is on notice for settlement.

WITNESSES

The following witnesses testified in the hearing and will be referred to by title in the Decision, except for the Parent's private evaluators – [REDACTED] Central Auditory Processing Evaluator), [REDACTED] Speech-Language and Assistive Technology Evaluator), [REDACTED] (Occupational Therapist), [REDACTED] Clinical Psychologist), and [REDACTED] (Vocational Rehabilitation/Transition Plan Evaluator). [REDACTED] AT staff person, [REDACTED] and [REDACTED] Principal [REDACTED] are also referred to by name.

Parent/District witnesses: [REDACTED] (Parent), [REDACTED] (General Education Teacher A), [REDACTED] (Special Education Teacher/Case Manager), [REDACTED] (Case Provider/Special Education Teacher), [REDACTED] (Social Worker), [REDACTED] (Special Education Teacher), [REDACTED] (Dean of Students), [REDACTED] (Psychologist), [REDACTED] (Speech Pathologist), [REDACTED] (Occupational Therapist), [REDACTED] (Dean of Attendance), [REDACTED] (Social Worker), [REDACTED] (Case Manager), [REDACTED] (Special Education Teacher), [REDACTED] (Audiologist).

FINDINGS OF FACT AND ANALYSIS

In light of the fact that the District has withdrawn its request for due process hearing, the District's only burden is presenting evidence that the special education needs for the Student have been appropriately identified and that the special education program and related services proposed to meet the needs of the Student are adequate, appropriate, and available. 105 ILCS 5/14-8.02a(g-55). The Parents, however, have the burden of proof regarding the request for a due process hearing involving a denial of FAPE based on the United States Supreme Court ruling in *Schaffer ex rel. Schaffer v. Weast*, 126 S.Ct. 528, 537 (2005) which was analyzed with respect to the relevant Illinois statute (the Illinois School Code) by the Northern District. *Kerry M v. Manhattan School Dist.; and the Illinois State Board of Education*, U.S. District Court, Northern District of Illinois, IDELR 194 106 LRP 58547 (September 2006).

Parent filed for due process citing primarily failure to provide: Student records; an appropriate evaluation, including a functional behavior assessment (FBA) and behavioral intervention plan (BIP); vocational/transition assessment and plan; an IEP with services and an appropriate placement in the LRE; progress reports to Parent; ESY; and failure to follow proper discipline and misconduct procedures.

1. **The Hearing Officer finds that the District failed to conduct an appropriate evaluation, including an adequate functional behavior assessment (FBA) and appropriate behavior intervention plan (BIP).**

IDEA defines an evaluation as procedures mandated to determine whether a child has a disability and the nature and the extent of the special education and related services that a child needs. 34 CFR § 300.15. Based on IDEA requirements, the evaluation materials include those tailored to assess specific areas of educational need including that the district "use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information." 34 CFR §300.304 (c)(2). IDEA requires that a full and individual evaluation includes all components that are needed to identify a student's disability and educational needs including related services. 34 CFR § 300.301(a).

Parent has presented evidence that the District did inadequate assessments or failed to do the following assessments: FBA, psychological, central auditory processing (CAP), speech and language, attention and executive functioning, assistive technology, occupational therapy, and vocational. Parent requested an independent educational evaluation (IEE). The District refused and filed for due process. Parent then filed for due process. Parent had independent educational evaluations done for psychological, speech and language, CAP, and occupational therapy (OT). Subsequently, the District accepted the reports and agreed to pay for the evaluations. The District has also agreed to pay for a vocational rehabilitation evaluation.

All four evaluators and the vocational specialist found deficits and made specific recommendations for the Student's education. Two recommended a therapeutic day school such

as [REDACTED] which is a facility for severely learning disabled students, where assistive technology and significant personal attention are available. The four evaluators and the vocational specialist testified at the hearing and their testimony about their findings and recommendations is reviewed below.

The District failed to do a Central Auditory Processing Assessment (CAP). At Parent's request, [REDACTED] a clinical audiologist, did a CAP evaluation on the Student in 2011 and wrote a report of the evaluation. She found he had difficulty in tasks taxing auditory closure and discrimination, binaural separation tasks (listening in noise), and attaching correct verbal labels to auditory patterns. She recommended short-term aural rehabilitation to improve auditory perceptual and related skills; metalinguistic strategies such as auditory closure, use of metacognitive strategies, use of metamemory techniques and specific programs. PD 34-5. She testified that, after a review of all documents, it is her impression that he has always had an auditory processing problem. She testified that there were numerous "red flags" and that the Student should have been referred for CAP assessment in first grade. [REDACTED] At the end of third grade the Student's scores on the Test of Auditory-Perceptual Skills (TAPS) clearly showed problems. Sentence memory and numbers forward were below age equivalency [REDACTED] The Student had strengths in context, but not numbers individually. [REDACTED] "Teacher reported limited progress in academics with significant concerns about short attention span." [REDACTED] The Student had "very limited" reading and "weak" word attack skills. [REDACTED] Student at kindergarten-first grade reading level since first grade.

[REDACTED] clinical psychologist and school psychologist, conducted a psychological evaluation of the Student at Parent's request. The District stipulated to her background [REDACTED] and accepted her evaluation [REDACTED] had the impression that the Student never had a thorough evaluation. This has led to a "lot of errors" in attempting to define and address his needs. In testimony, [REDACTED] reviewed the Student's previous psychological evaluations. [REDACTED] When the Student was initially evaluated in kindergarten, the psychologist noted only partial administration of tests because of behavior. [REDACTED] PD 79 – 88. Parent reported speech delay and at three the Student was referred for hearing and speech and language evaluation. The speech and language report noted ear infections and lead levels. Ear infections can be linked to auditory processing problems and excessive lead levels can cause Attention Deficit Disorder (ATT) and possible cognitive issues. The Student was noted to be impulsive. He was diagnosed with mild to moderate receptive deficit and referred for speech and language therapy.

A speech and language evaluation when the Student was seven indicated receptive one-word vocabulary at a four-year-old level and expressive at a five year, nine months level. [REDACTED] However, he was recommended for dismissal from speech therapy and continued services were not recommended in the IEP. Another evaluation was done when he was nine, in third grade. [REDACTED] He was given only abbreviated intelligence scale with four sub tests. In this May 27, 2004, psychological evaluation there was no further recommendation for speech and language. [REDACTED]

[REDACTED] testified that again in grade six there was no thorough evaluation. The Student was given only a screening device. PD 122. The school psychologist who conducted that evaluation

noted “very limited reading abilities and low math ability.....virtually a non-reader.” When she reviewed the most recent report [REDACTED] testified that she had no sense that the psychologist who did the evaluation met with the Student and only reviewed a formal group testing that had been done. PD 80 (reference to evaluation of May 2010 – PD 129-133). In testimony that school psychologist admitted that she had never interviewed the Student and based her evaluation on existing data.

[REDACTED] testified that despite the earlier delays in visual perception there was no referral for OT. Even with all the Student’s behavioral issues, there was no assessment of adaptive behavior or formal emotional functioning or referral for psychiatric evaluation.

As noted above, the District’s psychologist who conducted the most recent school psychological evaluation admitted that for the May 11, 2011, IEP, she had never interviewed the Student and based her evaluation on existing data. She testified that she did not complete any assessments or interview the Parent. Nor did she observe the Student in class or evaluate his curriculum. Even though she testified that the teachers were very concerned about attention she did not assess the Student’s attention. Despite her acknowledgement that she did review the previous 2007 psychological and that the group testing scores in the psychological report indicate “academic warning” in reading and written language and below average in math, she did not assess the Student in areas of concern or deficits identified by the school psychologist in the 2007 assessment: visual processing, emotional, auditory processing, phonological processing, low self-esteem.

[REDACTED] testified that she did complete assessments in all these areas. She testified that based on the previous 2007 assessment it was important to assess in these areas and that the District’s 2010 psychological was inadequate with regard to the Student’s needs.

[REDACTED] in her report stated that the Student has demonstrated learning and behavioral issues since he began preschool. PD 86. Currently her test results indicate he has severe specific learning disabilities in areas related to central auditory processing and language development. “These learning disabilities and the lack of sufficient remediation have contributed to extreme delays in acquiring academic skills (which) remain significantly below his grade level placement and are inadequate to support his success in the current educational placement.” [REDACTED] cited delays in language development which delayed reasoning and problem solving abilities. She notes that he “learns well through the visual modalities and his visual and practical reasoning skills appear to be well within the average range. The inattention in the learning environment is complicated by the difficulty he has with central auditory processing deficits and the language delays.”

[REDACTED] finds the Student “very responsive to individualized instruction and demonstrates eagerness and tenacity to learn under such circumstances.” She recommends placement in a highly structured educational classroom that provides more opportunity for individualized instruction and a multisensory approach to learning—“... language and phonetic based remediation program based on the Orton Gillingham model. An appropriate program is the Wilson/Slant program, which has been very effective in teaching older dyslexic students to read.” An appropriate placement would be [REDACTED] Academy, where these remedial programs are

utilized. "Remediation should follow the recommendations made by [REDACTED] for intensive speech and language therapy to develop auditory processing abilities and receptive and expressive language abilities." PD 87. He "will (also) benefit from Occupational Therapy services as outlined in the report completed by [REDACTED]" "A vocational assessment should be completed and transitional plans should begin next year." PD 87

The District also failed to complete an occupational therapy assessment (OT) despite warning signs. Parent had Occupational Therapist [REDACTED] conduct an evaluation. [REDACTED] testified that starting in 1998 there were concerns but the Student never had an occupational therapy assessment. PD 50. She found concerns regarding Figure Ground visual processing, visually shifting across midline, differences in spatial right/left understanding, and differences in sensory process that affects self regulation. However, by 2004 no occupational therapist had been called in. In May 2007 the Developmental Test of Visual-Motor Integration (VMI) showed skills in the 7th percentile. PD 49. Had he gotten occupational services early on, Block testified, it would have helped him at an early age. PD 50.

She recommended, among other things, that a school occupational therapist well versed in sensory integration theory work with him and his school team to provide the Student with tools to successfully self advocate to meet his needs, modifications to school materials and for computer-based materials and with the Student directly to instruct him in the use of modifications/strategies. She testified that he should have been referred for OT assessment in first grade based on school information. She testified that there were other indicators meriting an OT assessment referral including his poor hand printing (PD 117); performance scale is below average and academic scores are poor as well as behavior--possibly sensory (PD 119); poor academics continue (PD 121); virtually a non-reader (PD 123); lead level was extremely high (PD 135).

The District also failed to conduct an assistive technology evaluation. The fourth evaluation requested by Parent was conducted by [REDACTED] a speech and language pathologist specializing in augmentative communication and child language. In her speech and language evaluation, she determined that the Student's speech and language skills are "significantly impaired." PD 20. The TAPS assesses ability to discriminate, perceive, and process auditory information. His scores show he struggles to process auditory input, particularly with phonologic process. His "reading, writing and spelling abilities fall significantly below the average range according to testing..." PD 20. [REDACTED] testified that the Student is "working hard to overcome lack of phonological skills and memory (problems)."

[REDACTED] interviewed the District speech pathologist who reported that she was not familiar with the Student's specific academic work or the expectations of regulation classes. PD 19-20. The District speech pathologist testified that approximately two weeks ago she provided a half hour of speech therapy to the Student. It should have been one hour but the Student said he had a headache.

[REDACTED] reviewed the Student's IEPs and [REDACTED] evaluation reports. He received speech therapy when younger but it was discontinued although he was below age level expectations. PD 149-153. [REDACTED] testified that he "should have been receiving it

all along.” She also expressed concerns about the lack of Assistive Technology (AT) Assessment, noting that if his AT needs had been monitored, there were computer programs that would have been appropriate for him to work on from first grade. [REDACTED] testified that no AT was recommended, although all her recommended programs were available at this point. There were no goals in the IEP to address speech and language. No AT evaluation was completed and none needed according to this IEP. The AT recommended use of headphones and tape recorder are not those recommended by [REDACTED]

[REDACTED] recommended AT programs with training of school staff, Student, and his family members; weekly one to one support for the Student, and a laptop with specific programs. [REDACTED] occupational therapist, and [REDACTED] also testified regarding when the Student should have been referred for an AT evaluation: in the May 28, 2004, IEP, it states he “spells poorly”; “trouble putting ideas on paper” (PD 354); reading “kdgn level (PD 374).” [REDACTED] testified that there were indicators of ADHD and the District should have assessed Attention and Executive Functioning: in 1998, behavior difficulties (PD 115); in 1998 social assessment, Parent described the Student as having a short attention span and is unable to sit still (PD 134); 2001 psychological referred for Behavior (negative) acting out with teacher, adults and peers (PD 117).

The District also failed to conduct an adequate functional behavior assessment (FBA) despite numerous alerts: Parent’s concern that his behavior affects his learning (PD 268-- May 30, 2000 IEP); the social worker’s comments regarding his behavior for the social worker evaluation as part of the triennial evaluation dated May 24, 2010 (PD 139); check list of student behavior (PD 148); Parent transition questionnaire (PD 553); teacher comments (PD 562 May 17, 2010). The first behavior assessment for the Student was done May 11-13, 2011. The special education teacher and case worker for the Student completed the FBA (SD 556-8) but no data was collected. With respect to “Targeted Behavior”, “Frequency” is noted as “weekly” and “Duration” and “Intensity” are designated as “varies.” SD 556. These designations are useless and fail to meet the IDEA standards. Neither the Parent nor other school staff was included in the FBA and BIP.

General Education Teacher A testified that she attended the February 2, 2010 IEP (PD 475) and she was not asked if the Student’s behavior impeded his learning. She would have said “yes” if asked. [REDACTED] testified that the Student required an in depth behavior assessment to address behaviors. However, no one asked her about that at the IEP meeting.

The FBA is an integral part of the evaluation process, particularly when a student has exhibited behavioral difficulties, in order to determine the factors that contribute to a student’s interfering behaviors. IDEA requires that if a child’s behavior is of concern, an evaluation addressing this must be conducted. The main purpose of the FBA is to help the IEP team in developing a behavior intervention plan (BIP) that will reduce or eliminate behavior which impedes learning.

The Social Work Assessment also was not comprehensive. The District social worker testified regarding her report (PD 138-139) that she did not complete an adaptive behavior measure as part of her evaluation. However, she noted under adaptive behavior that the Student’s “adaptive behavior is within the slow range.” PD 139. Yet she did not complete a formal measure of the

Student's adaptive behavior. The social worker from the Student's elementary school [REDACTED] testified that at the May 25, 2007, IEP meeting, she learned that the Student exhibited the following characteristics, which she checked on the Entrance Form for School Social Work Services: 1) unable to focus on task and complete assignments; 2) lacks coping skills that significantly impact/affect school functioning; 3) displays significant self-esteem that negatively impact academic functioning; and, 4) is hyperactive, inattentive and impulsive. PD 140. The District social worker admitted in testimony that the Student continued to exhibit these entrance criteria for social work services.

The District also failed to conduct a vocational assessment. Although he had not yet done an evaluation, [REDACTED] vocational evaluator with the LaGrange Area Department of Special Education, and owner of a private practice in vocational evaluation, testified that he assesses high school students in public school as well as attends IEP meetings, and writes vocational goals and transition plans. PD 92 and 94. He reviewed all the Student's IEP vocational/post secondary goals and transition plans. He testified that a true assessment had not been completed and the goals and transition plan were inadequate. The Student is reading at first grade level and having behavioral issues. A goal of a four-year university to pursue a law degree was not realistic for the Student. PD 453. The Student would not be able to complete research when he is a non reader.

The Parent has presented evidence that the District failed to provide an appropriate vocational/transition assessment and develop an appropriate transition plan based on the Student's significant learning needs. The District has agreed to pay for a vocational assessment by [REDACTED]

A school district is required by Congress to identify, evaluate and place potentially disabled students. 20 USC § 1412(a)(3)(A); 23 ILAC S. 226.100. Specifically, in Illinois, as noted above in the burden of proof description, the school code requires a district to present "evidence that it has properly identified and evaluated the nature and severity of the student's suspected or identified disability ...and that it is providing or has offered a" FAPE. 105 ILCS 5/14-8.02a(g-55). In this case, the District has not met the standard of the Illinois School Code of "a carefully completed case study." 105 ILCS 5/14-8.02(b). Parent has presented evidence, particularly in the form of the four independent educational evaluations, which the District accepted and agreed to pay for, that the District's evaluation was not a comprehensive evaluation. Parent has met her burden in proving that the District failed to conduct an adequate evaluation.

2. The Hearing Officer finds that the District failed to develop an IEP that provides an appropriate educational program/placement based on an appropriate evaluation and scientific, research based evidence including all related services and assistive technology with sufficient intensity to address (the Student's) educational needs from December 12, 2008 to the close of hearing including ESY 2009 and 2010 and failed to develop an IEP where present levels of performance accurately and objectively state current academic, functional and developmental skills of the Student; goal statements are responsive to the learning impediments of the Student and objectively measure Student's progress; and lists objectives

that provide accurate and meaningful strategies for improving the Student's academic, developmental and functional skills including an appropriate transition plan.

The United States Supreme Court has articulated a two-prong test to determine whether a child has been given a free appropriate public education under the IDEA. *Hendrick Hudson Dist. Bd. of Education v. Rowley*, 458 U.S. 176 (1982). The first prong is whether the school district complied with the procedural requirements of the IDEA. Second, the Hearing Officer must determine whether the IEP was reasonably calculated to enable a child to receive an educational benefit. That determination is based on whether the District's IEP for the Student identified his needs/eligibility and offered services to address those needs as required by statute. In this case, the determination that the Hearing Officer must make is whether the Student's IEP was reasonably calculated to meet the *Rowley* standard.

(I)Procedural Requirement

Parent has argued, "Records, important to the issues of this case, were delayed in their production, produced at hearing or after specific witnesses testified, or not produced at all. "Preponderance of evidence supports the parent's position that she was denied FAPE by district's *failure to provide copies of all student's records in a timely manner, effectively impeding counsel* and the IEE assessors from ascertaining relevant information concerning the Student's educational history, status and programming. *IC v. CPS*, page 15, 110 LRP 50962 (SEA IL 5/19/10)." Parent Closing-Page 10.

Prior to hearing, the Hearing Officer issued an order granting Parent's Motion to Compel Production of Documents and requiring the District's attorney to submit an affidavit that records had been produced, which he did. Nonetheless, throughout the hearing, District witnesses testified that they had not produced records. As detailed in Parent's closing argument, the following witnesses testified as to records not produced:

- a. General Education Teacher A: 1. [REDACTED] assessment: reading and math, 2. Myreadinglab.com print out of the Student entries/scores, etc., 3. Email;
- b. Case Manager: 1. Email-IEP conference notifications, communications with Parent, 2. Documents: i.e. PD 637-640, 3. Documents: i.e. PD 641-2, 4. Documents: i.e. 678-696, 5. Log of contacts with Parent, 6. Sign in sheet: Log of individuals who reviewed Student's file;
- c. Dean of Attendance: 1. Email;
- d. Special Education Teacher: 1. Email: one example is IEP conference notification, 2. She testified that she did not complete an ESY report card;
- e. Case Provider: 1. Data progress notes, 2. Dates of service logs, 3. Email: one example is IEP conference notification;
- f. Dean of Students: 1. Email, 2. Determinations that MDR was not required, 3. Expulsion documents;
- g. CPS psychologist: 1. Online progress notes, 2. Email;
- h. Speech online 1. progress notes and Email.

IDEA requires a school district to allow parents or their representatives to inspect and review records “without unnecessary delay and before any meeting regarding an IEP, or any hearing...” §300.613(a). With respect to procedural violations of IDEA, only “procedural inadequacies that result in the loss of educational opportunity constitute a denial of FAPE.” *Evanston Community Consol. School Dist. No. 65 v. Michael M.*, 356 F. 3d 798, 804 (7th Cir. 2004); *Board of Ed. Of Township High School District No. 211 v. Michael R.*, 2005 WL 2008919 (N.D. Ill. 2005). IDEA-2004 which became effective on July 1, 2005, also requires that where a procedural violation is alleged, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies: (I) impede the child’s right to a FAPE; (II) significantly impede the parents’ opportunity to participate in the decision making process regarding the provision of a FAPE; or (III) cause a deprivation of educational benefits. P.L. 108-446, Section 615(f)(3)(E)(ii).

The Hearing Officer finds that the Parent has met her burden in proving that the absence of a multitude of school records constitutes a procedural flaw that “ ‘seriously infringe(s) the (parent’s) opportunity to participate in the (individualized education program) formulation process’ (and) (is) the very kind of serious (deficiency) that ‘clearly (results) in the denial of a (free appropriate public education)’ (*W.G.*, 960 F.2d at 1484).” *Board of Education of the City of Chicago v. Illinois State Board of Education*, 2006 WL 2989289, p. 4 (N. D. Ill)). The Hearing Officer finds that the District has not complied with the first prong of *Rowley*.

(II) Substantive Component of a Legally Sufficient IEP.

To determine whether the District complied with the second prong—the substantive component of a legally sufficient IEP—the Hearing Officer must find that the District’s IEP for the Student identified his needs/eligibility and offered services to address those needs as required by statute. Parent has stated as issues the District’s failure to provide: an adequate evaluation, appropriate IEP, FAPE, an appropriate placement, sufficient related services, appropriate assistive technology, progress reports, and adequate transition plan; and failure to address the Student’s behavioral needs.

In the hearing, the District agreed that the Student’s place should be a therapeutic day school. However, the District has argued that the issue is one of timing—that the District could not have known until the May 11 2011, IEP that the Student’s placement should be a therapeutic day school. The District argument has no evidentiary support.

As detailed with respect to the District’s failure to complete an appropriate evaluation, the evidence demonstrates that the Student’s issues were apparent from the age of three. It was noted that he had excessive lead levels in his blood. As early as kindergarten there was an opportunity to appropriately evaluate this child and provide the requisite services but this was not done.

██████████ found his expressive and receptive vocabulary tests significantly below age level. ██████████ testified that, after a review of all documents, it is her impression that he has

always had an auditory processing problem. The fact that he was making no progress in reading abilities should have told somebody that the program being used was not effective or something was being missed in terms of an underlying problem and someone should have looked at auditory and visual processing. According to [REDACTED] the Occupational Therapist, "The Deficits found would not suddenly appear, unless (the Student was a) victim of sudden trauma." This testimony counters any argument that the District makes that the Student merely developed these issues recently.

In light of the ongoing lack of an appropriate evaluation it was never possible to develop an IEP "reasonably calculated to provide educational benefit" for the Student. To develop an IEP which would meet federal standards, the Student's evaluation would have to be comprehensive, allowing identification of his deficits and needs, in order to set meaningful goals to track progress.

The IEP is the instrument utilized to create the placement for a student. In the Student's case the IEP goals ranged from meaningless to standards set for the Student far beyond his level of academic and emotional functioning, i.e., despite the fact that the Student read at a second grade level, a number of goals required him to utilize the skill of reading far beyond his ability to do so.

All of Parent's evaluators testified as to the inadequacies of the IEPs. The Student has not received direct social work services to address the emotional impact of his inability to function in the classroom and how this impacted his self esteem. Supportive services required to assist a child with a disability to benefit from special education, such as speech, auditory processing, sensory, OT and assistive technology, were not listed in his IEPs.

[REDACTED] the psychologist, testified that the IEP goals from all the IEPs were inappropriate in that they were un-measurable. The school psychologist testified that she was unaware of social emotional accommodations on the May 11, 2011 IEP (SD 524) and she did not make recommendation for any psychological services.

[REDACTED] the clinical audiologist, testified that none of the IEP had goals for CAPD or accommodations/modifications. She testified that in her professional opinion, he should have CAP goals in his IEP, the goals should be more clearly written, as well as benchmarks. The goals only minimally address the discrimination issue. Additionally, according [REDACTED] there should be a goal to address noise tolerance.

[REDACTED] vocational rehabilitation counselor, testified that the goals and quarterly benchmarks do not appear to be "doable" given the Student's academic level. The most recent clinical evaluation indicates he is reading at 1.8 grade level.

[REDACTED] testified that "IEPs are designed to be a team plan." However, she noted that sensory, visual and speech/language were not addressed in the May 11-13, 2011 IEP. SD 556-558. No IEP addressed the Student's education OT needs.

[REDACTED] testified that the speech goals were not related to vocabulary and should have semantics which is necessary for the Student's educational progress. SD 583-588.

Principal, [REDACTED] Academy, testified that the academic goals in the May 11-13, 2011 IEP would need to be revised as they did not address phonetic skills and basic math for the Student and the IEP goals/benchmarks were general and too high.

The vocational rehabilitation counselor, [REDACTED], also testified that the February 19, 2009, vocational goal or transition plan and the February 2, 2010 vocational goal and transition plan are also not viable in view of the Student's low academic level. The transition plan does not address any related services or daily living skills nor designate who will be responsible for all the coordinated set of activities. PD 492. The May 24, 2010, vocational goals and transition plan reflect the same deficiencies. PD 537, 539 and 548-9. The same inadequacies are in the transition plan in the May 11, 2011 IEP. SD 554-555.

The *Rowley* standard is whether the IEP was reasonably calculated to provide educational benefit. Parent has met her burden and the Hearing Officer finds that the District has not complied with the second prong of *Rowley* standard for the substantive component of a legally sufficient IEP. Based on the findings and analysis the Hearing Officer determines that the District has failed to provide the Student a FAPE.

In this case, the May 11, 2011, IEP was also inappropriate, despite the fact that the IEP team had the Parent's independent educational evaluations. In light of all the deficits found by these evaluations and the Student's ongoing academic struggles and failures, plus the fact that the District agreed to pay for the IEEs but then did not incorporate the recommendations in the IEP, the Hearing Officer finds that the District has acted unreasonably in not developing an appropriate IEP. The Illinois School Code places the burden on the school district to show it has identified and evaluated the student's suspected or identified disability and that, if the student has been or should have been determined eligible for special education and related services, that it is providing or has offered the services. 105 ILCS 5/14-8.02a(g55)). The Hearing Officer finds that the District has failed to meet its burden.

Parent has met her burden in proving that the District failed to provide FAPE. The District has agreed that the Student should be in a therapeutic day school but has declined to name a location, while maintaining that the location is within the discretion of the District. Even though the Hearing Officer raised this issue more than once, the District still declined to name a location that would meet the requirement of the agreed-to therapeutic day school placement.

Pursuant to Illinois statute, the District must ensure a FAPE is available to each child with a disability who resides in the state and is enrolled in the district and requires special education and related services, to accord with 34 CFR 300.101 through 300.103. The education and services must be provided according to the child's individualized education program. 223 Ill. Adm. Code 226. 50.

Parent seeks compensatory education for the Student based on the denial of FAPE. Parent requests compensatory education services of sufficient duration and intensity to restore the Student to the position he would have attained had the District provided him with FAPE during the period he was deprived of FAPE, citing *Petrina W. v. City of Chicago Public School District* 299, 109 LRP 78111, p. 4 (N.D. Ill. 2009). Parent believes, and based on the evidence,

including the evaluators' recommendations, the Hearing Officer agrees, that the following represents compensatory education services necessary to meet this standard:

a. After school tutoring and related services to begin at the start of the school year and continue until all sessions are completed and the District to provide safe/reliable transportation for all compensatory services: 1:1 tutoring services beyond the regular school day by a certified special education teacher trained in scientific research based interventions such as Wilson Reading program for (but not limited to) 60 minutes per session, twice a week for a total of 184 hours/sessions; (1) one hour of Wilson four days a week (PD 87); (2) 1:1 speech language services beyond the regular school day by a certified speech pathologist 60 mpw, once a week for a total of 92 hours/sessions; (3) 1:1 OT services beyond the regular school day by a certified OT 30 mpw, once a week for a total of 52 sessions; and (4) FastForward for 3 months after school to start ESY 2011, at a location agreed upon between the Parent and District.

b. Assistive technology for all compensatory services.

The Student also requires extended school year (ESY) 2011. General Education Teacher A testified that ESY needs were not reviewed at the IEP meeting and that the only way a student could qualify for ESY services in high school was to fail classes. That statement notwithstanding, the IEEs confirm the need for the Student to have ESY 2011.

Based on the needs identified by the private evaluators and their recommendations for intense services, in addition to the therapeutic day school, the Student is entitled to ESY and the compensatory services listed above. Should the Student need additional compensatory education based on further evaluations to meet the *Petrina* standard he must receive those services.

At this point the evaluators find that there is a level of intensity needed for the Student to make gains based on his deficits. Parent has demonstrated through the private evaluators that the Student's needs will best be met in a private therapeutic day/learning disabilities school. Parent has met her burden as required by *Schaffer* with respect to her filing of a due process complaint regarding lack of FAPE.

The recommendations of the evaluators and the opinion of two of them that [REDACTED] is the appropriate environment for him, support a finding that the Student's needs for intense academic work can best be met at [REDACTED] (or a similar environment). Based on the evidence, the Hearing Officer finds that Parent has met her burden in proving that the District failed to provide an appropriate educational program/placement based on scientific, researched based evidence including a certified special education teacher, and related services with sufficient intensity to meet the Student's educational needs from December 22, 2008 to the present including ESY 2011. CFR 300.35, 300.39(a). Parent has offered evidence, based on the independent evaluations, that the Student's needs should be addressed in a therapeutic day/learning disabilities school.

In the District's closing argument, the District argues that the District should be held accountable on the matter of denial of FAPE only for the two-year window from December 22, 2008, through

December 22, 2010. "As a matter of policy and practice, the period the District is alleged to have denied the Student FAPE should not be expanded to include the six months through to hearing. The District notes that the applicable statute is silent on the issue: 20 U.S.C. Section 1415(b)(6)(A) and (B). The District cites no legal support for its position. The argument is illogical. If the District's interpretation were correct, then Parent would have to file another due process hearing to obtaining relief since December 22, 2010. This would not only be inefficient it would thwart the purpose of IDEA's goal to ensure a student is provided a FAPE, in as timely a manner as possible. The Student cannot be punished because the due process hearing period extended over a period of time as the parties attempted to resolve the matter and the IEEs were being conducted. The Student is in high school, reading at a first grade level. No further time can be lost in providing him with a FAPE.

3. **The Hearing Officer finds that the District failed to provide an appropriate placement in the LRE: a Learning Disability therapeutic day placement to address significant reading, writing and math deficits.**

Based on the needs identified by the Parent's evaluators and as agreed to by the District, the Student's placement is a therapeutic day/learning disabilities school. As discussed above, the District's argument that it could not have known prior to the review of Parent's evaluations that the Student needed a therapeutic day school has been disproven.

Specifically, Parent has requested a therapeutic day school which 1) primarily serves severe learning disabled students in a small school and nurturing environment; 2) certified by ISBE for speech language impairments; 3) primary reading program for learning disabled students is Orton-Gillingham based reading program that is systematic, explicit, sequential and researched based phonics program with explicit instruction in letter-sound relationships taught in a clearly defined and logical sequence to a level of automaticity; 4) school staff experienced in implementing this type of systematic, explicit, sequential and research based programs; 5) staff are experienced in remediation for students with severe/significant speech language impairments per certification from ISBE; 6) staff are experienced in addressing severe auditory process deficits; 7) staff are experienced in implementing written language interventions; 8) school has psychologist, social worker, speech pathologist and occupation therapies; and, 9) staff experienced in implementing assistive technology and written language remediation/interventions as well as math remediation. Parent's request that this comprehensive description of a therapeutic day school for the Student be determined as the appropriate placement in the LRE is supported by all the evaluators. All the evaluators agree that this is the only placement which will provide a FAPE for the Student and thus it is the least restrictive environment (LRE) for the Student.

Parent states that there are the only two therapeutic day high schools in the [REDACTED] that provide educational services for students with the primary disabilities of severe learning

disabilities and severe speech language impairments: [REDACTED] School. Parent's assertions are supported by the testimony of the evaluators. Parent asks that the Student attend [REDACTED] because it is closest to the Student's home. [REDACTED] not available at the time of the hearing decision, the Parent asks that the Student attend [REDACTED] School.

[REDACTED] testified that the District should have considered placement in a private LD school when the Student was in third grade because he did not make progress after four years of special education services. She testified that a large high school like the one the Student currently attends is "overwhelming." He is "so far behind" and "does not have much time to make it up." He is going to need help developing education skills. She recommends [REDACTED] because it specializes in children with severe learning disabilities and uses the Wilson reading program, the "No. 1 program" for success in teaching severely learning disabled children like the Student to read. It is "highly structured." She testified that [REDACTED] School could do the same thing but it is a little further away from where he lives. [REDACTED], she notes, does accept students with ADD and is better equipped to handle the Student. She testified that Compensatory Education should include, after the school day, an additional hour of Wilson reading instruction four days a week. He needs this as long as he can get services. He also needs compensatory speech and language services four days a week and in the summer time besides developing emotional vocabulary to negotiate with people and understand his own feelings. A social worker could also assist mother to help him. He needs double time for all tests because of attention difficulties. Additionally, [REDACTED] testified that the Student needs two 60 minute sessions a week in social studies and science areas.

[REDACTED] also testified that [REDACTED] can meet the Student's vocational and transition plan needs.

[REDACTED] the speech and language pathologist, determined in her evaluation that the Student's speech and language skills are significantly impaired. She recommended direct speech and language services to address significant deficits in vocabulary, syntax, auditory process difficulties, and poor semantic skills: 60 mpw direct speech and language, with additional 30 mpw consultation with teachers and AT staff, and his SOLO program can provide his vocabulary.

She recommends a laptop because he needs programs available all the time because he has to be able to do homework. Progress is monitored so he needs to have everything on one computer. He needs a talking calculator because he cannot do calculations without it. He also needs a scanner and printer in a case with AT support 60 mpw.

[REDACTED] Principal, [REDACTED] Academy and Clinical Director of Achievement Center, testified that [REDACTED] s grades 1-12, students up to 22 years, North Central Association of Colleges and Schools accredited, and approved for out of district special education placement by ISBE. [REDACTED] is certified for speech language impairments. The main focus is on learning disabilities but it is also approved for autism, OHI, speech and language, because some students will have other disabilities and may have specific label of behavior or emotional disability but it is really caused by learning disability. There are also students with attention deficits, speech/language, and CAP deficits. Student to staff ratio is one to three. The reading

instruction is based on Orton Gillingham. Assistive technology programs are Don Johnson SOLO programs, Read Outloud, Write Outloud, Inspiration, Draft Builder, Earobics for AP, LindaMood Bell, Kurzweill, Dragon (the new one). Some students, she testified, do not have an IEP; they just need a smaller, nurturing environment and some are gifted.

The [REDACTED] is after school and Saturdays, doing evaluations. Students come to improve reading, writing, math, and study for ISAT.

[REDACTED] testified that Parent and the Student visited [REDACTED]. A letter she wrote indicates [REDACTED] has a program that would meet his needs. PD 570. Ms. Fouks reviewed the Student's IEP 2009, May 24, 2010, eligibility document, psychological, and social work from 2010. She also reviewed [REDACTED] CAP evaluation. Since [REDACTED] wrote the letter she also reviewed the OT evaluation by [REDACTED] speech and language and AT assessment by [REDACTED] and the most recent IEP of May 11, 2011. SD 515. After reviewing all these additional documents, she still believes the Student would benefit from [REDACTED]. He could start June 17 for summer program but could start "right now." She had concerns regarding his last IEP. [REDACTED] found these goals to be too abstract. SD 531. Although math is a stronger area for the Student he needs to develop accuracy for whole numbers and fractions. He might have a grasp of elementary geometry but she would like to see a goal for basic math. His phonological and auditory processing needs to be worked on because they are depressed. In earlier District psychological evaluations she did not see comments on this.

Some students at [REDACTED] have reported behavior issues. [REDACTED] analyzes reports and invites involved people to visit. Some BD and ED students can benefit in [REDACTED], because sometimes processing or academic problems cause emotional or behavior problem. A student is interviewed for eye contact and body language. [REDACTED] also looks at how supportive a parent is. The Student's mother is very supportive. [REDACTED] is aware of the Student's behavior issues from reports--cutting and late for class, missing assignments. [REDACTED] has a behavior program based on distraction and redirection, talking with a student, allowing a student to vent. [REDACTED] has a nature center for taking walks with an adult and talking, deep breathing, and thinking positive. For out of control behavior, there is lunch detention, in school detentions, and finishing work after school. [REDACTED] also has transition services and work student programs.

The District in its closing expressed doubt as to whether [REDACTED] would be the most appropriate location citing a previous incident involving the Student and that the [REDACTED] Principal was "evidently unaware" of it. The District's argument misstates the facts with respect to the incident. Additionally, the District's closing cites the Student's "behavior", completely disregarding the testimony of evaluators and the [REDACTED] Principal who stated that the behavior is the result of the Student's deficits. The Hearing Officer notes that the District, in its closing, still has not named a location for the Student's placement.

Based on the evidence, the Hearing Officer finds that Parent has met her burden in proving that the District failed to provide an appropriate educational program/placement based on scientific, research based evidence including a certified special education teacher, and related services with sufficient intensity to meet the Student's educational needs from December 22, 2008 to the present including ESY 2011. CFR 300.35, 300.39(a). Parent has offered evidence, based on the

independent evaluations that the Student's needs should be addressed in a therapeutic day/learning disabilities school.

Federal and state statutes and administrative rules require that school districts ensure that a continuum of placement options is available to meet the needs of children with disabilities for special education and related services. 34 CFR 300.39 and 115, 23 Ill. Admin. Code 226.300. The continuum includes instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions. The District has agreed that the Student's placement should be a therapeutic day school but has offered no location for the placement. All the evaluators agree that this is the only placement which will provide a FAPE for the Student and thus it is the least restrictive environment (LRE) for the Student. Parent has met her burden in seeking placement at a private therapeutic school, which will provide FAPE in the LRE.

4. The District failed to identify in a timely manner and then provide appropriate assistive technology in the classroom setting and for all school work.

No assistive technology was provided to the Student at the school. Assistive technology device is any item, piece of equipment or product system used to increase, maintain, or improve the functional capabilities of a child with a disability. 34 CFR 300.5.

The IEEs contained findings and recommendations which support a need for assistive technology for the Student. [REDACTED] recommended a lap top and specific software. AT is part of a child's special education, related services or supplementary aids and services. 34 CFR § 300.105. In addition to the therapeutic day school and compensatory services, the Student is entitled to AT. Specifically [REDACTED] recommended software (Read:Outloud-Solo 6, Write:Outloud-Solo 6, Co:Writer-Solo 6, Draft:Builder-Solo 6, Earobics, WordMaker, Simon Sounds it Out, talking calculator (Premier Assist), Cue Card, Bookshare subscription, Livescribe pen program with classroom implementation)

The District asserted that it does not have to provide brand-name programs and further asserted that the District has more cost effective generic software. However, the District's own witness does not support this argument. [REDACTED] coordinator for Special Education AT, testified that they have all the recommendations made by [REDACTED] with the exception of Read:Outloud which [REDACTED] testified that the Student needs, noting that Kurzweil would not be appropriate for the Student. [REDACTED] also testified that Bookshare.org has a free version of Read:Outloud although she recommended the Solo 6 version of Read:Outloud.

In a ruling and preliminary injunction entered by in the, Northern District of Illinois, Judge Conlon enjoined the [REDACTED] from refusing to implement changes to an IEP that were ordered directly or indirectly by the Hearing Officer, including specific brand name reading programs and computer software: "Wilson or Orton-Gillingham and use of a computer both at home and at school, with SOLO software program, Version 6 installed." *D.C.C., and*

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5. The District failed to accurately and objectively report to the Parent the lack of the Student's progress in the services and programs and/or implement an appropriate response to the Student's continuous lack of progress December 12, 2008 through the present.

IDEA requires that a student's "IEP be reviewed periodically, but not less than annually to determine whether the annual goals for the child are being achieved." 34 CFR 300.324(b)(i). In addition the IEP must be revised "to address any lack of expected progress toward the annual goals." 34 CFR 300.324(b)(ii)(A). IDEA also requires that the IEP indicate "...when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided." 34 CFR 300.320(a)(3)(ii).

The District failed to provide IEP progress reports or update the IEP as required by IDEA to address the Student's continued lack of progress. The District did not produce any IEP report cards for December 12, 2008, through June 2009 for the elementary school. The General Education Teacher A and Case Provider testified that meeting the IEP goals was solely based on whether the Student was passing the specific classes and not on the goal. The only IEP report produced by the District for 2009-2010, June 2010 IEP (PD 192-3) just reports the grade of the class. If the Student received an "F" then the "no" box was checked on whether he was "meeting IEP benchmarks." The General Education Teacher A testified that she was teaching Algebra to the Student in the fall of 2009. She admitted during testimony, however, that the February 19, 2009, IEP goal is a geometry goal. PD 452. None of the Student's IEP had goals for computer information technology, art, or PE but the High School Report of Student progress for June 2010 (PD 192-3) indicates that the Student was meeting or not meeting an IEP benchmark in each of these areas.

The testimony of the Case Provider regarding the 2010-2011 school year reflected a number of inconsistencies. SD 216-218 and SD 243-246. It was designated that for November 2010 the Student was making expected progress in the first benchmark of reading short paragraphs for goal No 1, understanding of composing a well written paper (SD 216) and not making progress on the benchmark of recognizing when he is getting angry. SD 218. For February 2011, the Student is not making progress on the same November 2010 benchmark from goal No. 1 (SD 243) and the November 2010 benchmark on recognizing when he is getting angry is marked as making expected progress for the Student. SD 246. The Parent testified that she did not receive these IEP Report Cards. On March 11, 2011, Parent emailed the Case Manager/District Representative about the lack of IEP report cards. PD 589.

All the IEPs from December 12, 2008 to the present have a section to indicate end of year progress but none indicate whether the Student met his IEP goals, yet staff report that the Student is "making expected progress."

The District is mandated to provide an ongoing review of each child's performance and progress in order to make adjustment to the educational setting, S.226.100(a)(3). Parent has presented evidence that the District failed to do so.

6. The District failed to follow proper discipline and misconduct procedures under state and federal law.

Parent asserts that IDEA requires that for removals more than ten school days the District is required to: continue to provide educational services; conduct a functional behavioral assessment and provide behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur; provide special education services. 34 CFR 300.530(d)(i-ii)(3-4).

The District failed to provide any prior written notice as required regarding the Student's removal for more than ten days in September 2010 and October 2010. Additionally, the District was required to convene an MDR pursuant to IDEA for the more than ten day suspensions. 34 CFR 300.530(e). Parent asserts that all suspensions were "part of a pattern." The District was obligated to determine whether or not the series of removals constitute a pattern.

The District must provide special education services for a student removed for more than ten days that constitute a change of placement pursuant to IDEA (300.530(b)(2) and (d)) and receive a functional behavior assessment (d)(ii).

Parent testified that Student was suspended for 15 days for the 2009-2010 school year and 28 days for the 2010-2011 school year. PD 617. Parent testified to the inaccuracies regarding suspensions. PD 816-830. She relayed these inaccuracies to the Dean of Attendance who advised her to speak with the Dean of Students. The Dean of Students informed her that he would take care of the suspension inaccuracies in the attendance log. The District never notified the Parent of any decisions regarding whether to convene a manifestation determination review (MDR).

The Special Education Teacher/Case Manager testified that she did inquire into whether a (MDR) should be convened. PD 731 (fax cover to the District's attorney dated January 5, 2010). The Dean of Students testified that he also inquired into whether a MDR must be convened when the Student was suspended well beyond the ten days. He testified that the Student was already suspended beyond the ten days on November 4, 2010.

Parent has presented evidence that the District failed to follow appropriate discipline procedures as required by law.

Case Law Review

To meet IDEA requirements, the School Code and implementing regulations, the District must provide the Student with a FAPE in the least restrictive environment (LRE).

Burden of Proof

To prevail the Parent has the burden in proving that school officials were unreasonable, citing *Schaffer ex rel. Schaffer v. Weast*, 126 S.Ct. 528, 537 (2005) and *Kerry M v. Manhattan School Dist. and the Illinois State Board of Education*, U.S. District Court, Northern District of Illinois, IDELR 194 106 LRP 58547 (September 2006) (which analyzed *Schaffer* with respect to the relevant Illinois statute (the Illinois School Code). As cited above, the District failed to meet its burden of presenting evidence that the special education needs for the Student have been appropriately identified and that the special education program and related services proposed to meet the needs of the Student is adequate, appropriate, and available. 105 ILCS 5/14-8.02a(g-55). However, the Parent has the burden of proof regarding the request for a due process hearing involving a denial of FAPE. *Schaffer, Kerry M.* In this case Parent based on the Hearing Officer's findings of fact has met her burden.

Unreasonableness of School District

In this case, the Hearing Officer has found that the District's evaluation is insufficient and invalid. The educators who testified did not know his needs, understand his behavior problems and could not offer scientific based reasons for their assessment of the Student. Some of this may reflect that in this very large school teachers are unable to give students the attention they need. The Hearing Officer notes that one witness testified that in addition to the 18 students on a case manager's caseload, she also has five classes to teach. A number of teachers talked about their affection for the Student and in reports evaluators noted caring and concerned teachers. Nonetheless, the Hearing Officer has to base a decision on findings of fact and how best to address the Student's needs. Parent offered four professionals who conducted exhaustive evaluations. The District presented no challenge to these evaluators. The Hearing Officer finds the evaluations to be professional and meeting legal requirements. Accordingly, the Hearing Officer relies on their opinions. Even with those evaluations at the May 11, 2011, IEP the District did not develop an IEP to meet the Student's needs nor offer a specific location for the placement to which the District agreed.

In *Forest Grove Sch. Dist. v. TA*, 2009 U.S. LEXIS 4645, page 7 (June 22, 2009), the Supreme Court, noting the school district's position was "at odds with the general remedial purpose underlying IDEA...and similarly conflicts with IDEA's 'child find' requirement", declared that "when a school district unreasonably failed to identify a child with disabilities it would not comport with Congress' acknowledgment of the paramount importance of properly identifying each child eligible for services" if an appropriate remedy was not available. *Forest Grove*, page 7. In this case, the Student has been identified as eligible for special education services but the principles in *Forest Grove* are applicable. This Hearing Officer's finding that the District acted unreasonably in failing to identify his specific needs, set appropriate goals, and provide him requisite services, despite his compelling needs, requires a remedy to meet the standard enunciated in *Forest Grove*: "the express purpose of the Act is to 'ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs' Sec. 1400(d)(1)(A)." *Forest Grove*, page 7. That remedy in this case is a private therapeutic day/learning disabilities school.

Placement/Location

The Seventh Circuit in *Murphysboro* found that if a district has failed to offer FAPE and did not present any alternatives, the only option is the alternative offered by the parent. The hearing officer is not required to locate another school that would satisfy the LRE requirement but simply to determine whether the one offered by the district would be appropriate. *Board of Educ. of Murphysboro Comm. Unit School Dist. No. 186 v. Illinois State Board of Educ.*, 41 F.3d 1162, 1169, (7th Cir. 1994). In the instant case, the District has not offered any location for the therapeutic day school placement which it has agreed is the appropriate placement for the Student and the Parent has proven that the therapeutic day/learning disabilities school is appropriate.

Specifically, Parent has identified and the evidence has proven that the Student's placement must be a therapeutic day school in a location which: 1) primarily serves severe learning disabled students in a small school and nurturing environment; 2) certified by ISBE for speech language impairments; 3) primary reading program for learning disabled students is Orton-Gillingham based reading program that is systematic, explicit, sequential and researched based phonics program with explicit instruction in letter-sound relationships taught in a clearly defined and logical sequence to a level of automaticity; 4) school staff experienced in implementing this type of systematic, explicit, sequential and research based programs; 5) staff are experienced in remediation for students with severe/significant speech language impairments per certification from ISBE; 6) staff are experienced in addressing severe auditory process deficits; 7) staff are experienced in implementing written language interventions; 8) school has psychologist, social worker, speech pathologist and occupation therapies; and, 9) staff experienced in implementing assistive technology and written language remediation/interventions as well as math remediation.

Parent has requested that the District be ordered to have the Student attend [REDACTED] which meets all the requirements of the therapeutic day school placement as listed above. [REDACTED] is closest to the Student. If [REDACTED] is unavailable the Student must attend [REDACTED] which also meets the requirements. If [REDACTED] is unavailable, the District must provide the Student with another therapeutic day school placement which meets all the requirements, No. 1 through 9, listed above.

Although Parent seeks to have a specific school (location) named in the order, it is actually the placement which must be identified in the order not the specific school. In reviewing the matter, of placement/location, the Second Circuit noted:

The Comments to Part 300 of the C.F.R., p. 46588, clarify the difference between "placement" and "location." "Placement" is defined as points along the continuum of placement options available for a child with a disability, and "location" is defined as the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services. In resolving this issue, the USDOE concluded that "[t]he location of services in the context of an IEP generally refers to the type of environment that is the appropriate place for provision of the service. For example, is the related service to be provided in the child's regular classroom or resource room?" *Id.*

This conclusion comports with the Senate's commentary, which states that "[t]he location where special education and related services will be provided to a child influences decisions about the nature and amount of these services and when they should be provided to a child." S. Rep. No. 105-17, at 21 (1977). "For example, the appropriate place for the related service may be the regular classroom, so that the child does not have to choose between a needed service and the regular educational program." *Id.* "For this reason," the commentary continues, "in the bill the committee has added 'location' to the provision in the IEP that includes 'the projected date for the beginning of services and modifications, and the anticipated frequency, location, and duration of those services.'" *Id.* (emphasis omitted). We interpret these statements to indicate that the term "location" does not mean the specific school location, but the general environment of the overall program. Therefore, we conclude that because there is no requirement in the IDEA that the IEP name a specific school location, T.Y.'s IEP was not procedurally deficient for that reason. We emphasize that we are not holding that school districts have carte blanche to assign a child to a school that cannot satisfy the IEP's requirements. We simply hold that an IEP's failure to identify a specific school location will not constitute a per se procedural violation of the IDEA.

T.Y., K.Y., on behalf of T.Y., Plaintiffs-Appellants, v. NEW YORK CITY DEPARTMENT OF EDUCATION, REGION 4, Defendant-Appellee, 584 F.3d 412 (2nd Cir. 2009)

The Hearing Officer notes that this is a Second Circuit opinion and not a Seventh Circuit opinion but its review of the USDOE's opinion as having expressly considered this question in its commentary to the 1997 amendments to the IDEA provides guidance. Also of importance is the Second Circuit's language that it is: "... not holding that school districts have carte blanche to assign a child to a school that cannot satisfy the IEP's requirements."

Parent asserts that the Hearing Officer has authority to name a location. However, the Hearing Officer's authority to do so is not at issue. What is critical is that the IEP developed pursuant to the Hearing Officer's Order mandate the appropriate placement for the Student. The placement is the designation of the spectrum of services available to an eligible student. 23 ILAC 226.300. The only placement which will provide the Student the services he requires is the therapeutic day school setting with the requisite services No. 1 through 9, listed above. If a Hearing Officer merely names a location/school in the Order without clearly identifying the Student's placement, then a Student might be without a placement if the named location/school is unavailable for any number of reasons including a lack of openings, or if a location/school no longer exists, because of lack of funding, bankruptcy, natural disaster, or another unforeseen occurrence. Identifying the specific placement ensures that a school district knows that it is obligated to provide that placement for a student whether a specific named location/school is available.

In this case, the District would not provide the name of a location where the Student's placement could be provided, even though the District stated that naming the location is in the District's

domain. The evaluators provided recommendations that included naming ██████ Academy where the Student could receive needed services. ██████ School is also identified as being able to provide the services. If for some reason, either ██████ as the first choice or ██████ as the second choice is not available, the District must still provide the Student with the required therapeutic day school/learning disabilities setting with the requisite services No. 1 through 9, listed above.

Least Restrictive Environment

While the District correctly asserts that the law mandates placement in the LRE and mainstreaming to the maximum extent appropriate, that is not at the expense of FAPE. “Under the IDEA, children with disabilities must be mainstreamed with non-disabled peers to the extent possible.... (mainstreaming) was not developed to promote integration with non-disabled peers at the expense of other IDEA educational requirements and is applicable only if the IEP meets IDEA minimums.... In implementing the LRE mandate, each school district must maintain a continuum of program options which range from regular classrooms with supplementary aids to separate schools and residential facilities. See 34 C.F.R. 300.551(b)(1). Thus, the regulations contemplate that mainstreaming is not required in every case.” *Board of Education of Murphysboro Community Unit School District v. Illinois State Board of Education*, 41 F.3d 1162, 1168 (7th Cir. 1994). The District’s reference to concern regarding “institutionalization” of the Student is misplaced. The Hearing Officer has made a finding that the Student’s needs must be addressed in a therapeutic day/learning disabilities school as the only placement that will provide him FAPE. Accordingly it is the placement that is the least restrictive environment (LRE) for the Student.

Compensatory Education

IDEA regulations recognize compensatory education services awards (20 USC § 1415(i)(2)(C)(iii), 34 CFR 300.151(b)(1)) and such services have been affirmed by the Seventh Circuit which upheld a hearing officer’s order of compensatory OT services for a student in elementary school in *Evanston Community Consolidated Sch. Dist. No. 65 v. Michael M.*, 356 F.3d 798 (7th Cir. 2004). The Seventh Circuit states that “Compensatory services are well-established as a remedy under the IDEA.”

Parent requests compensatory education services of sufficient duration and intensity to restore the Student to the position he would have attained had the District provided him with FAPE during the period he was deprived of FAPE, citing *Petrina W. v. City of Chicago Public School District 299*, 109 LRP 78111, p. 4 (N.D. Ill. 2009) (“remedy...an educational deficit created by an educational agency’s failure...to provide a FAPE to a student...as such, award for compensatory education should be reasonably calculated to provide the education benefits that likely would have accrued from special education services the school district should have supplied in the first place.”). In that case, the Northern District stated that: “As the Seventh Circuit has yet to offer guidelines for such an exercise, this Court can either look to the formula developed by the Third Circuit, on the one hand, or the standard adopted by the D.C., Sixth, Ninth, and Eleventh Circuits, on the other.” *Petrina W. v. City of Chicago Public School District 299*, 109 LRP 78111, p. 4 (N.D. Ill. 2009). The Northern District decided on the qualitative method, noting that, “Because a flexible, individualized approach is more consonant with the aim of IDEA, as articulated in its statutory language and Supreme Court jurisprudence, this Court

finds such an approach more persuasive than the Third Circuit's formulaic method. See 20 U.S.C. § 1400(d)(1)(A); *Rowley*, 458 U.S. at 201.” *Petrina* at 5. The compensatory education recommendations by the evaluators, based on the assessments of the Student to date, meet the *Petrina* standard. Those specific recommendations are incorporated in the Order. However, should the Student need additional compensatory education based on further evaluations to meet the *Petrina* standard he must receive those services.

Parent has met her burden pursuant to statute and case law in demonstrating that the District violated applicable statutes in failing to provide the Student a FAPE in the LRE. Accordingly, based on the Student’s compelling needs as identified by the independent evaluators and District’s unreasonableness in failing to identify his specific needs and provide him with appropriate services, the Hearing Officer grants all Parent’s relief except attorneys fees, which the Hearing Officer has no authority to grant. In the order, the Hearing Officer also incorporates specific amounts of services and compensatory education as recommended by the evaluators. The evaluators’ credentials are well established in the special education community and there was no challenge by the District during the cross examination as to the witnesses’ credibility. Although in its closing argument, the District cast aspersions on one of the evaluators’ credibility based on the issue of reimbursement for her services and all the evaluators generally, the Hearing Officer rejects these assertions as baseless. The evaluators’ recommendations are reliable for a number of reasons, including the fact that the District accepted all the evaluators’ reports and did not deny the accuracy of the test results. The District personnel, on the other hand, lacked knowledge in the area of Student’s learning and language disabilities. Additionally, the Hearing Officer finds that the amounts of services as agreed to by the District during the hearing do not comport with the recommendations made by the evaluators, despite the District’s acceptance of the reports. Finally, the previous IEPs contained inadequate services and the Hearing Officer wants to ensure that there is no further time squandered in providing the needed services to the Student.

CONCLUSIONS OF LAW

Based on the evidence, the Hearing Officer makes the following conclusions of law:

I. The District violated the law in failing to conduct an appropriate evaluation. IDEA requires that “... the district complete a sufficiently comprehensive evaluation to identify all of the child’s special education and related services needs. Evaluation means procedures used in accordance with §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.” 34 CFR § 300.15. Further the District violated the law in failing to conduct an adequate functional behavior assessment in order to develop an appropriate behavior intervention plan or appropriate response to address suspensions and attention issues. 34 CFR §§ 300.324(a)(3), 300.320(4)(ii).

Parent has met her burden in proving that the District failed to conduct an appropriate evaluation.

II. The District violated its obligation, in compliance with applicable law, to offer the Student a free, appropriate public education (FAPE). IDEA 20 U.S.C.A sec. 1400(d)(1)(A). The District failed to meet the standard the United States Supreme Court articulated--a two-prong test to determine whether a child has been given a free appropriate public education under the IDEA. The first prong is whether the school district complied with the procedural requirements of the IDEA. The Hearing Officer found that the District did not comply with the first prong by failing to provide the Student's records to Parent. Pursuant to IDEA, Parent has a right to examine all educational records regarding the Student. 34 CFR 300.501, 300.613. Parent has a right to the requested records prior to a due process hearing. 34 CFR 300.613(a). With respect to the second prong, the Hearing Officer must determine whether the IEP was reasonably calculated to enable a child to receive an educational benefit. That determination is based on whether the District's IEP for the Student identified his needs/eligibility and offered services to address those needs as required by statute. In this case, the determination that the Hearing Officer must make is whether the Student's IEP was reasonably calculated to meet the *Rowley* standard. *Hendrick Hudson Dist. Bd. of Education v. Rowley*, 458 U.S. 176 (1982). The Hearing Officer found that the District did not meet the standard of a legally sufficient IEP.

The District violated the Illinois School Code which places the burden on the school district to show it has identified and evaluated the student's suspected or identified disability and that, if the student has been or should have been determined eligible for special education and related services, that it is providing or has offered the services. 105 ILCS 5/14-8.02a(g55)). The Hearing Officer found that the District did not appropriately identify the Student's disability and accordingly failed to offer the appropriate services. Pursuant to Illinois statute, the District must ensure a FAPE is available to each child with a disability who resides in the state and is enrolled in the district and requires special education and related services, to accord with 34 CFR 300.101 through 300.103. The education and services must be provided according to the child's individualized education program. 223 Ill. Admin. Code 226. 50.

The District violated the law in failing to provide an appropriate educational program/placement based on scientific, research based evidence including a certified special education teacher and related services with sufficient intensity to meet the Student's educational needs. 34 CFR 300.35, 300.39(a).

Parent has met her burden in proving that the District failed to provide FAPE.

III. The District violated its obligation, in compliance with applicable law, to provide the Student with a FAPE in the least restrictive environment (LRE). IDEA 20 U.S.C.A sec. 1400(d)(1)(A). The Act provides access to specialized instruction and related services individually designed to provide educational benefit. A district must identify a student's needs in light of the disabilities and utilize instruction and related services to meet those needs. 34 CFR 300.101 through 300.103, 105 ILCS 5/14-8.02a(g-55), 223 Ill. Adm. Code 226. 50.

“Under the IDEA, children with disabilities must be mainstreamed with non-disabled peers to the extent possible.... (mainstreaming) was not developed to promote integration with non-disabled peers at the expense of other IDEA educational requirements and is applicable only if the IEP meets IDEA minimums.... In implementing the LRE mandate, each school district must maintain a continuum of program options which range from regular classrooms with supplementary aids to separate schools and residential facilities. See 34 C.F.R. 300.551(b)(1). Thus, the regulations contemplate that mainstreaming is not required in every case.” *Board of Education of Murphysboro Community Unit School District v. Illinois State Board of Education*, 41 F.3d 1162, 1168 (7th Cir. 1994). The Hearing Officer found that the Student’s placement is a therapeutic day/learning disabilities school. This placement will provide him a FAPE in the LRE.

Parent has met her burden in proving that the District failed to provide FAPE in the LRE.

IV. The District violated its obligation to identify, in a timely manner, the Student’s needs, for assistive technology and failed to provide appropriate assistive technology in the classroom setting. 34 CFR § 300.5.

Parent has met her burden in proving that the District failed to provide assistive technology.

V. The District violated its obligation with respect to review and update of the IEP and to report to the Parent the lack of the Student’s progress in the services and programs. The “IEP (must) be reviewed periodically, but not less than annually to determine whether the annual goals for the child are being achieved.” 34 CFR 300.324(b)(i). The IEP must be revised “to address any lack of expected progress toward the annual goals.” 34 CFR 300.324(b)(ii)(A).

Parent has met her burden in proving that the District failed to update the Student’s IEPs and report the Student’s lack of progress to the Parent.

VI. The District violated the law in failing to follow proper discipline and misconduct procedures. IDEA requires that for removals of more than ten school days, the district is required to: continue to provide educational services; conduct a functional behavioral assessment and implement behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur; provide special education services. 34 CFR 300.530(d)(i-ii)(3-4). The District failed to provide any prior written notice required per 300.503 of its determination regarding removal of more than 10 days. 34 CFR 300.536. The District failed to convene an MDR. 34 CFR 300.530(e).

Parent has met her burden in proving that the District failed to follow proper discipline and misconduct procedures.

ORDER

1. The District will provide to Parent all missing Student records listed in the Hearing Officer's Decision, page 11, within ten days of the date of this Order.

2. The District shall order a comprehensive and in depth assessment of behavior and attention and the effects in the school setting including the need for psychological and appropriate social work interventions; behavior assessment to be fully funded by the District; Parent will submit three names of professionals who do not work for the District, to the District within five days of the Decision and the District within five days will choose one evaluator from the three names to complete the behavior assessment. The assessment must be completed within 60 days.

3. The District shall arrange and pay for an independent vocational assessment by [REDACTED] to be completed within 45-60 days and payment within 30 days of receipt of assessment invoice.

4. The Student's placement shall be a therapeutic day school in a location which: 1) primarily serves severe learning disabled students in a small school and nurturing environment; 2) certified by ISBE for speech language impairments; 3) primary reading program for learning disabled students is Orton-Gillingham based reading program that is systematic, explicit, sequential and researched based phonics program with explicit instruction in letter-sound relationships taught in a clearly defined and logical sequence to a level of automaticity; 4) school staff experienced in implementing this type of systematic, explicit, sequential and research based programs; 5) staff are experienced in remediation for students with severe/significant speech language impairments per certification from ISBE; 6) staff are experienced in addressing severe auditory process deficits; 7) staff are experienced in implementing written language interventions; 8) school has psychologist, social worker, speech pathologist and occupation therapies; and, 9) staff experienced in implementing assistive technology and written language remediation/interventions as well as math remediation.

5. The Student will attend [REDACTED] school, which meets all the criteria for his placement described in No. 4. If [REDACTED] is not available to the Student, the Student will attend [REDACTED] school, which also meets all the criteria. If [REDACTED] school is not available to the Student, the District is responsible for having the Student attend a therapeutic day school in a location which meets all the criteria described in No. 4 of this Order.

6. The Student's location/school for his placement must be determined within ten days from the date of this order.

7. The Student's placement at public expense begins June 2011 for the summer term and shall continue for the 2011-2012 school year for the purposes of implementing the IEP to be developed pursuant to this order.

8. An IEP meeting must be convened at the location/school identified for the Student, to include the participation of the IEE assessors and appropriate staff from the school where the Student's

placement will be implemented, for the purpose of developing an IEP and transition plan, based on the Student's individual needs as determined by the recently completed IEE assessments, to include: (a) identification of the Student's eligibility under the IDEA; (b) Student's present levels of performance; (c) goals and benchmarks to address all current areas of educational need based on Student's present levels of performance and written so that progress from his current levels can be measured; (d) specialized instruction and the related services, assistive technology, and accommodations needed to allow Student to benefit from special education, including use of and training from appropriate assistive technology as recommended by the experts in the use of the computer and the specific, named recommended software (Read:Outloud-Solo 6, Write:Outloud-Solo 6, Co:Writer-Solo 6, Draft:Builder-Solo 6, Earobics, WordMaker, Simon Sounds it Out, talking calculator (Premier Assist), Cue Card, Bookshare subscription, Livescribe pen program with classroom implementation), speech/language therapy, occupational therapy, and vocation and community services, including instruction and services beyond the regular school day as cited in No. 7 below. Specifically, the Student must receive, but is not limited to, two sessions of 60 mpw of social work; 60 mpw direct and 30 mpw consult speech/language services including additional 30 mpw direct CAP intervention; 60 mpw of AT to fully integrate AT in the curriculum; OT 45 mpw direct and 60 mpw consult; and training for the Parent on the assistive technology. The Student must receive any additional services that will be determined necessary upon completion of the assessment ordered in No. 2 above.

9.In compensation for the District's failure to develop and implement an appropriate IEP for the Student for the 2009-2010 and 2010-2011 school years, the District shall fund the Student's enrollment in an afterschool educational program with tutoring, therapy, and use of assistive technology tailored specifically to the Student's needs at the location/school to be determined pursuant to No. 2 above for the 2011-2012 school year. The services will include but are not limited to:

- (a) 1:1 tutoring services by a certified special education teacher trained in scientific research based interventions such as Wilson Reading program for 60 minutes per session, twice a week for a total of 184 hours/sessions;
- (b) 1:1 speech language services beyond the regular school day by a certified speech pathologist 60 mpw, 1 time a week for a total of 92 hours/sessions;
- (c) 1:1 OT services by a certified OT 30 mpw, 1 time a week for a total of 52 sessions;
- (d) FastForward for three months after school to start ESY 2011, at a location agreed upon between the Parent and District.

Assistive technology for all compensatory services to assist the student in all academic areas placed on a lap top computer with Read:Outloud-Solo 6, Write:Outloud-Solo 6, Co:Writer-Solo 6, Draft:Builder-Solo 6, Earobics, WordMaker, Simon Sounds it Out, talking calculator (Premier Assist), Cue Card, Bookshare subscription, Livescribe pen program. Additional vocational services as recommended by the vocational evaluator and other services which may be determined necessary to meet the *Petrina* standard.

10. The District shall provide safe appropriate transportation at public expense for the after school services.

11. The District shall issue to the independent educational evaluators payment in full of all invoices within 30 days of the hearing order:

- a) [REDACTED] \$1,250.00
- b) [REDACTED] \$600.00
- c) [REDACTED] \$4,875.00
- d) [REDACTED] \$2,475.00

The District will also pay the independent evaluators for their time in helping develop the new IEP for the Student.

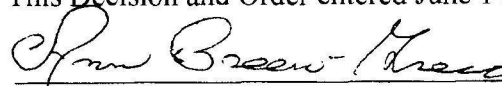
12. The District shall provide proof of compliance with this order to the Illinois State Board of Education, 100 North First Street, Springfield 62777-0001 on or before July 14, 2011.

RIGHT TO REQUEST CLARIFICATION: Either Party may request clarification of this decision by submitting a written request for such clarification to the 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. A copy of the request shall be mailed to the other parties 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.

FINALITY OF DECISION: This decision shall be binding upon the parties unless a civil action is commenced.

RIGHT TO FILE CIVIL ACTION: 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 105 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 was mailed to the party.

This Decision and Order entered June 14, 2011.



Ann Breen-Greco, Impartial Hearing Officer

**ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING**

██████████
Student
vs.

Case No. 2011- 0177

CPS

Chicago Public Schools 299
School District

ANN BREEN-GRECO, Hearing Officer

CERTIFICATE AND AFFIDAVIT OF DELIVERY BY MAIL

The undersigned Hearing Officer certifies that she served copies of the aforesaid Decision and Order upon Parent and District, through counsel, and the Illinois State Board of Education at their stated addresses, through the United States Postal Service at Chicago, IL, by certified mail before 5:00 p.m. on June 14, 2011:

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