Case Number: 2011-0298
[redacted] **vs.** City of Chicago SD 299
Hearing Officer: [redacted]

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

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SPECIAL EDUCATION SERVICES

Impartial Due Process Hearing Decision
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District Name [redacted] **Phone: 773-553-1000**
Superintendent
Address
Represented by

Parent Name [redacted] **Phone:** [redacted]
Address
Represented by

Date and Timelines
Date of Written Request: 03/24/2011 **Date of Hearing: 09/14/2011 to 9/21/2011**
Date of Pre-hearing Conf: 07/26/2011 **Date of Decision: 10/7/2011**

Summary of Decision

Parent of 17 year old high school student with ADHD and intellectual functioning assessed in the borderline average to mildly impaired range by various psychologists, requested a due process hearing on behalf of her son who was identified as eligible for special education due to a mild cognitive impairment and an emotional disorder at the time of the request. She alleged that Student was denied FAPE by District from March 2009 through the present due to its failure to appropriately assess Student and develop and implement IEPs appropriate to his needs. She sought orders for District payment of private psychological and speech/language assessments performed at her request before the hearing and for additional independent assessments to be performed in the areas of occupational therapy, assistive technology, and vocational evaluations at District expense. She also sought provision of remedial reading instruction and speech therapy, functional behavior analysis and behavioral intervention plan, and for assistive technology, occupational therapy, and a transition plan based upon the requested independent evaluations. Parent requested compensatory educational services in the form of 160 hours of afterschool support in language arts, occupational therapy, speech language therapy, and assistive technology, and 2 years of compensatory social work or psychological services.

Student, Parent, two independent evaluators, staff from the two public high schools and from his current therapeutic day school testified. Hearing Officer declined Parent's request to order services based on evaluations not yet performed or to delay orders regarding requested services until such evaluations could be performed, noting that adherence to the statutory process for requesting and contesting the request for an IEE would have avoided the potential need to convene another due process hearing if the parties disagree on implementation of the recommendations that may be included in the ordered independent evaluations.

HELD: for Parent

ORDERED: 1) District to pay for independent psychological and speech/language assessments, which were performed prior to hearing, and for assistive technology, occupational therapy, and vocational assessments to be performed; 2) Student to receive multisensory reading instruction; 3) Student to receive 60 minutes per week direct speech/language therapy and 30 minutes per week of speech/language consult in his classroom; 4) Student to receive comp ed in the form of 160 total hours of afterschool tutoring and speech/language therapy; 5) IEP to be revised to include measurable goals and objectives addressing Student's identified reading, writing, spelling, and math deficits based on current objective assessment data.

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF [redacted]	)	**ISBE CASE NO. 2011-0298**
v.	)	[redacted]
[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 of District payment for IEE assessments, implementation of an intensive reading remediation program, provision of related services, conduct of a functional behavior analysis and development and implementation of a behavioral intervention plan, assessment for and development of a transition plan, and compensatory education and services. The hearing officer has jurisdiction to hear and decide this matter under *105 ILCS 5/14-8.02a(g)(2010) and 34 CFR 300.512(2006).* The undersigned Hearing Officer has advised the parties that there are and have been no conflicts which have prevented her from conducting a fair and impartial hearing and rendering a fair and impartial decision in this cause.

Procedural History

Parent's attorney submitted a *DUE PROCESS REQUEST AND REQUEST FOR INDEPENDENT EDUCATIONAL EVALUATIONS* on Parent's behalf to District's Superintendent on March 24, 2011, which included, inter alia, the allegation that District failed to conduct adequate assessments of all areas of potential disabilities and that it conducted no formal assessments of student's need for speech language services, occupational therapy, assistive technology, behavior modification or vocational services. (DPHR pp. 1-2) The relief requested therein included District funding of independent educational evaluations, or *IEEs*, in the areas of assistive technology, social assessment, concerns regarding attention and impulsiveness, and occupational therapy. Additionally, the hearing request included a prayer for District payment for a comprehensive vocational assessment by a certified vocational rehabilitation counselor. (DPHR p. 3)

District submitted a written response to the Parent's hearing request on April 4, 2011. Therein, District counsel stated that District had provided Student with a free appropriate public education in the least restrictive environment and that District had conducted proper, valid, and reliable assessments in all Domains considered relevant at the time of Student's triennial evaluation. He stated that vocational, speech and language, and occupational therapy assessments were not warranted at the time of Student's most recent evaluation, and that no compelling evidence exists in support of independent vocational, speech and language , occupational therapy, and assistive technology evaluations. He advised that District would defend its evaluations at hearing. (Response pp. 1-2) District did not submit a request for due process hearing to prove the appropriateness of its own evaluations of Student.

A resolution session was convened on April 6, 2011. The Pre-Hearing Conference date established by the Illinois State Board of Education Special Education Database System was April 25, 2011. However, it was continued upon the joint request of the parties to May 23, 2011. District agreed to placement of Student in a private therapeutic day school, but Parent requested continuance of the Pre-Hearing Conference to July 26, 2011 in order to complete private evaluations of Student. The Pre-Hearing Conference was held on July 26, 2011, and the *Pre-*

Hearing Conference Report, dated July 30, 2011, is incorporated into the record as Hearing Officer Exhibit A. A document entitled *Parent Pre-Hearing Statement*, which was submitted by Parent's attorney on July 26, 2011, advised that Parent had arranged for two independent evaluations, including a psychological evaluation and a speech/language assessment, and that they had been completed and that reports would be provided to District shortly. The relief requested in that Statement included District payment for psychological assessment of Student. (Parent Pre-Hearing Statement, p. 3)

District counsel submitted a document entitled *School District Pre-Hearing Conference Disclosure Statement*, dated April 25, 2011, reiterating its Response to the hearing request. He also submitted a document entitled *Amended Pre-Hearing Conference Disclosure Statement*, dated July 25, 2011, wherein he reiterated District's Response to the hearing request and added that District had agreed to placement of Student in a private therapeutic day school. (Amended Pre-Hearing Conference Disclosure Statement, p. 3)

The ISBE SEDS established a hearing date of June 7, 2011. At a Status Conference held on April 14, 2011, the parties agreed to hearing dates of June 7, 8, and 9, 2011. (See Report of Status Conference dated April 14, 2011) As noted above, however, the Pre-Hearing Conference was postponed until July 26 2011, and at the Pre-Hearing Conference, as noted in the *Pre-Hearing Conference Report*, Parent's attorney requested, and District counsel agreed, to a delay in the Hearing to allow receipt of the private evaluation reports and convening of an IEP meeting to consider them. Hearing was therefore scheduled for September 14, 15, and 16, 2011.

Hearing proceeded as scheduled on September 14, 15, and 16, 2011 at the locations designated in the *Pre-Hearing Conference Report*. Due to the lateness of the hour of completion of witness testimony on Friday, September 16, 2011, it was agreed that counsel could submit their closing arguments in writing, not to exceed 7 pages, on or before September 21, 2011 at 12:00 noon, and a continuance was entered into the ISBE SEDS in order to note the extension of time for those submissions. On October 3, 2011, hearing officer, unable to complete the Decision within 10 days as required by Illinois law, due to the complexity of the issues recited by Parent's counsel and the volume of evidence requiring analysis, advised the parties and ISBE that she needed additional time and would make every effort to complete it by October 7, 2011, which she did.

The Decision in this matter is not being issued within 10 days of completion of the hearing as stated above. Due to the postponements of the Pre-Hearing Conference and hearing at the requests of the parties as noted above, it is not being issued within 45 days of the initiation of the statutory 45 day timeline.

In attendance at the hearing of this matter were Parent, [redacted]. Also in attendance for parts of the hearing was [redacted] attorney for District. The hearing was reported by [redacted] Reporting (312- 368-1228).

25 witnesses were called to testify over 3 days of hearing. The following witnesses were called to testify on behalf of both parties: **Parent** [redacted] District case managers; [redacted] District psychologists; [redacted] District social workers; [redacted] District specialized services administrator; [redacted] clinical professional counselor/family therapist; [redacted] behavior health therapist; SCCS therapeutic day school personnel [redacted] speech/language pathologist (also the evaluating speech/language pathologist in this case), [redacted] Director, [redacted] IEP Coordinator, [redacted] social worker, and [redacted] teacher; and [redacted], private evaluating psychologist. **Student** was called to testify on behalf of Parent only.

In this Decision, documents relied upon in the finding of facts are referenced by the page number of the document preceded by a "P" for Parent's documents and a "D" for District's documents. The documents used by counsel at hearing are listed in the Appendix A attached to this Decision and Order. [1]

[1] Hearing officer requested at the Pre-Hearing Conference that parties submit a joint document disclosure packet or stipulate to use of only one party's document where parties submitted duplicate documents. At the time of hearing, District counsel Barbaric advised that

Parent's counsel submitted copies of 3 Illinois hearing officer decisions and copies of the following federal court decisions in support of his position at the conclusion of witness testimony on September 16, 2011: *Knable v. Bexley*, 238 F.3d (6th Cir. 2001); *Hibbing v. J.T.*, 45 IDELR 92, 106 LRP 12718 (D. Minn. 2006); and *Kevin T. v. Elmhurst*, 36 IDELR 153, 102 LRP 9030 (N.D. IL 2002). On September 21, 2011, both parties' attorneys submitted written closing arguments by email.

Issues

In addition to her hearing request of March 24, 2011, Parent submitted a Pre-Hearing Statement on July 26, 2011 including 2 issues with 15 sub-issues. Based on review of those documents, and as determined at Pre-Hearing and by the evidence presented and arguments made at hearing, the issues to be resolved are as follows:

1. Whether the District performed an appropriate full and individual re-evaluation of Student in the Spring of 2010, prior to development of his May 19, 2010 IEP?
2. Whether District has deprived Student of a free appropriate public education since March 23, 2009 as follows:
   A. Failure to conduct adequate assessments of all areas of potential disabilities;
   B. Failure to develop and implement IEPs appropriate to Student's individual needs including appropriate present levels of functioning, goals and objectives, modifications and accommodations, related services, behavior intervention plan, transition plan, and extended school year services;
   C. Failure to identify and utilize appropriate curricula and effective teaching methodologies?

Findings of Fact

The material facts relevant to the issues in this matter are as follows: Student is a 17 year old male who is currently eligible for special education and the related service of social work in the categories of Mild Cognitive Impairment and Emotional Disorder. He will turn age 18 on January 29, 2012. His current DSM-IV diagnoses include: Bipolar 1 Disorder, Attention Deficit Hyperactivity Disorder, Adjustment Disorder-Unspecified, Mixed Receptive and Expressive Language Disorder, and Reading, Mathematics, and Written Language Disorders. He has borderline average intellect with severe dyslexia and a moderately severe oral language impairment which impact his cognitive functioning and his educational performance. At the time of hearing, he was achieving significantly below grade level in all areas, at approximately the 2nd grade level. (C.J., A.B.; (P3-44, P337, 344)

Pre-2008-2009 Academic and Evaluation History

Student was initially evaluated by District in March 1998 "...due to extremely defiant and impulsive behaviors related to ADHD.... and found eligible for learning disability and emotional disability services....A full-scale I.Q. was not obtained during his initial evaluation due to inattention and disruptive behaviors." (P289)

At the time of his triennial evaluation in 2004, Student's achievement was below the first grade level in reading and spelling and at the mid first grade level in math. There was no current cognitive assessment information on file for him at that time. (P289)

At the time of his triennial evaluation in April 2007, Student was 13 years old and in seventh grade in the District, placed in a self-contained cross-categorical classroom where he failed Reading, Math, and Written Language, all modified at the first and second grade levels. He had an extremely short attention span and disruptive behaviors that impeded his ability to participate in class. (P289) The District psychologist who performed his triennial assessment in April 2007 assessed his cognition using the Wechsler Abbreviated Scale of Intelligence (WASI),

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he would use Parent's documents where possible in questioning witnesses when District documents were duplicative of Parent's documents.

and concluded that his cognitive ability was in the extremely low range, at the first percentile of intellectual functioning, including a full scale I.Q. of 64 and Verbal and Performance I.Q.s of 67. His adaptive skills, measured by the Vineland-II Adaptive Behavior Scales, were also in the low range in Communication, including receptive and expressive language and written communication, Daily Living , and Socialization. (P290-291) Student's teacher rated his school problems in the clinically significant range on the Behavior Assessment of School Children (BASC II)(P291)

The 2007 psychological evaluation also included assessment of Student's academic achievement with the Kaufman Test of Educational Achievement, Second Edition (K-TEA-II)[2]. The school psychologist reported that Student was a non-reader with deficits in decoding and phonetic skills, extreme deficits in reading comprehension, and poorly developed phonological awareness and reading fluency skills. His standard scores of 50 to 53 put him at or below the 0.1 percentile and at the K.10 to 1.0 grade equivalent at that time. (P289) His spelling skills were at the pre-primer level, standard score 55, percentile 0.1, grade equivalent 1.1. (P290) In Math, Student demonstrated an ability to add and subtract with pencil and paper without regrouping, solve a single digit multiplication problem, tell analog time to the quarter hour, count change and understand number order. His standard scores of 66 to 70 placed him in the 1st to 2nd percentile at the 2.8 to 2.9 grade equivalent. (P289-290)

The evaluating psychologist noted that Student's deficits would impact his ability to understand verbal information and to reason with words and express ideas with words in the classroom. (P290) They would also impact his ability to work with visual information in the classroom with time restraints and when tasks required nonverbal reasoning skills for success. (P291) She recommended continued services to ameliorate and remediate Student's deficits, including a behavior modification plan to address peer relations and short concrete directions to be checked for understanding. (P292)

Parent was injured in an automobile accident in August 2007, and the family moved in with her sister, causing Student to attend school in another school district during Student's eighth grade year in 2007-2008. (Parent) An Annual Review IEP meeting was held on April 25, 2008. (D1-22) The IEP document noted disabilities of Mental Impairment and Emotional Behavioral Disorder. (D12) It was further noted that Student had not met any of the four IEP goals previously written for implementation by the District and dated 4/25/07 in the areas of Reading/Language Arts, Social Science, Science, and Math. (D1,17-20) His present levels of academic performance were stated, on his goal sheets, as reading comprehension at the first grade level, writing at the transitional level, and needing support with regrouping, multiplication, and division. (D6-9) Student had been receiving the services of a Class Aide, Guidance Counseling Services, and a Behavior Intervention Plan, a copy of which was included in Student's IEP. (D12-16)

A new IEP, dated 5/30/08, was developed at the end of his 8th grade year in that district, and was to be implemented beginning June 8, 2008, as he transitioned to the local high school district. (D23-48) It identified eligibility due to a Cognitive Disability, referring to a mild mental impairment. (D38) It also noted confusion as to whether Student's eligibility included Emotional Disturbance due to the "incomplete and inconsistent records from (District)." Nevertheless, it did reference Student's "extremely short attention span" and "significant behavioral and emotional difficulties" and his need for social and behavioral support including positive reinforcement and direct teaching of replacement behaviors. (D36) It also noted deficient adaptive behaviors in communication and functional academics and his difficulty communicating his frustrations to staff. (27) His educational needs included instruction in organizational and study skills, test-taking strategies, social skills, and resolution and negotiation skills, as well as an environment to address his behavior, and "significant support" to engage in instruction, including access to a program assistant and a daily teacher contact to monitor progress and provide support and feedback. (D38-39)

[2] See Appendix B attached to this Decision for the District's 2007 and 2010 KTEA scores.

The Background Information provided in the 5/30/08 IEP stated that Student's academic skills ranged from the first to the third grade level, with word identification skills at the first grade level, reading comprehension skills at the third grade level, and, regarding math, that Student was able to add and subtract but was not able to multiply and divide. He could add coins and bills but was not able to estimate change back. He was able to tell time and understand the concept of elapsed time. It was noted that he could write a sentence but that he required assistance with spelling and organization. His extremely short attention span was noted also, as were his attention seeking behaviors and inappropriate language. He was highly motivated by earning points leading to rewards, typically in the form of breaks. He was also provided immediate feedback and direct teaching of replacement behaviors. (D36)

The IEP goals and objectives written for implementation during the Student's 2008-09 school year included 1) improvement of reading comprehension using phonics and word patterns and sequencing events in a story, 2) writing a cohesive paragraph, and 3) writing sentences with correct spelling. He was also to demonstrate functional math skills by 1) solving 2-digit addition and subtraction problems with regrouping and 2) by using the dollar up method when making a purchase. The IEP also included a goal for Student to identify career choices and to explore curricular, extracurricular and career opportunities with staff. (D41)

The 5/30/08 IEP called for Student to receive individual and group speech/language therapy in the amount of 45 minutes per week and group and individual counseling services in the amount of 25 minutes per week, and to participate in a boys social skills class. (D45)

Pursuant to his IEP, Student was to be placed in a program offering a modified curriculum and focusing on developing functional academic skills and vocational skills in the local high school and receive special education instruction in the following special education courses: English I, Reading, U.S. History, Social Science Survey, Applied Mathematics 1, Community Based Consumer Math I, and Vocational Concepts. (D45) He was to have assistive technology devices and services and supplementary aids, including access to a computer utilizing specialized software. He was to receive positive behavioral interventions and supports to address behavior. (D43) He was to receive extended school year services and special transportation. (D48) The IEP included a very brief "Transition Services Plan", which referenced Student's consideration of becoming a carpenter by enrolling in an apprenticeship or on-the-job training, the pursuit of competitive employment, and establishment of his own residence, and provided a link to a *Transition Resource Directory* . (D45-47)

Student's 2008-2009 School Year at High School M

Following the development of the May 30, 2008 IEP, Parent moved her family back into the District in July 2008. She enrolled Student at High School [redacted] in the District, and she provided a copy of the 5/30/08 IEP to A.G., the Case Manager at School M. (Parent) However, a new IEP was developed by staff at High School M, dated 10/1/08, which noted an IEP Conference convened as an Annual Review and for Transition Planning. Although a box next to "Revision to IEP Dated:____" was also checked, it had been crossed out and initialed by A.G. (P145-164) The document identified Student's Primary Disability as a Cognitive Impairment and referenced his eligibility determination as ***Moderate*** *(emphasis added) Cognitive Impairment*, but omitted reference to his Emotional Disturbance as an applicable eligibility determination and did not mention his ADHD. (P145, 148) Only the K-TEA scores from the 2007 triennial evaluation were provided as "Relevant Information".

At the time of the October 1, 2008 IEP meeting, Student was enrolled in the following classes, instructed by special education teachers: World Studies, Algebra, Biology, and Survey Literature. Information regarding Student's classroom performance was gathered from those teachers by [redacted] the teacher who was designated as Student's Service Provider, who made the information available at the IEP meeting. The information gathered indicated that Student did not study or complete his assignments, was tardy for class, left his books in his locker, took notes very slowly, failed tests and quizzes, was easily distracted and did not focus and stay on task, and that his behavior was unsatisfactory, including talking too much, acting out, disrupting other students, challenging authority, and use of inappropriate language. Classroom teachers

recommended that student receive 1:1 attention and instruction, frequent monitoring of his progress, and provision of notes to Student, in addition to seating near the teacher. Student's P.E. teacher reported that Student had been absent only once, tardy twice, and that his behavior was satisfactory. (W.C.; P503-507) Student had 4 minutes to move from one class to the next class. He did not have assistance to help him transition between classes or to prepare for his classes.

The 10/1/08 IEP document included notation of Parent's concerns about Student's behavior and the need for a school setting that could address Student's behavior. (P147) Parent asked for a therapeutic day school at the meeting, but it was denied on the basis that they needed more time to observe Student's behaviors in school, and the Case Manager was advised by the District's Area Office that District could not refer Student to a therapeutic day school because they had not seen the off task behaviors.

The goals included in Student's 10/1/08 IEP in the Language Arts, Social Sciences, Math, and Biological and Physical Sciences all referenced the reading and math scores on the K-TEA given to him in April 2007, showing achievement at the Kindergarten through Grade 2 levels, as his Present Levels of Academic Achievement. They also referenced his talking and fooling around in class and not completing his class work. They did not include any of the goals and objectives from the 5/30/08 IEP directed toward learning to read , write, spell, and develop functional math skills. Rather, they called for him to perform algebraic tasks, i.e. "that he will (sic: no verb included as to what he "will" do) with factors and distributive property, trinomials, differences of square quadratic formula, radicals, and expressions with 50% accuracy", and to study poetry, *Romeo and Juliet*, *Edward Scissorhands*, and *To Kill a Mockingbird*. (P152-155) He was to be graded using unspecified modified criteria. (P160)

The IEP included a Social/Emotional goal directed to Student's difficulty reading and his distraction from classroom learning activities and his disruption of the classroom process and aggravation to his classmates. To address that need, Student was to use self management skills to regulate his emotions and behavior. The Social Worker who wrote the goal felt that 40 minutes per month was sufficient time for him to address this goal. (L.R.; P156) Although the Case Manager invited a school speech and language pathologist to attend the Student's IEP meeting, she did not attend. (; P168))

The new IEP noted that Student did not require a functional analysis and behavior intervention plan for the reason that his behavior did not impede his learning or that of others. (P149) Nevertheless, a document entitled *Functional Analysis & Behavior Intervention Plan (FA/BIP)* was typed and dated 10/1/08. The targeted inappropriate behavior was "cutting class", based upon report of truant attendance patterns, cutting school daily, resulting in failing grades and lack of credits. Student's class cutting was determined to be caused by immature decision making, lack of motivation, *lack of basic skills to support instruction*, and ill-preparation for class. Non restrictive interventions to be used included provision of force choice options, reduction of workload, reward for task completion, and phoning home and enlisting parental participation. Progress on the BIP was to be reported to the special ed office quarterly. Restrictive interventions included implementing ISBE disciplinary procedures and *recommendation of a more restrictive placement.* (P163-164)

The 10/1/08 IEP document indicated that Student did not require paraprofessional support or assistive technology to access the curriculum. (P150) It provided for no extended school year services for Student. (P149) It did not require special transportation for Student. (P161) Modifications and accommodations to be provided "if possible" included seating away from door and windows, books on tape, which Student was to secure from the local library himself, and visual aides. He was also to be provided extra time on assignments and tests, oral testing, placement in peer groups with use of manipulatives and hands on projects, highlights of main idea reading passages, a check of his understanding of the assignment and of his being on task in class, and 40 minutes per month of social work services. (P151)

A Transition Services Plan, dated 10/1/08 and attached to the IEP document, noted Parent's vision that Student was "very hands on", and that he liked to work on the computer and maybe become a carpenter, and also her concern about his anger. It noted Student's vision that

he would like to go to carpenter school. The three Transition Goals were written as follows: (Student) "wants to learn to draw or be a carpenter or class to increase his hands on activities"; (Student) "wants to find a career with his hands on talents for drawing"; and (Student)"lives at home with his Mom, 3 sisters, and 3 brothers. (Student) likes to work with his hands." The Coordinated Set of Activities provided to assist Student in attaining those "goals" did not include any specific classes or training, referencing only that he would be taught in instructional classes, continue to work on his 40 hours of community service, and that the PLAN career assessment was taken in Fall '08 with results pending. (P162)

The placement determination in the 10/1/08 IEP called for 920 minutes per week of special education instruction in a separate special education classroom in Language Arts, Math, Science, and Social Science. The only related service to be provided was 40 minutes per month of social work. Student was to participate in Lunch, Advisory, Music/Band, Art/Drafting, P.E., and World Language with non-disabled peers, with modification or accommodation. (P157)

Student did not show improvement with the IEP and Behavior Intervention Plan developed on October 1, 2008. Parent was responsive to phone calls from Student's Service Provider and from his Algebra teache[redacted] His grades for the semester ending January 2009 included a B in Biology, a D in World Studies, and Fs in Reading in Language Arts, Survey Literature, Freshman Seminar, Algebra, and P.E./Health. (P527)

On February 6, 2009, Student's IEP was revised to include the requirement that Student attend summer school because he failed multiple classes and needed to make up the credit, to provide for special transportation required for Student to attend school due to his disability, and to add "verbally disrespectful" as a target behavior on his behavior intervention plan. The revised BIP noted Student's immaturity and lack of social skills as the antecedents to his disrespectful behavior and required teachers to take anecdotal notes and do write ups for quarterly review to help reduce Student's verbal outbursts. ([redacted] P139-144)

Student was referred by[redacted] who had been the family therapist since December 2008, for a private psychological evaluation which was performed on March 6, 2009. (Parent; [redacted] P378-385) Parent gave a copy of the report of that evaluation to the case manager and the Principal's assistant at School M approximately 2 to 3 weeks after the evaluation. (Parent)

In her report, the evaluating psychologist reported motor activity below normal limits, eye contact adequate, and frustration tolerance fair. Student was polite but somewhat reluctant to perform tasks. He presented as sad. His memory functions were weak across modalities, judgment and insight appeared fair to weak, and attention and concentration poor. Student tended to mumble and speak softly. The psychologist estimated the testing as only a fair estimate of Student's actual functioning. (P379-380)

She administered the Wechsler Adult Intelligence Scale-III (WAIS-III) to assess Student's cognitive functioning. Student attained a Verbal IQ of 70, within the Borderline range, and a Verbal Comprehension index score of 72, also within the Borderline Range. He displayed poor word knowledge/vocabulary. He had below average general knowledge and "hampered" abstract problem-solving skills and mental arithmetic capacity. His visual spatial skills were very limited, with a Performance I.Q. of 64, within the Extremely Low range. His perceptual Organizing Index score was a 65, also at the first percentile rank. He had weak visual spatial problem-solving , visual perception, visual discrimination, and remote visual memory skills and very poor grapho-motor functioning and immediate visual memory. (P380-381) This test was designed for adults and was inappropriate for Student at the time of testing, since he was only 15 years old. It was not normed for a child of his age, which resulted in a lower performance I.Q. because he would be expected to perform like a child a year older than he was.[redacted]

An Academic Screening was performed with the Wide Range Achievement Test, Revision Four (WRAT-4) to assess Student's reading and spelling. Based on that assessment , Student was performing at the 1.8 grade equivalent, Standard Score 64, 01 percentile, in Word Reading, and 2.0 grade equivalent in spelling, Standard Score 67, 01 percentile, which the psychologist believed consistent with the WAIS-III results and Student's history of special education placement. (P381)

Based upon administration of The Adaptive Behavior Assessment System-I (ABAS-II), with input from Parent, Student's adaptive skills fell into the extremely low range, including his Communication, Community Use, Functional Academics, Self-Care, and Social areas. (P382) And, on the Reynold's Adolescent Depression Scale-2 (RADS-2), he did not show a significant level of depression, although his negative affect score was elevated. (P383) He had difficulty verbalizing story productions on The Adolescent Apperception Test. His projective drawings indicated a lack of emotional support, anger and sadness, helplessness and inadequacy, emotional isolation, and very low self-esteem.

Parent reported to the psychologist that student had destroyed property, was aggressive and manipulative, had been suspended from school, and had been arrested for stealing. She also reported that Student was taking Focalin for ADHD. (P379, 383) The results of the ADHDT completed by Parent were consistent with a diagnosis of ADHD. Parent noted Student's aggressive conduct, hostility, deceitfulness/theft, and rule violations on the Conduct Disorders Scale. (P382) The DSM-IV diagnoses in the report included:

Attention Deficit Hyperactivity Disorder, Combined Type
Dysthymic Disorder, Early Onset
Conduct Disorder, Adolescent Onset type, Moderate
Mild Mental Retardation

(P384)

From February 2, 2009 through May 22, 2009, Student's Algebra teacher kept anecdotal records of Student's behavior in her class. His behaviors, which occurred every day, included tardiness, lack of preparedness for class, verbal and physical threats towards others, including a threat to shoot the teacher, and ignoring the teacher. The teacher worried about her own safety. She spoke with Parent by phone and found her to be very very cooperative. Parent showed great concern about Student and even offered to come to class herself. (C.I.; P511-513) The Algebra teacher did not attend any of Student's IEP meetings while he attended School [redacted] However, she subsequently recommended a smaller, therapeutic school environment to meet Student's educational and behavioral needs in correspondence sent to Student's school (School R) on February 17, 2010. ([redacted] P500)

The Social Worker had one or two contacts with Parent during the 2008-09 school year and consulted with staff. He talked to Student directly on January 22 and on February 5, 2009 about his behavior. When he sought Student out on May 13, 2009, he was advised that Student was suspended from school for 4 days. He talked to him about the suspension on May 27, 2009. Student was absent when the Social Worker sought him out on October 10, 2008 and May 20, 2009. ([redacted] P608-617)[3]

An IEP meeting was convened on May 28, 2009 for the stated purposes of Annual Review and Transition Planning. The IEP document of that date does not include a Transition Plan or indicate what, if any, progress was made during the year or provide any new information, by way of grades or progress or lack thereof on IEP goals in Student's academic or functional performance, other than denying a need for compensatory services on the grounds that he was meeting goals and benchmarks. (P111-130) The 2007 K-TEA scores were again included as Student's relevant academic information. Parent's concerns included notation of behavior issues since age 4, which she said were not improving, and also that Student was not learning and that his behavior was not getting better at home or at school. Parent advised that she had increased his private therapy and that she wanted his school placement changed to a smaller therapeutic school with more services. (P112) [redacted]he aforementioned family therapist, again attended the meeting with Parent, and they requested placement of Student in a therapeutic day school. The case manager advised them that they still had to have anecdotals from Student's teachers to make such a placement determination, in spite of all of the phone calls Parent had

[3] At the time that L.R. testified on September 15, 2011, he referenced his file and his progress notes, which had been requested by Parent's attorney as part of his records request in this matter but had not been produced prior to the hearing. District counsel obtained copies of the documents from L.R. on the morning of September 16, 2011 and the pages were put into the record as Parent documents number 608-617)

been receiving throughout the year from teachers regarding Student's behavior and Student's suspension from school. (Parent; [redacted]

The 5/28/09 IEP identified Student's eligibility as a ***Moderate*** Cognitive Impairment, making no reference to Emotional Disturbance or ADHD. (P111, 113) It required no assistive technology or paraprofessional support for Student. (P117) However, added to the accommodations/modifications list from the previous IEP were the following:

- *Allow for reader, video, and/or audio version of materials that requires comprehension*
- *Student will continue to receive pull-out and pull-in social work related services*
- *When possible, allow student to type information*
- *Provide rewards to student when possible. For example, computer time, listening to music, or no homework pass*
- *During CIT classes, allow student to work with special education teacher*
- *To help with organizational skills, request usage of binder or spiral notebook*
- *Allow for extra time of 10% on all nation, state, and city normed test*

(P118)

The academic goals included in the 5/28/09 IEP were, again, those dated 10/1/08 through 9/30/09 that were included in the October 1, 2008 IEP, present levels of academic performance based on the 2007 K-TEA, with quarterly benchmarks to be evaluated for progress in January, April, and June 2009. There was no indication for any of the benchmarks as to whether Student had met or had not met his benchmarks in the 2008-2009 school year. (P119-125) The Social/Emotional goal again required Student to learn to use self management skills to regulate his emotions and behavior and to identify factors that elevate his emotional state and required 40 minutes per month of direct social work service, although social work is not listed on the IEP as a related service. (P121, 126) An Independent functioning goal and objectives required Student to reduce his verbal comments to teachers and fellow classmates and the harness (sic) of the comments by apologizing for his verbal assaults and removing himself from the individual he verbally assaulted. (P120)

Although this IEP, like the previous one, indicated that Student did not require a behavior intervention plan, the Revised Behavior Intervention Plan of 2/6/09 was included in the 5/28/09 IEP with a new date of 5/29/09 and amended to require teachers to turn in their anecdotal notes weekly rather than quarterly. (P114-116) It did indicate Student's need for extended school year services. (P114) However, even though special transportation was added on the 2/6/09 Revision, the IEP of 5/28/09 did not require special transportation for Student. (P130)

Finally, Student was to receive the same amount of special education instruction as in his 10/1/08 IEP in Language Arts, Math, Science, and Social Studies, with no provision of related services, in spite of an indication that he was to receive pull-in and pull-out services from the social worker. This required his removal from the regular education setting for more than 60% of the day, and the IEP noted that Student could not remain in regular ed for more than 60% of the day because he required "a significantly modified curriculum to address his weakness in reading decoding, sight word recognition, phonetic skills, and reading fluency." (P126-127)

Student attended class at School [redacted] in the Summer of 2009. (Parent) His transcript indicates that he took Algebra and received a D and an F for the summer semester ending August 2009. (P527)

Student's 2009-2010 School Year at High School R

The family moved to another home, still within the District, in September 2009, and Student was hospitalized for psychiatric reasons when Parent enrolled him in High School [redacted] which is a year round school, for the 2009-10 school year. Student began attending School [redacted] after his release from the hospital in October 2009. (Parent; [redacted]

During the Fall of 2009, Parent received phone calls from school regarding Student's behavior, including walking across the tables, shoving a teacher, cursing, not doing his work, and not coming to school. (Parent)

On February 17, 2010, correspondence from [redacted] Student's Service Provider and Algebra teacher from High School M, were faxed to [redacted] the Case Manager at School [redacted] Therein, they reported that Student had low levels of reading and math, per the 2007 evaluation, exhibited inappropriate behaviors, absenteeism, in and out of school suspensions, cutting class, and failure to do his work. [redacted] expressed that Student was a danger to himself and others and recommended a smaller, therapeutic school environment. [redacted]

On February 18, 2010 a Case Conference was convened to discuss Parent's concerns that Student was not learning anything at School [redacted] and her desire for a setting that could better address his academic and social/emotional needs. [redacted] Parent; P109-110) [redacted] attended the meeting to report on Student's therapeutic progress and to support Parent's request for therapeutic day school placement for Student. She and Parent advised those present of the private psychological evaluation performed in March 2009 and of Student's diagnoses and his regimen of psychotropic medication. (Parent; [redacted]

Student's Case Manager, [redacted] the school Social Worker, [redacted] a general education teacher, and Student's special education teachers, [redacted] and [redacted] attended the meeting and advised that Student had fairly good attendance and was not disrespectful or disruptive in their classrooms. They reported that he hardly ever completed his assignments and sometimes put his head down to sleep during class. Parent was advised that School [redacted] did not have Student's behavioral or academic records for the period prior to his enrollment in School [redacted] in Fall 2008. [redacted] An offer of afterschool tutoring for two days per week for reading skills was made at the meeting. However, the tutoring did not occur because of Parent's concerns about the danger of the neighborhood and a problem with late bussing. [redacted]

An Assessment Plan for Student's Triennial Re-Evaluation was filled out on or about April 12, 2010 without a formal domain meeting. [redacted]

Information regarding Student's health was to be obtained from Parent and Student's doctor. The Domains of Vision and Hearing were checked as "not relevant" to Student's educational problems, noting that there was existing information from 5/4/2007. Communication Status and Motor Abilities were checked as "not relevant" to the Student's educational problems and "N/A" was typed in the boxes regarding existing information, additional evaluation data needed, and sources for data regarding those two domains. (D122)

Relevant Domains checked, in addition to Health, included Social/Emotional Status, General Intelligence, and Academic Performance. Existing information listed for those domains included Student's history of ADHD with medication, problematic attendance, his behavior plan targeting class cutting, verbal disrespect, and frequent mobility, his previous psychological evaluation and IEP, grade history, and teacher reports. Additional evaluation data needed included a Social Assessment, records of community based services, Update/BASC, and current level of academic performance. (D122)

District's triennial re-evaluation of Student consisted of a social assessment conducted by [redacted] on April 23, 2010 and a psychological assessment conducted by [redacted] on May 13, 2010, at which time Student was over 16 years of age and at the end of his second year in the 9th grade. [redacted] P296-304)

Student's German teacher, also designated as his Service Provider, obtained information from Student's other teachers regarding his performance in their classrooms and used the information to complete a Learning Environment Screening, dated 5/19/10, which was not discussed at Student's IEP meeting but which was included in the IEP document. The Screening document noted Student's difficulty with and avoidance of reading and writing and the acting out behaviors that resulted when he was asked to read. It also related his difficulty in grasping simple computation, slowness in remembering number facts, and trouble learning multiplication tables, formulas, and rules. It noted his difficulty writing sentences and/or paragraphs and his poorly formed handwriting. According to the Screening, there had been no improvement with the use of the following interventions: one to one repetition with the teacher, line markers and highlights, repetition of directions, use of calculator, limited answer questions, and fill in the blank from a word bank. It noted that the use of computer programs, which were not identified, to teach reading, listening, and math skills had just been introduced and it was too early to tell if they were

helping him. Student's listed behaviors were disruptiveness, short attention span, loud and boisterous, and unmotivated. ([redacted] P91-95, P494-498)

[redacted] herself reported that Student did not come to class on time, and he slept in class and she could not wake him up. She was responsible for conducting a behavior analysis and writing a behavior plan for Student, and she requested reports from his other teachers to assist in the preparation of same. ([redacted]; P494)

According to Student's World Studies teacher, Student would begin "acting out" in class when presented with reading and writing assignments because he had difficulty with reading and understanding what he had read. In a cross-categorical class of 10 to 15 special education students with cognitive impairments and learning disabilities, Student's discussion skills were average, but his writing was below average. Because Student and a few others were non-readers, the teacher read out loud to them in class. Although he had to separate Student from certain other students because Student could not focus around them, he did not have discipline or cooperation problems with Student in his classroom. ([redacted]; P494)

Student had good attendance in his English II class but usually put his head down and advised the teacher than he was not going to do any work. He disrupted the class by making noises, singing aloud, playing with pens, talking and clowning with classmates, roaming around the room, interrupting instruction, and disobeying the teacher. He required a lot of coaxing and encouragement to do any work in class. ([redacted]; P495)

Student's Chemistry teacher reported that Student produced no work in her class. He slept a lot and attempted to play cards. He had some interest in doing the labs, but he had to do written work to be allowed to do the labs. He did not present a discipline problem, but he advised the teacher that he did not want to be there and that he did not feel like doing any assignments. He came to class without his book and calculator. When the teacher worked with him individually and constantly, he would do assignments at times. His motivation was up and down. ([redacted] P496)

The Geometry teacher reported that she had no behavior problems with Student, but that he rarely did any work and cussed a lot in normal conversation with peers. She talked a lot with him in class about different things and felt that he was a nice boy. His attendance in her class was good, and he was in class everyday with exception of 1 suspension and 1 sick day. There were 12 or more students in the class and 90% of them had learning disabilities. There were non-readers, including Student and 2 or 3 others. There was no assistive technology in the classroom other than calculators and an overhead projector. The teacher contacted Parent twice but felt that Parent was making excuses for Student because Parent told her that Student couldn't read and did not like Math, so she did not communicate with Parent any further. ([redacted]; P498)

In his Computer Technology class, an area of reported strength per Student and Parent, Student made no attempt to work, although he was wide awake and socializing and away from his desk, roaming the room. He rejected the teacher's offer of individual help. Student's behavior was preceded by his difficulty with reading in this class, per the teacher's report. [redacted]

The school psychologist administered the Wechsler Abbreviated Scale of Intelligence (WASI) -4 Scale to assess Student's cognitive abilities. The WASI, which is an abbreviated version of the Wechsler Adult Intelligence Scale (WAIS), includes 4 subtests—Vocabulary, Block Design, Similarities, and Matrix Reasoning—compared to 11 subtests in the full Wechsler assessment. [redacted] It does not assess processing speed or working memory. The school psychologist reserves the full WAIS assessment for initial evaluations and doesn't use it for re-evaluations. However, as noted above, the WASI was also used when the District tested Student's cognitive ability for the first and only previous time in 2007. (P291) From her testing on the WASI, [redacted] concluded that Student had a Full Scale I.Q. of 65, with a 95% confidence level that it fell between 61-72. Student's performance on the Block Design subtest, which measured in the low average range, indicated Student's personal strength in spatial visualization in manipulation of blocks, in geometric designs, and visual motor coordination. In her report [redacted] noted that Student demonstrated speed and preciseness on this subtest, which she opined might be attributable to his activities of playing video games and maneuvering, assembling, and repairing items, per the previous reports of Student and Parent regarding his skills at such activities. (R.B.;

Parent; Student; P298) His performance on the other 3 subtests measured within the Delayed range. Performance and Verbal I.Q. scores were not provided for comparison to the WASI administered by the District in 2007. [redacted]

[redacted] administered the Kaufman Test of Educational Achievement, 2nd Comprehensive (K-TEA-II) to assess Student's academic growth in reading and math since his previous triennial assessment in 2007.[4] [redacted] Student's test scores on the K-TEA-II were lower in Math Concepts and Math Computation than in 2007, about the same in Reading Comprehension, and slightly better in Letter and Word Recognition, all still at or below the first and second grade levels and at or below the 1st percentile. (P289-90, 296-97).

The K-TEA has a spelling subtest and a written language subtest, which [redacted] did not administer. [redacted] did not assess Student's written or oral language skills. She did not administer reading related subtests. She did not assess his phonological awareness. She did not assess his spelling or his handwriting or ask him to write a sentence or a paragraph. She did not see a need for a speech/language assessment. ([redacted]; P296-297, 399) She reviewed the Learning Environment Screening prepared by [redacted] dated 5/19/10, but it was not taken into account for her evaluation. The Screening document indicates that Student does not read. In the psychological evaluation, Student referred to and responded with pictures. The Screening also references Student's poor memory for printed words, which [redacted] acknowledged is relevant to his working memory. It noted a variety of issues related to Student's written expression, including difficulty writing sentences and paragraphs and poorly formed handwriting. However, the school psychologist believes that it is not her discipline to refer a student for an occupational therapy assessment. ([redacted]; P91-95 and P306-310)

The psychologist gave the Behavior Assessment System for Children (BASC) scales to Student's teachers to determine if they were seeing similar behaviors by Student in their respective classrooms. Behaviors found in the Clinically Significant range included difficulty comprehending and completing schoolwork, weak study skills, poor organization, and difficulty turning in assignments on time. Behaviors in the At-Risk Range included hyperactivity, including restlessness, impulsivity, and difficulty maintaining self-control, difficulty maintaining attention, and difficulty being tactful and socially appropriate and making decisions. ([redacted].; P299)

During [redacted]'s assessment of Student, he was able to sit, complete the assessment and attend to task, although he needed some motivation to continue on the subtests. ([redacted])

Adaptive Behavior Scales completed by Parent and a teacher indicated that Student's communication skills—what he understands, says, reads, and writes—were in the Low range, with a standard score of 62. He was scored in the Moderate Low range for his adaptive skills in the areas of Daily Living and Socialization. (P299)

[redacted] concluded that Student's profile continued to be that of a student with Cognitive Delays and an Emotional Disability and she recommended use of accommodations that were in his previous IEP, including additional time, verbal assessments when possible, behavior modification plan, seating near the teacher, use of a calculator in math, and text books on tape. She additionally recommended that tutorial services would be beneficial to Student, as would the use of close captioning on the T.V. at home, and use of computer reading and math programs geared toward those subjects, stating that "...the parent "may which (sic) to invest in programs such as Reader Rabbit, at their (sic) expense." (P300)

The Social Work assessment completed by [redacted] and dated 4/23/10 consisted of a review of records and interviews of Parent, Student, and Student's teachers. (L.H.; P301-304) It referenced Student's most recent eligibility determination as "Educable Mentally Handicapped (primary) and Behavior/Emotional Disorder (secondary)", although, as noted above, Student's previous two IEPs from High School M in October 2008 and May 2009 identified his eligibility as Moderately Cognitively Impaired, which would have been formerly designated as Trainable, not Educable, Mentally Handicapped. The report also referenced attendance records for Student for the 2009-2010 school year indicating that Student had 73 days of attendance, 2 excused absences, and 55 unexcused absences, in 134 enrollment days and 144 attendance days. His 3rd

[4] See Appendix B.

quarter grades were reported to be Fs in Chemistry, Geometry, Computer Technology, and P.E., and Ds in English II and World Studies. ([redacted] P301)

The Social Worker reported that Student's teachers did not consider Student to be a behavior management problem. However, they reported concerns with his attendance, failure to do assignments, and playing cards in class and trying to engage in "other disruptive behavior." They expressed a need for regular attendance and completion of tasks to allow them to determine Student's needs and capabilities. (P302)

It was reported in the social work assessment that Student's father was incarcerated but that Student lived in a supportive home environment with his mother and siblings and participated in family oriented activities. Parent advised the Social Worker of her predominant concern that Student was unable to read in spite of his skills and his abilities, of his diagnoses of ADHD and ODD, and his private therapy with [redacted] every other week. She advised her of his school suspensions, destruction of property, arrest for stealing, and juvenile probation. She also advised her of Student's proficiency in art and his ability to take a computer apart and reassemble it and his ability to work well with his hands. Parent expressed her desire for educational programming to address not only Student's behavioral needs but one that would nurture and channel these gifts. (P302)

The Social Worker reported that in her interview of Student, he advised her that math was super bad and hard for him, that he was bored with his computer class, considered school unnecessary, that he stayed up late playing video games, overslept and missed the school bus in the morning, and slept in his first period class. He advised her that he was taking his prescription medications at 6:00 a.m. and 10:00 p.m., but denied that they were causing his sleep issues. He advised her of his love for computer games and that he taught himself how to repair and install computer software, that he could put stuff together, and that he wanted to become a carpenter. (P303)

From her interviews and observations, the Social Worker determined that Student possessed an array of skills. (P303) Among her recommendations were continuation of school social work services, a program of mentoring and tutoring to increase academic, daily living, and other skills, accommodations to address his ADHD, and use of a behavior plan to address his school attendance issues.(P304)

A conference was convened for the stated purposes of Re-evaluation, Transition Planning, and FBA/BIP on May 19, 2010. (D148-149) The school psychologist attended the eligibility portion of the conference, but she did not participate in writing Student's IEP. Her written report was not completed until after the eligibility determination meeting was held on May 19, 2011. ([redacted] P311) An Eligibility Determination document was completed and dated 5/19/11 (P103-108; D142-147) Signatures on the participation sheet include those of Student, Parent, and A.H. and District personnel [redacted] and a general education teacher. (P103) The Eligibility Determination consisted of a one page Summary of Assessments, including only *Academic Performance*, which recited only [redacted] KTEA-II scores, *General Intelligence*, which recited only a summary of [redacted] WASI-4 scale results, and a *Social/Emotional* summary from [redacted]s social/emotional assessment. No information was provided under the *Health* caption. It included a two page Eligibility Determination with 3 boxes checked denoting that Student did not lack appropriate instruction in reading or math and that his English language proficiency was not limited, that his disability was identified as *Mild Cognitive Impairment* and *Emotional Disorder*, and that his disability adversely affected his educational performance, including academic as well as social and communication skills. It was determined that he required special education and/or related services to address the effect of the disability on educational performance and deemed him eligible for same. (P105-108)

An IEP was developed and dated 5/21/10 (D150-189) The IEP was then sent to Parent on 5/21/11. (D151) It noted Student's very weak reading, writing, and math skills with reading at the 1.8 grade level, spelling at the 2.0 grade level, and math at the 1.7 grade level. Student's ability to decode words phonetically was very limited. He had earned only 4 credits after 2 years of high school in the District and had received grades of F in Computer Info Tech, Chemistry, and Geometry, and Ds in English II, German I, and World Studies. Parent continued to express

deep concern that he could not read or do simple math although he could defeat computer games and assemble, disassemble, and repair things. (P54-55)

The IEP of 5/21/10 indicated that Student required assistive technology to access the curriculum or to meet behavioral or adaptive needs, but it denied that any A.T. devices had been recommended or that an A.T. evaluation had been done or was required. (P57) It acknowledged the need for an FBA and BIP, and a two page FBA and BIP were referenced and included in the IEP. The only Target Behavior addressed was Student's tendency to be rude and disrespectful to the teacher, which was determined to be caused by Student's frustration about having to write answers on paper. (P57, 89-90)

The IEP denied the need for paraprofessional support. A list of accommodations and modifications was repeated for the academic subject areas of Language Arts, Math, World Language, Science, and Social Science, noting Student's very weak reading, writing, and spelling skills. They included the allowance of the use of a calculator, tape recorder, and computer, but did not specify any software or purpose for the computer or the tape recorder or provide for any training of Student in the use of any assistive technology in any of his subject areas. (P57-60)

Goals were included in the 5/21/10 IEP in the areas of Language Arts, Math, Science, World Language, Social Science, Social/Emotional, and Post Secondary Education and Training. (P63-80) The Math goal was for Student to "...be able to find the area of two and three-dimensional figures with at least 60% accuracy by April 2011." No present level of performance was provided for this goal other than reference to Student's lack of knowledge of his basic multiplication and division facts and difficulty reading graphs and tables and inability to recall information presented visually. (P65-66)

The writing goal was for Student to "Write to communicate for a variety of purposes to construct sentences which demonstrate subject-verb agreement, compose paragraphs that include a variety of sentence types, and to use standard English to edit documents for clarity, subject-verb agreement; proofread for spelling, capitalization and punctuation on bell ringers, quizzes, and work products with at least 50% accuracy." No present level of performance was provided for Student's writing for this goal. (P63-64) [redacted] had not assessed written expression and had not referred Student for any further assessments. [redacted]

The reading goal included in the 5/21/10 IEP required Student to "increase reading readiness skills in the areas of decoding, word recognition , and comprehension to 75% as measured by work samples, teacher charting, and running records." The present level of performance refers to his Letter & Word Recognition and Comprehension Scores and grade levels per the 5/13/10 KTEA. The quarterly benchmarks do not address decoding or encoding or phonetic awareness weaknesses but are directed toward increasing his sight word vocabulary. (P79-80)

Pursuant to the 5/21/10 IEP, Student was to receive 1010 minutes per week of special education instruction outside of the general education classroom in separate classes for 54% of the day, which included 200 minutes per week each in Language Arts, Math, Science, World Language, and Social Science. (P81) He was to receive 5 minutes per week for "Post Secondary Education & Training" and "Post Secondary Employment" to address the goals that he "be able to apply to either a community college/trade school and takes courses related to construction" and that he "seek employment with a construction firm, or with the Park District as a janitor". (P69-70, 73-74) He was to receive 20 minutes per week of Social Work to address the goal that he "demonstrate self control". (P77) No other related services were to be provided. (P81)

[redacted] Student's special education German teacher and Service Provider, was also designated as Student's Transition Representative. She was responsible for writing Student's transition plan and transition goals in 2010 and again in 2011. As Transition Assessments in the areas of Employment, Education and Training, she used a brief interest inventory, student questionnaire, and parent questionnaire, which involved questioning of Parent and Student regarding Student's interests and abilities. These same assessments are listed as the Functional Vocational Evaluation as well. Independent Living Skills were not addressed and were deemed not applicable to Student on the Transition Service Plan, and Student's daily living skills were deemed "commensurate with that of his non-disabled peers". [redacted] also included a Learning

styles inventory, which she completed with Student, wherein she determined that he was a visual learner, closely followed within a few points by Auditory and Tactile. The Post Secondary Outcomes involved Student applying to community college for courses in construction or obtaining employment as a janitor or construction worker because he had indicated interest in those jobs. His planned course of study for the remainder of high school included English I, II, III, and IV and Algebra, Geometry, Advanced Algebra/Trig, and social science, up to the age of 18. ([redacted]; P87-88, 91-97, 100-102; D116-120)

Under this IEP, Student was to receive special transportation and 4 weeks of ESY services. (P85-86) Student attempted to attend school to receive ESY services during the summer of 2010. The bus picked him up and took him to a school, where he was told that he was not on the list. He sat and waited for the bus driver to return to pick him up. After two days, the bus driver told Parent, who did not send Student back. (Parent) Student did not receive his ESY services because of a problem with transportation. [redacted]

In August of 2010, [redacted] contacted District's Special Services Administrator regarding Parent's ongoing requests for therapeutic day placement. [redacted]) On August 30, 2010 a conference was convened for the stated purpose of an IEP meeting and was attended by Parent [redacted] and a Representative from District's Office of Special Education Services.[5] (P45) At that time Parent expressed her concerns about Student's reading skills and his behavior and her desire for him to receive 1:1 assistance. She requested placement in the private therapeutic day school with which [redacted] was associated, but the OSES representative advised Parent that it was too expensive. She did not follow up with Parent regarding the placement request after that. [redacted] did not make a written summary of that meeting. (Parent; [redacted]

Student's 2010-2011 School Year at High School R

Student remained placed in special education classes at School [redacted] for the 2010-2011 school year. The classes in which he was enrolled included Art I, German II, English III, Advanced Algebra with Trigonometry, Physics, African American History, and United States History. He was initially also enrolled in an Occupational Prep class, a business class which addressed academic and social skills, taught by [redacted] his English teacher. However, he was allowed to transfer out. [redacted]

He did not make any progress on the writing goal in his 5/21/2010 IEP, which was implemented in his English class by [redacted]; P63) At the end of the school year Student began reading parts of an Easy Read Play in class. The teacher did not administer any type of standardized assessment to determine whether reading progress was being made. She called Parent more than once regarding Student's lateness for class, lack of preparedness, and verbal arguments with her and with other students. [redacted] was not aware of an FBA or BIP for Student. His behavior impeded his learning. [redacted]

In Art class, Student did not do any work. He would sit in the back of the room in spite of the teacher's requests that he sit in front. When he did come to class, he slept. The teacher had no strategy to address his behavior and felt there was nothing she could do. He failed the class. [redacted]

German class required oral discussion and much less reading and writing than other classes. [redacted] sometimes questioned whether Student was cognitively impaired because she has had in depth conversations with him about history and things that interest her. In her class, when he wanted to work, he would work. He was able to look at a picture and match it with a word, but he could not complete work with just plain reading. To get more work from him, she gave him simpler assignments, worked with him 1:1, and allowed him to work orally. It was difficult to address his needs in a class of 15 special needs students. He was not a behavior problem for her. Although she had presumed him to be a non-reader, he started doing some reading aloud during the last few months of the school year in Spring 2011. [redacted]

[5] This OSES representative was identified as N.B., who was on the parties' witness lists to testify at hearing. On the first day of hearing, District counsel advised Parent's counsel that she no longer worked in the District. H.O. advised Parent's attorney that if he needed her testimony, time would be allowed for him to locate and subpoena her so that her testimony could be included, since he had not been advised of her status previously. He did not request additional time to do so.

On February 28, 2011 Student was given a 1 day in school suspension for walking out of class after the teacher questioned him about looking at a text, and for kicking the door when he returned to class. (P491) On March 4, 2011, he was given a 2 day out of school suspension for doing sit ups and push ups in class and disrupting the class rather than doing his work. (P490)

An IEP was developed, dated May 26, 2011, two months after Parent submitted her due process hearing request in this matter. Pursuant to that IEP, Student was enrolled in the summer program at SCCS, a private therapeutic day school, at District expense. He has remained in that placement for the 2011-12 school year. (P3-44)

The 5/26/11 IEP, which is Student's most current IEP, references reading at the 1.8 grade level and spelling at the 2.0 grade level, noting his limited ability to decode words phonetically and his lack of reading fluency. Still, it notes that he does not require intervention for communication needs. His math achievement is noted to be at the 1.7 grade level with errors in single and double digit addition and subtraction including regrouping, using his fingers to calculate. His 3rd quarter grades were Fs in Art and Afro/American History, Ds in Advanced Algebra/Trig, and Cs in German, Physics, and English on a modified grading scale. The IEP does not indicate progress or lack thereof relative to his individual goals and benchmarks from the 2010 IEP, although, as noted above, he did not make progress on his writing goal in English III class. The narrative under General Considerations in the Development of the IEP state that Student Student's "reading and math performance appears to have stalled and he doesn't seem to be making academic progress." (P5) The narrative accompanying his social/emotional goal states that Student "is observed and reported by his teachers to be making marginal strides relative to his overall academic functioning." (P28) Teachers reported behaviors of tardiness, unpreparedness, excessive talking, difficulty staying on task, failure to complete assignments, sleeping, profane language, drawing attention to himself, playing, and failing to demonstrate his maximum potential. Mother's continued concern over his inability to read and perform simple math was noted. (P5-6)

The accommodations/modifications lists remain the same as in the previous IEP. (P9-P13) New goals are included, without reference to Student's progress or lack thereof on the previous year's goals. Academic goals developed and included in Student's current May 26, 2011 IEP include one each for writing and math, and goals for German, social science, and science. However, the IEP includes no reading or spelling goals. It includes 2 transition goals to increase Student's awareness of post-secondary educational and employment options and 2 social/emotional goals to demonstrate appropriate decision-making skills and to manage his emotions and his behavior. (P14-33)

The Writing goal calls for Student to "...write a paragraph using the internet, graphic organizers, checklist and writing prompts with 40% accuracy." The Math goal calls for Student to use a variety of equations and simple formulas and apply the four operation (sic) to solve for the missing variables and construct a graphic presentation at 55% accuracy rate. (P14, 16)

The IEP again acknowledges Student's need for assistive technology but denies that any have been recommended and denies the need for an A.T. evaluation, stating that the A.T. that is available to Student at school includes a computer, highlights, and a calculator. (P8)

The Transition Services Plan, again the responsibility of [redacted] is a copy of the plan from 2010 except the date of the transition assessments is 2/25/11 as opposed to 4/7/10. (P40-41, 87-88)

The 5/26/11 IEP includes an FBA dated 5/19/10, the date of the previous year's FBA, but the accompanying BIP targets the behaviors of sleeping in class and failing to work and using profane language, rather than the previous year's behavior of rudeness and disrespect to the teacher. (P43-44)

The IEP calls for 300 minutes per week of special education instruction in all academic areas, including World Language, and in the area of Social/Emotional as well, plus 20 minutes per week of Post Sec. Ed. & Training and 25 minutes Post Sec. Employment. The related service of Social Work is also called for in the amount of 30 minutes per week. Placement was determined to be a therapeutic day school for 100% of the day. (P34-35)

The Independent Evaluations of July 2011

[redacted] is a licensed and certified school and clinical psychologist in private practice, who has a PhD in psychology and neuropsychology and over 35 years of experience in her field, including employment in local school districts. She also taught in elementary and junior high schools, including teaching children with mental and cognitive impairments, prior to becoming a psychologist. She conducted a psychological evaluation of Student at Parent's request on July 12 and July 13, 2011. She administered various assessments and scales, including the full WAIS-IV with subtests and the Woodcock-Johnson-III to obtain a complete picture of Student's cognitive abilities, the Woodcock-Johnson-III Tests of Academic Abilities, and the Adaptive Behavior Assessment-II (to Parent) Her review of Student's records helped her target the testing that needed to be done, based on the pattern of longstanding major problems with learning and emotional functioning reflected in her review of his educational and medical records. She does not use the WASI because it is a very very abbreviated assessment and does not provide enough information to draw a conclusion. The previous WASI's administered by the District did not provide enough information about Studen[redacted]

Even though Student was not engaged and appeared unmotivated during [redacted] testing, his visual processing was within the average range, indicating that he is of at least average intelligence. He obtained a Full Scale I.Q. of 69 on the WAIS-IV. However, intelligence cannot be determined by a full scale I.Q., and Student's individual composite scores on the WAIS-IV and his scores on the Woodcock-Johnson III support the conclusion that Student is functioning in the borderline range of intelligence at a minimum. (C.J.; P335-336)

[redacted] assessed Student in the important areas that should have been, but were not, assessed by [redacted] in the District's 2010 assessment, including written or oral language skills, processing speed, and working memory. She administered reading related subtests. She assessed his phonological awareness. She tested for reading, writing, and math disorders. Achievement testing revealed no mastery of phonics and that Student was significantly below grade level and expectations in all subject areas. [redacted] P335, 339) Student's adaptive skills have greatly improved since the 2010 assessment, which [redacted] attributes largely to a current medical prescription of the mood stabilizing medication, *Abilify*. His medications are currently on target. Previously, he was only on medication for his ADHD. [redacted]

[redacted] also observed Student in his current therapeutic placement as part of her assessment. She issued her report of evaluation, a copy of which was provided to District for consideration prior to hearing in this cause. Her charges for these services, reflected in her itemized invoice dated August 31, 2011 total $2754. ([redacted] P333-340)

[redacted] is an experienced licensed and certified school speech/language pathologist with a Masters Degree from Northwestern University. He operates a private clinic and contracts with Student's current therapeutic day school to provide speech/language services to its students. He conducted a speech/language evaluation of Student at the request of Parent's attorney which evaluation was completed on July 28, 2011, and a copy of his report was provided to District for consideration prior to hearing in this cause. Student was friendly and cooperative during A.B.'s speech/language assessment, which included tests of Social Maturity, Memory and Learning, Nonverbal Intelligence, Receptive and Expressive Vocabulary, Oral Reading, and Articulation. His charges for the evaluation total $1400, and he will submit a bill for his time, which included 1 hour to review Student's records, 1 hour to interview Parent, 3 hours of testing, and 2 hours to write his report, to Parent's attorney. ([redacted] P341-344)

A meeting was convened on August 10, 2011 for the stated purposes of IEP meeting, Transition Planning, and to consider outside evakuations (sic).. However, the only documentation of that meeting by District is the typed IEP cover sheet with identification and purpose information and participant signatures and a separate page with signatures only. No written record was made of the consideration of the independent evaluations at that meeting. (D242-243; D.M., [redacted] B.A., a District psychologist, with the title of School Psychology Lead, attended on behalf of the District as Psychologist and Evaluation Representative, although he has not evaluated,

serviced, or had other direct involvement with Student. He was invited only to interpret the outside evaluation done by [redacted] (B.A.; D242) Also attending on behalf of District were [redacted] as Case Manager, OSS Representative, and District Representative, and District's attorney. Parent and her attorney also attended, as did A.B. Student's current teacher and social worker at SCCS, [redacted] and SCCS's IEP Coordinator, whose job it is to set up IEP meetings for students at the school were also in attendance. The findings and recommendations of the independent evaluators were not incorporated into Student's IEP as the result of that meeting. (D242; Parent, [redacted] objected to [redacted]'s recommendation that Student be made eligible for special education due to a learning disability because RTI (Response to Intervention) had not been done, even though Student has had ten years of IEPs without improvement, and because District's previous evaluations classified Student as cognitively impaired.[redacted]

Based upon the comprehensive assessments conducted by [redacted]. and [redacted]., Student is a young adult with cognitive functioning in the borderline average range with dyslexia and a moderately severe oral language impairment, categorized as oral and written language production and comprehension disorders. These disorders are neuro-developmentally based and therefore longstanding in nature. They have had and continue to have a significant impact on Student's educational performance, particularly his ability to read, spell, and write.

To address Student's educational needs, in addition to therapeutic programming for his emotional disturbance and severe specific learning disabilities, Student requires assistive technology to develop phonics skills related to reading and spelling and a program to facilitate and enhance his writing. Because of his weak phonemic awareness and lack of reading instruction to appropriately address that deficit, he is in need of intensive systematic multisensory reading instruction from a certified instructor at this time, the *Wilson Reading System* being most appropriate for Student due to the age-appropriate materials, the fact that it was designed to instruct dyslexic adults, and the training that is provided to *Wilson* instructors. The *Wilson* program is derived from the *Orton-Gillingham* method. Additionally, Student also requires speech and language services integrated into his classroom, 60 minutes per week of direct speech and language services, and 30 minutes per week for the consultation of the speech pathologist in his classroom.

Due to the lack of provision of adequate special education services in the speech and language areas in the past, Student also requires afterschool instruction of at least one additional hour per day for at least two years. It should be aimed at spoken and written language and improving his phonemic awareness to increase his ability to produce words, spell, read, and write. The *Fast ForWord* program, which [redacted] recommends for Student, is a cognitive training program with an auditory component. [redacted] P333-339, 341-344)

[redacted] recommended additional evaluations in the area of assistive technology, with which the District Lead Psychologist concurs, and an occupational therapy assessment because of his slow motor processing and to address his attention and organizational/executive functioning deficits. District psychologists do not typically recommend occupational therapy assessments, but they can recommend that handwriting, copying, and fine motor skills be looked into. [redacted] P338) [redacted] also recommended a comprehensive vocational assessment to determine Student's strengths and interests and to provide direction in vocational planning. District psychologists do not give recommendations for vocational assessments. [redacted] P338)

Student's Current Placement

The therapeutic day school in which Student is currently enrolled at District expense educates 41 high school students, all with IEPs, the majority of whom have EBD eligibility. The school day is 5 ½ hours in length, from 8:45 a.m. until 2:30 p.m. The staff of certified special education teachers includes Student's teacher, who took an intensive one week training in the *Orton-Gillingham* method of multisensory instruction in March 2011, and one teacher in the elementary school program who is trained in the *Wilson Reading System*. The school has a social worker and contracts with an occupational therapist and speech/language pathologist. Technology in the school consists of Smart Boards (interactive white boards) and classroom computers, which the school is currently trying to update. ACT test prep in done in all high

school classrooms daily. [redacted] There is a Spanish teacher, but not a German teacher on staff. ([redacted]

Student has been at [redacted] since the June and attended the summer session for 4 ½ hours per day. [redacted]) At the time of the hearing, he was two weeks into the Fall term. [redacted] Student likes [redacted] because it is smaller than School [redacted] and he gets more help. (Student) He used the Co-Writer software in his classroom on September 15. (Student; [redacted] He is adjusting fairly well to the transition, and 30 minutes per week of direct social work services is appropriate for him at this time. (C.B.) He has no problems with class cutting and absenteeism or general behavior problems, and he is sleeping less in class as time progresses, with help from the social worker. He did "exchange words" with another Student and he was redirected. [redacted]) There are 10 students in the classroom with the teacher and her assistant. The teacher is able to work with Student 1:1. [redacted]

The teacher and social worker have been addressing the goals and behaviors in Student's 5/21/11 IEP. The teacher feels that she would like to have at least the first quarter before making changes to his IEP, although she feels that foreign language is going to be difficult for him because he has to pronounce and write, and he lacks confidence and is reluctant to do so. When Student doesn't want to participate, he puts his head down, but he does not do it consistently, and the teacher is able to successfully redirect him most of the time. She informs him of the consequences of not doing his work, and he cooperates when he decides he is does not want to give up privileges and perks and get lower grades, but she has seen his refusal to work. His grades thus far have been Cs. His talking has not been excessive. He has been good with the current teacher. [redacted]

[redacted] has been a special education teacher for 2 years, and [redacted] is her first teaching position. She spent 10 years as a teaching assistant, and she obtained her Masters Degree in Special Education in 2002. Her *Orton-Gillingham* training taught her how to use the multisensory method in her instruction, and she uses parts of it in the classroom now for decoding, vocabulary, and word study and across the curriculum. Her class includes students ranging in age from 14 to 18 with reading skill levels of pre-K all the way up to Grade 12. She is currently assessing where each Student is using *Orton-Gillingham* assessment tools. She has not yet assessed Student, however. ([redacted])

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, at all times relevant to the issues in the case, it properly evaluated and identified Student's needs and either provided or offered to provide him with a free appropriate public education in the least restrictive environment. *105 ILCS 5/14 8.02a (g-55)(2010)* The burden of persuasion is on the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005) In this case, Parent bears the burden of persuasion on all issues except the issue of the appropriateness of District's 2010 triennial re-evaluation of Student, for which the District bears the burden, as it would be unfair to permit District to shift the burden of proving the appropriateness of its evaluation to Parent by its failure to adhere to the procedures for denial of a student's request for IEE as discussed further below.

An appropriate education, commonly referred to as *FAPE*, is an education that is reasonably calculated to provide the student with meaningful educational benefit, as based upon an individual education plan, or *IEP*, developed by an *IEP* team, including the student and his parent. *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 parent 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 parent's right to participate in the decision making process, or caused the 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)*

Each special education student is to be placed in the least restrictive environment in which he can receive a satisfactory education. *20 U.S.C. 1412(a)(5)(2005); 105 ILCS 5/14-8.02(d)(2008)*

The preponderance of the evidence does not support District's position that its reevaluation of Student was sufficiently comprehensive to identify all of Student's special education and related services needs nor that the assessments used gathered sufficient relevant functional, developmental, and academic information about Student. The preponderance of the evidence in this case does support Parent's position that District denied Student a free appropriate public education by failing to adhere to procedural requirements that resulted in the denial of FAPE and also substantively by failing to perform an appropriate full and individual re-evaluation of Student, failing to assess and identify Student's unique educational needs, failing to develop IEPs appropriate to Student's unique needs, and failing to provide Student with the appropriate type and amount of instruction, support, and related services to allow him to receive meaningful educational benefit.

The documents created by District staff, including the IEPs that were in effect between March 24, 2009 and the current time, the testimony of District staff, and the testimony of the well qualified and credible independent evaluators favor the Student's position rather than the District's. In his questioning of District staff, counsel for District stressed, with witness after witness, that they had not referred Student for speech/language, occupational therapy, or assistive technology and that they had seen no reason to do so. The fact that they did not make such referrals , especially in light of the District's own records and witness testimony evidencing Student's severe needs, does not favor District in this matter. Regarding the specific issues, it is therefore concluded as follows:

1. *District failed to perform an appropriate full and individual re-evaluation of Student in the Spring of 2010 prior to development of his May 19, 2010 IEP.*

2.A. *District failed to conduct adequate vocational, assistive technology, and functional behavioral assessments 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. *105 ILCS 5/14-8.02a(b)(2008)* Children who are already receiving special education must be reevaluated by the District at least once every 3 years unless the parents and the district agree that a reevaluation is unnecessary. *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 parents' 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)*

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 about the child. Assessments must be selected to ensure that that the results accurately reflect the child's aptitude or achievement, and the evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. *23 ILAC 226.110(2007), 34 CFR 300.304(2006)*

The District's re-evaluation of Student in this case was not sufficiently comprehensive to identify all of Student's special education and related services needs. It consisted chiefly of a District psychologist's brief assessment, primarily limited I.Q. and academic achievement testing, and the school social worker's interview of Parent, Student, and teachers. The Domain, or assessment planning, sheet identifying the assessments to be included in the evaluation was not prepared in a meeting where Parent could sit down and discuss needed assessments with evaluators and service providers. Rather, she was given a consent to sign, while the psychologist

and social worker filled in their respective boxes on the Domain sheet separately and without meeting.

The school psychologist performed her regularly conducted tests which were insufficient to address identification of Student's needs. He had been identified as a child with a learning disability for many years, then, when given his first cognitive assessment at age 13, identified as mildly cognitively impaired. For some unknown reason, he was identified as moderately cognitively impaired by the District on the IEPs developed at School [redacted] in October 2008 and May 2009. The school psychologist did not explore further when she saw strengths in the borderline average range of intelligence, but rather relied on a full scale I.Q. coupled with low adaptive behavior scores at a time when his ADHD and bipolar disorders were not being appropriately medically addressed, to label Student as cognitively impaired. She did no testing in several crucial areas of cognitive and academic functioning, and she did not feel obliged to refer Student for any further assessments by an occupational therapist or speech/language pathologist or for anyone to assess what technology would allow Student to benefit from special education instruction.

Further, even though Student's records were replete with indications for the need of speech/language and occupational therapy assessments to help address severe ongoing problems with expressive and receptive language related tasks, including his failure to read and write and the behaviors that resulted from his work avoidance in these areas, and the attention, organization, and other sensory issues related to his ADHD, the assessment plan omitted assessments by an occupational therapist and a speech/language therapist.

Additionally, although Health was to be assessed as part of Student's re-evaluation, no information was provided under that heading on the Eligibility Determination document, and there was no evidence presented that a school nurse or any other health professional was in any way involved in Student's re-evaluation, even with information provided by Parent that Student had received private therapy, had had psychiatric hospitalization and was prescribed psychotropic medication.

Student should have received an assistive technology assessment. Assistive technology service, when required to assist a child to benefit from his special education, includes the evaluation of the needs of a disabled child for items, equipment or systems needed to increase or improve his functional capabilities and to coordinate the use of assistive technology with other therapies and training of the child and his instructors and other service providers in the use of the technology. *34 CFR 300.5-.6 and .34 (2006)*The school psychologist recommended that Mother purchase "Reader Rabbit" software for Student, and the May 21, 2010 IEP stated Student's need for assistive technology, yet District did not recommend or conduct an assessment of Student's assistive technology needs, which could have been performed by a speech pathologist, occupational therapist, or other District personnel with the skills to determine what technology would allow Student to benefit from his instruction. The same is true of the current IEP. Although the accommodations in his IEPs included "use of a computer" and the Learning Screening prepared by [redacted]. indicated that software was just beginning to be used, no specific software was ever identified. Clearly, an assistive technology assessment should have been done as part of the re-evaluation at the latest, since it had not been done earlier, even though Parent consistently told staff that Student could use a computer. Based on Student's academic history and also upon the evidence presented at hearing from the independent psychological and speech/language evaluators, Student requires an independent assessment of his assistive technology needs. The lead psychologist for the District does not dispute this need, and the past 2 IEPs themselves reflect a need for same as well.

Student should have received an appropriate vocational assessment. Special education includes vocational education in the form of organized programs directly related to the preparation of students for employment or careers not requiring a college degree. *34 CFR 300.39(b)(5)(2006)* Illinois law requires the development and implementation of a transition plan, updated annually, as part of any IEP implemented for a special education student beginning at the age of 14 ½. The measurable postsecondary goals included in the student's transition plan must be **based upon age-appropriate assessments related to employment, education or**

training, and, as needed, independent living. *23 ILAC 226.230(2007)(emphasis added)* The most recent Transition Service Plans developed for Student by [redacted], a teacher of Special Education German, were based only upon cursory questionnaires directed to Student and Parent regarding their views of Student's skills and interests. These alone do not constitute a sufficiently appropriate assessment related to employment and training for a 17 year old Student with significantly deficient academic achievement. Since the District has not appropriately assessed or addressed Student's vocational needs as part of his triennial evaluation or at any other relevant time, an independent vocational assessment is now necessary, especially since Student prefers to work with his hands, he will be turning 18 in a few months, and he has already spent over 3 years in high school without any meaningful pre-vocational or vocational experience or training, and his academic skills, which also have not been properly addressed by District, have stalled.

At the conference convened to review an evaluation conducted by the school district, the school district must advise parents of the right to seek an independent educational evaluation, *IEE*, by a qualified examiner not employed by the school district if they disagree with the district's evaluation. If and when parents disagree with the district's evaluation and wish to obtain an independent educational evaluation at district expense, they must submit a request for same in writing to the school district superintendent. Although the district may inquire as to the reason for the request, parents are not required to provide the district with an explanation for their objection to the district's evaluation. **Within 5 days of its receipt of the request for IEE, the District must provide the parents with information about where an independent educational evaluation may be obtained and the agency criteria applicable for independent educational evaluation, and it must either file a due process complaint to request a hearing, in which it has the burden of proving to the hearing officer that its evaluation is appropriate, or ensure that an IEE is provided at public expense. If it agrees to provide the IEE, the IEE must be completed within 30 days of the written request.** *20 USC 1414(a)(2004); 105 ILCS 5/14-8.02(b)(2008); 34 CFR 300.502(2006); 23 ILAC 226.180(2007)*

Parent is entitled to reimbursement for the psychological and speech/language evaluations performed by [redacted] and is also entitled to District funded occupational therapy, vocational, and assistive technology assessments. See *Hibbing v. J.T.*, 45 IDELR 92, 106 LRP 12718 (D. Minn. 2006) Parent's attorney submitted a request for independent educational evaluation of Student in writing on March 24, 2011, including it in Parent's hearing request of that date rather than submitting a separate request for an IEE prior to the hearing request. District did not respond to the request within 5 days. It did not agree to fund the IEE. It did not request a due process hearing to prove that its evaluation was appropriate. Clearly, District failed to adhere to procedure. However, in his written response to the hearing request on April 4, 2011, District counsel responded that District's evaluation, last performed in Spring 2010 preceding the May 19, 2010 eligibility meeting and the May 21, 2010 IEP, was appropriate and that he would defend the evaluation in this hearing. He was advised at the Pre-Hearing Conference that he would bear the burden of proof on this issue as District would not be permitted to shift the burden by failing to request a due process hearing on the issue as it should have done.

The procedures, had they been followed, would have resulted in a hearing on the appropriateness of District's evaluation of Student and, based on the evidence that has now been presented, would have resulted in an Order that District fund independent psychological, speech/language, occupational therapy, and vocational assessments as well as a separate assistive technology assessment, if it could not be performed by the speech/language therapist and/or the occupational therapist. All of the assessments, not just the psychological and the speech/language could have then been completed, reported upon, and considered for inclusion in Student's IEP before hearing on any of Parent's other issues in this matter. The process followed in this matter, however, has resulted in the need for additional assessments to be performed in the future. Therefore, those reports and the testimony of the assessors were not available at this hearing, and any order for inclusion of the findings and recommendations of those future assessments would be speculative. This hearing officer therefore declines to order the inclusion of any potential findings and recommendations in Student's IEP for implementation unless the District and Parent

can agree to the evaluators and agree to abide by their findings and recommendations, which is provided as an alternative in the Orders below. Unfortunately, if the parties do not select that option, their failure to agree may result in a future due process hearing for this Student and/or his Parent and the District.

In his closing argument Parent's counsel argued that District failed to conduct assessments in speech and language, occupational therapy, and assistive technology, that it did not conduct a formal functional behavior analysis, and that its vocational and psychological assessments were inadequate. He currently seeks Orders for District payment of the evaluations that were performed by [redacted] and also Orders for District funding of independent occupational therapy and assistive technology assessments and for a comprehensive vocational assessment by a certified vocational rehabilitation counselor. He also seeks an Order for a social assessment and an Order that District develop an effective functional behavior analysis and behavior plan. As noted above in this section, the comprehensive speech/language and psychological assessments, with a number of recommendations based on those assessments have been performed, and the [redacted] and vocational assessments will be ordered here. The evidence does not support the need for an additional social assessment at this time. The school social worker performed an appropriate social assessment, and the social worker in the current therapeutic placement did not express a need for any further assessment, and so further social assessment will not be ordered.

A Functional Behavioral Assessment is a process for gathering information regarding a student's target behavior, or behaviors, which are deemed to be impeding the education of the student or his fellow students, the antecedents and consequences, controlling variables, student's strengths, and the communicative and functional intent of each behavior. Once completed the FBA, as it is called, is to be used in developing behavioral interventions. A behavioral intervention is designed to influence the student's actions or behaviors positively and is to be based on empirical findings of behavioral science. *23 ILAC 226.75 (2007)* The behavioral assessments as well as the behavioral intervention plans in this case, according to the evidence, were developed by a teacher, designated as Student's Service Provider, who would ask for Student's teachers to give her a brief write up of Student's behaviors, and then he or she would write up an FBA and BIP. [redacted] determined that Student's behavior was pretty much caused by his frustration at not being able to read and write and that he engaged in work avoiding behaviors like putting his head down and refusing to work, or by not coming to class at all. The appropriate response, of course, would have been to give Student instruction and related services and technology directed toward allowing him to learn to read, write, spell, and otherwise improve his expressive and receptive language skills. [redacted] herself is the only teacher that seemed to be able to successfully intervene at least occasionally. The Art teacher and the English teacher didn't have any strategy to address his behavior and didn't even know he had a behavior intervention plan. Most of the other teachers testified there was nothing they could do to effect behavior changes in Student. They also seemed to misunderstand the meaning of "behavior", believing that it had to be somehow aggressive or violent, or otherwise bad disruptive behavior in order to be addressed by a behavior intervention plan, even though Student's withdrawal and work avoidance were behaviors that were impeding his ability to be educated, and which were addressed haphazardly at best. He also exhibited a number of sensory organizational and attention behaviors related to his ADHD. They should have been addressed in his behavior plan but were not. Those will be addressed by the occupational therapy assessment and recommendations.

The staff currently educating Student in a therapeutic day school for Students with emotional and behavioral disorders, including a social worker, and a teacher, and teacher assistant for a class of 10 students, can address Student's behaviors more effectively than the staff at the public high schools did and did not testify to the need for a new plan at this time, although they have the capability to do an assessment and behavior plan as needed. So while it is true that District did not conduct an appropriate behavior assessment or develop or properly implement an appropriate behavior intervention plan while he was in attendance at Schools [redacted] at the time of hearing, [redacted] staff did not report any behaviors that they were not addressing appropriately,

and an Order directing the District, after the fact, to conduct an FBA and develop a BIP would serve no purpose here. The deprivation of FAPE that resulted from the failure to do so in the past will be addressed with other Orders below.

> 2.B. and C. *District did not develop and implement IEPs appropriate to Student's individual needs, the classes in which Student was enrolled were not appropriate to his needs, and he was not provided with math and language arts instruction appropriate to his individual needs.*

Each child's IEP must be developed based upon comprehensive assessment of a student's needs, including her transition needs if she has reached age 14 ½. Goals must be written to address a student's individual needs based on present levels of performance. They must be written so that progress can be measured from the level at which the student begins when the goal is written to the level she has attained on the goal one year later. The type and amount of related services and assistive technology necessary to help a student make progress on his IEP goals, including transition goals, must be stated in the IEP. *23 ILAC 226.220, .230(2007), 34 CFR 300.320, .324(2006)* Additionally, each child's IEP must include a statement as to whether a child requires the provision of services beyond the district's normal school year, or extended school year (ESY) services in order to receive FAPE and a description of the amount, frequency, duration and location of the services to be provided must be included in the child's IEP. *23 ILAC 226.230(2007)* The IEP must not only be properly developed in accordance with these procedures, but it must also be implemented appropriately. See *Kevin T. v. Elmhurst*, 36 IDELR 153, 102 LRP 9030 (N.D. IL 2002) and *Knable v. Bexley*, 238 F.3d (6th Cir. 2001) The preponderance of the evidence in this case supports Parent's position that Student has not received appropriate special education programming since March 24, 2009. The statute of limitations prevents consideration of the violations that occurred prior to that date.

The IEPs developed for Student were not based on comprehensive assessments of Student's needs. They did not contain appropriate measurable goals and objectives in the areas in which Student was so desperately in need of instruction and service, and they did not include speech/language therapy as a related service or assistive technology that could have allowed Student to learn. They did not include appropriately developed behavior intervention plans or transition service plans. The 2009 and 2010 IEPs did not provide sufficient social work services or a delivery model that would allow Student to receive those services. He received no direct assistance with his organizational problems. There was no system in place to make sure that Student got off the bus, into the school, and then transitioned from class to class with his materials or got to his social work services within the school, even though he was labeled with a cognitive impairment. He was enrolled in classes that did not address his individual needs. While he needed intensive reading and math instruction at his very basic level of performance and goals that would allow for objective measurement of his progress, he was placed in German, Algebra, Geometry, and Trigonometry classes and in English classes that did not address his need to learn to read and write and where he avoided doing any work because he could not read or write, and the teachers said that there was nothing they could do about it.

Student did not receive meaningful educational benefit in the programs at High Schools [redacted] Parent consistently asked District to give him more support or to put him in a more restrictive setting where he could get the support he needed, but her pleas were ignored and Student was allowed to struggle and fail for 3 years of high school until Parent finally got a lawyer and requested a due process hearing. Student was not able to take advantage of the social work services that were provided for in his IEPs, because the schools' service delivery models and lack of individual support provided prevented him from accessing those services on a regular basis. His IEPs did not provide Student with 30 minutes per week of social work services, which his current school social worker deems sufficient at this time, until the May 2011. He did not receive the ESY services called for in his IEP in summer 2010.

The evidence shows that the methodology, if any, used by District to educate Student was ineffective, and yet there were no meaningful changes made during the period of which Parent

complains until the May 2011 IEP meeting, at which time his placement was changed to a more restrictive therapeutic setting. Because the District's method of providing special education to Student has failed, the methodology now recommended by [redacted] should be implemented. The vague and nonspecific testimony of a few staff members that Student was doing some reading and showed some improvement in his behavior at the end of the 2010-11 school year does not overcome the fact that recent assessments and comparison of assessment data from Student's prior evaluations show no progress, and even some regression in skills. *Henrico v. Z.P.*, 399 F.3d 298, 307(4th Cir. 2005) This lack of learning is rooted in IEPs that were not thoughtfully developed to address his individual needs. *See Oak Park v. Kelly E.*, 21 F. Supp.2d 862(N.D. Ill. 1998)

Although the current transition and behavior plans developed by the District before Student's placement in a therapeutic day school were deficient, the transition plan cannot be revised until after a proper independent vocational assessment is performed, and Student's behavior is being addressed by staff at the therapeutic day school, who are capable of assessing and addressing Student's behavioral needs as they deem necessary.

The relief requested by Student includes, inter alia, a prayer for compensatory education for the denial of FAPE from beginning 2 years prior to the submission of Parent's due process hearing request to the present time. Compensatory education is the provision of future educational services for a disabled student under the *IDEA* for the school district's failure to provide a free appropriate education in the past, and it is allowed by the courts in this jurisdiction. *Kevin T. v. Elmhurst*, 36 IDELR 153, 102 LRP 9030 (N.D. IL 2002) And see *Reid v. Dist. of Columbia, 401 F.3d 516 (D.C. Cir. 2005)* The award of compensatory education in the form of 160 hours of afterschool tutoring and speech/language therapy is supported by the evidence in this case through the testimony of [redacted] The evidence does not support Parent's request for compensatory services of 60 minutes per week of social worker or psychological services or for any services to be determined by future independent assessments. The Order below is crafted in accordance with the evidence presented at hearing.

IT IS THEREFORE ORDERED:

1. That District shall pay for the evaluation and report of [redacted] in the amount of $2754 within 30 days of this Order.
2. That, upon receipt of his itemized written invoice, District shall pay for the speech/language evaluation performed by [redacted] in the amount of $1400 within 30 days of receipt of the invoice.
3. That Student shall be provided with daily systematic, sequential, multisensory reading instruction by a trained instructor in either the *Wilson* or *Orton-Gillingham* methods as part of his regular school day.
4. That Student shall be provided with speech/language therapy as part of his regular school day in the amount of 60 minutes per week of direct services and 30 minutes per week of speech/language consultation in his classroom.
5. That an IEP meeting shall be scheduled upon receipt of this Order with sufficient time to allow completion of a revised IEP that shall be implemented no later than 30 days from the date of this Order, which revised IEP shall include:
   a. the results of the psychological and speech/language assessments performed by [redacted]
   b. measurable reading, writing, math, spelling, and other receptive and expressive language goals addressing phonemic awareness, decoding and encoding skills and objectives based upon the Student's needs and current levels of performance as set forth in the aforesaid independent assessments and upon any objective assessments of his skills that have been performed in his current placement since July, 2011 that provide a baseline from which to objectively measure progress on the goals and objectives; and
   c. speech/language services as designated in Order 4. above.

6. That Student shall receive the following at District expense in compensation for the deprivation of FAPE since March 24, 2009: 160 hours total of direct individual instruction and speech/language therapy beyond the regular school day.

7. That regarding further independent assessments of Student, which shall be completed within 60 days of the date of this Order:

a. District shall fund independent occupational therapy, assistive technology, and vocational assessments of Student by evaluators selected by Parent, and convene an IEP meeting(s) to consider the results of the assessments and allow the IEP team to determine which, if any, of the recommendations are to be included in Student's IEP for implementation; or alternatively,

b. the parties shall agree to the evaluators to perform the above assessments and the costs of the assessments to be born by District, in which case the District shall convene an IEP meeting and develop an IEP which adopts the recommendations of the evaluators, and which IEP shall be implemented at public expense.

7. 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 December 19, 2011.

DATED: October 7, 2011

Stacey L. Stutzman
Impartial Hearing Officer

APPENDIX A
(Decision and Order 2011-0298)

P 3-44 : IEP dated 5/26/11 (by stipulation of parties)
P 45 : IEP participant sign in sheet dated 8/30/10
P 52-88 : IEP dated 5/19/10
P 89-90 : Functional Behavior Assessment, Behavior Intervention Plan dated 5/19/10
P 91-95 : Learning Environment Screening dated 5/19/10
P 96-97 : Student's Transition Questionnaire dated 4/7/10
P 100-102: Parent's Transition Questionnaire
P 103-108: Eligibility Determination IEP dated 5/19/10
P 109-110: Case Conference Notes dated 2/18/10
P 111-130: IEP dated 5/28/09
P 139 : Revisions to IEP, dated 2/6/09
P 140-141: Functional Analysis & Behavior Intervention Plan, dated 2/6/09
P 144 : Waiver of IEP Revision Meeting dated 10/1/08
P 145-164: IEP dated 10/1/08
P 289-295: Triennual (sic) Report, dated 4/12/07
P 296-300: Report of Psychological Re-Evaluation, dated 5/18/10
P 301-304: Social Work Re-evaluation, dated 4/23/10
P 306-310: Learning Environment Screening, dated 5/19/10
P 311-313a: Related Service Documentation
P 317-320: Related Service Documentation
P 322 : Related Service Documentation
P 326 : Related Service Documentation
P 333-340 : Report of Psychological Evaluation, and Invoice for same dated 8/31/11
P 341-344 : Report of Speech/Language Assessment
P 359-366 : Individual Treatment Plan
P 369-372 : Crisis Intervention/Client Assessment dated 5/16/11
P 378-385 : Psychological Evaluation for Outpatient
P 399 : KTEA-II Comprehensive Form A
P 443 : WASI Record Form
P 457-458 : Vineland-II Survey Interview Form Report
P 490-491 : Misconduct Reports
P 492-493 : Incident List
P 494-499[6] : Interfaculty correspondence
P 500-502 : Fax Transmitted correspondence dated 2/17/10
P 503-507 : teacher evaluations of student
P 508-520 : Anecdotal Records
P 521 : Conference Notification dated 5/8/09
P 522 : Anecdotal Record
P 525-531 : Transcript Posting Report
P 535-538 : Grades
P 556-557 : Emails dated 6/17 and 6/18/10

[6] The same interfaculty correspondence is marked P99, P494, and P499. It includes the name of another student, and H.O. has redacted that student's name from each of the documents in Parent's exhibit book.

P 559 : Email dated 6/24/10
P 572-573 : Emails dated 8/24/10
P 595-596 : Email dated 4/7/11
P 598-600 : Email cover sheet and draft conference notes
P 601 : Entrance Form for School Social Work Services dated 5/21/10
P 602-603 : Social Work IEP goal dated 5/21/10
P 604 : Fax dated 3/28/11
P 605 : Correspondence dated 11/10/10
P 608-617 : Social Work Progress Notes[7]

D 1-22 : Annual Review IEP dated 4/25/08
D 23-48 : IEP dated 5/30/08
D 116-117: Student's Transition Questionnaire dated 4/7/10
D 118-119: Learning Styles Inventory
D121 : Consent for Reevaluation form, unsigned, dated 4/12/10
D122 : Consent for Evaluation Assessment Plan dated 4/5/10
D142-147 : Eligibility Determination IEP dated 5/19/10
D148-189 : IEP dated 5/19/10
D198 : IEP participant sign in sheet dated 5/19/11
D242-243 : IEP participant sign in sheet dated 8/10/11

[7] Not disclosed until L.R.'s testimony and made available the day following his testimony.

APPENDIX B
(2011-0298 Decision and Order)

	2007 K-TEA Scores			2010 K-TEA Scores		
	SS	%	G.E.	SS	%	G.E.
Reading Composite Extreme	53	0.1	K.11	57	0.2	Lower
Letter & Word Recognition	50	<0.1	K.10	62	1	1.8
Reading Comprehension	53	0.1	1.0	52	0.1	1.5
Math Composite Extreme	67	1	2.8	58	0.3	Lower
Math Concepts & Application	70	2	2.9	65	1	2.6
Math Computation	66	1	2.8	50	<0.1	1.7
Spelling	55	0.1	1.1	(not assessed in 2010)		

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(i), 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 served copies of the aforesaid Decision and Order upon Parent and Parent's counsel, District and its 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 October 7, 2011 before 5:00 p.m.

Stacey L. Stutzman
Impartial Hearing Officer