

Case Number: 2011-0209
[REDACTED] vs. City of Chicago SD 299
Hearing Officer: Stacey Stutzman

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

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Impartial Due Process Hearing Decision Cover Page

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District Name [REDACTED] Phone: 773-553-1000
Superintendent [REDACTED]
Address [REDACTED]
Represented by [REDACTED]

Parent Name [REDACTED] Phone: [REDACTED]
Address [REDACTED]
Represented by [REDACTED]

Date and Timelines

Date of Written Request: 01/04/2011
Date of Pre-hearing Conf: 02/22/2011

Date of Hearing: 05/2/2011 to 5/5/2011 and
5/10/11
Date of Decision: 5/27/2011

Summary of Decision

Parent of a 14 year old functionally illiterate male now in 8th Grade was eligible for special education due to a learning disability and speech and language impairment and placed in a District special education classroom since age 7. He was last evaluated by the District in April 2010. Parent's attorney requested copies of his records and IEE at District expense in December 2010 and submitted a request for due process hearing on January 4, 2011. District did not respond to the IEE request until February 23, 2011, upon Order to do so, and did not produce many of the school records, testified to by witnesses at hearing, until the close of hearing. Records requested but not produced included the protocols to the April 2010 District SPL assessment. Parent requested Orders that Student be placed at [REDACTED] school at public expense and receive compensatory education for lack of FAPE from 1/4/09 through the present date. She also sought payment for the independent psychological, occupational therapy, speech/language and assistive technology, and central auditory processing assessments. All of the independent evaluators testified at hearing. In addition to claims that Student had not been appropriately re-evaluated in 2010 and that his IEPs and resulting educational programming for 2009 through 2011 did not provide FAPE in the LRE, Parent alleged that certain procedural violations also resulted in the deprivation of FAPE, including the failure of the District to provide Parent and her attorney with copies of all of the requested school records, failure to appropriately report Student's progress, and the failure to obtain parental consent for an assistive tech assessment performed by District in January 2011 pursuant to an A.T. referral prepared by teacher and case manager on June 2, 2011, and failure to complete an A.T. assessment before the Fall 2011-2012 term.

HELD: for Parent on Issues relating to evaluation, substantive and procedural deprivation of FAPE, and LRE.

ORDERED: 1) placement of Student at [REDACTED] School beginning with Summer term 2011; 2) Occupational Therapy; 3) Speech/Language Therapy; 3) Dichotic Listening Training; 4) Social work services; 5) laptop computer and software and training for Parent and Student; 5) Assistive Technology services and devices; 6) District payment for IEEs; 7) Compensatory education including afterschool tutoring and of 2 additional years at Cove School, including summer programming, from June, 2012 through August, 2014.

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)
) ISBE CASE NO. 2011-0209
)
) [REDACTED]
) Impartial Due Process
) Hearing Officer

This matter is before the undersigned impartial hearing officer for a due process hearing concerning Parent's request for Orders that District pay for outside evaluations of Student secured by Parent prior to hearing, develop an IEP based on those evaluations, place Student in a private therapeutic day school for students with learning disabilities¹ at District expense, and provide compensatory educational services for the District's denial of a free appropriate public education to Student from January 4, 2009 to the present date. Parent has also requested an Order that District produce the remainder of Student's school records. The hearing officer has jurisdiction to hear and decide this matter under 105 ILCS 5/14-8.02a(g)(2008). The parties have been informed of their hearing rights under 23 ILAC 226.625(2007) and 34 CFR 300.512(2006). The undersigned hearing officer has also advised the parties that there are and have been no conflicts which prevent her from conducting a fair and impartial hearing and rendering a fair and impartial decision in this cause.

Procedural History

Parent's attorney submitted her initial Request for Due Process Hearing, dated January 4, 2011, received by District on January 4, 2011, and her Amended Due Process Hearing Request, dated January 31, 2011, incorporating the original hearing request, to which District had no objection and which was received by District on January 31, 2011. District's counsel did not submit a written Response to the aforesaid initial Hearing Request or the Amended Hearing Request within 10 days of receiving either. At the Pre-Hearing Conference held on February 22, 2011, District counsel advised that she had no excuse for not submitting a response. Upon hearing officer's Order of February 22, 2011, she submitted a written Response on February 23, 2011.

Parent's attorney submitted a written request for independent evaluation of Student (hereinafter *IEE*) across multiple domains, including, inter alia, the need for assistive technology, to District on December 28, 2011. She submitted a written request for an independent assessment of Student's need for assistive technology on January 31, 2011. District did not submit a request for due process hearing to show that its own evaluations were appropriate in response to either of the Parent's IEE requests. Nor did District respond in writing to the Parent's requests for independent educational evaluations until February 23, 2011, in its Response to Parent's due process hearing request, and only after being ordered to do so. At the Pre-Hearing Conference on February 22, 2011, District counsel advised that she did not respond to the December 28, 2011 request for IEE because it was already at issue in the Parent's subsequent January 4, 2011 hearing request. However, as noted above, she did not respond within 10 days to that hearing request. When she submitted her Response to the due process hearing request, as ordered, on February 23, 2011, however, she alleged therein that District had never received the December 28, 2011 request for IEE. It was determined that District should bear the burden of proving that its own evaluations of Student were appropriate at this hearing, as set forth in the Status Report of

¹ The parties stipulated at hearing on May 2, 2011 that should the hearing officer order placement in a private therapeutic day school for students with learning disabilities, the placement ordered will be Cove School, in lieu of Parent presenting testimony from Cove School's Director at hearing.

February 9, 2011 and the Pre-Hearing Conference Report of February 23, 2011 rather than allow it to shift the burden of proof to Parent by its own failure to follow procedure.

The resolution session in this matter was initially scheduled for February 2, 2011, but was postponed and held on February 10, 2011 because of a blizzard.

Parent's attorney submitted Parent's Motion to Compel the Production of All Student Records, dated January 31, 2011, seeking to obtain from District the records requested in writing, with authorization from Parent, on December 28, 2010, prior to the submission of the original due process hearing request. Upon District counsel's representation that the requested records had been provided to Parent's counsel, and Parent's counsel advising that she had not received them, an Order was entered on February 9, 2011 requiring District counsel to submit the affidavit of the person who had provided the records, [REDACTED] including the date and method of delivery.

Pre-Hearing Conference was held on February 22, 2011, having been previously scheduled for and continued from February 7, 2011 in order to accommodate the aforesaid Amended Hearing Request, Response, and resolution session. The Pre-Hearing Conference Report dated February 23, 2011 is incorporated into the hearing record as *Hearing Officer Exhibit A*.

On February 25, 2011, District counsel submitted a written Response to Parent's January 31 Motion to Compel, addressing Parent's List of Outstanding Student Records and indicating that all existing requested documentation relating to Student in each category had been provided to Parent's counsel, per hearing officer's Order of February 22, 2011, but did not include the affidavit of [REDACTED] as ordered on February 9, 2011. In emails of February 25 and 27, 2011, Parent's counsel advised that she would respond to District's Response because she believed that some records remained outstanding. On February 28, 2011, she was advised by email from the hearing officer that no further response was required. Rather, she would be permitted to present evidence at hearing relating to the stated issue of whether Student was denied FAPE due to District's failure to provide a complete copy of all Student records.

Additional Student records were disclosed by various witnesses employed by the District during the hearing in this matter, some of which were copied and provided to Parent's counsel following the conclusion of witness testimony in this case on May 5, 2011. Unproduced records disclosed during hearing that have not yet been produced include speech language protocols and [REDACTED] progress notes with narrative.² Hearing officer offered Parent's counsel the opportunity to schedule an additional day of hearing to re-question any witnesses as needed in regard to those documents. However, that offer was declined, and Parent's counsel requested, instead, that 2 pages of a document designated as school psychological progress notes be admitted into evidence as Parent Documents pages 947 and 948. District counsel responded that she did not object to the introduction of those documents, and the documents were therefore inserted into the record accordingly.

As noted in the Pre-Hearing Conference Report and the accompanying February 22, 2011 Interim Order, the hearing in this matter was scheduled for May 2 through May 5, 2011 rather than earlier dates due to the need to complete a number of independent educational evaluations, convene an IEP meeting to consider the reports of those evaluations, the need for District to respond to various document and IEE requests and pleadings, and to provide Parent's counsel with any outstanding Student records, as well as the District's intervening Spring break.

Hearing was convened as scheduled on May 2, 2011 through May 5, 2011 at Student's previous and current schools of attendance. The parties were permitted to call all of the witnesses they wished to present pursuant to their respective witness lists, some of whom they had withdrawn, but, due to the lateness of the hour on May 5, 2011, it was agreed that they could present their closing arguments to the undersigned hearing officer in written form on or before May 10, 2011, which they did.

² See email from Sara Mauk to Cynthia Hansen and H.O. Stutzman dated 5/6/11

Due to the aforementioned continuances of the Pre-Hearing Conference and the Hearing, this Decision is not being issued within 45 days of the initiation of the 45 day timeline. It is not being issued within 10 days of completion of the due process hearing, including the submission of closing arguments in writing on May 10, 2011, due to an extension of time requested by the hearing officer, due to the large amount of testimony and documentary evidence and legal precedent presented for review, and agreed to by attorneys for the parties on May 19, 2011, allowing submission of this Decision on May 27, 2011 rather than May 20, 2011.³

In attendance at the hearing of this matter were Parent, her attorney, [REDACTED] District's attorney, [REDACTED]. The hearing was reported by [REDACTED] on May 2, 4, and 5 and by [REDACTED] C.S.R. on May 3, 2011, both of [REDACTED] Reporting (312-368-1228 or 800-803-7900).

Sworn testimony was given by 21 witnesses during the course of the hearing in this matter. The following witnesses were called to testify on behalf of both Parent and District: [REDACTED] District Case Manager; [REDACTED] District Audiologist; [REDACTED] District School Nurse; [REDACTED] District Speech Language Pathologist; [REDACTED], District Special Education Teacher (7th and 8th Grade); [REDACTED] former District Special Education Teacher, now retired(6th Grade); [REDACTED] District Psychologist; [REDACTED] District Case Manager/Records Custodian; [REDACTED] District Social Worker; [REDACTED] District Social Worker; [REDACTED] District Occupational Therapist; [REDACTED] District General Education Teacher (8th Grade), and **Parent**.

In addition to the above, the following witnesses were called to testify on behalf of Parent only: [REDACTED], District Speech Language Pathology Paraprofessional; [REDACTED], District General Education Teacher (6th Grade); [REDACTED] private Speech Language Pathologist and Speech Language/Assistive Tech Evaluator; [REDACTED], District Technology Coordinator; [REDACTED], District Legal Secretary; [REDACTED] private Occupational Therapist/Evaluator; [REDACTED] private Audiologist/Central Auditory Processing Evaluator; and [REDACTED] private Psychologist/Evaluator.

Parent submitted 948 pages of documents for use at hearing, including the 2 pages of psychological progress notes referenced above in this Decision. District submitted 219 pages of documents for use at hearing. Parent documents are herein identified with a "P" and District documents with a "D" preceding the page number. Documents used at hearing are referenced by their page numbers in the transcript of this hearing but are not listed in this Decision due to the time constraints for completing this Decision.

Parent's attorney included a legal brief and copies of case law in her disclosure packet. Additionally, she submitted a 32 page written closing argument by email and U.S. mail on May 10, 2011. District's attorney submitted an 8 page written closing argument by email on May 10, 2011. Both attorneys submitted a large volume of case law in support of their respective positions on May 5, 2011 at the conclusion of witness testimony, including decisions from Illinois, the 7th Circuit Court of Appeals, the U.S. District Court for the Northern District of Illinois, and decisions from various other jurisdictions. Both attorneys also submitted copies of various administrative decisions in special education matters. Copies of all are included in the record but are too numerous for citation here under the time constraints for completing this Decision.

Issues

1. Whether District violated Student's right to a *FAPE* since January 4, 2009 by failing to conduct a sufficiently comprehensive full and individual re-evaluation of Student?

³ Hearing Officer would have preferred additional time to complete this Decision to her own satisfaction. However, even after advising the Illinois State Board of Education of the need for an extension of time and the parties agreement to the initial one week extension, she received and responded to 2 warning letters from ISBE on May 21 and May 26, 2011 and is therefore submitting this Decision in the form it is as of May 27, 2011.

2. Whether District violated Student's right to a *FAPE* since January 4, 2009 by failing to develop and implement individual educational plans (*IEPS*) reasonably calculated to enable Student to receive an appropriate education?

3. In addition to the violations alleged above, whether District violated Parent's procedural rights between January 4, 2009 and the present time, and, if so, whether those procedural inadequacies impeded Student's right to a free appropriate public education, significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of *FAPE* to Student, or caused a deprivation of educational benefit to Student, and specifically:

A. Failure to provide Parent and her attorney with copies of all Student records in a timely manner;

B. Failure to report Student's lack of progress accurately and objectively and/or failure to update Student's *IEP* to address his lack of progress;

C. Failure to obtain parental consent for an A.T. assessment performed on January 11, 2011; and

D. Failure to complete an assistive technology assessment and convene and complete an *IEP* meeting to consider the results of the assessment before the beginning of the 2010-11 school year?

4. Whether District failed to place Student in the least restrictive environment within which he can receive a satisfactory education from January 4, 2009 to the present?

Findings of Fact

The material facts relevant to the issues in this case based upon the evidence presented at hearing are as follows: Student is a 14 year old male who is currently attending 8th grade in a District elementary school (hereinafter *School S*) He is to begin high school in Fall 2011. He receives special education programming under the *IDEA* in the categories of Specific Learning Disability and Speech/Language Impairment. (Parent; D75, 123-170)

Student's cognitive ability is within the average range. Among other characteristics, he is dyslexic, has a significant receptive and expressive language disorder, an interhemispheric integration deficit, severe executive functioning difficulties, low visual motor and motor coordination skills, and below average visual perceptual skills, all of which impact his ability to learn and which require specific educational interventions. Although he can learn visually, his visual learning is impacted by the fact that he cannot read. When he must copy written work from paper, book, or board, he copies one letter at a time while he tracks what he is copying with his left index finger. He has no appropriate keyboard skills or experience with any type of assistive technology. He is functioning significantly below grade level in all academic areas, including reading skills at the mid-first grade level, spelling at the beginning first grade level, and math skills at the mid-second grade level. He has mastered consonant but not vowel sounds, and he has not learned to decode and encode language to allow him to read or spell at a functional level. He has not mastered math facts, and, although he is able to solve simple addition and subtraction without regrouping, he has no conceptual knowledge of multiplication and division or calculating fractions, and he has weak understanding of money value, measurement, geometric shapes and other math concepts. His adaptive skills are immature. He is unable to identify his year of birth, spell his sister's name, or state his address or phone number. He cannot navigate safely and independently in his community or neighborhood. He has not made progress in his current educational placement and program. (C.J., P1-14; J.F., P21-30; J.M., P35-46; A.T., P53-75; Parent)

Student suffers from abdominal migraines, which occur intermittently and without advance notice and which cause nausea and vomiting and bowel control problems. They usually

occur in the middle of the night or in the morning. His physician has prescribed the medication Propranolol to address this condition, District has long been aware of the condition and the prescribed treatment. (Parent; [REDACTED]) Student cannot attend school when he is suffering these attacks or when he must see the physician for treatment of this condition. (Parent)

Student has been enrolled in the District since he began 1st Grade at age 6 in Fall of 2004. In March of 2004, at age 7, he was identified as having an expressive and receptive language impairment. (P213-215) He was determined eligible for special education under the *IDEA* due to a specific learning disability in June 2004. (P230-235) District conducted a triennial re-evaluation of Student in April 2007. (D1-5; P147-151)

It conducted another triennial re-evaluation in April 2010, pursuant to an assessment plan dated March 12, 2010 and with consent from Parent dated April 8, 2010. (D44, 45) That evaluation included an assessment of intelligence and academic performance by the school psychologist and an assessment of basic receptive and expressive vocabulary and oral language by the speech/language pathologist on April 15, 2010. ([REDACTED] D52-57, 50-51) The school social worker submitted a report dated April 14, 2010 regarding interviews of Parent and Student and unnamed teachers on April 13, 2010 and a very brief review of some school records. She did not administer any testing or rating scales pertaining to Student's adaptive functioning, behavior, or emotional status. ([REDACTED] D47-49) The school nurse submitted a report dated April 15, 2010 which refers to the health history provided in the initial evaluation of June 17, 2004 and also to Student's abdominal migraines and the prescribed medication, a heart murmur, and seasonal allergies. She noted therein that Student had passed hearing and vision screenings in January of 2009. ([REDACTED] D50-51) After the eligibility conference held to consider the aforesaid assessments, the school psychologist administered the *Vineland Scales of Adaptive Behavior* to Parent, but she did not score it until February 14, 2011, and so the results were not considered at the IEP eligibility meeting on April 22, 2010. ([REDACTED] P947) The 2010 triennial evaluation did not include an assessment by an occupational therapist, and the Domain Sheet completed prior to the evaluation on March 10, 2010 indicated that Student's motor skills were not relevant to the evaluation. (D45) Nor did it include any type of assessment of Student's need for assistive technology by the speech therapist, who has had no training or experience with assistive technology, or the psychologist or any other staff member. (J.S.; M.J.) It did not include assessment of Student's auditory processing, although, in her progress notes relating to the eligibility conference held on April 22, 2010, the psychologist stated that she recommended one. (P947)

Independent educational evaluation of Student was secured by Parent in January through March 2011, due to her disagreement with District's evaluation, which included psychological, speech/language, assistive technology, central auditory processing, and occupational therapy assessments by qualified providers. ([REDACTED]) During the independent assessments, Student advised that he had been assessed for assistive technology by the District, at which point Parent inquired about this assessment and was provided was provided with a copy. This assessment was not discussed with her at any previous meeting nor was she shown a referral or asked to sign a consent. (Parent; P199-202)

Following his identification in May 2004 as a student with a learning disability, Student was placed in self-contained special education classrooms in various elementary schools in the District, including *School P* for Grades 2 through 4 and the Spring Semester of Grade 6, and *School S* for Grades 7 and 8. (Parent; D182). He was mainstreamed for science and social studies classes with non-disabled peers from Spring 2009 to the present date, 6th through 8th grades. ([REDACTED] 37; D107) He was not provided with extended school year services during the summers of 2009 or 2010 and his IEPs include no documentation or discussion as to why eligibility was denied considering his absences due to illness and his poor academic progress. (D40, 110) The only IEPs developed for him during his 6th grade through 8th grade school years, on 2/17/09 and on 6/2/10, did not provide for the use of assistive technology, direct social work services, or occupational therapy services. No IEP was developed to cover the last 4 months of the 2009-2010 school year. (D27-43, 86-112)

January through June 2009, Grade 6 at School S and IEPs dated 4/9/08 and 2/17/09

Student was enrolled at School P for the second semester of 6th Grade with an IEP that had been developed on April 9, 2008, while he was in 5th Grade at another District elementary school. (P321-339; D7-26) That IEP designated Student's primary disability as Learning Disability and also noted an eligibility determination of Speech/Language Impairment. (P321, 323; D7, 9) It called for specialized instruction and accommodations/modifications in all academic subjects and for specialized instruction and/or related services requiring the development of goals in Social/Emotional and Speech/Language. (P324; D10) Extended School Year (ESY) Services were checked as not needed "...for promotion or to maintain current level of information, skills, and behavior in areas necessary for self-sufficiency," which decision, it was noted, was to be "... considered prior to April 1st each year." (P324; D10) The IEP document advised that Student had never been evaluated or referred for the need for assistive technology to access the curriculum and stated that he did not need assistive technology.(P325; D11)

The following Accommodations and Modifications were to be used in instructing Student:

- Test with special education teacher
- Test 1 concept at a time
- Provide motivation & verbal rewards on daily basis
- Multiple choice tests
- Give simple directions with written examples
- Prompt to use correct grammar in sentences/word order to describe, answer questions + comment
- Student will need an extra social studies book to have at home so parent.. *(nothing further provided to complete this statement)*

Grade Accommodations:

- A=100-80%
- B= 80-65%
- C= 65-50%
- D= 50-40%

(P326; D12)

An IEP Summary Sheet included in the aforesaid IEP acknowledged Student's learning difficulties in every single category provided, including following directions and verbal requests, processing information, written expression, understanding concepts, copying from the board, transitioning from task to task, and short auditory attention span, frequent distraction and loss of concentration, poor spelling, and disorganization. (P339; D25)

Although the 4/9/08 IEP included seven goals, the two which appeared to be directed toward social studies and science, are unreadable. Of the remaining five goals, one was for the social worker to address Student's "need to develop self-awareness to achieve school success" with 60 minutes per month of direct service to be provided in a separate class. (P332; D18) Another was for the Speech Language Pathologist to address Student's articulation per a present level of performance stating that he "...has mastered all of his sounds except for /th/" with the goal that he "...will produce /th/ in the initial, medial, and final position of words with 80% accuracy." This was to be done in a separate class for 120 minutes per month.(P333; D19) There were no additional speech/language goals addressing his receptive and expressive language deficits, nor was there any indication anywhere in the IEP of his then current receptive and expressive language status or of any past assessments of same. As noted below, however, even though he was in the 5th grade, he had not learned his vowel sounds or the parts of speech needed to write a sentence. (P327-28; D13-14)

Of the remaining three goals in the 4/9/08 IEP, all to be implemented by the special education teacher, two were for Language Arts/English/Reading and one was for Mathematics.

There were no present levels of performance provided--i.e. at what level, if any, he was reading anything-- upon which to measure progress. Rather, it was noted that Student "has difficulty staying focused and this has an effect on his learning how to read. He also has a reversal issue." The goal written to address this lack of focus and reversal issue was for Student to "... use a wide variety of word analysis strategies to read and comprehend unfamiliar words and materials with 50% accuracy." The quarterly benchmarks addressed 1) his need to identify short vowel sounds with 40% accuracy, 2) long vowel sounds with 40% accuracy, and 3) understand the use of prefixes and suffixes and the difference between synonyms and antonyms. (P327; D13)

The second language arts goal required Student to "...produce written work that will adhere to Standard English conventions with 50% accuracy." Again, no actual present level of performance was provided regarding Student's writing skills. Rather the IEP stated that "Because of Student's deficiency when it comes to reading, his writing skills have not developed. His grammar skills, when working with a workbook, seems (sic) to be developing. (P328; D14) The benchmarks accompanying the writing goal addressed 1) distinguishing between common and proper nouns and changing singular nouns to plurals with 40% accuracy; 2) understanding different kinds of sentences and use of verbs, adjectives, and nouns, also at 40% accuracy; and 3) editing his work with punctuation and capitalization, and "try to work on his spelling with memorization and spellcheck."(P328; D14)

The Math goal in the 4/9/08 IEP was based not on any objective present level of performance, but on the statement that he "...has been improving in the area of math is understanding regrouping in addition and subtraction and seems to be understanding the concept of multiplication." The goal was for him to "...demonstrate and apply a knowledge of sense of numbers including basic arithmetic operations with 60% accuracy." The benchmarks called for him to add, subtract, and multiply 2 to 3 digit whole numbers, including regrouping, with 50% accuracy. (P329; D15)

The 4/9/08 IEP called for placement in a special education classroom for 61-100% of the school day and for participation with typical peers in Art, Library, Computer, and Gym classes. It did not designate any related service provision, though the IEP included social work and speech/language goals to be implemented in separate classrooms by those providers, as noted above. (D335)

There is no documentation on the IEP as to whether the quarterly benchmarks, to be measured in June and November of 2008 and January 2009, were or were not met. (P327-333; D13-19) When Student enrolled at School P, he was placed in W. cross-categorical special education classroom. The special ed teacher did not implement the 4/9/08 IEP goals and he is not sure whether the goals were met. He assessed Student with the WRAT (Wide Range Achievement Test), a brief screening measure of basic academic skills. Student received small group pull-out speech therapy from a speech pathology paraprofessional once a week for 30 minutes to address articulation of the /th/ sound. ()

On February 17, 2009, an IEP meeting was held at School P and designated as Student's Annual Review. A new IEP was prepared by the special ed teacher with some input from the case manager. (P340-355; D27-43) The special education teacher noted 2008 ISAT scores at the academic warning and below standards performance levels, WRAT scores indicating 2.2 grade level word recognition and 2.7 mathematics level, and Winter 2009 Learning First Scores of 44% for Reading and 18% for Math. (W.W.; D28)

Parent attended the meeting and expressed concerns about Student not being able to read and his need for reading time and about his frustration at not being able to understand basic instructions or to answer normal basic questions. (Parent; P341; D28)

Four goals were included in Student's 2/17/09 IEP. One was directed to the production of the /th/ sound with 80% accuracy to be implemented by the speech and language pathology paraprofessional. (P349) The other three, two for Math, and one for Language/English/Reading, were to be implemented by the special education teacher. (P346-348)

The Present Level of Performance provided in the area of Language/English/Reading was "WRAT Reading 2.2 word recognition." The goal addressing it was for Student to "...meet

the standard and can apply word analysis and vocabulary skills to comprehend selections with 70% accuracy." The quarterly benchmarks used to measure progress on the aforesaid goal included 1) determining word meanings in context using denotation and connotation strategies with 60% accuracy; 2) use prefixes, suffixes, and root words to understand word meanings with 70% accuracy; and 3) apply knowledge of analysis to construct meaning of unfamiliar words with 70% accuracy. (██████████; P346)

The present levels of performance for the two Math goals in the 2/17/09 IEP are, first, "WRAT Reading 2.2 word recognition/WRAT Mathematics 2.7", and second, Student "...is able to read at a mid 2nd grade level in reading and a high 2nd grade in mathematics." (P347-348) The first Math goal was for Student "...to meet the standard and estimate, make and use measurements of objects, quantities and relationships and determine acceptable levels of accuracy." The benchmarks attached to this goal for measurement purposes required him to 1) convert currency and metric measurements into larger and smaller units with 70% accuracy; 2) demonstrate the correct change when making a purchase with 80% accuracy; and 3) estimate measurements with 60% accuracy. (P348)

The second Math goal was for Student to "...meet the standard to demonstrate knowledge and use of numbers and their many representations in a broad range of theoretical and practical settings with 70% accuracy." The quarterly benchmarks were for Student to 1) show relationships between sets of numbers, including rational numbers, whole numbers natural numbers, and integers with 60% accuracy; 2) write prime factorizations using exponents with 70% accuracy; and 3) represent any large number using scientific notation with 60% accuracy. (P347)

There is no indication on the IEP document as to whether or not the above goals or benchmarks, to be measured in ██████████ and 2009 and ██████████, 2010, were met. (P346-349) The special education teacher could not determine whether or not Student made progress during the semester he was in his class in Spring 2009 because Student was not there long enough for him to test him and to provide continuity. He did, however check boxes stating that benchmarks were met on Student's progress reports dated ██████████; D202-203) Student was absent or tardy 20 to 25% of the time he was in ██████████ special ed class at School P, which detracted from instruction time. The teacher was aware of the Student's abdominal migraines. Nevertheless, he felt that he was not able to determine that Student would regress without ESY services, and so he denied him ESY services in the 2/17/09 IEP. He doesn't recall talking about how to address all of the Student's absences. He felt that Student must have been excused for his absences because otherwise he would not have been promoted to 7th Grade. Although Student could not read by himself and had poor handwriting, the teacher did not use or recommend assistive technology for Student or make a referral for either an A.T. or O.T. evaluation. ██████████

Pursuant to the 2/17/09 IEP, Student was mainstreamed, ██████████ for the first time since 1st Grade, in 6th Grade general education Science and Social Studies classes. An aide accompanied Student and others from his special education class to the general education classes. W.W. used his own basal reading program and the Saxon 5th Grade Math text in his classroom. Student's rate of progress was "glacial". ██████████

The 2/17/09 IEP did not recognize Student's eligibility in the category of Speech/Language Impairment, just his Learning Disability eligibility, but it did call for Student to continue speech/language therapy for 30 minutes per week with the paraprofessional to address only his ability to make the /th/ sound. (P340, 342, 349, 350) No other direct related services were provided. The IEP called for 20 minutes per month of consultative social worker services and 15 minutes per quarter of School Nurse consultative services. (P350)

IEP Report cards were issued by ██████████ on 1/23/09, 4/1/09, and 6/12/09 with boxes checked that Student was meeting the benchmarks for the /th/ speech goal and language arts and math goals. However, the benchmarks identified on the 1/23/09 report card for math and language arts are for the goals and benchmarks that were not developed until 2/17/09, rather than those from the 2008 IEP that was in effect at the time and required to be measured in January 2009. On the remaining reports, the math and language arts benchmarks do not reflect the

benchmarks that are on Student's 2/17/09 IEP. None of the reports have been signed by the Parent. There is teacher signature only on the 4/1/09 report. (██████████ D202-203)

Fall 2009 through Spring 2011, 7th and 8th Grades at School S

Student attended the first day of school at *School P* in Fall 2009. However, Parent was advised that that Student would have to attend *School S* because of a boundary change. Parent took the transfer to *School S*, where Parent was advised that Student had to stay at *School P*. Ultimately, Student began 7th Grade at *School S* in the 3rd week of the Fall term. (Parent; V.A.; D182)

The 2/17/09 IEP goals developed at *School P* were to be implemented at *School S* by V.A., the cross-categorical classroom special education teacher, and M.J., the speech/language therapist. In accordance with the previously developed IEP, he continued to be mainstreamed for Science and Social Studies. V.A. did not understand the IEP goals or how to measure Student's progress on them. She used the SRA program for language arts beginning in November, 2009 in a small group. Student began and has remained on the lowest level of that program, Level A, up to the current time. He has not been successful with decoding with the SRA program, and he has remained at the pre-primer level in his reading and writing. ██████████ does not have time to work with Student 1:1. She is not familiar with *Orton-Gillingham* based instruction, and she does not know what the term "sequential" means in relation to Student's curriculum and instruction. She is not familiar with a central auditory processing (CAP) deficit. Student has had trouble retaining what is taught regarding addition and subtraction. He has made little progress in ██████████ class from September 2009 to the present time. ██████████ checked that he was meeting his goals and benchmarks on Progress Reports dated 11/18/09 through 6/16/10. However, the benchmarks on the 2/17/09 IEP only run through November 2, 2009, and no IEP was developed to replace it until June 2, 2010. The benchmarks for the 6/2/10 IEP are dated from November 2010 through April 2011, so there were no goals and benchmarks covering the period from November 2009 through the end of the 2009-2010 school year. (██████████ D91, 99-106, 198, 205-207) Student was absent 35 times and tardy 21 times during 7th Grade. His language arts instruction took place first period in the morning, so that he missed instruction when he was tardy. In spite of his absences, he was promoted to 8th Grade. (██████████ D183) In regard to his abdominal migraines, although staff was advised of their impact on Student's ability to attend school when he had suffered an attack, Parent was asked only to bring in the prescription for the medication he took for them. She was not asked to sign any medical authorizations, and she was not provided with any information or documentation for home instruction due to the condition. (Parent)

██████████ determined that Student was not eligible for ESY services for the summer of 2010 because she did not feel that he would lose or regress over the summer, even though she acknowledged that he had difficulty retaining basic math skills. She did not complete an ESY data summary form for Student because she did not think it was appropriate. She does not know what "critical skills" are in terms of the need for ESY to maintain them, and she does not know if missing school due to medical issues constitutes a special circumstance that would require ESY. (V.A.; D110; P112-113)

██████████ issued IEP progress reports dated 11/18/09, 2/3/10, 4/21/10, and 6/16/10 and she signed each of them and wrote that he met his benchmarks and his annual goals. The reports are not signed by Parent. (██████████ D205-207) The 2/17/09 IEP benchmarks ended with the last requiring measurement in 11/2009, and there was no annual review of the IEP in February 2010 to continue those IEP goals or develop new ones. The next IEP was developed on June 2, 2010, and the benchmarks for the goals in that IEP did not require measurement until beginning in November 2010. (D33-36, D99-106) Nevertheless, ██████████ reported that Student met his benchmarks February, April, and June, 2010. (D206-207)

The April 2010 Triennial Evaluation

Student's 2/17/09 IEP was not reviewed to determine annual progress and/or the need for any adjustments in his programming in February 2010, and a new IEP was not developed until June 2, 2010, subsequent to a triennial re-evaluation conducted pursuant to an assessment plan

dated March 12, 2010 and with consent from Parent dated April 8, 2010. (D44, 45) That evaluation included an assessment of intelligence and academic performance by the school psychologist and an assessment of basic receptive and expressive vocabulary and oral language by the speech/language pathologist on April 15, 2010. (D52-57, 50-51) The school social worker submitted a report dated April 14, 2010 regarding interviews of Parent and Student and unnamed teachers on April 13, 2010 and a very brief review of some school records. She did not administer any testing or rating scales pertaining to Student's adaptive functioning, behavior, or emotional status. (D47-49) The school nurse submitted a report dated April 15, 2010 which refers to the health history provided in the initial evaluation of June 17, 2004 and also to Student's abdominal migraines and the prescribed medication, a heart murmur, and seasonal allergies. She noted therein that Student had passed hearing and vision screenings in January of 2009. (D50-51) After the eligibility conference held to consider the aforesaid assessments, the school psychologist administered the *Vineland Scales of Adaptive Behavior* to Parent, but she did not score it until February 14, 2011, and so the results were not considered at the IEP eligibility meeting on April 22, 2010. (J.S.; P947) The 2010 triennial evaluation did not include an assessment by an occupational therapist, and the Domain Sheet completed prior to the evaluation on March 10, 2010 indicated that Student's motor skills were not relevant to the evaluation. (D45) Nor did it include any type of assessment of Student's need for assistive technology by the speech therapist, who has had no training or experience with assistive technology, or the psychologist. (J.S.; M.J.) It did not include a assessment of Student's auditory processing, although, in her progress notes relating to the eligibility conference held on April 22, 2010, the psychologist stated that she recommended one. (P947)

The triennial re-evaluation included the following standardized assessments: administration of the *WISC-IV* to determine Student's level of cognitive functioning and the *KTEA-II* to determine Student's level of academic achievement by the school psychologist, J.S., on April 15, 2010 (P153-158); administration of the EOWPVT to assess Student's single word expressive vocabulary skills, the ROWPVT to assess his single word receptive vocabulary skills, and the OWLS to assess his listening comprehension and oral expression. (M.J.; P166-168) No classroom observation was completed by either of the aforesaid evaluators as part of their assessments. The psychologist reviewed Student's school records and interviewed Student's teachers, Student, and Parent, wherein she was advised of his poor academic and functional skills and Student's embarrassment of being in special education. (P153-155)

As a result of her testing, the school psychologist reported that Student had a full scale I.Q. of 69, which would put him in the low range of cognitive functioning. (P156) The *WISC-IV*, however, is a heavily language based assessment which is not reliable for Student, since he has a language processing deficit. The school psychologist reported the following additional *WISC-IV* Index/IQ Scores: Verbal Comprehension: 73, in the borderline range; Perceptual Reasoning: 94, in the average range and an area of significant strength comparatively; Working Memory: 65, in the low range and a significant weakness; Processing Speed: 59, in the low range and a significant weakness. (J.S.; P156-57)

She reported scores in the lower extreme range of achievement on the *KTEA-II* in Reading, Math, and Spelling, with Standard Scores ranging from a low 49 in Spelling to a 66 in Nonsense Word Decoding, all at or below the 1st percentile, with Grade Equivalents from K:11 in Nonsense Word Decoding to 2:8 in Math Computation, with most at first grade level or below and all described as in the lower extreme of academic achievement. She recommended continued eligibility for LD services. (P157)

The Speech Language Pathologist reported below average scores on the tests of one-word receptive and expressive vocabulary and scores in the low range of oral language for Listening Comprehension (Stanine 2 out of 9) and Oral Expression (Stanine 1 out of 9) and she recommended speech therapy due to a communication impairment impacting reading and language arts and his ability to comprehend classroom materials and express his opinions and ask questions. (P167) She has been unable to locate the protocols related to her testing. She did not administer up-to-date assessments. (P165-168, 675)

The school social worker, who did not administer any formal assessments, reported that Student was unmotivated to do his work, was working at a primer/pre-primer level in reading and that he often sat and drew, and was quiet and did not try to do his work. During the social studies class, he needed constant cues and reminders or else he would sit idle. She noted Parent's concerns about Student's poor memory and his academic needs, and that he did not know his address, year of birth, and his mom's phone number. He was reported to feel remorseful and upset when confronted about his forgetfulness. However, she concluded that Student "continued to be unmotivated to do most of his school work" and recommended that social work services should be discontinued because he was not demonstrating any significant emotional, behavioral, or social needs. (P169-172)

The school nurse determined that nursing services would continue in the amount of 15 minutes per quarter to monitor health issues and at home medication regime. (P179-180)

An IEP meeting was convened on April 22, 2010 to consider the aforesaid re-evaluation. However an IEP was not completed that day in Parent's presence, and she was not given copies of any documentation relating to the meeting at that time. She was asked to sign a form allowing the school staff to prepare Student's IEP without her, even though she did not have to leave the meeting. (Parent; D83) The eligibility determination document prepared following the triennial re-evaluation identified Student's disabilities as Learning Disabled and Speech/Language Impairment with adverse effects upon his educational performance, including academic, social, and communication skills. (P364) A copy of that document was not printed out and sent home to Parent until May 24, 2010. (S.B.) Parent did not receive copies of the reports of evaluations. (Parent) It was not until November of 2010 that she obtained a copy of Student's IEP and the report of psychological evaluation. (Parent) The school psychologist advised Parent that if Student were to attend his local public high school, he would drop out, and she offered to change Student's eligibility from learning disabled to cognitively impaired so that he could attend a special high school for the cognitively impaired. Parent agreed initially but then declined that offer. (Parent)

Learning Environment Screenings were completed by the special ed teacher, dated 4/22/10, and by Case Manager, dated 4/26/10. They noted that Student had poor decoding skills and problems in virtually every aspect of basic reading skills, including poor memory reversal of letters, poor retention of vocabulary, avoidance of reading, poor fluency, word omission, weak comprehension. He had a long list of difficulties in math, written and oral expression, and listening comprehension as well. His behaviors included short attention span, lack of motivation, and inattentiveness. It was noted that he forgets concepts that he has been taught. (P181-190)

An IEP was developed at some point following the aforesaid April 22, 2010 conference by the case manager and the special education teacher and without Parent's participation. (D86-112) It included three annual goals to be implemented by the special ed teacher and one by the speech/language pathologist. In two of those goal statements, Student was referred to as "she". (P380-387).

The first academic goal for language arts referred to his need to strengthen his decoding/reading abilities but was directed at writing a sentence with a noun, verb, capitalization and punctuation. It referred to placement at the beginning level, Level A, in the SRA Corrective Reading program and his reading and spelling at the pre-primer level of the Dolch list as his Present Level of Performance. The goal was for Student to "...write to communicate for a variety of purposes at a 80% mastery by writing two sentences related to a single topic using a word web." There was no indication of his then current ability to write a sentence with or without a word web. The quarterly benchmarks to be measured from 11/2010 through 4/2011 during his 8th Grade school year, addressed 1) use of a noun and a verb, 2) capitalization, using reminders, and 3) appropriate ending punctuation using visual reminders. (P380-381)

The second goal for Language Arts contained the same information as above for the present level of performance. The goal was for Student to "...identify and apply appropriate words analysis and vocabulary strategies to identify unfamiliar words with a 70% mastery using a reading series promoting letter sound recognition and building decoding skills, such as the SRA

Corrective Reading Program.” Nevertheless, all three of the quarterly benchmarks were directed specifically to developing a sight word vocabulary, not learning to decode words to learn to read.(P382-383)

There was only one Math goal in the 6/2/10 IEP, based on a present level of performance stating that Student “...was taught to add and subtract with regrouping....When retested a couple of months later he was unable to master the activity....He is working on a 6th grade level text with the use of a calculator....” The goal was for him “...to demonstrate and apply a sense of numbers, including numeration and operations, patterns, ratios, and proportions at a 70% mastery using a general education text and a calculator.” The quarterly benchmarks allowed use of a calculator to perform various higher level tasks, but did not require him to learn his basic math facts or understand math concepts. Nor did they address functional math skills, such as handling money or performing measurement. (P384-385)

Finally, the speech/language pathologist’s goal provided his present level of performance as reading and spelling at the pre-primer level of the Dolch list and provided the standardized test results from the recent evaluations. The goal was for him to “...increase the comprehension and expression of the language used in the classroom at his curriculum level to 70% accuracy.” No current percentage of accuracy was given, however, from which to measure progress, and the goal was not measurable. [REDACTED] The quarterly benchmarks related to identifying the main idea of a paragraph, summarizing 3 important details of the paragraph, and making an inference about a statement read to him, 4, then 5, then 6 out of 10 attempts. (P386-387) He was to receive 30 minutes per week of speech/language therapy in a separate classroom to address this goal. No other related services were provided per the 6/2/10 IEP. Consultation with the special education teacher was to occur for 15 minutes per quarter from the nurse, 5 minutes per month between the SLP and the special ed teacher, and 5 minutes per month between the special ed teacher and the gen ed teachers. (P388) The speech pathologist is not at School S every day. She has a large caseload and a lot of paperwork. She does not work in the special ed or the general ed classrooms with Student. He is pulled out with a group of Students. Since he cannot read, other Students read to him in the group. She does not feel that her foreign accent affects Student’s ability to understand what she says because he has never said anything to her about it. [REDACTED]

The modified grading scale included in the June 2, 2010 IEP, is substantially lower than even the previous IEP’s modified grading scale, and allows as follows, such that 33% is still passing:

A=70-62
B=61-53
C=52-42
D=41-33
F=32

On or about June 2, 2010 the Case Manager and the special education teacher completed a referral for an assistive technology evaluation of Student, which referral document indicates that a parental signature is required. [REDACTED] (P196-201) The document indicated that the current interventions being used with Student were the SRA decoding series and sight word walls, lists, index cards, both noted as unsuccessful and paraprofessional assistance, small group setting, and read alouds with visual cues, noted to be intermittent. Parent was never shown the document and her signature was not secured, and no A.T. assessment of any type was done until January 11, 2011. Parent was not made aware of it until Student advised her that it had been done. (Parent; P196, 199-203)

Student was not provided with ESY services in the summer of 2010, and no indication of any discussion of the reasons for denial were included in the IEP document. (V.A.; P391) Mother did ask the case manager about extended school year in September 2009 but was told that they would discuss it at the IEP meeting. (Parent)

During Student’s 8th grade year in the Fall of 2010-2011, Student was again placed in [REDACTED] special education class at School S and was mainstreamed with other special ed students for Social Studies and Science classes with an aide. (V.A.; P388)

Parent, concerned about Student's ability to be properly educated at his local public high school for the following year, investigated a special public high school in the District for cognitively impaired students. She attempted to obtain Student's records, and in November 2010, she was given copies of the psychologist's report and the IEP, which had not previously been provided to her, in order to seek admission to the specialized high school for Student. When the documents were submitted to that school, Parent was advised that Student was not eligible for admission because only a limited number of students could be enrolled, and enrollment was limited to those identified as cognitively impaired. (Parent)

Parent subsequently applied for admission of Student to [REDACTED] School, a private therapeutic day school for children with learning disabilities. Student visited [REDACTED] School and sat in on a class and played basketball with [REDACTED] students. Parent received notice of Student's acceptance to [REDACTED] on February 24, 2011. (Parent; P114)

Parent's attorney in this cause requested the production of all of Student's records from the District and submitted a request for IEEs at District expense on December 28, 2010, as noted in the procedural history above. District did not respond to the IEE request in writing, nor did it submit a request for a due process hearing to the Illinois State Board of Education. Parent proceeded to file for due process hearing through her attorney and to secure assessments of Student from evaluators independent of the District, performed between January 30 and March 23, 2011, including a psychological assessment from [REDACTED], a central auditory processing assessment from [REDACTED], a speech/language and assistive technology assessment from [REDACTED], and an occupational therapy assessment from [REDACTED]. Each of those evaluators reviewed the available Student records, tested Student in areas of concern, and observed Student in his public school placement. Each issued a report of evaluation, and copies of their reports and their invoices for the assessments were provided to District by Parent's attorney. [REDACTED]; P1-83)

The central auditory processing evaluation performed by [REDACTED] identified Student's interhemispheric integration deficit which is an inefficiency in the centers in the right brain communicate with the left. Integrated skills are needed for every task we accomplish. [REDACTED] refers to children with this deficit as her "How much and How to?" kids. Too much information overloads their systems. Student can learn what typical peers learn, for example how to read, but he must be provided with different methodology. Notetaking, for example, is a nightmare for Student due to his integration deficit. It also manifests in visual motor integration problems, sensory problems, and multitasking. Inattention is secondary to a fatigue factor due to system overload, and the system therefore shuts itself down and makes Student look like he is not paying attention. It may make him appear to be unmotivated. [REDACTED]; 362)

Student's records all the way back to 1st grade in 2004 include red flags that should have triggered an auditory processing assessment. Student has been unable to get his senses to work together. [REDACTED] P143- 147, 149, 153, 156-57, 372)) He has not been provided with appropriate goals and speech/language services to address his auditory processing needs. [REDACTED] P213, 225, 298, 320, 321, 355, 362, 370)

Student must be assessed with non-language based instruments. Otherwise, as with the *WISC*, his intelligence will be underestimated. With proper instruction, Student has the potential to learn to read well enough to get a job, read a daily newspaper, and get through a college class.

[REDACTED] determined that the District's psychological assessment had not been adequate to identify Student's needs. She conducted a comprehensive psychological evaluation of Student, using instruments appropriate for his suspected deficits, in the areas of cognitive, academic, and emotional functioning, including assessments of attention, executive functioning, adaptive behavior, anxiety, visual and auditory processing, written language, spelling, and writing fluency. She administered rating scales to the staff as well as to Parent. [REDACTED]; P5-11) She diagnosed a Learning Disorder of Reading, Written Language and Mathematics and a Mixed Receptive-Expressive Language Disorder. Her diagnosis of Attention Deficit Disorder is provisional, as she feels Student's attention issues may be related to his auditory processing deficit, and that it will be remediated with appropriate programming. She recommended that it be revisited after that

remediation process. (P11-12) Parent has taken Student to two physicians in the past who have advised her that Student does not have ADD. (Parent)

observed Student in his regular education Science and Social Studies classes and spoke with his special education teacher. She determined that the regular education teachers were skilled, but that they spoke very rapidly and that when Student tried to write, the aide erased what he had written and wrote for him. There was no review or consultation regarding the vocabulary. She determined that Student had not understood a lot of what was presented in his regular ed classes. (5) The regular education social studies teacher uses a 7th and 8th grade text, from which the aide, who accompanies Student and one other child to her class, reads to Student. She understands that Student does not understand what she says to him and that his disability could manifest as inattentiveness, daydreaming, and lack of motivation.

During her observation, was advised of the special ed teacher's continued use of the SRA Corrective Reading Series for Student in a small group, in which he is the top reader, and "Ladders to Success" math workbook to prepare for the ISAT. She is concerned about the use of the SRA program with Student because research has shown that it is not particularly effective for Students at his reading level. Student is having a lot of difficulty in the current special education placement and is not successful there. (P4-5, 15-18)

Regarding his emotional functioning and adaptive behavior, Student is becoming more and more frustrated. His language delays impact his peer interactions because he cannot pick up on what other children are saying and he can't respond, so he freezes, and others wonder what is wrong with him because they don't understand his behavior. He is nervous and worries that others will tease him, he worries about his future and he feels like exploding, but he doesn't have the language to attach to his feelings. (P5-7, 10-11)

Comparison of current assessments to previous assessments show that Student has made very little educational progress. His past evaluations and IEPs have not identified or addressed his educational needs. He is consistently functioning significantly, over one standard deviation, below where he should be. He currently has no strategy to learn.

Based on her own assessments and observations and on the reports of other assessors, recommends placement at School with intensive language therapy, very specialized, intensive Orton-Gillingham based instruction, such as the Wilson Language System or Slant, to address development of phonemic awareness, phonics, and decoding skills, and remediation in math in order to learn math processes and concepts. She recommends intensive after school tutoring and language therapy and extended school year services, which should have been provided to Student by the District all along. She also recommends occupational therapy services to address his motor processing and adaptive functioning deficits, social work services to address his social and emotional needs, including the ability to express his feelings and recognize social cues, and extra curricular sports and art therapy to help develop self-confidence and motor skills. (P11-12)

conducted a comprehensive three hour assessment of Student's speech and language needs and of his ability to benefit from assistive technology. She compared his performance without assistive technology to his performance with the use of specific hardware and software and found that he was able to perform tasks better with the technology (P35-46) Whereas District's April 15, 2010 speech/language assessment looked only at one-word vocabulary and oral language with outdated instruments, she used the most current instruments to include assessments of semantic language, auditory perceptual skills, and written language, which had not been assessed by District. He had no deficits relating to voice and articulation although his only speech/language goal had been directed solely to articulation on IEPs previous to June 2010. (P36-38)

Student does not know how to use words. He has significant deficits in listening processing, memory, oral and written expression and reading. He has significant deficits in vocabulary, syntax, and morphology and semantic language skills and in auditory processing skills that impact his language at the levels of phonemic awareness, discrimination, and memory. He needs 90 minutes per week of intensive speech and language intervention to work on vocabulary, concept development, and auditory processing. (P41)

Without the use of assistive technology, Student is unable to read or write. With a computer and appropriate software, he could potentially become literate. He has not been provided with [REDACTED] at school and is in desperate need of it. The District A.T. assessment dated January 11, 2011 appears to have been copied from the referral dated 6/2/10⁴. The preparer did observe Student in the regular classroom setting. The current educational team has no experience with assistive technology and requires a lot of training. Assistive technology must be an integral part of Student's academic program. He needs 90 minutes per week of fully integrated AT training with ongoing support and training of staff and family as well. ([REDACTED] 7, 41, 43, 199-203)

District has never conducted an occupational therapy assessment of Student, although his records indicate the need for same. ([REDACTED] P 143, 146, 181, 183, 204, 225, 320, 327, 328, 339, 370, 372, 885) At Parent's request, [REDACTED] conducted an O.T. assessment of Student on January 30, 2011 and an observation of him in his current placement on March 4, 2011. She was to participate in the IEP meeting held on April 11, 2011 by phone, but she was not contacted at the correct phone number for the conference. She determined that Student has deficits in visual motor and motor coordination and visual perceptual skills. He demonstrated decreased fine motor skills in the area of eye hand coordination/visual tracking, and motor planning and decreased copying and typing speed. He is unable to use money to make purchases. He has difficulty when he must combine motor skills with visual skills, for example, copying from a book or the board. He does not know how use assistive technology to assist him with his school work. He needs to learn to be independent. School should aim for him to be independent, not to have things done for him. Currently someone must assist him 80% of the time with his classwork. Parent must read and write for him to complete his homework. (Parent; [REDACTED])

Student needs direct occupational therapy services in the amount of 30 minutes per week and consultation services in the amount of 30 minutes per month to address Student's deficits and enable him to use assistive technology. ([REDACTED] P53-75) [REDACTED] has included her recommendations for same in her report, including goals directed to money skills, visual tracking and motor planning, use of assistive technology and Inspiration Software. (P70-74; 77-79)

An IEP meeting was convened on the afternoon of April 11, 2011 to allow District to consider the results of the IEE evaluations pursuant to a conference notification dated April 7, 2011. (P422)(And see Order of 2/22/11) Parent and her attorney attended. [REDACTED] attended by telephone. [REDACTED] did not attend. (Parent, [REDACTED])

During the IEP meeting [REDACTED] could not understand Student's current speech therapist due to her heavy foreign accent, and she does not believe that she could be effective for Student because she is so hard to understand. [REDACTED] She does not believe that the accommodations and modifications in the IEP developed by the District are designed specifically for Student. The goals included in the IEP are not measurable and do not address Student's need to learn to write and sequence and to understand math concepts and processes. ([REDACTED] P431-33, 435, 441, 448, 449)

A District occupational therapist reviewed [REDACTED] report and attended Student's IEP meeting on April 11, 2011. She has never assessed Student. She did not contact [REDACTED] regarding her independent assessment. She read the summary of [REDACTED] report to the IEP team at the meeting. She advised the team that she did not feel that O.T. services were warranted for Student. Parent and [REDACTED] disagreed with her. She did not include direct O.T. services in Student's IEP, but she added consultative services to address [REDACTED] concerns regarding Student's executive functioning. [REDACTED]

The District's educational audiologist reviewed [REDACTED] report of evaluation on April 11, 2011 and spoke to the speech pathologist, [REDACTED] that day to discuss how to implement [REDACTED] recommendations. She has no disagreement with [REDACTED] findings and considers her reputable and knowledgeable in the performance of CAP evaluations. She and the school speech pathologist met on April 11, 2011, discussed [REDACTED] report and prepared goals to address her findings and recommendations. ([REDACTED] P 143, 146, 181, 183, 204, 225, 320, 327, 328, 339, 370, 372, 885) [REDACTED] reviewed the April 11, 2011 IEP and finds that it accurately

⁴ The parties stipulated that the date of referral on this document is a typographical error and that the date of referral should read 6/2/10 instead of 6/2/11.

reflects her report and that it includes, for the first time in Student's educational programming, goals to address Student's need for dichotic listening training. However, the goals are not written in a manner as to be measurable. (J.F.; P427, 450-454)

The school speech therapist accepted and adopted [REDACTED]'s assessment and did not perform further assessments. She wrote speech/language goals for the April 11, 2011 IEP. [REDACTED] However, the goals are not based on [REDACTED] recommendations and J.M. does not understand them.

An IEP document was not produced while Parent and her attorney were present for the meeting of April 11, 2011. As occurred at the April 22, 2010 IEP meeting, District asked Parent to sign a form allowing the IEP to be developed without her, but she refused. IEP documents were provided to them on April 12, 2011. The IEP dated 4/11/11 is approximately 64 pages long, which includes some blank pages, and the copies provided to Parent and her attorney differ from that of the District. [REDACTED] P423-487 to D123-181) The length of the IEP is attributable to the fact that duplicate goals were included for elementary and high school. Parent submitted a three page, 33 point dissent to the IEP when she received it, stating, inter alia, that the goals presented had not been developed at the IEP meeting and that she had not been permitted to participate in the preparation of the IEP. Parent; P490, 498-500)

Although the new IEP acknowledges Student's need for assistive technology, it does not include the services and devices recommended by [REDACTED] pursuant to her assistive technology assessment, nor does it acknowledge [REDACTED]'s assessment. [REDACTED] P430) It does not include [REDACTED] recommendation for direct social work services to address social and emotional deficits. Rather it calls only for the social worker to consult with the special education teacher regarding the monitoring of Student's asserting himself in the classroom. (D433) The IEP dated 4/11/11 does reference the use of the Orton-Gillingham approach in one goal addressed reading new vocabulary words.(P438-439) It calls for Student to receive extended school year services to goals in the 4/11/11 IEP for the reason that he "...is at a critical stage of development where the window of opportunity will be lost without ESY"... and that he...should receive ESY ...to bridge the skills between elementary...and high school." (P482) It also calls for transportation for the reason that Student "...is will be attending a separate day school."

Student will be age 14 ½ on September 18, 2011. (P424) The IEP of 4/11/11 includes a Transition Services Plan for Student based on the EXPLORE assessment conducted on September 28, 2010. Parent submitted answers to a Transition Questionnaire she received from the Case Manager after the 4/11/11 IEP meeting. She received a copy of a draft Transition Questionnaire with Student answers typed in, dated 4/7/11, on May 4, 2011. [REDACTED] Parent; P492-93) The IEP indicates that the Transition Plan has not been completed due to insufficient data and that another meeting is to be scheduled within 15 days for completion of the plan. (P428) The plan does reference the need for vocational skills assessment, the use of unspecified assistive technology, and travel training, and training in employment, self-advocacy, and banking skills.(P486) An occupational therapist could help Student with such independent daily living skills. (A.T.)

The 4/11/11 IEP calls for placement of Student in a separate day school with 1875 minutes per week of special education, including 90 minutes directed to speech/language and 225 minutes to independent functioning (service providers not designated. It also calls for consultation/collaboration in the amount of 5 minutes per month from the SPL to the special ed teacher, 15 minutes per quarter from the nurse to the special ed teacher, and 30 minutes each per month from the social worker and the occupational therapist to the special ed teachers. A specific school is not identified in the IEP. (P480)

Conclusions of Law

At a due process hearing convened pursuant to the provisions of the Illinois School Code, it is incumbent upon the District to present evidence that it has provided or has offered to provide the student in question with a free appropriate public education in the least restrictive environment, in accordance with the stated issues in the case. *ILCS 5/14-8.02a(g-55)(2008)* The burden of persuasion falls upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49(2005) In

this case the burden is upon District to show that its own evaluations of Student have been appropriate and that it therefore should not have to reimburse Parent for the independent evaluations she obtained in Spring 2011 per her request for school funded IEEs. *Board of Education of Murphysboro v. ISBE*, 41 F.3d 1162(7th Cir. 1994) Although District counsel did not respond to the request for IEE by submitting District's own request for due process hearing, her failure to do so does not permit District to shift the burden to Parent, as determined at the Pre-Hearing Conference held in this cause. The burden of persuasion falls upon Parent in regard to the remaining issues in this case.

Based upon the preponderance of evidence relevant to the issues in this case, applying the applicable law to the findings of fact herein, it is concluded as follows:

Issue No. 1 (Evaluation): District violated Student's right to a free appropriate public education by its failure to conduct an appropriate full and individual reevaluation of Student.

No child shall be eligible for special education without a carefully completed case study, currently defined as a full and individual evaluation (FIE), fully reviewed by professional personnel in a multidisciplinary staff conference and only upon the recommendation of qualified specialists. Children who are already receiving special education must be reevaluated by the District at least once every 3 years and not more than once a year, unless the parent and district agree otherwise. Additionally, reevaluation must be ensured where the district determines that the child's educational or related services needs, including improved academic achievement and functional performance of the child, warrant a re-evaluation. 23 ILAC 226.120(2007); 34 CFR 300.303(2006) The school district must inform parent of the domains in which assessment is needed and obtain parent's consent for evaluation, after which the evaluation is to be conducted and an eligibility meeting convened within 60 days of the signed consent. 105 ILCS 5/14-8.02(b)(2008), 23 ILAC 226.110(2007)

Before January 4, 2009, Student's last District reevaluation was done in April 2007. Since that time, District has conducted only the following evaluations of Student: 1) triennial evaluation in April 2010, consisting of the school psychologist's limited assessments of intelligence and achievement; 2) the school speech pathologist's very limited assessment of one word vocabulary and listening comprehension and oral comprehension, for which the protocols cannot be found; 3) the psychologist's administration of the *Vineland Scales* to Parent, but not teachers, after the April 22, 2010 eligibility conference, which was not scored until January 2011, apparently in response to Parent's requests for IEE and for a due process hearing, and never discussed at an IEP conference; and 4) the assistive technology assessment performed on January 11, 2011, which District counsel has denied was in fact an evaluation of Student requiring parental consent, but which report indicates that it was performed pursuant to the referral prepared on June 2, 2010, which did not include Parent's signature, as the referral form itself required.

A full and individual evaluation is one that provides for the assessment of a child in all areas of suspected disability, and which uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining whether the child has one or more of the qualifying disabilities under the IDEA and also to provide the appropriate educational programming for the child in the event that he is eligible for special education and related services. In identifying the assessments to be used in a completing a full and individual evaluation, the relevant aspects, or domains, of a child's functioning or performance include health, vision, hearing, social and emotional status, general intelligence, academic performance, communication status, and motor abilities. 20 USC 1414(b)(2004); 23 ILAC 226.110(2007); 34 CFR 300.15, .304, .305(2006) Additional procedures are required in the determination of eligibility of a child in the category of specific learning disability, including observation of the child in the classroom and specific documentation for the eligibility determination. 23 ILAC 226.130(2007); 34 CFR 300.307-.311(2006) The IDEA identifies 13 disabilities as the basis for eligibility for special education, including, inter alia, cognitive disability, other health impairment, specific learning disability, and speech or language impairment. 23 ILAC

226.75(2007); 34 CFR 300.8(2006) Screening for instructional purposes by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered evaluation. 34 CFR 300.302(2006)

Special education is instruction conducted in the classroom, home, and other settings specially designed—meaning that its content, **methodology**, and delivery is adapted-- to meet the unique needs of the specific disabled child. 34 CFR 300.39(2006) The *IDEA* also identifies a number of supports and related services to be provided by the school district if necessary to allow a child in need of special education to benefit from special education, including, although not limited to, early identification and assessment of a child's disabilities, speech-language pathology, audiology, assistive technology devices and services, occupational therapy, counseling services, medical services for diagnostic and evaluation purposes, school nurse and social work services, and parent, staff, and student training. 23 ILAC 226.75(2007); 34 CFR 300.5-.6, .34, .125.(2006)

The reevaluation performed by District in April 2010 was neither timely nor sufficiently comprehensive to comply with the above *IDEA* standards under the facts of this case. Student was not progressing in basic reading, writing, and math skills when he arrived at *School P* in January 2009, even after 4 ½ years in a self-contained special education classroom. His expressive and receptive language skills were woefully inadequate. Yet no language assessment was done, and the only speech services were provided by a paraprofessional in a pull-out group for 30 minutes per week and focused on articulation of the /th/ sound. The only assessment performed at that time was the special ed teacher's screening of Student's word recognition and math skills with the *WRAT*, which showed skills at the second grade level. It was noted that Student was performing at "C level in his classes", which would require that he only achieve at 50-65% under the modified grading system in place per his 4/08 IEP. Without any new evaluation, Student's direct social work services were taken away, even though Parent advised of his frustration and self-consciousness about his inability to read. While Student needed more integrated intensive instruction and services to address his learning and language disorders, and, again, without any evaluation supporting a change in placement, he was put into 2 general education classes without any assistive tech support.

When the triennial evaluation was finally performed, it failed to include assessments of Student's language other than very basic vocabulary, listening comprehension and oral expression, omitting, significantly, written expression and semantics. There was no assessment of auditory processing, even though the psychologist's notes indicated that he needed one, or of his attention, executive functioning, adaptive behavior, (but for the one *Vineland* administered to Parent only after the fact), his independent functioning, emotional status, or fine motor, motor integration and coordination, and sensory issues. The assessments administered by the psychologist and the speech pathologist were insufficient to provide necessary information for appropriate educational programming for Student. Neither of them observed Student's performance in the classroom. Although there is and has been assistive technology available to allow Student to benefit from special education instruction, Student had never been assessed for it or provided the opportunity to use it beneficially in his special or general ed classes prior this school year. An AT. assessment should have been done long before April 2010 and should certainly have been included in the April 2010 triennial evaluation at the very latest. The District's [redacted] screening finally performed in January 11, 2011 by a visit to Student's special education classroom, must be classified as too little and too late, noting that the person who did the screening did not testify at this hearing to shed any light on whether this was an evaluation of Student or not, and the District's attorney and staff seem to disagree on what it was and why it was done and whether or not parental consent was required or obtained for it.

District will need to consider and develop a transition plan for Student on or before he reaches age 14 ½ on September 18, 2011, at the beginning of the Fall term of the 2011-2012 school year. It may need to include additional IEP team members. Student's transition goals, supports, and services will need to be based upon appropriate evaluation procedures and information, take into consideration Parent's as well as Student's preferences and include employment, post-secondary education, and community living alternatives. 105 ILCS 5/14-

8.03(2008) The April 11, 2011 IEP document indicates that District has begun transition planning for Student but not completed it. Although the 2010 triennial evaluation did not include pre-vocational skill assessment, the failure to include it was not legally inappropriate, since it was not required at that time. Any transition plan that is developed for Student on or before September 17, 2011 will need to adhere to Illinois statute and regulations, and it should include the findings and recommendations of the independent assessors in this case insofar as they relate to the Student's transition needs.

District argues that Monday morning quarterbacking should not be allowed by the independent assessors. However, as the independent assessors testified most convincingly, Student's records are replete with red flags that cried out for a timely and comprehensive evaluation of Student in order to develop IEPs appropriate to his individual educational needs. Special education is effective only when there is, first and foremost, a comprehensive evaluation of the child's needs. It appears from the testimony given in this case, however, that Student was merely put into the existing programs at his respective schools and passed from year to year without regard for the need to properly assess him and individualize his program to meet his unique needs.

If a parent disagrees with the school district's evaluation of her child, she has the right to request an independent educational evaluation at public expense. This provision allows a parent the opportunity to obtain her own evaluation of her child to counteract the evaluation obtained by a district when she suspects that the district's evaluation has not discerned the true identification or nature of a student's disabilities and/or his resulting needs. The school district can exercise one of two options within 5 days of receipt of a parent's request for IEE: 1) If it chooses to stand by its evaluation, it must initiate an impartial due process hearing and prove to the hearing officer that its evaluation is appropriate; or 2) it can respond by agreeing to fund the requested IEE and provide information to Parent on how and where to obtain it. *20 USC 1414(a)(2004)*; *105 ILCS 5/14-8.02(b)(2008)*; *23 ILAC 226.180(2007)*; *34 CFR 300.502(2006)* When an IEE at public expense is requested and the school district does not agree to fund it, a parent has the right to secure the IEE at her own expense to determine the nature and extent of a student's educational needs, not just for the purpose of eligibility determination, and present it to the District for consideration. She can present the IEE findings to a due process hearing officer, and, if the District's evaluation is found to be inappropriate, the District shall be ordered to pay for the IEE. *105 ILCS 5/14-8.02(b)(2008)* and see *Hibbing v. J.T.*, 45 IDELR 92 (D. Minn. 2006)

In this case, Parent's attorney submitted a request for a comprehensive independent educational evaluation of Student in writing by email and facsimile to the District's CEO and its lawyers on December 28, 2010 on the grounds that the evaluation performed by the District in April/June 2010 was not sufficient under the requirements of applicable state and federal law. Parent renewed this request specific to the assistive tech assessment on January 31, 2011 after Parent learned from Student that the District's AT representative had done some type of assessment after securing a copy of that assessment report from District. District did not respond to either of Parent's requests within 5 days. It did not agree to fund any IEEs. It did not request a due process hearing to prove that its evaluation was appropriate. In fact, it would have issued no response at all had it not been ordered to do so, and when it did respond pursuant to hearing officer order, it did so far beyond the procedural deadline far into the pre-hearing process in this matter. Clearly, District knowingly failed to adhere to procedure and cannot now complain that it should not have to pay for the independent assessments that were performed.

It has been determined that District's evaluations of Student were not appropriate. The independent evaluations were appropriate under the circumstances of this child's case, and, in the case of the evaluations performed by [REDACTED] were adopted by the District's audiologist and speech/language pathologist. The District's own psychologist recommended an auditory processing evaluation, but District never performed one. The invoices for the IEEs were submitted to the District before hearing and introduced into evidence at hearing. Each evaluator testified that they charged the usual and customary fees for the work they performed. The only evidence introduced by District in an effort to refute the IEE fees was the school psychologist's testimony as to what she is paid to conduct psychological evaluations in the District, and

counsel's argument that *105ILCS5/14-8.02(2008)* states that the Clinical Psychologist Licensing Act does not allow fees paid to licensed psychologists in excess of the amount that would be received by a school psychologist for performing the same service. However, [REDACTED] is a certified school psychologist, both Illinois and nationally, specializing in the assessment and treatment of children and adolescents. Furthermore, as noted above, District opted not to participate in the selection of the independent assessors and the determination of the parameters of the assessments to be performed and the fees for same when it did not respond to the Parent's requests for IEEs as required by the statute and its regulations.

Issue No. 2 (IEPs): *District violated Student's right to a free appropriate public education by failure to develop and implement IEPs that were reasonably calculated to enable him to receive an appropriate education*

An appropriate education is one that is reasonably calculated to provide the student with meaningful educational benefit, based upon an IEP, developed by an IEP team, including the student's parents. *Hendrick Hudson Dist. Bd. Of Ed. v. Rowley*, 458 U.S. 176 (1982) The school district is required to follow procedures that are designed to allow the parents to participate in the development of the IEP. The applicable procedures are set forth in *34 CFR 300.300-328(2006)* and *23 ILAC 226.110-350(2007)*. Procedural violations alone cannot be deemed a denial of FAPE unless the evidence proves that the violations impeded the student's right to FAPE, the parents' right to participate in the decision making process, or caused student to be deprived of an educational benefit. Otherwise, a hearing officer's determination of whether FAPE was received must be based on substantive grounds. *20 U.S.C. 1415(f)(3)(E)(2007)*; *34 CFR 300.513(a)(2006)*; and *see Hjortness v. Neenah*, 507 F.3d 1060(7th Cir. 2007) In determining whether a district has complied with *IDEA's* substantive requirement, the educational benefit provided to the child must be considered in relation to the child's intellectual and academic potential. *Jaccari J. v. City of Chicago*, 54 IDELR 53, (N.D. Ill. 2010), *Kevin T. v. Elmhurst*, 36 IDELR 153 (N.D. Ill. 2001)

Based on the documents themselves, the testimony elicited from the teachers and the service providers, and the very compelling testimony of the independent evaluators, the IEPs developed on February 17, 2009 and June 2, 2010 were procedurally and substantively insufficient. They were not based on Student's needs but on the service delivery models available at the respective schools. The very few goals that were written were not only unmeasurable but insufficient in number to address Student's very, very significant needs. Thirty minutes per week of pull-out group speech therapy, especially when it was used to address an unnecessary articulation goal that was the only speech goal in effect for 17 months, was insufficient to address his language deficits. The methodology used in language arts and math has been unsuccessful, and Student is not making meaningful progress. And yet, it has been continued. Student has been instructed to perform tasks in mathematics that he has no understanding of and when he cannot even perform basic math operations. He has been denied appropriate related services from the social worker and an occupational therapist. He has been provided with no assistive technology to help him learn to read and write. He has been labeled as inattentive and unmotivated, and his lack of progress has been blamed on him and on his absences due to illness, but no support has been given in response to the absences. He has been denied extended school year services without good reason when he clearly required them to receive an appropriate education. It is particularly disturbing that there was no annual review of the 2/17/2009 IEP, and no new IEP was developed for Student until June 2, 2010, and that IEP was developed without Parent's participation. *School S* has a pattern of scheduling a short IEP meeting and then asking Parent to sign a form allowing the IEP to be developed out of Parent's presence. In the case of the June 2010 IEP, she did not even receive a copy until November, 2010.

The special education teacher, general education teachers, and the speech therapist each do their own thing in their own classrooms. There has been no meaningful integration of the speech therapy and the instruction. Student has made little to no progress, even described as "glacial" by District personnel, who admit that their methodology has been unsuccessful. The independent assessors have stressed the need for very specialized instruction and therapy from

properly trained personnel integrated across Student's school day and for the use of appropriate assistive technology and the training of parent, staff, and Student in the use of the technology in order for Student to progress.

It is concluded that Student has not received an appropriate education from District between January 4, 2009 and the present time. Because of the IEEs performed at Parent's request and Parent's request for this due process hearing, the April 11, 2011 IEP is at least a start of an appropriate IEP for Student. With additions and revisions it can provide Student with an appropriate education when it is completed and implemented by the appropriate providers.

Issue No. 3(procedural violations): *District violated Parent's procedural rights by*

- 1) *failure to provide copies of Student's school records in a timely manner, which impeded Student's right to FAPE and Parent's right to participate in the decision making process;*
- 2) *failure to report Student's lack of progress accurately and objectively and/or failure to update Student's IEP to address his lack of progress which denied FAPE and Parent's opportunity to participate in the decision making process; and*
- 3) *its failure to perform a timely assessment of Student's need for assistive technology, which impeded Student's right to FAPE and deprived him of an educational benefit.*

Procedural violations alone cannot be deemed a denial of FAPE unless the evidence proves that the violations impeded the student's right to FAPE, the parents' right to participate in the decision making process, or caused student to be deprived of an educational benefit. *20 U.S.C. 1415(f)(3)(E)(2007); 34 CFR 300.513(a)(2006); and see Hjortness v. Neenah, 507 F.3d 1060(7th Cir. 2007)*

The parents of a child with a disability must be afforded an opportunity to inspect and review all of his education records with respect to identification, evaluation, and educational placement and the provision of FAPE. *34 CFR 300.501(a)(2006)* When copies of a student's school records are requested by the parent, student, or authorized representative, they must be produced by the District no later than 15 school days after the date of the receipt of such request by the official records custodian. *105 ILCS 10/5(2008)* Further, the records must be provided before any meeting regarding an IEP, or any special education due process hearing or resolution session. *34 CFR 300.613(2006)* The law is settled as to the all-encompassing definition of student school records, and it was cited extensively in Parent's Motion to Compel and in her closing argument. District did not dispute that law in responding to Parent's Motion, when ordered to respond. District did not provide the sworn affidavit of [REDACTED] or anyone else in her stead, when ordered to do so, that all of the requested records in existence had been produced, and, at the hearing, a large number of documents were found to be outstanding when individual witnesses were questioned and testified that they had never been asked to produce them in this case. So, clearly, District did not produce all of Student's records in this case in a timely manner as requested and as ordered.

The question then becomes whether this procedural violation impeded Student's right to FAPE, Parent's right to participate in the process, or deprived Student of an educational benefit. Parent has had the advantage of the skillful and zealous advocacy of her attorney in this matter and of knowledgeable and experienced independent evaluators who reviewed the records that were produced in time for their assessments and performed appropriately comprehensive assessments. Not only were the triennial re-evaluation speech/language assessment protocols, which were key to Parent's claim, never produced, but the District's noncompliance resulted in the expenditure of extra time spent on Parent's behalf to obtain and review the records, which translates into extra cost. This constitutes an impediment to Parent's right to participate in the process. At this time, it appears that the only outstanding records include the speech/language assessment protocols, which cannot be found, and [REDACTED]'s occupational therapy notes and the GETS documents to which she testified. They will be ordered to be produced.

As discussed under *Issue No. 1* above, an assistive technology assessment should have been performed long before January 11, 2011. At the very latest, it should have been a part of the triennial re-evaluation performed in April 2010 for which parent signed consent. When the

referral was not even generated until June 2, 2010, it should have been reviewed with Parent and her signature obtained as the referral form itself required. This would have allowed for the assessment to have been completed and AT provided to support Student in Fall 2010. The District has not provided any reasonable explanation for the failure to do a timely AT assessment. Staff and counsel do not even agree on whether they did an evaluation or whether what they did on January 11, 2011 was an evaluation requiring parental consent. [REDACTED] report and testimony prove that a thorough assessment of Student's needs in this area was required in order to determine the technology to be used to best address his unique needs and to allow him to receive appropriate instruction and related services and that the District's assessment did not do so. The failure to provide Parent with the June 2, 2010 referral for signature and review and to submit the referral to allow the evaluation to be completed did deprive Student of an educational benefit as well as depriving Parent of the opportunity to participate in the decision to have the assessment performed.

Parent has alleged that FAPE was denied because of the District's failure to accurately report Student's lack of progress to her pursuant to 34 CFR 300.320(2006) and 23 ILAC 226.100(2007).⁵ Student's special ed teachers and the speech therapist testified that they provided quarterly progress reports. However, as the documents in evidence reflect, those progress reports were largely unrelated to Student's IEP goals and provided no meaningful information to Parent. Again, it is significant, that there was no annual review of the April 2008 IEP goals nor of the 2/17/09 IEP, the IEP documents themselves do not indicate progress or lack thereof, and a new IEP was not developed until at least June 2, 2010, and that was not implemented until the Fall of 2010. The failure of the District to accurately and objectively inform Parent that Student was making little or no academic progress constituted a denial of FAPE and prevented Parent from making decisions crucial to Student's educational programming.

Issue No. 4(LRE): *The least restrictive environment in which Student can receive a satisfactory education is a therapeutic day school for students with learning disabilities, which, pursuant to the parties' stipulation, is Cove School.*

Each special education student is to be placed in the least restrictive environment in which he can receive a satisfactory education, meaning that to the maximum extent appropriate, the placement shall provide the student with the opportunity to be educated with his nondisabled peers. 20 U.S.C. 1412(a)(5)(2005); 105 ILCS 5/14-8.02(d)(2008)

Student has been placed in a special education classroom within the District's elementary schools from 2nd Grade through 8th Grade. He has not received appropriate instruction and related services during at least the last 3 school years. As a result, he cannot functionally read, write, spell, or perform basic mathematical operations without the use of a calculator, and his receptive and expressive language skills remain significantly impaired. He requires an intensive and integrated educational program to address his deficits if there is to be any hope of him staying in school and making meaningful educational progress. Although the law presumes that there is benefit to disabled students from education alongside their typical peers, the need for Student to receive appropriate academic programming now, at age 14, is absolutely crucial, and this need far outweighs any need to attend his local metropolitan high school, where he would have to be largely segregated from typical peers anyway in order to receive the intensive instruction he now requires.

The IEP developed by District personnel on or about April 11, 2011 agrees to a placement in a therapeutic day school, and the parties have stipulated that if a therapeutic day school is ordered in this case, it shall be [REDACTED] school. Because the IEPs of 2/17/2009 and 6/2/2010 were inappropriate and denied Student FAPE, although they could have been implemented as written in the current self-contained classroom setting, properly developed IEPs would have addressed Student's significant deficits in reading, writing, math, and language and

⁵ This is an area of the decision that was not developed as thoroughly as it might have been due to the time constraints imposed, but the documents in the record support Parent's contention.

would have required placement in a setting that offered the instruction and services recommended for him at this time by the independent assessors, whether publicly available or private if not available publicly. Whether Student is ultimately able to return to a regular public school environment will depend on the progress he makes at Cove School. In the meantime, however, Cove provides him more access to peers similar to himself than he would be have in a self-contained special education classroom in a large public high school.

Time constraints prevent further development of the conclusions of law in this matter, including citation to numerous court decisions from this and other circuits in support of Parent's various positions, as set forth in her attorney's extensive written closing argument. However, it must be noted that Parent herself was a very credible witness. With the exception of the school psychologist, audiologist, and the regular education teachers, key school personnel, including the current case manager and special education teacher and speech pathologist were not as credible and persuasive as the independent evaluators, all of whom, and particularly [REDACTED] were extremely knowledgeable and who were able to provide important information necessary for appropriate educational programming for Student. In regard to [REDACTED]'s testimony regarding her own difficulty understanding the school speech pathologist at the recent IEP meeting due to her foreign accent, the record does reflect that [REDACTED] was difficult to understand when testifying at hearing. She also had a tendency to cut others off when speaking and to become agitated at being questioned. Both the school nurse and the speech therapist complained of their burdensome case and paperwork loads while testifying.

Parent has asked for compensatory education and has supported her request with ample evidence of the nature and extent necessary through the testimony of the IEE assessors. The testimony of District's own personnel and documentation support Parent's contention that Student has been deprived of FAPE since January of 2009 and that compensation in the form of appropriate instruction and/or related services should be awarded here. See *Reid v. Dist. of Columbia*, 401 F.3d 516 (D.C. Cir. 2005)


IT IS THEREFORE ORDERED:

1. That Student shall be placed at [REDACTED] School for extended school year services for the Summer 2011 term.
2. That Student shall be placed at [REDACTED] School for the 2011-2012 school year.
3. That Student shall receive the following related services in addition to his daily individualized educational instruction:
 - A. Direct speech/language therapy in the amount of 90 minutes per week;
 - B. Daily dichotic listening training for 10 minutes per session;
 - C. Fully integrated assistive technology training and support to Student, staff members working with him, and his Parent in the amount of 90 minutes per week;
 - D. Direct occupational therapy services in the amount of 30 minutes per week and an additional 30 minutes per month for occupational therapy consultation;
 - E. Direct individual and group social work services in the amount of 60 minutes per week.
4. That Student shall be provided with a laptop computer with carrying case and internet capabilities to use between home and school.
5. That Student shall be provided with the assistive technology recommended by IEE evaluators [REDACTED]
6. That in compensation for the District's failure to provide Student with an appropriate education in the Spring 2009, and in the 2009-2010 and 2010-2011 school years, including its failure to provide ESY services in the Summers of 2009 and 2010,
 - A. Student shall receive at least 90 minutes per week of Wilson Language System tutoring outside of the regular school day during the 2011-2012 school year; and
 - B. Student shall be placed at Cove School at District expense for regular and extended school years from Summer 2012 through and including Summer 2014, with related

services to be provided as determined by the IEP team at the time of his annual reviews and IEP development conferences.

7. That reliable daily round trip transportation between home and [REDACTED] School shall be provided for Student at District expense during the aforesaid placement periods.
8. That upon receipt of this Order, an IEP conference shall be convened at [REDACTED] School to allow for the revision and completion of the 4/11/11 IEP in order to permit the resulting IEP to be implemented beginning no later than 30 days from the date of this Order pursuant to 105 ILCS 5/14-8.02a(j).
9. That the revised IEP shall accurately reflect Student's needs and present levels of performance, provide measurable goals based on those levels of performance, and modifications and accommodations, in accordance with the findings and recommendations from the recent IEEs, and shall include the education and services required by Orders No. 1-7 herein.
10. That District shall pay in full the invoices previously submitted to it for the IEE assessments performed by [REDACTED] and [REDACTED] within 30 days of the date of this Order.
11. That District shall produce the speech/language assessment protocols from the April 2010 speech/language assessment and all progress notes and documentation referenced by [REDACTED] District occupational therapist, in her hearing testimony within 7 days of this Order.
12. That District shall provide proof of compliance with the above Orders to the Illinois State Board of Education, Program Compliance Division, 100 N. First Street, Springfield, IL 62777-0001 on or before July 8, 2011.

DATED: May 27, 2011


Stacey L. Stutzman
Impartial Hearing Officer

RIGHT TO REQUEST CLARIFICATION

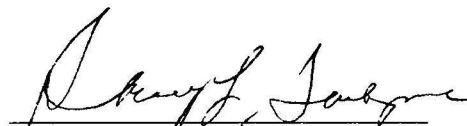
Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought,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

RIGHT TO FILE A CIVIL ACTION

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

CERTIFICATE OF SERVICE

The undersigned due process hearing officer certifies that she uploaded this Decision and Order onto the ISBE SEDS and emailed it to counsel for the parties and to ISBE on May 27, 2011, and served copies of the aforesaid Decision and Order upon Parent, Parent's counsel, District's counsel, and the Illinois State Board of Education at their respective addresses by depositing same with the United States Postal Service at Libertyville, IL, certified mail postage prepaid, on May 28, 2011 before 1:00 p.m.



Stacey L. Stutzman
Impartial Hearing Officer