

ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING

RECEIVED

OCT 04 2011

In the Matter of:

SPECIAL EDUCATION  
SERVICES

[REDACTED] by his parent/guardian, )  
[REDACTED] )  
and )  
[REDACTED] )  
Local School District. )

ISBE Case No.: 2011 - 0390  
W. David Utley  
Impartial Hearing Officer

**DECISION and ORDER**

The Hearing in the above captioned matter took place on three separate dates, August 9, 2011, August 12, 2011 and September 1, 2011 at the [REDACTED]

The parties were advised of their rights under Section 14.08.02 (a) of the School Code, 34 CFR 300.512 and 23 Illinois Administrative Code 226.625. The undersigned Hearing Officer has jurisdiction to hear and decide this case under 105 ILCS 5/14-8.02 (a) of Illinois School Code, 23 Illinois Administrative Code 226.600 et seq. and the Individuals with Disabilities Education Act, 20 USC 1415. The Student was represented by his mother and the School District was represented by [REDACTED]

**A. Procedural Background**

The Parents' Request for an Impartial Due Process Hearing was dated May 13, 2011 and was submitted on the Student's behalf by his mother. The Due Process Request was received by the School District on or about May 16, 2011. The District retained [REDACTED] to represent its interests. [REDACTED] responded to the Impartial Due Process on May 23, 2011. The parties conducted a Resolution Session on May 20, 2011 which was not successful. A mediation session was held on June 9, 2011 and there was a partial resolution of the issues [SD 24 - 27].

An initial status call was held on June 6, 2011 and continued to June 10, 2011 to accommodate the scheduled mediation on June 9, 2011. On June 10, 2011, a status call was held and a Pre-Hearing Conference was scheduled for June 14, 2011 with the parties orally agreeing to waive the seven (7) day notice. At the parent's request, the Pre-Hearing Conference was continued to July 26, 2011. The Pre-Hearing Conference was held in person at the [REDACTED]

The parties' initial discussions during the Pre-Hearing Conference focused on the issues. The School District objected to many of the proffered issues and items of relief as not being appropriately raised in the Due Process Request. Over the School District's objection, the Parent was allowed to clarify certain issues and requests for relief. In addition, during that Pre-Hearing Conference, an issue as to admissibility of the testimony of [REDACTED] was raised. The parties were given an opportunity to brief this issue and the Hearing Officer entered an Interim Order relative to this on August 6, 2011 excusing [REDACTED] from testifying in this matter.

Procedurally, the mother and School District attorney agreed and stipulated to admission of the Parent document book [PD 1 - 622] and the School District document book [SD 1 - SD 643] and for admission of all the documents contained therein.

The Hearing was open to the public at the request of the parent. During the first day of hearing, an issue came up as to the use of the [REDACTED] resident phone notification system to advise the residents of [REDACTED] as to the hearing. The School District filed a Motion for Protective Order which was treated as a request for preliminary injunction and granted subject to further proceedings. An evidentiary hearing was held on August 12, 2011 and the Hearing Officer allowed the initial Order to remain in force during the Hearing. After the second day of hearing, the Parent requested leave to amend the witness list. This matter was briefed by the parties and the Hearing Officer entered an Order on August 23, 2011 allowing, in part, the parent to amend the witness list.

The School District requested submitting closing briefs in lieu of closing arguments. This was granted and the parties were allowed to submit simultaneous closing briefs on September 19, 2011. After receipt of the closing briefs, the School District filed a Motion to Bar the Parent's Closing Argument. Hearing Officer entered an Order on September 22, 2011 denying the School District's Motion other than as to issues not raised in the Due Process Request and Pre-Hearing Conference Summary.

The Parents called the following witnesses: Student; [REDACTED]

[REDACTED]  
School. Per the Parent's Request to Amend the Witness list, the parent was also allowed to call

[REDACTED] for the limited purpose of issues with Rtl.

The School District called [REDACTED]

[REDACTED] [Those in bold face were called by both the Student and the School District]

**B. Issue(s) Presented**

The School District failed to provide a Free Appropriate Public Education (FAPE) to the Student by:

1. Failing to appropriately evaluate the student or incompletely evaluating the student relative to his disability;
2. Failing to write goals specific to the student's IEP Program;

3. Failing to draft appropriate modifications and accommodations relative to his IEP
  - a) by failing to provide the student with appropriate list of all vocabulary words, pronunciations and definitions at least one week prior to any test;
  - b) by failing to provide the student with audio books for school work and pleasure reading at the district's sole expense;
  - c) by failing to provide the student with all formulas for math tests and quizzes without the need for the student to memorize those formulas;
  - d) by failing to have his teachers sign off on the student's homework assignments to ensure that the student has documented his homework correctly; and
  - e) by failing to provide a summary of all notes and lesson plans until such time as his typing speed is at grade level;
4. Failing to identify and to provide appropriate and current assistive technology in the classroom setting and for all schoolwork;
5. Failing to provide transportation, at the school district's sole expense, for any extended summer school (ESY) sessions;
6. Failing to staff the Student's class with Highly Qualified teachers with certification in the Student's disability.

**C. Relief Requested**

1. The Student shall have Goals written in the IEP that are SMART (Specific, Measurable, Agreed Upon, Realistic and Tangible) and are in line with the Wilson Program for each and every goal on the IEP where reading is involved.
2. The Student shall have reading intervention (more specifically, the Wilson Reading Program) instructions that shall be provided in a one on one setting if homogeneous grouping is not possible based on where the Student is working in the Wilson Reading Program for all years that the Student remains [REDACTED]
3. The Student shall be provided with an Assistive Technology Device(s) other than an AlphaSmart to use and have at school for all the years that the Student remains in the [REDACTED]
4. The Student shall receive a list of all vocabulary words, their pronunciation and definition at least one week prior to any test for all the years that the Student remains in the [REDACTED]
5. The Student shall be provided with audio books for school work and pleasure reading at the School District's sole expense for all the years that the Student remains in the [REDACTED]

6. The Student shall be provided with all formulas for math tests and quizzes and shall be able to use all formulas for all math tests and quizzes without the need to memorize the formulas for all the years that the Student remains in the [REDACTED]

7. The Student shall be provided with transportation, at the School District's sole expense, anytime his school year is extended to include summer school for all years that he remains in the [REDACTED]

8. The School District shall provide documentation as to the certification(s) of the teacher(s) working directly with the Student at the Middle School and for every year that the Student remains in the [REDACTED]

9. The School District shall provide the Student's mother with full reimbursement for the two (2) independent evaluations conducted by [REDACTED]

10. The Middle School Teachers shall sign off on the Student's homework assignments daily in an effort to ensure that [REDACTED] has documented his homework correctly for all the years that [REDACTED] remains in the [REDACTED]

11. The Student shall be provided with a summary of all notes and/or all lesson plans for each and every class prior to his typing speed getting to where it needs to be for all years while in the [REDACTED]

#### **D. Findings of Fact**

1. The Student has attended [REDACTED] since the school year 2005 - 2006 [SD 0223 - 0235]

2. He was in the Fifth grade during the 2010 - 2011 school year [SD 0223 - 0235]

3. His teacher in Third Grade was [REDACTED] [SD 0229]

4. [REDACTED] holds an Early Childhood Teaching Certificate with endorsements for Self Contained - General Education Age 0 - Grade 3. She is considered Highly Qualified in Elementary Self-Contained (K- 3 Only), English as a Second Language, Reading and Title 1 Remedial Reading [SD 0266 - 0623] [See also Tr. 231 -232]

5. His teacher in Fourth Grade was [REDACTED] [SD 231]

6. [REDACTED] holds an Elementary Teaching certificate with endorsements for Self Contained General Education, Kindergarten - Grade 9. He is considered Highly Qualified in Elementary Self-Contained (K-5 Only), Elementary Self-Contained (K - 3 Only), English (Grades 9 - 12 only); English as a Second Language, Journalism (Grades 9 - 12 Only), Language Arts (Grades 1 - 8 Only) and Speech (Grades 9 - 12 Only). [SD 0632 - 0633] [Tr. 249 - 253]

7. His teacher in Fifth Grade was [REDACTED] [SD 0234]

8. [REDACTED] holds an Elementary Teaching certificate - Kindergarten to Grade 9 with endorsements for Self Contained General Education - Kindergarten - Grade 9 and Social Science. He is considered Highly Qualified in Instrumental Music, Language Arts (Grades 1 - 8 Only), Physical Science - Middle Grades Only), Reading, Title I Remedial Math; Title I Remedial Reading and Vocal Music. [SD 0626 - 0627] [Tr. 601 - 602]
9. [REDACTED] has provided services to the Student including the Read Naturally program and the Wilson Reading Program. [Tr. 80, Tr. 130, Tr. 192]
10. [REDACTED] holds an Elementary and Secondary Teaching Certificate with endorsements for Learning Behavior Specialist I, Learning Disabilities and Social/Emotional Disorders. She is considered Highly Qualified in Elementary Self Contained (K - 5 Only). [SD 0636 - SD 0639] [See also Tr.131 - 133; 221 - 222]
11. [REDACTED] is a Special Education Teacher and AIMSweb coordinator [Tr. 287 - 288]
12. [REDACTED] holds a Type 10 Special Teaching with Endorsements in Learning Behavior Specialist I - Limited, Learning Disabilities and Social/Emotional Disorders. She is considered Highly Qualified in Basic and/or General Math, English (Grades 9 - 12 Only); Language Arts (Grades 1 - 8 Only), Reading and Title I Remedial Reading. [SD 0628 - 0629] [Tr. 286 - 294, 308]
13. [REDACTED] will be teaching the Student at the [REDACTED] for the school year 2011 - 2012 [Tr. 320 - 321]
14. [REDACTED] holds a Secondary Teaching Certificate as well as a Special Teaching Certificate. She has endorsements in Language Arts, Social Science and Social Science - History. She is Highly Qualified in many areas including Language Arts (Grades 1 - 8 only) and Title I Remedial Reading. [Tr. 320] [SD 0640 - 0641]
15. [REDACTED] is the Principal at [REDACTED] [Tr.712]
16. [REDACTED] holds a Secondary Teaching Certificate and an Administrative Certificate. She has endorsements for Language Arts at the Junior HS and Social Science at the Junior HS. She is considered Highly Qualified in, among others, English as a Second Language, Language Arts (Grades 1 0 8 Only), Reading and Title I Remedial Reading.
17. [REDACTED] the School District Director of Special Education. [Tr. 790]
18. [REDACTED] holds a Secondary Teaching Certificate, an Elementary Teaching Certificate and a Type 75 Administrative Certificate with Endorsements in Learning Behavior Specialist I - Limited, Learning Disabilities, Mental Retardation and Social/Emotional Disorders. She also is considered Highly Qualified in, among others, Basic and/or General Math, Environmental Science, Geography (Middle Grades Only), Language Arts (Grades 1 - 8 Only), Reading and Title I Remedial Reading. [SD 0637 - 0638]
19. [REDACTED] is the School District Speech Language Pathologist. [Tr. 551]

20. [REDACTED] holds a Special Teaching Certificate with additional endorsements in Speech - Language Pathology and an IL Approved Program in Speech & Language Impaired. [SD 0634]

21. [REDACTED] is the School District School Psychologist [Tr. 375]

22. February 26, 2009 Domain - Identification of Needed Assessments [SD0203 - 0204] Under Academic Achievement, the teacher stated that the student is functioning in the below average range academically. He did not pass a speech/language screening. [SD 0204]

23. March 18, 2009 Speech/Language Evaluation [SD 02020 a - 0202 x] The Student was 9 years old in the 3<sup>rd</sup> grade [REDACTED]. The areas of concern were language comprehension and articulation. [REDACTED] conducted the evaluation. She used various evaluations to include the Peabody Picture Vocabulary Test, Expressive One-Word Picture Vocabulary Test, Language Processing Test- Revised and Goldman-Fristoe Test of Articulation. She found that his receptive and expressive language skills scored in the average range overall. Articulation was delayed with development of the /l/, /r/, and /th/ sounds. Voice and fluency were age appropriate. [SD 0 202 b]

24. The March 25, 2009 IEP Conference Summary Report [SD 0190 a - 0202] This meeting was for initial eligibility. Under academic achievement, the Student was at grade level in math but had trouble with vocabulary and comprehension. He was not at grade level for 3<sup>rd</sup> grade reading and writing. [SD 0191] Goals and Objectives/Benchmarks were directed only to "delayed articulation". The Speech/Language teacher and the Speech/Language paraprofessional were to target sounds in words - particularly as to /l/, /r/ and /th/. [SD 0194 - 0195] He was to participate in district wide assessments with no accommodations. [SD 0197] He was to receive Speech/Language Therapy 40 mpw. [SD 0198] His placement determination was the General Education program with only Speech/Language services.[SD 0199]

25. The Student's Mother sent an e-mail to this fourth grade teacher relative to the Students achievement. [PD 208]

26. [REDACTED] forwarded this e-mail on to the administration relative to the student.

27. From the time that the School District received this e-mail, it convened a meeting by mid-December and agreed to conduct an evaluation [SD 592, Tr. 274 - 275]

28. The March 23, 2010 IEP Conference Summary Report [SD 0151 a - 0180] This IEP was to review existing data and for an IEP revision/review. His disability was listed as a Specific Learning Disability. His Academic Achievement (Student in 3<sup>rd</sup> grade) noted that he had trouble with vocabulary and comprehension. He was not at grade level for 3<sup>rd</sup> grade reading and writing.

The K-TEA showed that overall his spelling, reading and reading comprehension were within the average range although somewhat below age and grade level. He was low average for fluency and reading rate. [SD 0154] His interventions included Tier 1 Daily 5 in a small group and 1-on-1 for 90 mpw; Tier 2 reading in Read Naturally with 120 mpw 5 days a week. His instructional needs included small groups, listening once or twice to Books on Tape, read to self, read to

someone, reading response journal, working on words. The Reading Specialist suggested listening to Books on Tape to fill the gap in summer. [SD 0155]. Eligibility Determination - Specific Learning Disability showed that his instructional needs were significantly different and exceeded general education resources. This disability adversely affected his educational performance in basic reading skills, reading fluency and reading comprehension. He was determined to be eligible for Special Education and Related Services. [SD 0156] His present level of academic achievement showed that he struggled in spelling, reading decoding, oral fluency and independent comprehension - right at the line for average/below average. He had made reading growth so far. He is slightly above average in math. [SD 0163] He was to receive resource for 150 mpw and Speech and Language Services for 30 mpw. [SD 0172]

Psychological Evaluation: [REDACTED] administered the Kaufman Test of Educational Achievement - 2<sup>nd</sup> Edition (KTEA - II), the Gray Oral Reading Test - Fourth Edition (GORT - 4). The Student "performed academically within the average range in the area reading compared to other children his age for silent reading comprehension, oral reading comprehension and spelling. He was within the average for decoding, accuracy and fluency. However, oral reading was below the average and so was sight reading. [SD 0176 - 0178]

He was found eligible or continued to be eligible under the eligibility determinations of Specific Learning Disability in Reading and Speech/Language. The team noted that he was within the average range overall for reading components. He was in the average range for oral reading accuracy, oral reading comprehension, silent reading comprehension and spelling. He was low average for reading rate and fluency. He was within age level limits for reading comprehension and spelling. He was below age level limits for ltt (sic)/word recognition. He was almost ½ years below age level for oral reading rate and fluency. [SD 0156]

Goals and Objectives/Benchmarks were provided [SD 0164 - 0169] He was to work on /l/, /r/ and /th/ sound in unstructured conversation with 80 % accuracy [SD 0164]; encoding 60 words correctly from the 3<sup>rd</sup> grade Dolch list [SD 0165]; utilize strategies to decode 20 words with all 5 short vowel sounds [SD 0166]; will read 33 words passage independently from the 3<sup>rd</sup> grade level and retell the story using his own words [SD 0167]; will be introduced to 20 vowel-paired words from print, and then identify, define and verbalize them; will decode, define and use 20 words with "ar" appropriately in sentences verbally and then write the sentences in a bind book. Evaluation as to these was based upon observation logs, tests, class work and was to be measured bi-weekly.

Accommodations included use of a graphic organizer to arrange facts on paper, long assignments broken down into smaller parts, smaller group when all possible within the classroom, and more time to complete assignments that involve a lot of reading" [SD 0170].

29. The August 10, 2010 IEP Conference Summary Report [SD 0141 - 147] This meeting was held to review the [REDACTED] Health Evaluation. The Student was at the 4.0 level in Read Naturally. The team agreed that the Student's reading goals are appropriate but that a writing goal needed to be developed. Agreement with parent on co-teaching class. [SD 0142]

30. The September 13, 2010 IEP Conference Summary Report [SD 0135 - 0140] Additional Notes/Information shows that meeting was to discuss ESY, payment for private testing and

additional testing in reading. Student to receive 64 hours of ESY. [REDACTED] will do the QRI (Qualitative Reading Inventory). [REDACTED] completed the WADE (Wilson evaluation).

31. The October 18, 2010 IEP Conference Summary Report [SD 0110a -0134] Additional Notes/Information on the Qualitative Reading Inventory (QRI) - the Student had independent sight word ability at the 3<sup>rd</sup> grade level, an instructional level at the 4<sup>th</sup> grade level and frustration at the 5<sup>th</sup>/6<sup>th</sup> grade level. His comprehension was more difficult although on a conversational level, he understands more.

He was doing well in Speech/Language therapy with the “r” sound and with the “l” and “th” sounds with cueing. He was working in his Wilson Reading Program with the notation that he found vowel combinations more difficult and that he performed better reading real words than non-sense words. He currently was at the 2.5 level. He does better when the vocabulary is within context. He does have a strong vocabulary background. The Parent was concerned why the Student does well on the ISAT which doesn’t match up with Wilson program. [REDACTED] stated that all publishers create a test to measure different things. As to a diagnosis of dyslexia, the Mother was referred to a private evaluation. [PD-0111]

32. Measurement of Goals and Objective/Benchmark from March 23, 2010

- A. The team noted that the student has difficulty decoding various sounds such as “ar”, “tion”, and “oa”. His goal was to decode, define and then verbalize 60 words with the sounds in the correct content in a sentence.
1. His first goal was to use 20 words with an “ar” in sentences verbally and then write the sentences. On 01/06/11, the “ar” sound was not introduced until Step 8 and the Student was working in Step 5. (Therefore, not working on this).
  2. His second goal was to decode, define and verbalize 20 words with “tion” appropriately in sentences and then write down the verbalizations. “Tion” is not presented until Step 7 of the Wilson program. [Therefore, he did not meet this goal even though he was working successfully at Step 6].
  3. His third goal was to decode, define and verbalize 20 words with “oa” verbally and then create passages with these words, using appropriate sentence structure. The “oa” sound was presented in Step 9. Although he is working successfully in Step 6, he has not yet met this goal. [PD7]
- B. The Student has difficulty spelling words from the 3<sup>rd</sup> grade level. He was to encode 60 words correctly from the 3<sup>rd</sup> grade Dolche list. He was passing his spelling tests with 90 % accuracy. As of April 11, 2011, the Student met this goal [PD8]
- C. The Student was having difficulty distinguishing and blending sound with short and long vowel sounds. He was to utilize strategies to decode 20 works with all 5 short vowel sounds and met this goal by January, 2011. He was to utilize strategies to decode 20 works with all 5 long vowel sounds. The Student was working in Step 5 of the Wilson Reading program and can recognize v-consonant-e and open syllable rules. He was to utilize strategies to decode 20 works with all long and short vowel sounds. He was in Step 6 of the Wilson Reading program and decoded words with both short and long vowel sounds. [PD9]

- D. The Student was having difficulty recalling facts from a 3<sup>rd</sup> grade passage and then retelling the passage using his own words, identifying the main character, setting and main idea. He was to read a 33 word passage independently from the 3<sup>rd</sup> grade level and retell using his own words. As of January, 2011, he passed out of the Read Naturally 5.0 level and successfully was able to write a retell for each story. He completed these successfully. [PD10]
- E. The Student has difficulty identifying and sounding out words with vowels and letter pairs that don't sound like their original sounds or one vowel sound is dominant, i.e. OA, EA, OU OI, IE, AU and ew, ow, lr and er. The Student will be introduced to 20 vowel-paired words from print and identify, define and verbalize them. As of January 2011, the Student was in Step 5 of the Wilson Reading Program and vowel-paired words are introduced in step 9. The Student will be introduced to 20 letter-paired words from print and identify, define and verbalize them. As of April, 2011, the Student was in Step 6 working with multisyllabic words with suffix endings and consonant-le syllables. The Student will read from 3<sup>rd</sup> grade literature and identify vowel-paired words verbally and will write the words in correct sentence structure. As of April, 2011, the Student was in Step 6 working with multisyllabic words with suffix endings and consonant-le syllables. [PD11]
- F. The Student had delayed articulation skills. The Student will produce targeted sounds in structured and unstructured conversation including /l/, /r/, and /th/. As of May, 2010, he met the goal for /r/ and was to focus on /l/ and /th/. He met the goal with minimal cuing and then by March, 2011, met the goal. [PD12]

33. The April 14, 2011 IEP Conference Summary Report [PD 5 - 20] As to his present level of academic achievement, he was considered below average in reading on the EdPerformance (Scaled score of 2477 and grade equivalent of 4.5) and in the 25 % on the Aimsweb RCBM of unrehearsed passages. In Math, he was a grade equivalent of 5.4 (scaled score of 2508) on the EdPerformance and 75 % on the Aimsweb. The team noted that his disability has hindered him from reading and comprehending information at grade level. His mother was concerned about his dysgraphia. [PD13]

He was to participate in ISAT/PSAE/IMAGE with accommodations, i.e. test in smaller group, extended time to complete assessments, need to access word processor to complete written assessments and to have a staff member transcribe extended response on the ISAT. [PD16]

He was to receive 200 mpw in Language Arts and 200 mpw in Literature in the General Education Classes and 200 mpw in Reading Intervention in Special Education Classes/Services. [PD17]

Placement Considerations was the General Education with Resource Supports and Extended School Year Services (ESY) for Reading Resource of 180 mpw x 4 weeks. [PD 18]

Additional notes indicated that the team reviewed the outside evaluation(s). The Student's mother wanted the Student to have a clinical diagnosis. He will have four (4) placements at Middle School - Full Instructional; Resource Classroom; Co-Taught; and Mainstream. He was

to be in Reading Intervention in lieu of Social Studies. He will also be in computer (Exploratory) to continue keyboarding skills. He will also continue to work at his current Wilson level in Middle School. [REDACTED] was to work with the parent on a ESY schedule for the Student's Wilson program. [PD 19]

The Student was again allowed accommodations "to use a graphic organizer to arrange facts on paper, long assignments broken into smaller parts, smaller grouping when all possible within the classroom, and more time to complete assignments that involve a lot of reading" In addition, "textbooks should be provided in audio format in addition to print format. He was to use a word processor to complete written assignments [SD 0040]

34. Wilson Assessment of Decoding and Encoding (WADE) [SD 0147 a - 147 I] The August 2010 Wade Summary of Scores shows the following: Sounds: 83 % in Consonants; 56 % in Digraphs/Trigraphs, 36 % in Vowels, 5 % in Additional Sounds, 81 % in Welded and 52 % in Total Sounds. Reading: 73 % in Real Words, 5 % in Nonsense Words, 97 % in Sight Words and 63 % in Total Words. [SD 0147 d] Spelling: 85 % in Sight Words

35. AIMSweb Reports for 2009 - 2010 and 2010 - 2011 [SD 0236 - 0245] The May 17, 2011 Reading Improvement Report for 2010 - 2011 School Year for the Student shows that from the Fall, 2009 through the Spring, 2011, the Student needed to be further assessed and considered for Individualizing Program. Throughout, on the graphic chart, he was below the school average. [SD 0236] For the 5<sup>th</sup> grade, his performance was considered "below average" with the Student ranking in the 18 % based upon the National Percentile Ranking. The grade equivalent was 4.6. [SD 0237] In his reading test, the Student achieved a below average performance. The student scored in the 18% percentile on the national percentile rank. [SD 0247 b]

36. Horizons Behavioral Health [PD 84 - 86] [REDACTED] administered the Wechsler Intelligence Scale for Children (WISC - IV) and the Wechsler Individualized Achievement Test (WIAT - II) subtests on July 7, 2010 as to the Student. He was 10 years 3 months and going into 5<sup>th</sup> grade.

On his Cognitive Assessment (WISC - IV) (where average is 90 - 110 or 9 -11), he scored 87 (19<sup>th</sup> %) in Verbal Comprehension; 96 (39 %) in Perceptual Reasoning; 94 (34 %) in Working Memory; and 100 (50 %) in Processing Speed. His full scale IQ was 91 (27 %). He scored 7 in Vocabulary, Similarities, Digit Span; 8 in Block Design; 9 in Comprehension, Digit Symbol-Coding and Picture Concepts; and 11 in L/N Sequencing, Matrix Reasoning and Symbol Search. The Student's current full scale overall cognitive ability was presently in the average range as compared to a national sample of his peers aged 10:0 to 10:3. Verbal comprehension was in the low average range. Perception and Reasoning, he was in the average range of functioning. Working memory also yielded an average performance.

On the WIAT-II, his word/site reading was a grade equivalent of 2.8 and his reading comprehension was a grade equivalent of 2.5. The Student's current academic skills in the area of reading are below his overall IQ in decoding (pronouncing words) and reading comprehension. In sight reading, he was some 2 ½ years behind his level of education. His reading comprehension was in the borderline range - some 3 years below his level of education. He does need the criteria for learning disability in reading.

37. [REDACTED] Psychological Evaluation - January 27, 2011/February 22, 2011 and February 28, 2011 [PD 87 - 93] [REDACTED] administered the Woodcock-Johnson Psycho-Educational Battery - III, Tests of Achievement, NEPSY and Wide Range Assessment of Visual Motor Abilities.

[REDACTED] found difficulties in applying decoding skills, misperception of operational signs, misreading words and letters and displayed motor patterning difficulties in writing. He also has some relative deficits in areas associated with a developmental neurological assessment. He has difficulties in visual attention, visual motor perception, design copying, phonological processing and memory. Based upon these difficulties and lower level reading ability, he appears to be exhibiting symptoms of a reading disability known as "dyslexia".

[REDACTED] recommended a reading specialist trained in the area of dyslexia; a structured reading program to help him master the basic phonemic awareness and mastery of letter-sound association; an emphasis on rhyming, segmentation and blending to help develop good reading skills and then a transfer of these reading skills to writing skills.

Relevant accommodations include: extra time to access his learning capacity; need for quiet such as a separate room for testing; use of recorded texts to assist in the learning of materials that a dyslexic child struggles to read on his own.

38. [REDACTED] Dyslexia Testing Specialist [PD 104 - 160] [REDACTED] concluded, after testing on March 11, 2011, that the Student has a moderate dyslexia and moderate to severe dysgraphia. She recommended intense 1-on-1 tutoring by someone who is certified in Orton-Gillingham two times a week all year long; computer keyboarding by touch with daily touch typing sessions lasting 15 mpd; and classroom accommodations including audiobooks for all reading assignments; avoiding pen and paper tasks and allowing written assignments to be typed or dictated; grading hand written assignments only on content and not counting for spelling error, grammar or penmanship [PD 130]; never embarrass this student by showing his weaknesses to his classmates - no spelling bees, no reading aloud in class, no exchanging papers; providing extra time on tests; allowed use of a calculator or taught touch math and times tales; and being provided with a list of sequence of steps for memorization or math problems/procedures. [PD 131]

39. [REDACTED] reviewed the independent evaluations performed on/for the Student. On the WISC<sup>1</sup>, she found that the Student scored within average range for comprehension which is using language to problem-solve; within the average range for letter -number sequencing which has to do with holding verbal information online to be able to manipulate it; the average range for perceptual reasoning -which deals with non-verbal information [Tr. 415]; on working memory , he did better with letter-number sequencing than with digit span; he was solidly within average on processing speed. In her opinion, the scores as a whole tells us that he's pretty much within the average range [Tr. 416] and, in fact, the scores on these [outside evaluations] compare favorably to the Districts. The Student came in pretty close to average. As such, the scores are not in disagreement with the District's evaluations. [Tr. 417] On the WAIT

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<sup>1</sup> She noted that the standard deviation was 15 which would account for the range of scores being 85 - 115 instead of 90 - 110 as referenced by Dr. Lee.

(achievement) test, the Student's sight reading and reading comprehension results are not in disagreement with what the district/she obtained. [Tr. 417 – 419] His reading comprehension is lower than she would have expected - grade-based reading comprehension is very low but overall, his reading comprehension was in the lower end of average. [Tr.419] She also agreed that the independent evaluations provided additional information on the Student's strengths. [Tr. 446] These evaluations would not change the way that the District provided education benefits to the Student as they were similar.

40. ISAT - Spring 2010 The Student's scale score in reading is meeting standards - he did as well as or better than 69 % of student's nationally. [SD 0257]

41. Mediation Agreement [SD0021 - 0027] The parties agreed to the following accommodations/modifications:

1. The Student will avoid all paper and pencil tasks. Written assignments will be dictated. It was agreed that the Student will complete fill-in-the-blank and short answer assignments. While at school, the Student shall never be required to write more than three sentences, except essays. If the assignment requires more than three sentences, the expectation will be modified. Spelling, grammar and penmanship will not be counted for a grade in any essays. The Student will handwrite essays in class with his peers to the best of his ability. He will have the opportunity to take his essays home for transcribing, should he chose to prior to any essay being graded. This accommodation will be available in all classes.
2. The Student's spelling tests were not to be graded. Spelling tests may be given, and the Student will have the opportunity to take the tests with his class, however, his grade will not be counted against him.
3. Vocabulary tests will be presented orally.
4. The Student will never be asked to participate in spelling bees, exchanging papers or reading out loud in class.
5. The Student will be provided extra time on math test and quizzes. This provision is already in the IEP. The Student will receive copies of formulas for math tests and quizzes.
6. The Student will have tests and assessments read. [SD0021 - 0027]

#### **E. Burden of Proof**

The Supreme Court in *Schaffer v Weast*, 546 U.S.49 (2005) has held that the party filing the request for due process bears the burden of persuasion. "The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief" *Id.* at 537. However, per *Schaffer*, the states may, if it wishes, put the burden on the school district.

In Illinois, "the IDEA framework ... provides that 'the school district shall present evidence that the special education needs of the child have been appropriately identified and that the special education program and related services proposed to meet the needs of the child are adequate, appropriate and available'. 105 ILCS 5/14 - 8.02 (h) states only that a district's obligation is to present evidence, it does not place a burden of proof on the district. See *Schaffer*, *Id.* at 533-534 (distinguishing burden of production from burden of persuasion). As such, section 8.02(h) does not contain the explicit burden of proof language necessary to override the default rule the

plaintiff, as a party challenging the IEP, bore the burden of proof.” *Kerry M & Kristine M v Manhattan Sch. Dist. # 114*, 106 LRP 58547, 46 IDELR 194 (7<sup>th</sup> Circuit, No. Dist. IL, 2006).

Putting it in different fashion, it is the parent's burden to present sufficient evidence to support their allegations that the school district failed in its obligation to provide the student with a free appropriate public education (FAPE) and such other relief as they are seeking.

## **F. Conclusions of Law**

### **1. Whether the School District Failed to Appropriately Evaluate the Student or Incompletely Evaluated the Student Relative to His Disability.**

The parent/student submits that the School District failed to appropriately evaluate the student or incompletely evaluated the Student relative to his disability. The responsibility to conduct an evaluation is set forth in the IDEA at 34 C.F.R. Sections 300.301 (a) and 300.303 (a) and implemented in Illinois at 23 Illinois Administrative Code, Section 226.110 evaluation procedures.

Under the IDEA, a school district is required to assess a student in all areas of suspected disability. The district “shall use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent that may assist in determining (i) whether the child is a child with a disability; and (ii) the content of the child's individualized education program....” 20 U.S.C. 1414 (b) (2) (A). Further, the local educational agency shall (B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child” 20 U.S.C. 1414 (b) (2) (B). To this end, a district must ensure that it completes a full and individualized evaluation. *Kevin T. v. Elmhurst Comm. Sch. Dist. No. 205*, 36 IDELR 153 (N.D. IL 2002).

In early 2009, at a Domain meeting for the Student, he was initially considered for Special Education services. The Student was functioning in the below average range academically and he failed a speech/language screening. [Findings of Fact 22] [REDACTED] the School District's Speech/Language pathologist, conducted a Speech/Language evaluation on March 18, 2009 and found articulation delays. [Findings of Fact 23]

The School District held an initial eligibility meeting on March 25, 2009 IEP and the Student was found eligible for special education services under the category of Speech/Language. [Findings of Fact 24] During the meeting, under academic achievement, the team noted that the Student was at grade level in math but had trouble with vocabulary and comprehension and he was not at grade level for 3<sup>rd</sup> grade reading and writing. [Findings of Fact 24] . He was to receive services and Goals and Objectives/Benchmarks were formulated. [Findings of Fact 24]

In November, 2009, the Student's mother sent an e-mail to the fourth grade teacher, [REDACTED] [REDACTED] relative to her concerns regarding student academic achievement. [Findings of Fact 25] [PD208] [REDACTED] forwarded this to the administration and by mid-December, a domain meeting was arranged. [Tr. 274] At the March 23, 2010 IEP meeting, the Student was found eligible or continued to be eligible under the eligibility determinations of Specific

Learning Disability in Reading and Speech/Language. Goals and Objectives/Benchmarks were provided. [Findings of Fact 28].

A meeting was held to review his progress on his Speech/Language goals and benchmarks. Various team members and the mother were present and discussed this. [SD 0148] An August 10, 2010 IEP meeting was held to the [REDACTED] [Findings of Fact 29] The team agreed that a writing goal needed to be developed. [SD 0142] As the parent's request, another IEP meeting was held on September 13, 2010 to discuss scores, to discuss ESY, payment for private testing and additional tests in reading. An additional reading assessment was to be done by the school psychologist. [Findings of Fact 30] On October 18, 2010, another IEP meeting was held to review the existing data, to review and revise the IEP and to look at the Student's progress. [Findings of Fact 31] His last IEP meeting was on April 14, 2011 to review/revise his IEP and to review existing data. [Findings of Fact 32]

During the time from November 2009 through April 14, 2011, the School District used a variety of tests, observations and grade reports to evaluate the Student. The school psychologist administered the Kaufman Test of Educational Achievement, the GRAY Oral Reading Test, and the Qualitative Reading Inventory. [REDACTED] conducted the Wilson Assessment of Decoding and Encoding. [Findings of Fact 34] Previously, the Speech/Language pathologist had conducted various evaluations to include the Peabody Picture Vocabulary Test, Expressive One-Word Picture Vocabulary Test, Language Processing Test- Revised and Goldman-Fristoe Test of Articulation. [Findings of Fact 23]

In addition, the School District used RtI for screening students in the District. As part of this process, the School District utilized AIMSweb and Ed Performance to evaluate the students throughout the course of the year. [Findings of Fact 35] His AIMSweb May 17, 2011 Reading Improvement Report for 2010 - 2011 School Year for the Student shows that from the Fall, 2009 through the Spring, 2011, the Student needed to be further assessed and considered Individualizing Program. Throughout, on the graphic chart, he was below the school average. For the 5<sup>th</sup> grade, his performance was considered "below average" with the Student ranking in the 18 % based upon the National Percentile Ranking. The grade equivalent was 4.6. On May 17, 2011, in his reading test, the Student achieved a below average performance. The student scored in the 18% percentile on the national percentile rank. His grade level equivalent was 4.6.

Although I cannot consider the March 25, 2009 IEP Conference Summary Report [see 20 U.S.C. Section 1415 (f) (3) (C) - Due Process Complaint filed/presented on May 13, 2011<sup>2</sup>], other than in a historical context, it is instructive that, at that time, the domain sheet noted that the Student was functioning in the below average range academically. [Findings of Fact 22] The March 18, 2009 Speech/Language Evaluation noted the areas of concerns as language comprehension and articulation. [Findings of Fact 23] The March 25, 2009 IEP Conference Summary Report noted that the Student had trouble with vocabulary and comprehension and was not at grade level for reading and writing. [Findings of Fact 24]

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<sup>2</sup>The Parent has alleged that the School District failed to evaluate and identify a learning disability. This claim as to the School District's failure to properly evaluate the Student in 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup> grade prior to May 13, 2009 must fail as these all predated the two year Statute of Limitations as noted above.

In November, 2009, the Student's mother expressed concern over his reading [SD -592] [Findings of Fact 25]. The domains identified by the team for further study and evaluation included Academic Achievement, Cognitive Functioning, Hearing/Vision and Social/Emotional Status.

The school psychologist, [REDACTED] administered the Kaufman Test of Educational Achievement - 2<sup>nd</sup> Edition (KTEA - II) and the Gray Oral Reading Test - Fourth Edition (GORT - 4). The Student "performed academically within the Average range in the area reading compared to other children his age for silent reading comprehension, oral reading comprehension and spelling. He was within the average for decoding, accuracy and fluency. However, oral reading was below the average and so was sight reading. [Findings of Fact 28] Based upon the evaluations, the Student was found eligible or continued to be eligible under the eligibility determinations of Specific Learning Disability in Reading and Speech/Language. [Findings of Fact 28]

The Parent had several independent evaluations done. [REDACTED] administered the Wechsler Intelligence Scale for children (WISC - IV) and the Wechsler Individualized Achievement Test (WIAT - II) subtests on July 7, 2010 as to the Student. He was 10 years 3 months and going into 5<sup>th</sup> grade. On his Cognitive Assessment (WISC - IV) (where average is 90 - 110 or 9 - 11), he scored 87 (19<sup>th</sup> %) in Verbal Comprehension; 96 (39 %) in Perceptual Reasoning; 94 (34 %) in Working Memory; and 100 (50 %) in Processing Speed. His full scale IQ was 91 (27 %). He scored 7 in Vocabulary, Similarities, Digit Span; 8 in Block Design; 9 in Comprehension, Digit Symbol-Coding and Picture Concepts; and 11 in L/N Sequencing, Matrix Reasoning and Symbol Search. The Student's current full scale overall cognitive ability is presently in the average range as compared to a national sample of his peers aged 10:0 to 10:3. Verbal comprehension was in the low average range. Perception and Reasoning was in the average range of functioning. Working memory also yielded an average performance as did processing speed. [Findings of Fact 36]

On the WIAT-II, his word/site reading was a grade equivalent of 2.8 and his reading comprehension was a grade equivalent of 2.5. The Student's current academic skills in the area of reading were below his overall IQ in decoding (pronouncing words) and reading comprehension. In sight reading, he was some 2 ½ years behind his level of education. His reading comprehension was in the borderline range - some 3 years below his level of education. He does need the criteria for learning disability in reading. [Findings of Fact 36]

[REDACTED] also conducted certain evaluations of the Student including the Woodcock-Johnson Psychoeducational Battery (an achievement test), the Neuropsychological Assessment (NEPSY) and the Wide Range Assessment of Visual-Motor Abilities and found difficulties in applying decoding skills, misperception of operational signs, misreading words and letters and displays motor patterning difficulties in writing. He also has relative deficits in areas associated with a developmental neurological assessment. He has difficulties in visual attention, visual motor perception, design copying, phonological processing and memory. Based upon these difficulties and lower level reading ability, he appears to be exhibiting symptoms of a reading disability known as "dyslexia". [Findings of Fact 37]

[REDACTED] Dyslexia Testing Specialist, concluded, after testing, that the Student has a moderate dyslexia and moderate to severe dysgraphia. [PD 130] [Findings of Fact 38]

██████████ recommended a reading specialist trained in the area of dyslexia; a structured reading program to help him master the basic phonemic awareness and mastery of letter-sound association; an emphasis on rhyming, segmentation and blending to help develop good reading skills and then a transfer of these reading skills to writing skills. Relevant accommodations included extra time to access his learning capacity; need for quiet such as a separate room for testing; use of recorded texts to assist in the learning of materials that a dyslexic child struggles to read on his own. [Findings of Fact 37]

██████████ recommended that the Student would qualify for an IEP to help him learn and accommodations as needed to demonstrate and increase his abilities. In addition, she suggested an ophthalmological evaluation of vision to observe visual rotation and reversing in processing. [Findings of Fact 36]

██████████ among other things discussed in Section 3 below, recommended intense 1-on-1 tutoring by someone who is certified in Orton-Gillingham two times a week all year long; computer keyboarding by touch with daily touch typing sessions lasting 15 mpd; and classroom accommodations including audiobooks for all reading assignments. [PD 130] [Findings of Fact 38]

After receiving the various outside evaluations, the School District convened several meetings to consider the evaluations. At times, they incorporated some of the findings in their IEP and/or goals/objectives/benchmarks or requested additional evaluations. [Findings of Fact 33]

Although there may be discrepancies between the Independent Evaluators and the School District's evaluations, there certainly are similarities also. ██████████ reviewed the independent evaluations performed on/for the Student. In her opinion, the scores as a whole show that he's pretty much within the average range [Tr. 416] and, in fact, the scores on these [outside evaluations] compared favorably to the Districts as the scores are not in disagreement with the District's evaluations. [Tr. 417] She also agreed that the independent evaluations provided additional information on the Student's strengths. [Tr. 446] These evaluations would not change the way that the District provided education benefits to the Student as they were similar. [Findings of Fact 39]

Further, ██████████ testified that, in fact, as to ██████████ recommendation # 1, the School District had provided the Student with a reading specialist that had specific learning disability expertise [Tr. 438]. As to ██████████ Recommendation # 2 of a structured reading program, the Student was participating in a structured reading program - Wilson Reading Program. As to ██████████ Recommendation # 3, for rhyming, segmentation and blending to help develop good reading skills, beginning with simple words and progressing to multisyllabic words [r. T439], the Wilson program would address this area [Tr. 440] As to ██████████ evaluation, the diagnosis of dyslexia and dysgraphia would have fallen under umbrella of specific learning disability. As to her recommendation #1 for appropriately trained teacher instruction, the Student's teacher was trained in Wilson and Orton-Gillingham (a multi-sensory method). In terms of her Recommendation #2, keyboarding and typing, these will be addressed by the [Tr. 445] middle school as to keyboarding and language arts [Tr. 446]

One of the concerns that the Parent has expressed over the course of her interactions with the School District is that the evaluations are incomplete or inappropriate as they have failed to properly label the Student's disability. The parent felt that in order to appropriately deal with the Student's disability, the School District needed to appropriately label the Student as Dyslexic [SD 0420, SD 0430, SD 0481, SD 0549] and then, after the [REDACTED] evaluation, as Dysgraphic [See SD 0411]. The School District personnel attempted to advise the Parent that, from their perspective and pursuant to the Illinois State Board of Education, that the Student's eligibility domain was Specific Learning Disability (in Reading) and that Dyslexia was such a condition that qualified under this domain. [SD 0265, SD 0274, SD 0428]

The IDEA, in 34 C.F.R Section 300.8 (a) (1) has denoted a child with a disability as meaning:

“a child evaluated in accordance with Sec. 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.”

These are the only categories of disability listed in the IDEA. Dyslexia is subsumed under the definition of a Specific Learning Disability. In 34 C.F.R Section 300.8 (c)(10) (i), a Specific Learning Disability is defined as

“Specific learning disability. (i) General. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.”

During the hearing, the parent addressed a number of the School District personnel relative to the this issue of a diagnosis/label of Dyslexia and Dysgraphia for the Student. However, the label that is placed on the student is not the thrust of the IDEA. As the court in *Heather S. v. State of Wisconsin*, 26 IDELR 870, 26 LRP 4349, stated, “the IDEA concerns itself not with labels but with whether a student is receiving a free and appropriate education. A disabled child's individual education plan must be tailored to the unique needs of that particular child. *Rowley*, 458 U. S. At 181; *Board of Education of Murphysboro Community Unit Sch. Dist. Number 186 2. Illinois State Board of Education*, 41 F 3 1162(7<sup>th</sup> Cir, 1994) ... the IDEA charges the school with developing an appropriate education, not coming up with a proper label with which to describe [the student's] multiple disabilities.”

Here, whether the diagnosis is dyslexia/dysgraphia or the domain eligibility is Specific Learning Disability, the underlying issue, as noted by [REDACTED] and confirmed by the testing is that the Student has difficulty in reading. The School District's observations, in-house testing, standardized testing, psychological testing coupled with the outside evaluators' opinions all concern the Student's reading. Given the extensive testing done on the Student through the AIMSweb program, the EdPerformance testing, the State ISAT testing, the teacher's

observations, the psychological testing and speech/language testing done by the district, the District has met the mandate of the IDEA - "to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent".

The Parent has requested as relief to be re-imbursed for the two (2) subsequent outside evaluations which the Parent secured as to the Student. The "parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions and paragraph (b) (2) through (4) of this section" 34 CFR 300.502 (a). Upon this request, the public agency must, without unnecessary delay, either (i) file a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) ensure that it independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing ... that the evaluation obtained by the parent did not meet agency criteria". 34 CFR 300.502 (b) (2) (i) (ii).

In Illinois, parents have a corollary right to an Independent Educational Evaluation (IEE) at public expense with the additional requirement that the request be submitted in writing to the local school district superintendent and, if the parent wishes a evaluator with specific credentials that the parent and school district need to agree on the qualifications. If no agreement can be reached, a school district needs to initiate a due process hearing. See 23 Ill Admin Code 226.180.

There is no record that the Parent addressed a specific request for an IEE to the superintendent nor that she specifically disagreed with a particular evaluation in the context of any such letter. It is obvious that the Parent has disagreed with the evaluations that have been accomplished by the School District over, among other things, the use of terminology - dyslexia vs. specific learning disability. However, absent the technical requirement of notification to the Superintendent of this request, the Parent is not entitled to an IEE at public expense. Further, the "parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees." 34 C.F.R Section 300.502 (b)(5). As the School District had already re-imbursed the parent (T838) [SD 0264] for a prior IEE, and there is not reference anywhere to a subsequent evaluation with which the Parent disagrees, the School District does not have to re-imburse the Parent for either of the two subsequent evaluations - [REDACTED]

As such, the school district did not fail to appropriately evaluate the Student and this issue is found in favor of the school district.

**2. Whether the School District Failed to Write Goals Specific to the Student's IEP Program;**

The starting point for any analysis of whether an IEP is reasonably calculated to provide a meaningful educational benefit is the Supreme Court's decision in *Bd. of Ed. v. Rowley*, 458 U.S. 176 (Rowley). *Rowley* presents a two prong test relative to F.A.P.E., the second of which implicates a meaningful educational benefit. This substantive prong requires the District to provide an IEP that is calculated to allow the student to benefit from his educational experience.

It requires more than a nominal benefit for this instruction. *T. H. v. Bd of Ed of Palatine Comm Consol. Sch. Dist.* 55 F Supp. 830 (N.D., Ill. 1999); See *J. P. Ex rel. Mr. and Mrs. P. V Newington Bd. of Ed.*, 546 f. 3d 111. An IEP needs to contain goals and objectives which are measurable. *Independent Sch. Dist. No. 701, Hibbing Pub. Sch. v. J. T.*, 45 IDELR 92 (Minn., 2006). As noted therein,

“The instruction and services must meet the state's educational standards, must approximate the grade levels used in the state's regular education, and must comport with the child's IEP. *Id.* The objective of the criteria set out in federal law is ‘the achievement of effective results -- demonstrable improvement in the educational and personal skills identified as special needs -- as a consequence of implementing the proposed IEP.’ *Town of Burlington v. Dept. of Educ. for Com. of Mass.*, 736 F.2d 773, 788 (1st Cir. 1984) (citations omitted).”

Under 20 U.S.C. Section 1414 (d) (A)(i)(I - IV), the IEP must include a statement of the child's present level of academic achievement and functional performance; a statement of measurable annual goals, including academic and functional goals; a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports will be provided; and a statement of the special education and related services and supplementary aids and services needed.

A review of the Student's IEPs demonstrates that they are procedurally correct. They do contain the Student's present level of academic achievement and functional performance; they do contain a statement of measurable annual goals, including academic and functional goals; they do contain a description of how the Student's progress toward meeting the annual goals will be measured and when periodic reports will be provided; and they do contain a statement of the special education and related services and supplementary aids and services needed. [See SD 0190a - SD 0202; SD 0151a - SD 0180 vvv; SD 0029 - SD 0045)

The question that must be addressed here is whether or not they are designed to provide education benefit to the Student. It is important that annual goals describe what can be reasonably expected to be accomplished. *Letter to Butler*, 213 IDELR 118 (OSERS 1988). The goals and short term objectives/benchmarks must be specific enough for the educational provider and those reviewing the IEP to determine if the progress is being made. See, e.g., *In re: Student with a Disability*, 50 IDELR 236 (SEA NY 2008). Short term objectives – those steps taken during the course of the year to reach the annual goal – should serve as a measuring device to show progress towards meeting the goal. They should be sequential, starting with smaller steps and progressively adding additional steps to reach that annual goal. See, e.g. *Pocatellow Sch. Dist. 25*, 18 IDELR 83 (SEA ID 1991)

Although the District's goals and objectives/benchmarks seem to meet the above criteria, there is serious question if the Student is progressing towards those goals. In *Richard Paul E. V Plainfield Community Consolidated School District 202*, 2009 WL 995459 (N. D., Ill 2009), “[t]he Seventh Circuit has suggested that the necessary amount of progress needed to satisfy this standard will correlate, at least to some degree, with ‘the student's abilities,’ which reflect the severity of the child's disability, *Id.* Measuring a child's progression may seem difficult, but

'[o]bjective factors, such as regular advancement from grade to grade, and achievement of passing grades, usually show satisfactory progress'. *Id.*"

Although he has had regular advancement through the grades and achieved, to a certain extent, passing grades, grades are often subjective [Tr. 710]. [REDACTED] testified that "I can tell you as a former teacher that a grade I gave might be substantially different than another teacher's grade based on what we did. If I just had kids read to me and I did it based on a measure, it might be my determination that something did or did not meet. Some teachers might consider a level C in one assessment to be meeting. Another might consider it not to be meeting. So again, unless I did these specific grades -- and that's why we rely on standardized measures, so we can get data points that are standardized and developed for those reasons."

The various district observations, tests and evaluations and outside evaluators paint a somewhat mixed picture of the Student. On the ISAT testing, he was considered as meeting standards in reading [SD 0257] and his teachers felt that he was making progress towards his goals. [Findings of Fact 40] Even though [REDACTED] believed that the student has made progress, she wouldn't qualify it as great progress. [Tr. 129] [REDACTED] did not know how the Student made progress in the Wilson program if he is below average in reading pursuant to the scoring in the AIMSweb scores. [Tr. 860]

[REDACTED] had the opportunity to work with the Student in the Wilson Reading Program both during the school year as well as during an Extended School Year service in the summer. She felt that the Student was more than one year behind and probably close to two years behind in reading. [Tr. 215] He had two years of writing that looked identical. She had not seen a lot of improvement in his handwriting. Typically, she saw this type of writing around third grade. She was not aware that his handwriting ever has been addressed in his IEP [Tr. 116]

[REDACTED] based on the WIAT-II administered on July 7, 2010, found his word/site reading was a grade equivalent of 2.8 and his reading comprehension was a grade equivalent of 2.5. The Student's then current academic skills in the area of reading are below his overall IQ in decoding and reading comprehension. In sight reading, he was some 2 ½ years behind his level of education and in reading comprehension, he was in the borderline range - some 3 years below his level of education. [Findings of Fact 36]

On the AIMSweb program, for the 5<sup>th</sup> grade, his performance was considered "below average" with the Student ranking in the 18 % based upon the National Percentile Ranking. [SD 0237] [Findings of Fact 35]

Although it is not good practice to write goals to methodology [Tr. 184], there seems to be a disconnect between the goals and the program that the Student is currently working - the Wilson Reading Program. As to his goals for 2010 - 2011, [REDACTED] did not feel that goals were properly written. [Tr. 122] A review of his April, 2011 IEP shows that the Student did not meet all of his IEP goals for the 2010 - 2011 school year. [PD 7 - 12] In looking at his reading goals from his March 23, 2010 IEP, although the goals are written for his disability, since the Student was in the Wilson program, the extent of progress towards his goals is not being met as the Wilson program did not line up with the goals. For example, on PD 7, the short term objective/benchmark was that the Student "will decode, define and use 20 words with the "ar"

appropriately in sentences verbally, and then write the sentences in a bind box. A 1/6/11 Dates Reviewed/Extent of Progress entry showed that the Student is working in the Wilson Reading System in Step 5. The “ar” is presented in Step 8. He is working successfully in Step 5 which is working with open syllables”. Similar issues are noted on this and other pages. [PD 7 – 12] Eight of his Short Term Objective/Benchmark out of eighteen is similarly noted with reference to the Wilson program. [Findings of Fact 32]

██████████ the School District’s Director of Special Education, did agree that “while the goal doesn’t necessarily have to be written to the methodology, it can actually be written pursuant to the substance of the chapters within the Wilson program”. [Tr. 861 – 862]

Although the 2010- 2011 goals and objectives/benchmarks appear, for the most part, to be well written as to the Student and his unique needs, the objectives/benchmarks as noted above and the disconnect between the objectives/benchmark and the ability to measure them due to the difference in location of the Student in the Wilson Reading Program vis a vis the objectives/benchmarks do not allow an adequate measurement within the time frame allowed.

Moreover, the goals and objectives/benchmarks proposed for 2011 - 2012 do not follow up on the items that were not achieved. The various goals and objectives/benchmarks from the 2010 - 2011 that were not achieved are not to be found in the 2011 - 2012 IEP. Rather, there is only one goal stated: By April 12, 2012, the Student will read 136 words per minute from an unrehearsed 5<sup>th</sup> grade passage. The June 2011 objective/benchmark is that by June 2011, the Student will read 122 words per minute from an unrehearsed 4<sup>th</sup> grade passage. The December 2011 objective/benchmark is that by December 2011, the Student will read 118 words per minute from an unrehearsed 5<sup>th</sup> grade passage and the April 2012 objective/benchmark is that the Student will read 136 words per minute from an unrehearsed 5<sup>th</sup> grade passage. [SD 0-038] Even adding the goal proposed on or about June 9, 2011 that by April 12, 2012, the Student will decode words with r-controlled vowels and vowel digraphs/diphthongs in isolation and in controlled text with 95 % accuracy does not address the various items that the Student needs even from his previous IEP.

For these reasons, the current IEP as to the reading goals does not reflect the appropriate goals for the Student that are measurable within the time frame specified. It does not provide sufficient goals and objectives/benchmarks to address the issues determined by the district testing including issues on the AIMSweb scores and the various testing done by the school psychologist as well as the outside evaluators.

Based upon the failure to appropriately develop the goals and objectives/benchmarks, the school district has failed to write an appropriate IEP for the Student. This issue is found in favor of the Student.

**3. Whether the School District Failed to Draft Appropriate Modifications and Accommodations Relative to His IEP**

- a) by failing to provide the student with appropriate list of all vocabulary words, pronunciations and definitions at least one week prior to any test;

- b) by failing to provide the student with audio books for school work and pleasure reading at the district's sole expense;
- c) by failing to provide the student with all formulas for math tests and quizzes without the need for the student to memorize those formulas;
- d) by failing to have his teachers sign off on the student's homework assignments to ensure that the student has documented his homework correctly; and
- e) by failing to provide a summary of all notes and lesson plans until such time as his typing speed is at grade level.

Accommodations allow a student to participate in and progress throughout the general education curriculum so that the student will essentially show content mastery similar to nondisabled students. It merely takes the disability into consideration. Modifications, on the other hand, change either the level of standards or the content that the student is expected to attain.

In the March 23, 2010 IEP, the Student was allowed accommodations" to use a graphic organizer to arrange facts on paper, long assignments broken down into smaller parts, smaller group when all possible within the classroom, and more time to complete assignments that involve a lot of reading" [SD 0170] [Findings of Fact 28]. In the April 11, 2011 IEP, the Student was again allowed accommodations "to use a graphic organizer to arrange facts on paper, long assignments broken into smaller parts, smaller grouping when all possible within the classroom, and more time to complete assignments that involve a lot of reading". In addition, "textbooks should be provided in audio format in addition to print format. He will need to use a word processor to complete written assignments" [SD 0040] [Findings of Fact 33]

██████████ conducted her evaluation on March 11, 2011. She suggested that classroom accommodations include audiobooks for all reading assignments; avoiding pen and paper tasks and allowing written assignments to be typed or dictated; grading hand written assignments only on content and not counting for spelling error, grammar or penmanship [PD 130]; never embarrass this student by showing his weaknesses to his classmates - no spelling bees, no reading aloud in class, no exchanging papers; providing extra time on tests; allowed use of a calculator or taught touch math and times tales; and being provided with a list of sequence of steps for memorization or math problems/procedures. [PD 131] [Findings of Fact 38]

Thereafter, as part of the Mediation Agreement [Findings of Fact 41], the School District incorporated a majority of her suggested accommodations. Although Mediation Agreements are confidential and any discussion that occurred during the mediation may not be used as evidence in any subsequent due process hearing or civil proceedings 34 C.F.R. Section 300.506 (b)(7), the parties have stipulated that for purposes of this Due Process Hearing that the Hearing Officer may be allowed to see and consider the Mediation Agreement entered into between the School District and the Parent. On June 9, 2011, as part of the Mediation Agreement, the parties agreed accommodations/modifications which largely incorporated the recommendations of ██████████ [Findings of Fact 38 & 41] It is evident from the above that the District was willing to work with the Student to provide reasonable accommodations given his disability.

As to vocabulary lists, per the Student's 5<sup>th</sup> grade teacher, ██████████ provided words and vocabulary activities to the students on Mondays and then had a vocabulary test every Friday. The Student didn't give him any indication that he needed the words before the other students.

(T623) In fact, he did very well. (T624) Based upon [REDACTED] direct involvement in and knowledge as to this requested accommodation, it does not appear that educationally the Student is in need of this.

The April, 2011 IEP provided for audiobooks for school work. The Student was also enrolled in BookShare [SD 0205 - 0208]. The School District does not have to do more. There are various sources of audio books/discs/downloads that are available to the Student both commercially and through the public domain for his leisure reading.

Per the June 9, 2011 Mediation Agreement, agreement # 5 addresses the issue as to mathematic formulas, test, etc.

No agreement has been reached as to the last two items. However, various teachers have indicated that they have signed off on homework [Tr. 110, Tr. 269, Tr. 300, Tr. 302, Tr. 324] and this would not be unreasonable for the Student's teachers to do.

As to providing summaries of all notes and lesson plans until such time as his typing speed is at grade level, there was no testimony or document(s) submitted relative to this issue. Since the Parent has the burden of proof, see *Schaffer v Weast*, 546 U.S.49 (2005), this issue if found in favor of the School District.

This issue is found in part on behalf of the Student and in part on behalf of the School District.

**4. Whether the School District Failed to Identify and to Provide Appropriate and Current Assistive Technology in the Classroom Setting and for All Schoolwork.**

34 C.F.R. 300.34 Section 300.105 notes that "each public agency must ensure that assistive technology devices or assistive technology services, or both ... are made available to a child with a disability if required as part of a child's (1) Special Education under Section 300.36 or related services under Section 200.34 "[Related Services]. As noted in *Kevin T v. Elmhurst Community School Dist. No. 205*, 36 IDELR 153, "'AT services' include 'evaluation of the AT needs of the child, obtaining, designing, and selecting appropriate AT devices, training personnel to provide AT services'" 34 C.F. R. Section 300.5 and 300.6.

Although the School District agreed to provide audiobooks, AlphaSmart, a TypingMaster program and use of computers for the Student [Findings of Fact 28 and 33; Tr. 111], there was never any assessment done to determine the specific needs of the Student and if, in fact, these devices would actually assist him. As to any device which requires keyboarding, the Student's teacher(s) have noted that the Student has keyboarding difficulties [Tr. 334, Tr. 753]. [REDACTED] found that the Student was typing only seven (7) to nine (9) words per minute [Tr. 112]. Even given his handwriting difficulties, she felt that he was better off physically handwriting whatever was needed. [Tr. 112]

It is imperative that the School District conduct an Assistive Technology evaluation to determine the Assistive Technology needs of the Student so as to select appropriate AT devices, and if necessary, to train personnel to provide AT services. As such, the school district is to provide an

assistive technology evaluation of the student and incorporate the findings of this evaluation in the students next IEP.

This issue is found in favor of the Student.

**5. Whether the School District Failed to Provide Transportation, at the School District's Sole Expense, for Any Extended School Year (ESY) Sessions.**

Transportation is a related service under the IDEA. 34 C.F.R. Section 300.34 (a) and 34 C.F.R.300.34 (c) (16). The School District found the Student eligible for ESY for the summer, 2011. (T835) [PD 18, PD54] The parent claims that the School District should have provided transportation services for the Student for his ESY. The School District did not provide such services but the teacher involved offered to work with him at various places including the library. (T193) The Student did ride the school bus during the regular school year [Tr. 191 – 192].

The School District argues that since the Student didn't require specialized transportation (i.e. had no difficulty riding the bus and did not require specialized services - ramp, etc.), the School District is not obligated to provide transportation for the Student during the summer months. The School District also argues that the issue is moot since ESY was scheduled based upon a location and timing requested by the parent. The School District is mistaken in its belief that since the Student did not need "specialized services" such as ramp, restraints, etc., (T754) he was not entitled to transportation services for ESY. In *Wilson v District of Columbia*, 770 F. Supp 2d 270, 56 IDELR 125, (Dist D.C., 2011), Judge Kennedy held that since the lack of any transportation did not allow the student from assessing a necessary part of his IEP, this amounted to a denial of FAPE.

Here, the School District found the Student eligible for ESY services. Although arrangements were made for the teacher to meet at the library which was, apparently, a convenient location, the school district is still obliged to provide a service, if as in *Wilson, supra*, the lack of transportation prevented the Student from assessing his educational program. Since the summer session is now over and the Student was able to meet with the ESY teacher without cost to the parent, there was no loss of education opportunity or benefit. Therefore, this issue is moot. However, this well may be an issue next year or the coming years - come the summer months. If the Student is found eligible for ESY services during his remaining years in the School District, the School District is obligated to provide transportation for the Student and to include that in his IEP as a related service.

Although this Issue is moot retrospectively, prospectively, this issue is found in favor of the Student.

**6. Whether the School District Failed to Staff the Student's Class with Highly Qualified Teachers with Certification in the Students Disability.**

The parent has alleged that the Student's teachers were not highly qualified as demonstrated by a [REDACTED] not being a certified teacher who participated in providing reading instruction to the Student. In addition, those involved in the providing the Wilson Reading Program to the student were not certified in that program.

Under the IDEA, 34 C.F.R Section 300.18 (b) (1), “highly qualified requires that – (i) The teacher has obtained full state certification as a special education teacher ... or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher ... (ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary or provisional basis; and (iii) The teacher holds at least a bachelor’s degree. See also 20 USCS Section 1401 (10).

Illinois law, 226 IAC Section 226.800 requires that “[e]ach individual employed in a professional instructional capacity shall hold either: 1) a valid special certificate and the qualifications for the teacher area ... “. Further, for “each non-certified professional individual employed in a special education class, program or service, and each individual providing assistance at a work site, shall function under the general direction of a professional staff member. 2) Each program assistant/aide, as well as each non-employee providing any service in the context of special education, shall function under the direct supervision of a professional staff member.

In the instant case, each of the Student’s teachers possess the necessary State certification and also are noted to be “highly qualified”. [Findings of Fact 3 - 20] As such, as to the Student’s Teachers who provided educational services to the Student in the area of Special Education, these individuals meet the requirements of “highly qualified”. In addition, the Parent has acknowledged the teachers for their effort and support. “The teachers I have worked with at [REDACTED] School are simply amazing. They put in a lot of effort to help their students succeed and go above and beyond the call of duty. I cannot thank the teachers I have worked with at [REDACTED] enough, as without their support, I do not know where my son would be at this time.” [SD 8]

As to [REDACTED] there is limited information as to who she is/was and what her role was in providing services to the Student. It appears that she was involved during the Daily 5 in assisting with reading for the Student. [Tr. 94, Tr. 95, Tr. 96, Tr. 139, Tr. 222, Tr. 292, Tr. 320, Tr.321, Tr. 652] But other than that, there is no information as to her qualifications and/or certifications other than she is a teacher’s assistant. [Tr. 96] From the testimony, it appears that [REDACTED] was working under the direct supervision of the various team members in working with Students in Tier 1 and Tier 2 interventions. They would talk among themselves. [Tr. 652] As she was under the direct supervision of a professional staff member [REDACTED] this is sufficient to meet the Illinois requirements.

The Parent also argues that the teachers providing the Wilson Reading Program to the Student were not properly qualified. The testimony established that various teachers had undertaken only the initial Wilson Overview Course or the next Wilson course. (T94, T320, T321, T832) [SD 0621]. The parent argues that this is insufficient under the Wilson Program. (T203 - 205)

There was no testimony from the Parent as to the necessary Wilson certification required to implement the Wilson Program other than Exhibit 30. [Tr. 203 – 205] The School District introduced testimony and a document as to the Wilson Program as to this Student. The Wilson representative did not express any opinion that this particular teacher should not be using the Wilson Program. [Tr. 184 – 185] [SD 0405 - 0406].

This issue has been raised before in two cases cited by the School District. Only one of them is pertinent as the Hearing Officer in *Solanco School District*, 102 LRP 5651 did not reach this exact issue. Rather, he found the parent's objection was suspect since the parent was willing to accept one non Wilson certified teacher but not the other. In *North Penn Sch. Dist., Pennsylvania State Educational Agency*, 102 LRP 5338, Hearing Officer Rosenfeld determined that Wilson certification is not necessary for the implementation of an appropriate reading program. See: In Re: Rairdan M., Special Education Opinion No. 806. My colleague in *City of Chicago School District # 299*, 109 LRP 6338 (2007) has commented upon the Wilson program at page 13 and provided an excellent review/overview of the program vis a vis training and certification. As she noted, "the WRS [Wilson Reading System] also has an Introductory Workshop conducted by a Wilson trainer. Those that complete the workshop are able to begin using the WRS but are not considered trained in the WRS".

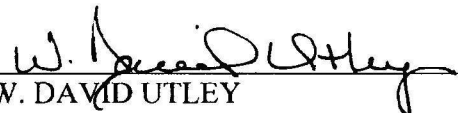
As such, based solely on this record and the limited rulings relative to the Wilson Reading Program as well as the definition pursuant to IDEA, 34 C.F.R Section 300.18 (b) (1) and 226 IAC Section 226.800, the School District did not fail to staff the Student's class with highly qualified teachers with certification in the students disability.

This issue is found in favor of the School District.

## **G. ORDER**

1. The School District did properly evaluate the Student as to his suspected areas of disability. The School District need take no further action as to this.
2. (A) The School District will re-write his goals in Reading so that they are written pursuant to the substance of the chapters within the Wilson program for each and every goal on the IEP where reading is involved. As the School District is already doing, it will continue the Wilson Reading Program for the Student until such time as the Student completes the program or until he transitions out of the School District.  
(B) The Student shall have reading intervention in the Wilson Reading Program provided in either a small homogenous group setting of no more five students or one on one setting if homogeneous grouping is not possible based on where the Student is working in the Wilson Reading Program until such time as the Student completes the program or until he transitions out of the School District.
3. The School District shall conduct an Assistive Technology evaluation and provide a written report of said evaluation within 30 days (October 31, 2011) of this order.
4. The School District shall provide the following accommodation and/or modification for the Student: – the [REDACTED] School teachers shall sign off on the Student's homework assignments daily to ensure that the Student has documented his homework correctly.
5. The School District shall convene an IEP meeting within 45 days (November 15, 2011) of this order to:
  - (A) Implement the results of the assistive technology evaluation;
  - (B) To re-write the Student's IEP as ordered above – 2 (A) and (B); and
  - (C) To provide the additional accommodation/modification in 4 above.

6. To the extent that the Student is eligible for Extended School Year services, the School District shall provide transportation, at the School District's sole expense, for such ESY.
7. The School District need not provide additional documentation as to the certification(s) of the teacher(s) working directly with the Student at the [REDACTED] School. The School District need take no further action relative to this.
8. The School District need not provide the Student's mother with reimbursement for the two (2) independent evaluations conducted by [REDACTED]. This issue is found in favor of the School District.
9. The School District shall provide proof of compliance with this Order to the Illinois State Board of Education, Compliance Division, no later than November 30, 2011.

  
W. DAVID UTLEY  
Impartial Hearing Officer  
Dated this 29<sup>th</sup> day of September, 2011

Post Office Box 681487  
Schaumburg, IL 60168  
(847) 321-1044

## FINALITY OF DECISION

This Decision and Order shall be binding upon all parties.

## 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 party and to the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, Illinois 62777. **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 decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14.8.01 (I), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision was mailed to a party.

**THE EFFECTIVE DATE OF THIS DECISION IS THE DATE OF RECEIPT OF ANY CLARIFICATION OF THIS DECISION. THE REQUEST SHALL OPERATE TO STAY IMPLEMENTATION OF THOSE PORTIONS OF THE DECISION FOR WHICH CLARIFICATION IS SOUGHT, PENDING ACTION ON THE REQUEST BY THE HEARING OFFICER, UNLESS THE PARTIES OTHERWISE AGREE. (105 ILCS 5/14-8.02)**

  
W. DAVID UTLEY  
Impartial Hearing Officer

Dated this 29<sup>th</sup> day of September, 2011

Post Office Box 681487  
Schaumburg, IL 60168  
(847) 321-1044

**CERTIFICATE AND AFFIDAVIT OF DELIVERY BY MAIL**

Under penalties as provided by law, pursuant to 735 ILCS 5/1-109, the undersigned certifies that he/she served the foregoing document by mailing a copy certified to the above named attorney(s) at the address(es) indicated above and to the Illinois State Board of Education, 100 N. First Street, Springfield, IL 62777-0001 by depositing the same in the U.S. Mail at the United States Postal facility at Schaumburg, IL on September 29, 2011.

[REDACTED]

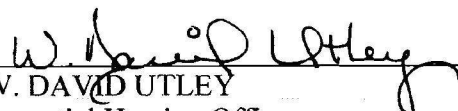
Via First Class Mail – Certified Only

[REDACTED]

Via First Class Mail – Certified Only

Illinois State Board of Education  
Attn: Andrew Eulass, Esq.  
Office of the Due Process Coordinator  
100 N. First Street  
Springfield, IL 62777-0001

Via First Class Mail – Certified Only

  
W. DAVID UTLEY  
Impartial Hearing Officer

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