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ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

[REDACTED]) Case No.: 2011-0259
Student,)
and) IMPARTIAL DUE PROCESS HEARING
CHICAGO PUBLIC SCHOOL DISTRICT 299,) DECISION AND ORDER
District.)
)
)

**Decision and Order
Jurisdiction**

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

Procedural History

A due process complaint was filed by the student through his parents in this matter on February 18, 2011, which was received by Chicago Public Schools [REDACTED] on February 23, 2011 and forwarded to the Illinois State Board of Education where it was received on February 25, 2011.

The District's Response to the Due Process Complaint was filed on March 8, 2011. [REDACTED]. A resolution session was held on March 14, 2011 with the parties agreeing to continue the proceedings until after an IEP meeting which was held over two days, March 17, 2011 and March 31, 2011.

Negotiations between the parties broke down and the case proceeded to prehearing conference. The prehearing conference was convened via teleconference on April 13, 2011. The prehearing conference report was issued on April 13, 2011, and is made a part of the record of these proceedings.

Student was represented by [REDACTED] and District was represented by [REDACTED]. Due Process and Mediation throughout the proceedings. The hearing was convened on June 13, 2011 at [REDACTED] and concluded on June 15, 2011.

Issues Presented and Remedies Requested

The issues presented in the case are:

1. Whether [REDACTED] provided a free and appropriate education during the period from February 20, 2009 to present, based on:
 - a. Failure to conduct adequate assessment of all areas of potential disabilities, with the result that the student's educational program for this period did not address, or addressed inadequately, his learning impediments and social/emotional needs.
 - b. Failure to provide essential related services, with adequate levels of intensity, in areas of social work, speech language and occupational therapy.
 - c. Failure to identify and utilize effective, research based teaching methodologies at a sufficiently intensive level that would enable the student to make progress commensurate with his cognitive skills.
 - d. Failure to provide, on a timely basis, appropriate assistive technology equipment and software, with training and support for both student and school staff, which was necessary to promote effective access to the educational curriculum and support development of reading and writing.
 - e. Student's IEPs for the past two years contained statements of present levels of performance that do not accurately and objectively state the student's academic, developmental and functional skill levels.
 - f. Student's IEPs for the past two years provide goal statements that are vague, not measurable, and not related to the statement of present level of performance.
 - g. Student's IEPs for the past two years contain goals which are not commensurate with the student's potential for development where the goals set an increase in skill level.
 - h. Student's IEPs for the past two years fail to address adequately communication, visual-motor, attention, and organizational limitations of the student.
 - i. Student's IEPs for the past two years provide for an inadequate level of related services, specifically:
 - a. Social work services have not been offered, despite significant social/emotional needs of the student.

- b. Speech language therapy to address express/receptive language delays was not offered.
 - c. Occupational therapy services to address student's deficits in attention, organizational skills and sensory processing were not offered.
 - d. Timely and sufficient support for use of assistive technology resources was not provided or adequate levels of assistive technology equipment and software.
 - e. Extended school year services were not offered despite substantial evidence that student was not making adequate academic, functional and developmental progress.
- j. District's failure to provide all school records to the parent has denied student a FAPE. (NOTE: though this issue was raised in the [REDACTED] and during the pre-hearing conference, due to the lack of evidence of any email communications between the parties, parent withdrew this issue at the conclusion of the hearing)

Student's Requested Remedies

The remedies being sought by Student are:

1. That [REDACTED] be directed to pay for an independent educational evaluation to assess all potential areas of student's learning disabilities in the following areas:
 - a. neuropsychological evaluation (NOTE: this remedy was removed by parent at the close of hearing)
 - b. comprehensive assessment by an occupational therapist
 - c. comprehensive assessment by a speech/language pathologist
 - d. social assessment by a licensed social worker
 - e. screen for central auditory processing disorder by an audiologist (NOTE: this remedy was removed by parents at the conclusion of hearing)
 - f. assess assistive technology needs
2. Direct [REDACTED] to provide an appropriate placement in a [REDACTED] school, or in the alternative to pay for private therapeutic day placement at [REDACTED]
3. Direct [REDACTED] to design and implement an effective plan for remediation of student's learning disabilities.
4. Direct [REDACTED] to offer related services in sufficient intensity to allow student access to educational opportunity, including the following:
 - a. Occupational therapy for 30 mpw
 - b. Direct instruction in the use of assistive technology equipment and software for at least 60 mpw
 - c. Social work services, individual and group, for 60-90 mpw
 - d. Speech language services for at least 60 mpw
5. Direct [REDACTED] to provide compensatory education services for the loss of FAPE during the past 2 years, including but not limited to
 - a. Tutoring for one hour per week for at least two years, with the provider, time and location selected by parents.

- b. Social work services for one hour per week for two years, by a provider and at a location selected by parent.
 - c. Provision of a laptop computer with appropriate software, at district expense, and provision of direct support in the use of AT resources for 60 mpw for one year.
6. Direct [REDACTED] to convene an IEP meeting that will consider results of evaluations and implement the foregoing relief.
 7. Assess reasonable attorneys' fees incurred by parents in pursuing this due process hearing.
 8. Other relief determined after the receipt of additional school records or other evidence at hearing.

District's Requested Remedies

The remedies being sought by the District are:

1. That the Student's current educational placement be determined his LRE.
2. That the relief being sought by the parents be denied.

Witnesses

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

1. [REDACTED] Case Manager/Counselor, [REDACTED]
2. [REDACTED] Principal, [REDACTED]
3. [REDACTED] School Nurse, [REDACTED]
4. [REDACTED], General Education 6th Grade Teacher, [REDACTED]
5. [REDACTED] Speech Language Pathologist
6. [REDACTED] Speech Language Pathologist
7. [REDACTED], School Psychologist, [REDACTED]
8. [REDACTED], Principal, [REDACTED] Academy
9. [REDACTED] General Education 4th Grade Teacher (assigned to [REDACTED] for student's 4th grade year, now at [REDACTED])
10. [REDACTED], Social Worker, [REDACTED] School
11. [REDACTED], Resource Teacher for Special Education, [REDACTED]
12. [REDACTED] Clinical Psychologist and School Psychologist
13. [REDACTED] Mother
14. [REDACTED] Counselor/Case Manager 2007-2009, [REDACTED]
15. [REDACTED], Student (was introduced briefly but did not offer sworn testimony)

Documents Offered Into Evidence

Both parties presented extensive binders of documents into evidence. The District submitted exhibits page numbered 1 through 217. Parents submitted exhibits page numbered 1-450.

Burden of Proof

As the moving party, the parents have the burden of proof [REDACTED]

Finding of Facts

Student is a 12 year old boy going on 13 in August, who is described as cooperative, friendly and pleasant. He has attended [REDACTED] since kindergarten. Born prematurely via emergency C-section, student was hospitalized in the NICU for about a month. He was diagnosed with asthma and allergies, eczema and has had repeated ear infections. He has esotropia, for which he wears glasses. He said his first words at one year, walked at two, and was toilet trained at three or four. In 2008, he was diagnosed with ADHD and put on medication.

Student was retained in kindergarten, and again in 3rd grade. His physician, [REDACTED] wrote a letter November 3, 2008 to [REDACTED] principal regarding development of an IEP by January, 2009. (SD 41) In that letter, [REDACTED] says as of 2004, she was aware of his poor school performance, poor focus and attention difficulties, and referred him to a specialist for further evaluation. His mother requested that an IEP be developed at least three different times between 2005 and 2008, yet no evaluations were conducted, nor were any IEPs developed. In 2005, student was diagnosed with ADHD, prescribed treatment and referred for cognitive and developmental testing.

A consent for evaluation was sent by [REDACTED] principal [REDACTED] to student's mother on 8/21/08. She signed and returned the form on 9/8/08. For reasons no one could explain, no evaluation was initiated until a second consent for evaluation was signed on 1/26/09. At that time, student was seen by the school nurse, social worker and psychologist.

[REDACTED] conducted the initial social assessment on student in February, 2009. (PD 122). She is a [REDACTED] social worker at [REDACTED] has her master's in social work from the University of Illinois in Urbana-Champaign, her LCSW and Type 73. She interviewed both his mother and grandmother, who were concerned because he was in 3rd grade and should have been in 5th grade at the time. Mother had been asking for help since kindergarten, and even had letters from doctors requesting that student be evaluated.

At the time of the social assessment, student was taking Focalin for the ADHD as well as allergy and asthma medication. Student was seeing an outside psychologist weekly for anger, depression and other issues. [REDACTED] determined that because he was already receiving

outside services, he didn't need social work services in school. [REDACTED]. In 2011, [REDACTED] was again part of student's IEP team. She received and reviewed the University of Chicago neuropsychological evaluation report at the resolution meeting in 2011, and still did not recommend social work services for student.

Also as part of that initial eligibility assessment, the school nurse, [REDACTED] evaluated student in 2009. (PD 11, 128). She recommended nursing consult services of 15 mpq to monitor health and medication management. (PD 130)

School psychologist [REDACTED] conducted a psychological evaluation in February of 2009. Student was then found eligible for special education services and an IEP was developed under the category of Learning Disabled.

[REDACTED] was student's 4th grade general education teacher in 2009-2010. She recalled student as mild mannered, but with a temper if he was aggravated such as when one of his classmates took his papers or books. She testified that even though he was in special education, he excelled better than some other students, and she had no academic concerns with him. At the beginning of the year, he was below 4th grade reading level. At the end of the year, [REDACTED] he got a C in reading and a B in writing.

In the spring of 4th grade, in 2010, the IEP provided an increase in minutes for 5th grade year including 420 mpw in both language arts and math. Student was in 5th grade for the first half of the 2010-2011 school year. When he returned from semester break, he was promoted to 6th grade.

[REDACTED] has been a resource teacher for special education at [REDACTED] almost [REDACTED] years. She has general education, special education endorsement and Type 75 school administration certificates.

She has known student since the 4th grade. She described him as articulate, with good expressive and receptive language skills. She says he understands information that's given to him. He is cooperative, considers learning fun, likes challenges, and is a very competitive student in a positive way. She said "I love [student]. He knows that."

She testified that the general education teacher took the lead on drafting goal statements but that team members assist in completing them. On student's reading goal, [REDACTED] was asked what was meant by "student learning a variety of reading strategies" ([REDACTED]). She testified that she taught student to use resources to improve his vocabulary, and to decode unfamiliar words. She taught him to sound out words, do sound blending, and work on basic phonics. She testified his decoding has improved over the last two years, particularly since he has been in three grades over two years and has seen more difficult words.

Collaboration memos [REDACTED] wrote to other staff confirm that she and others were aware of student's decoding and phonologic difficulties. (PD 345, 348). Though she testified that they

always discuss a student's need for assistive technology at an IEP meeting, and they have a variety of AT available at [REDACTED] it doesn't appear that any such discussion took place regarding student until the 2011 IEP was prepared.

She testified that the new strategies they are using to address his reading deficits include visual aids, graphic organizers, vocabulary resources, discussing what he is reading, and looking for background knowledge so he can look up words to clarify the meaning of words.

On IEP progress reports [REDACTED] for the 2009-2010 year, she wrote that he met benchmarks but that his growth in math was not at the level expected. When asked how this was possible, she testified that he could have met his benchmarks but still not be meeting the expected level of what he needs to know. This seems to suggest that at least some of the goals and benchmarks drafted for him were not appropriate, in that even if he met all his goals and benchmarks he was still behind where he should be.

[REDACTED] has been a special education resource teacher/case manager since 2007, and has worked at [REDACTED] School since November, 2010. She was student's case manager in January of 2011. [REDACTED] testified that she went to [REDACTED] and to [REDACTED] who discussed student's Scantron and other test scores as well as his classroom progress, and determined that he should be moved to [REDACTED] 6th grade in January, 2011.

The draft March 2011 IEP was convened over two days, March 17 and March 31. On the 17th, the team was discussing placement. They received the University of Chicago report and reconvened the meeting in order to read it and consider the findings. [REDACTED] testified that the staff was in "shock" at the discrepancies between the University of Chicago report and student's school performance as well as the [REDACTED] psychological report from 2009. She testified that the University of Chicago report showed him performing far below what his academic achievement showed.

[REDACTED] was student's 6th grade social studies teacher for the second half of the 2010-2011 year. Harmon has been teaching for 10 years and holds Type 75 general administration, Type 3 early elementary education and Type 10 reading specialist certifications. She testified that he was engaging, sweet, willing to help, participated in class, and had no behavior problems. His reading was at an O or 4th grade level, but he did not comprehend as well as a 6th grader should. His most recent BAS shows his reading has improved to the S level. Harmon testified that his writing skills are "very basic," though they are improving.

[REDACTED] testified that she had a lower performing class overall with students reading levels ranging from 2nd to 7th grade. As a consequence, they had many accommodations and modifications for the whole class, not just for student. These included extended time, graphic organizers, highlighters, and note books, among others. She testified that he is making progress and his work is improving. He is writing more paragraphs, his Cornell notes have improved, he has fewer misspelled words, and he's socially adjusted and acclimated. He also met standards

on the Scantron and Acuity tests. Harmon attended the March, 2011 IEP meetings, where she commented that he had issues with writing and comprehension, and his service minutes were increased on the IEP as a result. Testimony at hearing established that none of the [REDACTED] staff are familiar with nor using Orton Gillingham, Lindamood Bell, or Wilson reading instruction methods.

Throughout student's education, Mother has been concerned that his grades--mostly A, B, and C-- were not matching the work she saw him doing. She knew he was struggling in both reading and math. She was concerned that he continued to get good grades yet every year was required to attend summer school even though he never failed a class. Mother pursued and obtained a private neuropsychological evaluation through the University of Chicago in February, 2011. A report on that evaluation was provided to the IEP team, which convened March 17 and 31, 2011.

Educational Achievement and Grades

Student has had something of a mixed bag with his grades through the years. As early as kindergarten, his teacher noted he had problems with blending sounds to read words. (PD 322). On his 1st grade report card, his teacher noted that he needed lots of help with reading comprehension and fluency. (PD 320).

On his first 3rd grade 15 week progress report, he had Bs in Reading, Learning Technology, and Social Science; As in Art and Library Science; and Cs in Math and PE. (PD 385). On his 35 week progress report that same year, he was earning Cs in Reading, Writing, Math and Learning Technology; and Bs in Science, Art and Library Science. (PD 284). It is unclear why student was required to repeat 3rd grade. He received no failing grades, and on his 3rd grade ISAT (PD 267) Student met standards in both reading and math; however his third grade teacher for his first attempt at that grade was concerned with his handwriting and his oral reading abilities. (PD 286).

On his 4th grade 25 week report, (PD 283) student was earning As in Social Science, Art and Library Science; Bs in Reading, Writing and Science; and a D in Math. On his 3rd marking period IEP Report Card 4/20/10 (PD 281), teacher notes that student met his goals and objectives for the quarter; however, she also noted that his growth in mathematics hadn't reached the expected level of improvement.

On his 5th grade reading assessment he scored 75%. On the 6th grade, he scored 56%. (PD 166) In 5th grade Math he was at 50%, and 6th grade Math 45%. ((PD 168, 171). Student's math assessment scores improved from a 2203 in 2009 to a 2440 in 6th grade (PD 174); however, his scores remained below district averages.

Student's science scores tell a different story, however. Not only have his scores increased significantly from 2009 when he scored 2379 to 2011 when he scored 2521, but in

three of his last four science assessments, his score was actually ABOVE the district average. (PD 177). Similarly, in reading, student scored above the district average twice out of four assessments. (PD 178). His scores went from a 2297 in 2009 to a 2596 in 2011.

After being moved into 6th grade for the second half of the 2010-11 school year (PD 275) student's 6th grade 25th Week progress report reflected Cs in Reading, Writing, Mathematics, and Social Science; a B in Science; and As in Art and Library Science. His reading level improved from "O" on the BAS to "S" by the end of the 2010-2011 school year.

PSYCHOLOGICAL EVALUATIONS

Though there was testimony of a psychological evaluation performed when student was in kindergarten, results of that evaluation were not submitted into evidence. The two psychological evaluations that were submitted into evidence were the one prepared by [REDACTED] CPS school psychologist, in February 2009, and the one prepared by [REDACTED] at the University of Chicago in February, 2011.

2009 Psychological Evaluation (PD 116-121)

[REDACTED] is the school psychologist assigned to [REDACTED] School. She holds a Type 73 certificate, obtained her master's degree and Ph.D. from Western Michigan University, and has practiced for about 20 years. She conducted a psychological evaluation of student in February, 2009, and shared her report at the IEP meeting 2/20/09 (PD 116). She testified she knew he had ADHD.

She administered a WISC (Wechsler Intelligence Scale for Children) and a WIAT (Wechsler Individual Achievement Test (PD 118-119), which she used because she was comfortable with the instruments. His full scale IQ was 93, verbal comprehension 106 and perceptual reasoning 88, all within the average range.

Test	Composite Score	Percentile	Level
Verbal Comprehension Index	106	66	Average
Perceptual Reasoning Index	88	21	Low Average
Working Memory Index	91	27	Average
Processing Speed Index	91	27	Average
Full Scale IQ	93	32	Average

She testified that she didn't administer the pseudo word decoding subtest because she looked at the word reading test and "he was able to sound out to some degree," so she didn't feel it was necessary. His score for word reading was 72, below average. His reading comprehension score was 100, in the average range. When asked whether the mistakes in

pronunciation he made during testing, such as saying “bat” instead of “ball” (PD 117) suggested phonological difficulties, she admitted that they could.

She also administered the WIAT-II. His written language score was a 70, in the 2nd percentile. She didn’t test written expression because she used his writing sample, and didn’t use the WIAT-II protocol for evaluating the writing sample.

Test	Standard Score	Percentile	Grade Equivalent
Word Reading	72	3	2:8
Reading Comprehension	100	50	5:8
Numerical Operation	66	1	3:0
Math Reasoning	78	7	3:8
Spelling	70	2	2:1

She did not complete the Ability Achievement Discrepancy Analysis (PD 218) to test for the existence of a learning disability, because she said she looks at the IQ score; if the IQ score is commensurate with the student’s academic scores, the child doesn’t have a problem, but if there is a severe discrepancy of at least 14 points there is a problem. She admitted there was a severe discrepancy in student’s case.

She testified that the section on oral language, listening comprehension and oral expression were not administered because “typically the speech language person does those.” No speech language assessment was conducted at the time, nor did she recommend one. (PD 190). She didn’t administer reading comprehension, target words or reading speed supplementals, saying she wasn’t concerned with his fluency, she was more concerned with comprehension. Various elements of the test protocol were either not filled out, subtests weren’t administered, or both, such as reading comprehension (PD 213), cancellation, coding and symbol search (PD 243, 249, 254-255).

When asked whether the initial eligibility team in 2009 considered whether or not student would qualify for services based on ADHD, Skinner said “we try not to share that with a lot of parents because a lot of parents will then say the child is ADHD.” She then admitted that there was evidence that ADHD negatively impacted student’s learning.

She doesn’t remember participating in student’s initial IEP though she signed in. She also attended both 2011 IEP meetings (PD 21). She received the evaluation from University of Chicago (PD 146). The IEP team didn’t adopt or reject any of the recommendations in the report. (PD 25, 153-154).

In her summary (PD 120) Skinner noted that student scored within the average range of intelligence on the WISC-IV, that his strengths are verbal skills, and challenges are nonverbal. He is strong in reading comprehension and has difficulty with word reading, mathematics calculation and written expression. She recommended he be found eligible under the category

of Learning Disabled. She also noted that student might benefit from a Leap Frog, a self checking reading device [REDACTED] and, she thought that student could benefit from outside counseling (again at no expense to [REDACTED] for his "fragile academic confidence." Written expression, basic reading, and math calculation were noted as areas where there is a significant discrepancy between his achievement commensurate with his age and ability. (PD 107).

2011 Psychological Evaluation

Even after the IEP was implemented, student's mother remained concerned about his inattention, disorganization, learning ability, academic performance and social-emotional functioning. Though student continued to get primarily As, Bs and Cs, his mother said he was not reading well, didn't understand what he was reading, and wasn't doing well in math. She continued to believe that his grades did not reflect his actual learning.

As a result, two years after the initial [REDACTED] psychological evaluation, Student's mother took him to the University of Chicago for another psychological evaluation. A comprehensive battery of tests was administered, and a report prepared (PD 146). This report was provided to the IEP team and considered at the March 31, 2011 meeting. It doesn't appear that any of the recommendations contained in this report were either expressly adopted or rejected by the IEP team.

As in the 2009 evaluation, a WISC-IV was completed as part of the University of Chicago evaluation.

Test	Score	Percentile	Level
Verbal Comprehension	98	45	average
Perceptual Reasoning	75	5	borderline
Working Memory Index	97	42	average
Processing Speed	70	2	borderline
Full Scale IQ	81		

The evaluator notes that this full-scale IQ score "is an underestimate of student's overall skill development given that it is a summary across significantly varying scores." (PD 147). His verbal comprehension test showed strong performances on tasks tapping vocabulary, verbal analogical reasoning and ability to share social knowledge. On perceptual reasoning, he had significant difficulty with some aspects of nonverbal problem solving, struggles with visual analysis and attention to detail. On processing speed he was most challenged by tests of visually presented information (PD 148). Additionally, phonetic decoding and sequencing of verbal information across time were found to be weak. (PD 149). His performance on measures of learning and memory for verbally presented information ranged from borderline to average.

The evaluator used the Woodcock Johnson Tests of Achievement 3rd Edition which revealed borderline skills on reading decoding and comprehension, math and written language. Math calculation and phonetic decoding were the most difficult for him. Executive function tasks such as organization, planning and inhibition were impaired. In reading, student scored from borderline to average, as he was able to use context when reading to guide comprehension and retention. In spite of the deficits, the evaluator noted that certain subtests of reading, math and writing fluency showed areas of strength for student as well.

In total, however, student's scores indicated that his knowledge and skills were well below age level expectations. The evaluator found student to have evidence of ADHD, struggles with sustained attention in complex situations, and significant executive functioning challenges impacting his learning and memory. In addition, he found that student had the following learning disorders: Reading Disorder DSM-IV-TR code 315.00, Mathematics Disorder DSM-IV-TR code 315.1, and Disorder of Written Expression DSM-IV-TR code 315.2.

The evaluator made a series of recommendations, including that student should continue to have a well developed IEP in place that focuses on providing support and remediation for his cognitive and learning difficulties. Specific recommendations included:

- a. A supported learning program where educational goals are highly articulated and instruction is self-paced and sequential, in a primarily LD oriented program.
- b. Ongoing opportunities to work at an independent pace, particularly on complex multi-step assignments. Extended time of time and a half, multiple deadlines for extended assignments and breaking down of learning tasks recommended.
- c. Difficulties with attention, memory and learning cause him to miss important instruction during class. He will benefit most from having information presented to him both visually and audibly, which will require repetition and mastery.
- d. Extra help in organizational skill development and instruction in strategies for approaching new material, working in a resource based program that takes place daily and focuses on problem solving, outlining and organizing ideas.
- e. Greater structure should be provided with organization, verbally planning out what is required and guiding him to develop an outline, make "to do" lists and use organizer notebooks and folders.
- f. He would benefit from software for writing and organizing knowledge including webbing program called Inspiration.
- g. Access to peer notes is advised, outlines of material covered in class, and use of a tape recorder to keep track of activities and assignments.

- h. Student should re-teach lessons and have difficult concepts broken down into smaller steps.
- i. Structured tutoring program for extra support in reading and math problem solving, with a tutor trained in Lindamood-Bell.
- j. Reading for the Blind and Dyslexic can support text review by using tape recorded materials.

Speech Language Assessment 5/9/2011 (PD 139)

[REDACTED] is a speech language pathologist licensed in Illinois. She earned her master's degree and Ph.D from Northwestern University in speech language pathology, child language, alternative and augmentative communication. She evaluated student and reported her findings. (SD 97, PD 140).

She administered the PPVT, a test of single word receptive vocabulary (SD 98); student scored 97, solidly in the average range. Second, she administered the expressive vocabulary test, again he scored in the average range with an 86. Next was the Word Test II Adolescent, a test of expressive vocabulary and semantic language skills. He scored 76, well below average. (SD98, PD 141).

On associations, receptive vocabulary, synonyms, and antonyms, he was average or low average. Semantic absurdities, definitions and flexible word use were all significantly below average. He had trouble looking at a target sentence, determining what the error was and fixing it. He had trouble defining words even when he knew the word. On flexible word use, which measures high level language skills, student was unable to answer any question correctly.

On the TAPS III, he scored average on discrimination, the ability to decide if two words are the same or different. However, on phonological segmentation and blending, he had significant difficulty. His number memory is average, but word and sentence memory decreased. On cohesion, where the examiner reads stories and student has to comprehend and answer questions, he was solidly within the average range.

On the TOWL (Test of Written Language), he wrote a story (SD 105) which she called "deceptively average" since he scored high based on the vocabulary he used, which is his strength. The story itself, which he was required to create based on a picture, was "not very good."

In addition to the speech language assessment, [REDACTED] conducted an Assistive Technology assessment. She gave him two 6th grade level passages to read out loud. He was unable to read many of the key words to understand the meaning of the passages. When he got to an unfamiliar word, he was unable to sound it out. He also omitted and

transposed words. [REDACTED] testified that she was "blown away" that he scored a 75% on the quiz.

She then tested him using screen reader technology. He understood what he was reading much better, and scored 87.5% on the follow up quizzes after using the screen reader. She also used two components of a program called SOLO 6, called Write Out Loud and CoWriter. Using these programs, he retok his spelling test and scored 100%. (SD 106).

She noted that his language deficits are not of recent onset or origin, and that vocabulary is a strength for him, but that he has higher level language deficits. Her recommendation was 45 mpw of direct speech and language services to address his deficits incorporating programs like Earobics, Word Maker, and Lexia which he can do independently on a daily basis. On assistive technology, she recommended SOLO 6 Write Out Loud and CoWriter as well as a laptop, and training for student and staff on the technology.

Due to the similarities in his profile from 2009 to 2011 she said the need for speech and language was clearly evident in 2009, and indications of a need to be evaluated for assistive technology given his trouble with reading, writing and spelling. She recommended an additional 30 mpw of speech and language and 30 mpw of assistive technology support as compensatory services. She testified that she charged between \$500.00 and \$700.00 for her services doing the evaluation and \$200 per hour to testify.

Records Review (PD 134)

[REDACTED] is a clinical psychologist and school psychologist, who also conducts evaluations and record reviews. At the request of student's counsel, she reviewed his records and conducted a brief classroom observation. (PD 134-138). Along with medical records and other documentation, [REDACTED] reviewed the evaluations done by [REDACTED] speech/language and AT evaluations, and the University of Chicago neuropsychological report.

She conducted a classroom observation of him in his special education class during a reading lesson, where [REDACTED] was using a 7th and 8th grade text titled "Elements of Literature." [REDACTED] noted that Peter used a variety of techniques, provided structure and repetition, and that student had no difficulty paying attention, though he was very quiet. She then saw him in his mainstreamed social studies class where the kids were getting ready for a play. She saw him hang crepe paper at the teacher's request, and involve and lead other students in the task.

During her testimony, she concluded that the [REDACTED] psychological evaluation conducted in 2009 should have included many of the omitted subtests, which would have provided a more complete picture, and that in her opinion, [REDACTED] does a minimal amount of testing. In particular, she would have done the decoding subtest (PD 190) since student has always had difficulty with

decoding, as well as spelling, written expression and oral language. Because of some scoring errors in the protocols as well as the omitted tests, [REDACTED] concluded that the reliability of the 2009 psychological evaluation was called into question. (PD 240, 241, 245). She spent 5 or 6 hours in records review, charging \$150.00 and charged \$250 per hour for testimony at hearing. She made a variety of recommendations at the conclusion of her review (PD 137-138) which were similar to those contained in the University of Chicago evaluation.

IEPs and IEP MEETINGS

February, 2009 (PD 90)

Student's first IEP was developed on February 20, 2009 when he was found eligible under the category of Learning Disabled. He was in 3rd grade for the second time. At the time student's Word Reading was 2:8, Spelling 2:1 and Math Reasoning 3:8.

Parent was concerned that student wasn't retaining information, had attention deficits and low self-esteem. (PD 91). Psychological, nursing and social assessments were completed. (PD 94). Nursing consult of 15 mpq was recommended for health issues and medication management. (PD 95). Various modifications and accommodations were recommended, including extra time on assignments and homework, extra time on ISAT, open book testing, models, visual aids, and others. (PD 96-97)

For Reading Comprehension, his present level of performance was that he could read age appropriate material and had good comprehension skills. He could identify main ideas and recognize basic literary elements of character, setting and plot, using graphic organizers. He was able to complete his work in the time allotted all students. He had difficulty with word reading and word meaning on long passages, and had difficulty with spelling. This was found to negatively impact his ability to read and provide an extended response to questions following the reading.

The measurable annual goal for reading comprehension was: student will be able to use a variety of reading strategies to improve word reading and vocabulary skills and provide an extended response to questions following reading at the 80% mastery level. Benchmarks were: student will be able to decode words comprehend unfamiliar words using prefixes, suffixes and root words at the 80% mastery level; student will be able to develop strategies to clarify meaning, context clues and other resources including dictionaries and thesauruses at the 80% mastery level; student will be able to establish purpose for reading, ask questions and provide an extended response to questions following reading at the 80% mastery level.

In math, student's present level of performance was student is able to add and subtract whole numbers without regrouping. He can use a calculator and timetable chart for basic multiplication facts, and understands division of single digits. He had trouble with math

concepts, using comparisons, fractions and decimals, as well as math problems involving interpretation or multiple steps.

His math measurable annual goal was to be able to add and subtract whole numbers with regrouping; make comparisons using symbols of whole numbers, fractions and decimals; and solve two-step word problems at the 80% mastery level. Benchmarks were student will be able to add and subtract whole numbers with regrouping, compare and order whole numbers at the 80% mastery level; student will be able to solve problems with fractions and decimals at the 80% mastery level; student will be able to solve one and two step word problems at the 80% mastery level.

Student was receiving 150 mpw in both language arts and math direct instruction in separate class. (PD 100). He received accommodations on assessments (PD 102), but was graded using standard criteria.

March, 2010

Student's second IEP was developed on 3/18/2010. (PD 50, PD 69). He was in 4th grade at the time. He enjoyed reading and math, and showed great effort in completing his assignments. He was cooperative, loved participating in classroom discussions, and was knowledgeable on current events.

He was still having difficulty with reading comprehension and still in need of academic support for both reading and math. His reading at the time was at the lower 4th grade level, and his math skills were at the lower 3rd grade level. He was earning a D+ in reading, a C in math, and Scantron assessments in the fall of 2009 showed he was at 3.5 in reading, 3.1 in math, and 3.8 in science. On the spring 2010 Scantron, he improved to a 4.3 in reading, but decreased to a 2.9 in math and 3.3 in science. Parent concerns remained the same—that he get the academic support he needed and that the school communicate with her regarding his progress.

As with the 2009 IEP, a variety of accommodations and modifications were recommended, including: verbal directions, yes/no questions, offer choices for responses, extra response time in class, extended time for completion of class assignments and homework by 20%, explain directions and give concrete examples, test one concept at a time, allow use of tape recorder and computer, walk by student's desk to check for accuracy every 15 minutes, ask student to repeat directions to confirm understanding, provide visual cues and guides, provide motivation and verbal rewards.

His present level of performance in language arts/English/reading was that he was reading at a lower 4th grade level with good vocabulary and comprehension of material in both passages and chapter books, and was able to participate in class discussions. He understood the main idea, and could describe the characters and their role. Above lower 4th grade level, he had difficulty with unfamiliar words and related vocabulary and difficulty using context clues to

determine their meaning. As a result, comprehension on age appropriate material decreased by more than 50%, and he had difficulty with extended responses to questions.

His Measurable Annual Goal for language arts/English/reading was to be able to use a variety of reading strategies to improve reading comprehension. Benchmarks included: student will be able to use a combination of word analysis and vocabulary strategies within context to identify unknown words; student will be able to formulate questions to determine meaning based on plot/character, action or setting; and student will be able to use evidence in text to form and refine questions, predictions, and hypotheses to answer an extended response question. (PD 60-61)

In math, his present level of performance was that he could perform computational math problems using the operations of addition, subtraction, multiplication, and division using whole numbers and could use mental math, paper and pencil or a calculator. Multiple step word problems were difficult and he needed support with solving problems using whole numbers, fractions and decimals.

His measurable annual goal was to be able to demonstrate a sense of numbers and their representations in a broad range of practical settings. Benchmarks included: student will be able to differentiate how fractions are used as part of a whole, location on a number line, and division as a whole number; student will be able to show equivalent representations of a number by changing from standard form to expanded form, fraction to decimal, decimal to percent; and student will be able to develop and use strategies for solving multiple step word problems.

Student continued to be eligible under the category of Learning Disabled. (PD 89). Student was receiving 210 mpw direct service in a separate class for math, 210 mpw direct service in a separate class for language arts/English/reading, and 30 mpw direct service in regular classes for both math and language arts/English/reading. The special education and general education teacher consulted 45 mpw per each subject area above. He was graded using standard classroom criteria in all subjects. (PD 64).

March 17, 2011 and March 31, 2011

Student's 3rd IEP was developed after the due process complaint was filed in the present action, during the course of two meetings held 3/17/11 and 3/31/11. (PD 1). Parent's concerns remained unchanged from those expressed during the first two IEPs.

On this IEP, his strengths are that he is a very motivated reader, able to read short passages at the 6th grade level and comprehends elements of literature, including character, plot, theme, and genre, explicit and implicit main ideas. He is able to write one-paragraph responses to questions following a reading selection, maintaining sentence structure and grammar. He is very conscious of spelling, using dictionaries or thesauruses when he is unsure of a word. Student is a strong auditory learner. He is able to retain a significant amount of information when delivered by lecture followed by group discussion.

Interestingly, most of the very things that are noted to be a strength for student in reading are repeated under the Academic Needs section as areas of difficulty for him. For example, he is noted to be reading below grade level, having difficulty with word decoding and word recognition. He has difficulty identifying elements of character, plot, setting, theme, characterization, story and literary structure. He also has difficulty with extended response questions where he is required to explain character, setting, and theme that contribute to the meaning of a reading selection. It is difficult if not impossible to explain this contradiction.

In writing, student needs support with grammar and structure. He also has difficulty with writing more than one paragraph that requires the connection of ideas and word transitions. He is unable to write a short essay that includes an introductory paragraph, a body and a conclusion. He has difficulty expressing his ideas in written format though he is able to communicate his ideas very well verbally. He will need support in expository writing with the ability to understand important information in text to make connections and support ideas. He will also need support with drawing inferences in comparing characters based on the author's portrayal.

In math, he is strong in numbers and operations. He has strong computational skills and is able to use a calculator to perform the four basic math functions in a broad range of theoretical settings. He is able to convert a mixed number to an improper fraction and an improper fraction to a mixed number. He is also able to add and subtract fractions and mixed numbers with common denominators needed for success as he moves to 7th grade.

In math, student will need support in the following areas: measurement, geometry, data analysis, and pre-algebra concepts. For measurements, he needs support with conversions and the use of the metric system. In geometry, he needs to be able to describe a circle, radius, diameter and chord, understand reflections and rotations of two-dimensional figures. For data analysis, he has difficulty interpreting bar graphs and solving the probability of simple events. For pre-algebra, he will need to be able to solve problems with unknown quantities.

For the first time, it is noted that assistive technology is required for the student (PD 6), and that there is assistive technology recommended in a report. However, the report prepared by [REDACTED] was not created until May, 2011; this IEP was prepared in March, and no evidence of an AT evaluation being conducted prior to May 2011 was presented. There is no AT report included in the IEP, nor is any AT provided.

The accommodations and modifications provided student remain largely unchanged from the prior IEP (PD 7-9); however, extra time for completion of class assignments and homework is increased to 25%.

Student's present level of performance in language arts/English/reading (PD 12) indicates: student is currently performing at the 5th grade reading level, and is able to read age

appropriate material with 85% or greater comprehension. He struggles with unfamiliar words and with decoding. However, he has good reading comprehension skills and is able to perform at a "C" or greater on all classroom assessments. Student is strong with verbally presented information especially with repetition, but has difficulty with visual memory tasks, and needs more organization to improve these skills.

It was recommended that he be in a primarily learning disability environment to accomplish goals in independent reading within a resource program focused on problem solving and organization as well as writing. Extended School Year was recommended to accelerate his skills and to prevent regression. Auditory memory skills will be maintained when he is continuously exposed to high-level instruction. Assistive technology is recommended to support his difficulty with completing tasks that require written feedback; however, no AT evaluation is recommended nor are specific modes or methods of assistive technology recommended for student.

The measurable annual goal in language arts/English/reading is: Student will be able to read a 7th grade passage and comprehend its contents using the literary elements and decode up to 10 new words quarterly at the 80% mastery level; write compositions that contain complete sentences with an introduction, body and conclusion. (PD 12)(PD 35).

Quarterly benchmarks include: student will be able to read a 6th grade passage; decode 10 words with comprehension at the 80% mastery level; and identify the plot of a story including exposition, rising, action, climax, falling action and resolution. Use Cornell note taking method to build sentence structure and write a summary; student will be able to read a 7th grade passage decode 10 new words with comprehension at the 80% mastery level; identify the literary devices of similes, metaphors, personification, and mood; use a graphic organizer or mapping to aid in writing an extended response to reading; student will be able to read a 7th grade passage and comprehend the different genres of fiction, non-fiction, historical fiction, and realistic fiction; and use graphic organizers as an aid to build comprehension to write an essay response. (PD 12-13).

His present level of performance on mathematics is: student is able to perform math computation and word problems at the 5th grade level successfully when given thorough instruction. He has difficulty with interpreting word problems that require extended response. Student would greatly benefit from a tutoring program in math problem solving.

The section notes special education instructor is trained in math interventions that will support student in managing and interpreting what he is being asked in a math word problem. Student will also benefit from a resource special education environment where he can re-teach a lesson for the instructor to observe him verbalize his ideas and see if he comprehends difficult concepts. (PD 14).

His Measurable Annual Goal is that he will be able to apply math problem solving strategies in broad range of practical settings using 7th grade concepts: fractions, whole

numbers, inverse operations, and evaluating expressions. (PD 14) (PD 37). Quarterly benchmarks include: student will be able to visualize and solve math word problems at the 6th grade level with the use of diagrams or picture representations with 80% mastery; student will be able to use 7th grade concepts to solve one and two step problems involving whole numbers, fractions, and decimals using addition, subtraction, multiplication and division at the 80% mastery level; and student will be able to use 7th grade concepts to solve one and two step problems involving inverse operations, and evaluating expressions at the 80% mastery level. (PD 15)

The IEP provides for 300 mpw direct services in a separate class for language arts/English/reading and 300 mpw direct services in a separate class in mathematics. (PD 16). It also provides for a modified grading scale in biology & physical sciences and social sciences. (PD 17, PD 41). Further, it provides for consult/collaboration between the special education and general education teachers 30 mpw in language arts/English/reading, biology & physical sciences, and social sciences. (PD 39). It also provides for ESY 5 weeks, 300 mpw language arts/English/reading, and 300 mpw mathematics. (PD 18, PD 42). Student was once again found eligible under the category of Learning Disabled on 3/31/11. (PD 44).

After the 3/31/11 meeting, the only change to the IEP was to note that the University of Chicago report had been done, and to include a revision to Section 7 (PD 25) with his Woodcock Johnson results:

Subtest	Raw	SS	AE
READING			
Letter Word Identification	41	72	8-4
Reading Fluency	36	82	9-4
Passage Comprehension	25	76	8-1
Word Attack	5	64	6-10
Broad Reading	72	3	8-5
Basic Reading	66	1	7-7
WRITING			
Fluency	14	80	9-3
Writing Samples	10c	78	8-2
Broad Written Language	75	5	8-7
Written Expression	75	5	8-8
MATH			
Calculation	13	66	8-7
Math Fluency	53	80	9-2
Applied Problems	32	84	9-2
Broad Math	73	3	8-11
Math Calculations	66	1	8-8

PD 28: Differences to accommodations and modifications include 20% extended time for work in art, library and computer, and 25% in other subjects; additionally, checking for accuracy every 10 minutes instead of every 15.

IEP Report Cards

Student's progress toward his IEP goals was noted on his IEP report cards (PD 45) for reporting periods 6/2010, 11/2010, 2/2011, and 4/2011. Student was "making expected progress" on all goals and benchmarks. On his 11/2010 benchmark it is noted that "he is able to formulate at least 10 questions in reading a chapter and answer the questions with an extended response." In the draft IEP prepared 3/31/11, however, it is clear that extended response answers to reading continue to be a challenge for him. In the 2/2011 benchmark comments, it is unclear what progress he made in answering extended response questions, as the comments don't relate specifically to that quarter's benchmark.

On math, student was noted to be meeting all his benchmarks. On his 11/2010 benchmark, he was to be able to show equivalent representations of a number by changing from standard form to expanded form, fraction to decimal and decimal to percent. He was making expected progress, and was able to change numbers to expanded form with 100% accuracy, and fractions, decimals and percents with 80% accuracy.

Academy

is the Principal of Academy, where she has been since the 1970s. is a private therapeutic day school which has 100 students and 45 staff. There are 4 occupational therapists, a speech pathologist, a social worker, a school psychologist, assistive technology staff and reading specialists. At they personalize the curriculum based on the needs of the child and how they learn.

staff met student and his mother. They reviewed the psychological reports from and University of Chicago, the speech/language evaluation by and the records review summary by and found him appropriate for placement at

At 75% of the students have a learning disability like student. is known for reading remediation and working with individualized curricula based on the areas in which the child needs further development.

The staff at does not believe that student would be better served at or another therapeutic day school. stated that placement in such a school would further disable him, and would not be his LRE. She stated that when he transferred from 5th to 6th grade student's self esteem and self confidence shot up. He began to like school and he

became a happier learner. [REDACTED] recalled discussing student's LRE, and that the recommendation was general education with special education support for math and reading. The team didn't think private day school would be beneficial for student, that his performance didn't justify it, and that socially he was doing well at Scott Joplin.

Conclusions of Law:

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

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

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

Failure to Evaluate

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

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

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

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

In *Hibbing v. JT*, (D.C. Minn. 2006), the administrative law judge determined that the school’s evaluation was inadequate because the evaluation “did not sufficiently review the Student’s previous assessments, had marginal observational data, and was missing significant data.” P 10.

In this case, it is clear that in 2009, no speech language, occupational therapy or assistive technology assessments were performed in spite of clear indications that these examinations were needed. It is equally clear that the psychological examination conducted by [REDACTED] was wholly inadequate in that tests were inadequately scored, the protocols were not followed, and subtests were not administered that should have been. Additionally, [REDACTED] testimony showed something of a bias against an ADHD diagnosis, which may have prevented her from fully exploring the impact that the disability may have had on student’s ability to access his education.

It is equally clear that the private evaluation conducted at the University of Chicago in early 2011 was totally ignored by the IEP team that convened on March 17 and 31, 2011. Though [REDACTED] testified as to the “shock” they were in from seeing the report, it is clear from the testimony of [REDACTED], [REDACTED] and [REDACTED] that not one of them placed any credence whatsoever in the findings or recommendations in that report, nor did they discuss doing any other evaluations or collecting any data to either confirm or disprove the findings in the report. Instead, they basically ignored it, except to include a mention of the fact that it was done in the draft IEP.

This failure clearly violates the first prong of [REDACTED]. It is clear that without adequate evaluative data, a proper IEP cannot possibly be developed. It necessarily follows that any IEP that flowed from the flawed evaluation conducted in 2009 cannot possibly hope to confer meaningful educational benefit; however, it is appropriate to examine the IEPs in any case.

An IEP Reasonably Calculated to Confer Educational Benefit

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

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

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

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

In *Nein v. Greater Clark County School Corp.*, the student's IQ score dropped twenty points in three years but the district didn't make any changes to the IEP to address the change. 95 F.Supp 2d 961, 972. The court held "that where a child with a severe learning disability but significant potential makes no transferable progress in three years and where there was no indication the public school was ready and able to change direction, the limit of due weight and judicial deference to school authorities have been exceeded." *Id.* at 975. The Court also rejected the argument that the Student's grade promotion and good academic grades were necessarily evidence of progress because the student was "graded on a modified scale and his quizzes and tests were modified, often being read to him aloud because he was unable to read them." *Id.* at 977.

The Supreme Court in *Rowley* noted that not every "handicapped child who is advancing from grade to grade in a regular public school system is automatically receiving a 'free appropriate public education'." *Rowley footnote 25*. In *Hall v. Vance*, the Circuit Court determined that "the District court did not err in discounting [the Student's] promotions in light of the school's policy of social promotion and [Student's] test scores and independent evaluations." 557 IDELR 155, P. 6.

The District Court upheld a hearing officer's determination that the lack of baseline data resulted in a deficient IEP where the Present Level of Academic Achievement and Functional Performance was contradictory and did not provide concrete quantified data. *Woods v. Northport*, 56 IDELR 203, P. 27. Specifically, the IEP omitted information about the student's behavior, information from independent evaluators regarding recommendations for direct therapy, instructional material, and information regarding extremity range of motion, tripod grasp, and gait. *Id.* at 14.

As indicated above, the lack of comprehensive data on this student's particular strengths, limitations, disabilities and challenges has led to the creation of IEPs where the same challenges are noted year to year without fail. While by all appearances he gets good grades

and performs well on most assessments, he is at best two years behind grade level if not more despite extensive accommodations and modifications. There is no evidence that his promotion to 6th grade halfway through the last academic year was based on him being actually academically ready for work at that level; this is borne out by the fact that his grades went down, even as his self-esteem apparently went up.

While it is abundantly clear that this student has teachers who care for him and want him to succeed, without proper evaluations, baseline data and an appropriate IEP, he will remain below age and grade level achievement throughout his education if something does not change.

Least Restrictive Environment

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

The LRE is the one that allows the disabled child to be educated with her nondisabled peers, known as mainstreaming, to the greatest extent appropriate. *Beth B. v. Mark Van Clay*, 282 F.3rd 493, 496 (7th Cir. 2002).; *Casey K. v. St. Anne Comm. High School District 302*, 46 IDELR 102 (DC Central Dist. IL 2006). While it shows Congress' strong preference in favor of mainstreaming, it does not require, or even suggest, doing so when the regular classroom setting provides an unsatisfactory education. *Beth B.* 282 F.3d at 497.

In *Beth B.*, a student's placement in a regular education classroom was not appropriate despite the regular education classroom being a less restrictive environment. The Student had "virtually nonexistent" academic progress and was making limited developmental progress, despite being provided with aides, communication devices, computerized books, and an individual curriculum. *Id.* at 499. The court also noted that the proposed placement was at an acceptable point of the continuum of services because it would provide "reverse mainstreaming" opportunities, and that the placement also included "time spent with nondisabled peers in nonacademic classes." *Id.*

In this case, despite an increased number of minutes of direct instruction in a separate class, extensive accommodations and modifications, student still has the same struggles with reading and math that he had prior to his first IEP being developed.

While counsel for the District argued that because the due process complaint was filed just days after the University of Chicago evaluation was complete, and that student's witnesses were, in effect, modeling their recommendations after the requests for relief in the IEP, I find no merit in that argument. This student has struggled throughout his academic career, his mother has sought out help time and again. The University of Chicago report, the speech-language, and assistive technology evaluations were all credible, thorough and complete assessments of a child who appears to have a tremendous amount of strengths that need to be capitalized on, along with a significant number of deficits to be ameliorated if he is ever going to achieve any meaningful academic success.

Remedies

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

The compensatory education award "should aim to place disabled children in the same position they would have occupied but for the school district's violations of the IDEA." *Reid v. Dist. of Columbia*, 401 F.3d 516, 523 (D.C. Cir. 2005) see *Petrina W*, 53 IDLER 259, p.10 (approving of the analysis in *Reid*). Designing [the child's] remedy will require a fact-specific exercise of discretion. *Reid.*, 401 F.3d at 524. "Just as IEPs focus on disabled student's needs, so must awards compensating past violations rely on individualized assessments". *Id.* The award of compensatory education requires a "flexible, individualized approach". *Petrina W.* at P. 4. Furthermore, the inquiry must be "qualitative, fact-intensive, and above all tailored to the unique needs of the disabled student". *Branham v. District of Columbia*, 427 F.3d 7, P 2 (Citing *Reid* at 524)

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

In determining the appropriate amount of compensatory education for a student who had been denied a FAPE for 27 months, the District Court noted that the Seventh Circuit had not ruled on the issue of how to formulate compensatory education. [REDACTED] P. 3. However, the Court rejected "rote, day-by-day formulas" for determining compensatory education awards. *Id.* at 4. The Court noted that the question was not how much compensatory education it would take to place the student at the functional level of a young adult, but rather the amount of

assistance required to put the student back in the position she should have occupied if she had not been denied a FAPE. *Id.* at 5.

In this case, the failure to conduct appropriate evaluations and to develop and implement appropriate IEPs has denied this student a free and appropriate public education. As a result, an award of compensatory education is appropriate.

It is Ordered That:

1. That [REDACTED] be directed to pay for an independent educational evaluation to assess all potential areas of student's learning disabilities within 30 days of the date of this order, including:
 - a. comprehensive assessment by an occupational therapist
 - b. social assessment by a licensed social worker
 - c. reimbursement for the speech language and assistive technology assessment conducted by [REDACTED]
2. That [REDACTED] convene an IEP meeting to develop an IEP implementing the recommendations contained in the independent educational evaluations as well as in the University of Chicago neuropsychological report within 14 days of the date of receipt of the IEE reports.
3. That [REDACTED] provide and pay for an appropriate placement in therapeutic day school with expertise in working with students with learning disabilities such as [REDACTED] Academy or [REDACTED] school beginning with the 2011-2012 school year.
4. That [REDACTED] provide and pay for related services in sufficient intensity to allow student access to educational opportunity to begin at the start of the 2011-2012 school year, including the following:
 - a. Occupational therapy for 30 mpw to address executive functioning deficits
 - b. Direct instruction in the use of assistive technology equipment and software 60 mpw
 - c. Social work services, individual and group for 60-90 mpw
 - d. Speech language services 60 mpw
5. Direct [REDACTED] to provide compensatory education services for the loss of FAPE during the past 2 years, including but not limited to:
 - a. Provision of a laptop preloaded with recommended software and direct support in the use of the assistive technology for 45 mpw for one year.
 - b. A flexible bank of 160 hours of compensatory services time to be used as determined based on the results of evaluations, which may include additional tutoring, social work, speech-language, or occupational therapy services over the next two years from the date of this order.
6. The District shall provide proof of compliance with this order to the Illinois State Board of Education, 100 N. First Street, Springfield, IL 62777 on or before August 11, 2011.

Right to Request Clarification:

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

Right to File Civil Action

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

The undersigned Hearing Officer certifies that she served copies of the aforesaid Decision and Order upon Parents and District, through counsel, and the Illinois State Board of Education at their stated addresses by depositing same with the United States Postal Service at Chicago, IL via certified mail, with postage prepaid on June 27, 2011.

Dated this 27th day of June, 2011



LINDA MASTANDREA
HEARING OFFICER

