

Case Number: 2012-0234

[REDACTED] vs. [REDACTED]

Hearing Officer: Stacey Stutzman

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

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## Impartial Due Process Hearing Decision Cover Page

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District Name [REDACTED] Phone: [REDACTED]  
Superintendent [REDACTED]  
Address [REDACTED]  
Represented by [REDACTED]

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

### Date and Timelines

Date of Written Requests: 12/14/2011 and  
02/24/2012

Date of Hearing: 04/09/2012 to 04/10/2012  
Date of Decision: 04/20/2012

Date of Pre-hearing Confs: 02/15/2012 and  
03/14/2012

### Summary of Decision

Surrogate Parent of 13 year old Student currently identified with emotional and learning disabilities and previously identified speech and language impairment, who was placed in a therapeutic day school with provision of certain related services, including occupational therapy, while enrolled in his former school district, requested hearing on issues relating to District's failure to properly place Student in a therapeutic day school for a period of over one year after he was enrolled in District accompanied by the IEP from his former District, which called for placement in a therapeutic day school with provision of related services. Although District placed Student in a TDS subsequent to submission of the Parent's hearing request and prior to the Pre-Hearing Conference and Hearing in this matter, over one year after he enrolled in the District, Parent requested that hearing go forward on the issue of the inappropriate placement of Student in general education classes in regular elementary schools during his enrollment, and she sought compensatory services in the form of reading tutoring, based upon the recommendation of her expert's observation of Student and review of his records, to remedy the violation. District argued that it should not be held responsible for placing Student inappropriately because the IEP from the former District was confusing and also that Student was frequently absent from school and was hospitalized at times following his enrollment in the District.

Additionally, District requested hearing on the issue of its denial of Parent's request for an independent occupational therapy assessment, submitted after the initial Pre-Hearing Conference was held, and District's request was joined by ISBE with the Parent's pending matter, resulting in a supplemental Pre-Hearing Conference and an additional issue for hearing. The District's evaluating occupational therapist testified that even though Student scored below average on her test of visual motor integration, he did not need school occupational therapy services, he did not require sensory assessment, and that it was not the job of a school O.T. to address Student's various needs, which the evidence showed included, inter alia, sensory dysregulation, and poor organizational and executive functioning skills.

HELD: For Parent on both issues: 1) District failed to place Student in the least restrictive environment in which he could receive a satisfactory education from January 3, 2011 to February 17, 2012; and 2) District failed to conduct an appropriate occupational therapy assessment of Student.

ORDERED: 1) That, beginning no later than May 21, 2012, Student shall be provided with direct individual Wilson instruction at District expense by a certified Wilson instructor of Parent's choice, for a period of 2 calendar years from the date the instruction begins at a frequency of 5 calendar days per week for 1 hour per day outside of his regular school hours in compensation for District's failure to place Student appropriately from January 3, 2011 until February 17, 2012, and that any instruction that is not provided as ordered due to the instructor's unavailability, holidays occurring during the week, or lack or failure of transportation, if necessary for Student to receive instruction, shall be made up beyond the designated two year period; that District shall provide or otherwise bear the expense of reliable transportation, if required, to and from the location of the Student's Wilson instruction; 2) That the aforesaid Wilson instruction is to be provided in addition to, and not in lieu of, any extended school year services required to address Student's significant academic deficits and otherwise provide the Student with FAPE during the summers of 2012 and 2013; 3) That the independent occupational therapy assessment, including in school observation and preparation of written report, by a certified occupational therapist of Parent's choice at District expense, that the independent evaluator shall be allowed access to Student's educational placement and the staff therein in assessing Student, and that an IEP conference shall be convened to consider the results of that assessment no later than June 20, 2012; and that Student's Wilson instructor and the independent occupational therapist shall be invited to participate in Student's future IEP meetings at District expense.

ILLINOIS STATE BOARD OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)  
) ISBE CASE NO. 2012-0234  
)  
) Stacey Stutzman  
) Impartial Due Process  
) Hearing Officer

**DECISION AND ORDER**

This matter is before the undersigned impartial hearing officer for a due process hearing concerning Parent's request for an Order that District provide Student with compensatory services in the form of tutoring by an Orton-Gillingham trained tutor for its alleged failure to place Student in the least restrictive environment in which he could receive a satisfactory education, which Parent contends was a therapeutic day school, from January 3, 2011 until February 10, 2012. Also before the undersigned impartial hearing officer for hearing, upon ISBE's joinder of same, is District's request for an Order upholding its denial of Parent's request for an independent occupational therapy evaluation at District expense. The hearing officer has jurisdiction to hear and decide this matter under 105 ILCS 5/14-8.02a(g)(2010). The parties have been informed of their hearing rights under 23 ILAC 226.625(2007) and 34 CFR 300.512(2006). The undersigned hearing officer has also advised the parties that there are and have been no conflicts which prevent her from conducting a fair and impartial hearing and rendering a fair and impartial decision in this cause.

**Procedural History**

Parent's attorney submitted Parent's request for due process hearing, dated December 14, 2011, to District's Superintendent, who received it on December 14, 2011. District forwarded the hearing request to the Illinois State Board of Education (hereinafter *ISBE*) on December 19, 2011. (See *District Request for an Impartial Due Process Hearing Officer*) District's counsel submitted a written response to the Parents' due process hearing request on December 23, 2011. *ISBE* assigned the matter to the undersigned hearing officer via its Special Education Database System (hereinafter *SEDS*) on December 20, 2011, received via UPS on December 21, 2011. The parties signed a waiver of the resolution session on January 13 and January 17, 2012, respectively, and provided a copy of the signed waiver to ISBE and this hearing officer on January 17, 2012.

The date for Pre-Hearing Conference on Parent's hearing request established by SEDS was January 16, 2012. However, at Parent's attorney's request, it was scheduled for January 17, 2012. Thereafter, upon joint request of the parties, the Pre-Hearing Conference was continued to February 15, 2012 to allow them to participate in a scheduled IEP meeting before proceeding with the Pre-Hearing. Pre-Hearing was held on February 15, 2012, and a copy of the *Pre-Hearing Conference Report*, dated February 20, 2012, is incorporated into the record as Hearing Officer Exhibit A. As noted therein, Parent's attorney advised the undersigned hearing officer that Student had been placed in a therapeutic day school at District expense on February 10, 2011, and that the only issue and requested remedy remaining for hearing in this matter was whether Parent was entitled to compensatory tutoring services for District's failure to place Student in a therapeutic school earlier, specifically from January 3, 2011 to February 10, 2011. Due to Parent's counsel's unavailability, hearing was postponed from March 1, 2012 to March 13 and 14, 2012, the parties requesting 2 days for hearing due to the number of witnesses they intended to call.

On February 22, 2012, Parent's attorney submitted her request for an occupational therapy [REDACTED] citing disagreement with the District's evaluation of October 28, 2011, which had not been raised as an issue in Parent's December 14, 2011 hearing request or at the Pre-Hearing

Conference on February 15, 2012. On February 24, 2012, District denied Parent's request for IEE in writing and submitted its denial and its request for due process hearing on the issue of denial of Parent's request for IEE to ISBE. On February 28, 2012, ISBE assigned the District's request to the undersigned hearing officer, advising the parties and the hearing officer that it was to be joined with the pending matter. The notice of joinder was received by the hearing officer from ISBE on Saturday March 3, 2012. On that date, hearing officer also received, via email, District's Motion for joinder, or in the alternative, for bifurcation, of District's and Parent's hearing requests, including a request that the hearing scheduled for March 13 and March 14 be delayed to allow for resolution session or mediation on the issue of denial of the IEE request. On March 6, 2012, Parent's counsel submitted, via email, her notice of insufficiency of District's hearing request.

Hearing officer reviewed all of the above submissions and convened a Status Conference by telephone with attorneys for the parties on March 6, 2012, at which time she acknowledged ISBE's previous joinder of the District's hearing request to the present matter. The parties advised that they would convene a resolution session on the IEE issue on March 13, 2012. Interim Orders were issued denying Parent's Motion to Dismiss District's hearing request for insufficiency, waiving Parent's need to respond to District's hearing request, denying District's request for bifurcation of hearing, scheduling Pre-Hearing Conference on the IEE issue for March 14, 2012, and continuing the hearing to April 9 and April 10, 2012, with a disclosure deadline of April 2, 2012. (See *Report of Status Conference and Interim Orders*, dated March 7, 2012)

The parties participated in a resolution session on the IEE issue on March 13, 2012, and a Pre-Hearing Conference was convened as scheduled on March 14, 2012 on that issue. A copy of the *Supplemental Pre-Hearing Conference Report*, dated March 14, 2012, is incorporated into the record as Hearing Officer Exhibit B.

Hearing was convened as scheduled on April 9 and April 10, 2012 at Student's previous public school of attendance in the District. Due to the aforementioned continuances of the Pre-Hearing Conference and the Hearing, this Decision is not being issued within 45 days of the initiation of the 45 day timeline. It is being issued within 10 days of completion of the due process hearing.

In attendance at the hearing of this matter were Surrogate Parent's attorneys, [REDACTED] and [REDACTED], and District's attorney [REDACTED]. The hearing was reported by [REDACTED].

Fifteen witnesses were called to testify at hearing over a period of two days. The following testified on behalf of both Parents and District: [REDACTED] Principal of Student's prior therapeutic day school; [REDACTED] Case Manager, [REDACTED], Student's former case worker; [REDACTED] Student's former LH case manager; [REDACTED] Student's current LH case manager and therapist; [REDACTED], Student's court appointed special advocate [REDACTED] District Social Worker; [REDACTED] District Special Education resource teacher at School B; [REDACTED] District Case Manager at School B; [REDACTED] Parent's private psychologist/expert witness; [REDACTED] District Special Ed teacher at School B; and [REDACTED], District Special Ed Classroom Aide at School B.

In addition to the above, [REDACTED], District School Psychologist, testified on behalf of Parent only.

Additional witnesses testifying on behalf of District only were [REDACTED] District School Counselor at School P; [REDACTED] District Case Manager and Special Ed Teacher at School P; and [REDACTED] District Occupational Therapist.

Parent submitted copies of 360 pages of documents for use at hearing, including pages 345 through 360, which were disclosed by [REDACTED] during his testimony to be the final version of his Report of Psychological Evaluation, not previously provided to Parent by District, and which [REDACTED] produced following his testimony. The report was added to Parent's document book without objection.<sup>1</sup> District submitted copies of 426 pages of documents for use at hearing.<sup>2</sup> The

<sup>1</sup>Parent's Documents are referenced herein by page number preceded by a "P".

<sup>2</sup>District's documents are referenced herein by page number preceded by a "D".

documents presented and put in evidence or otherwise used at hearing are listed in the *Appendix* attached to this Decision.

A copy of *Petrina W. v. City of Chicago Public School Dist.* 299, 53 IDELR 259 (N.D. Ill. 2009) was included in each party's exhibit packet. In her closing argument, Parent's counsel referenced the Illinois regulations regarding programming for students transferring into an Illinois school district from another Illinois school district, found at *23 ILAC 226.50 (2007)*. She cited *34 CFR 300.114(a) and .115(2006)* in her argument. In his closing argument, District counsel referenced the *Petrina W.* case.

### Issues

1. Whether District failed to place Student in the least restrictive environment in which he could receive a satisfactory education from January 3, 2011 until February 10, 2012?<sup>3</sup>
2. Whether District conducted an appropriate occupational therapy assessment of Student on October 28, 2011 and has therefore appropriately denied Parent's request for an independent occupational therapy assessment of Student at public expense?<sup>4</sup>

### Statement of Facts

The material facts relevant to the stated issues in this case are as follows: Student is a 13 year old male who is currently eligible for special education and related services in the categories of learning disability and emotional disability pursuant to an eligibility determination of November 7, 2011. (P210, 215) He is a ward of the State of Illinois who lives in a residential facility operated by a social welfare agency (hereinafter referenced as *LH*), located within District's boundaries. ( ) Since February 17, 2011, he has been placed in a separate day school pursuant his most recent IEP of January 23, 2012. ( ) P320, 332, 333, 343)

Student has a thyroid disorder and is obese. He suffers from posttraumatic stress disorder (PTSD). He has been diagnosed and treated for bi-polar disorder. Additionally, he has been diagnosed with a heart condition, enuresis, resulting in nocturnal bedwetting, encopresis (inappropriate bowel movements), and a learning disorder. He has had multiple hospitalizations, including psychiatric hospitalizations due to psychosis. He has been physically aggressive, has had suicidal and homicidal ideation, and has engaged in self-harm, including poking himself with pens, shattering glass, and walking in front of traffic. He is socially, emotionally, and psychologically immature, hyper vigilant to his surroundings, and experiences dysregulation in a stressful environment, including sensitivity to loud noises or yelling. He has a history of stealing behavior and auditory hallucinations. He changes moods quickly, lacks anger control, and has a history of destroying property. He is prescribed medications to address his various conditions. ( ) P87-101, 142-143, 346, 360)

Student's academic achievement in both reading and math and his ability to sustain attention, concentrate, and exert mental control fall in the extremely low range. The most recent assessment of both his adaptive skills and his behavior resulted in T-scores in the clinically significant and at-risk ranges. (R.P.; P346-360) His expressive and receptive language skills are below average. (P213)

From 2006 through 2010, Student was a special education student placed by his former school districts in a public therapeutic day school (TDS) for low incident children with behavioral and emotional issues who could not be served in regular schools. The TDS was operated by a suburban special education cooperative. The staff used a positive behavior intervention strategy (PBIS) model and employed a point/level system. The student/staff ratio was 13 students per 2 staff, a teacher and a paraprofessional. The school environment was highly structured. Students were under constant supervision and were always escorted by staff. They received group and individual therapy and anger management and other services from trained staff to help them de-

<sup>3</sup> The evidence shows that a notice of where Student was to enroll was sent out to Parent on February 10, 2012 but that Student was not actually enrolled and able to begin to attend until February 17, 2012.

<sup>4</sup> The evidence shows that the District's occupational therapy assessment occurred on October 20 and that the report of that evaluation was dated October 28, 2012.

escalate and to develop social and coping skills. Although Student's behavior improved during the course of his attendance at the TDS, he was never stepped down to a less restrictive environment because he required ongoing support to maintain his emotionality and sustain positive behavior. ( )

In Fall 2010, Student was hospitalized due to a mood disorder. A change in foster homes subsequently precipitated his enrollment in District at elementary School P on January 3, 2011, midway through Grade 6. ( ) At the time of his enrollment, Student's foster parents provided School P with copies of his eligibility conference report dated June 4, 2009 and his IEP dated May 26, 2010 from the former district. ( ); P1-33) ( ) School P's special education teacher and case manager responsible for the supervision of the special education department and IEP development, reviewed Student's May 26, 2010 IEP. ( )

The IEP of May 26, 2010 was labeled "IEP". It identified Student's primary disability as a Speech or Language Impairment and indicated the need for and attachment of a behavior intervention plan due to Student's behavior impeding the learning of Student and others. It included 10 goals for Student directed toward improvement of his behavior, his peer interactions and limited social skills, his motor planning and the quality of his movement and the efficient organization of himself for effective participation in school activities, and reading, writing, and math. The IEP called for implementation by staff, including, inter alia, a Special Education Teacher, Occupational Therapist, Counselor, and Speech Pathologist. Although some of the academic goals were very vague, the present levels of academic achievement and functional performance provided information relating to Student's academic needs, which, at the end of his 5<sup>th</sup> Grade year, included difficulty in communicating due to his scattered thoughts and poor expressive language skills, his need to use a calculator to solve basic math problems, and his need for assistance and prompting to write a paragraph. He also required accommodations for State assessments. (P11-24) The following related services were required by Student's IEP: 60 minutes per week of Social Work; 30 minutes per week of Speech/Language; and 30 minutes per week of Occupational Therapy. (P25)

The May 26, 2010 IEP provided to District upon Student's enrollment in the District on January 3, 2011 clearly and specifically called for 100% removal of Student from the general education environment, with all of his education to be provided in the special education environment and with a significant number of supplementary aids and services, listed as *Pacing/Timing, Test Adaptations, Environment/Setting, Response, Assignments, Social Interaction Support, Scheduling, Motivation/Reinforcement, Self-Management, Presentation, and Materials*. (25-26) In considering the Student's LRE, the previous district's IEP team rejected regular education placements, even with special education services, for the reason that they did not provide "...enough support for serious behavior concerns." The placement option selected for Student was designated in the IEP as "ED out of district placement with social work" in order to "...support (Student's) behavior needs." As noted under the placement considerations, the nature or severity of Student's disability required removal from regular education programming and placement in a separate school. (P26) The IEP included a copy of a Functional Behavior Assessment and a Behavior Intervention Plan for Student, targeting his inability to stay on task when working independently, even in the structured environment of the TDS. (P20-21)

The June 4, 2009 eligibility IEP conference report, provided to ( ) along with his May 26, 2010 IEP at the time of Student's enrollment in the District, reflected Student's prior primary eligibility for special education in the category of emotional disability. (P1) It further indicated that, per his triennial reevaluation of April and May 2009, Student did not meet the criteria for emotional disability, in spite of his pervasive mood of anxiety, unhappiness and/or depression and his tendency to develop physical symptoms or fear associated with personal or school problems. According to that document, he did qualify for special education and related services in the category of Speech or Language Impairment due to a speech impairment and language delay/disorder. It was noted that Student's *significant speech and language deficits impeded his ability to communicate adequately with peers, make his needs known, and comprehend classroom instruction*, and that he *required a structured environment with social communication supports integrated into classroom instruction*, along with speech and language therapy. (P4-6)

Although the 2009 eligibility IEP team did not make an eligibility determination in the category of specific learning disability or emotional disability for Student in 2009, according to the aforesaid conference report, the evaluation data presented in the documentation included moderately low daily living and socialization skills, difficulty interacting with his peers, and a statistically significant 36 point difference in his average nonverbal IQ of 108 and his borderline verbal IQ of 72. He reportedly demonstrated significant deficits in all academic areas. On the Wide Range Achievement Test 3 (WRAT 3), he scored at SS 61 Grade 1 in Reading, SS 76 Grade 5 in Spelling, and SS 95 Grade 4 in Arithmetic. He reportedly had difficulty identifying and managing his emotions. On the BASC II behavioral scales, he was determined at risk in Externalizing, Internalizing, and School Problems. He was taking Abilify for psychosis. His fine motor precision was below average, and he was receiving both speech and physical therapy outside of school. (P2-3, 8-9) It was noted that attending to Student's social and coping deficits might contribute to academic and behavioral progress. (P2, 9)

Upon review of the IEP from Student's former district, rather than implement the former District's IEP, [REDACTED] contacted her "SSA"<sup>5</sup> in the District, who told her to place Student in regular education with speech services and to give him a "speech only" IEP. In the meantime, Student was enrolled full time in 6<sup>th</sup> grade general education classes and was expected to transition from class to class several times during the day to receive academic instruction. He resisted the transitions, and he refused to go to certain classes. He was not very verbal. He was not completing his assignments or his homework. He was not evaluated by District personnel. Staff did not develop or implement a behavior intervention plan. [REDACTED]

In February 2011, when she became aware that Student was enrolled in a general education program instead of a TDS, Student's caseworker complained to the School P Principal, who referred her to the school social worker, who agreed to review Student's IEP. She discussed Student's passive aggressive behavior with the social worker by phone. [REDACTED]

An IEP was drafted and dated February 22, 2011, nearly 2 months after Student's enrollment in the District. (P37-54, 56-73) The IEP acknowledged Student's eligibility for special education in the category of Speech/Language Impairment and his prior placement in a TDS. It reported his February 2011 *Scantron* test scores below the 1<sup>st</sup> percentile in reading, below the 4<sup>th</sup> percentile in Math, and below the 2<sup>nd</sup> percentile in Science. It noted his many deficits in receptive and expressive language and his refusal to transition and attend Math and Science classes. His foster parents expressed concerns regarding his school avoidance behaviors. The IEP identified areas of need in academic, communication, and social/emotional domains. Although the use of assistive technology was recommended to help address his needs, an A.T. evaluation was not recommended. Nor was paraprofessional assistance recommended. A behavior intervention plan was not included. (P56-61)

Only two goals were included in the Student's District February 22, 2011 IEP: 1) to complete mixed presentation of synonyms, antonyms, and homophones with moderate prompts or supports, to be implemented by the speech pathologist or paraprofessional; and 2) to develop an ability to recognize the impact of his decisions on himself and others and their implications in his life at least once per session, to be implemented by the social worker. His speech and social work services were to be *delivered monthly*. (P65, 67) The placement justification, however, called for 15 minutes per week of each service, resulting in 98% of his time being educated in the regular education classrooms. [REDACTED] did not consider it necessary to even consider a TDS placement because they "...were doing a 'speech IEP' only." The IEP provided no direct occupational therapy services, but 60 minutes per quarter of consultation between the occupational therapist and the general education teacher regarding independent functioning. (P69) His grades in all subject areas, promotion, and graduation were to be based on standard criteria. (P71)

On February 28, 2011, Student's caseworker was contacted by the school's Dean and advised that Student refused to go to class and that she would have his foster parents pick him up. However, he refused to leave school with the foster parents, he ripped his jacket to shreds, and he

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<sup>5</sup> This acronym was not further defined by the witness, but in context appears to refer to a District special education department supervisor or administrator.

smearred mud on the foster parents' car in front of the school. He was taken by ambulance directly to the hospital and admitted for psychiatric assessment and treatment for psychosis. Some type of tutoring was provided by the hospital during the month of March only, and correspondence and documents regarding the hospitalization were sent by the hospital to School B by facsimile on March 8, 2011. (██████████; P75-78; 79-85)

Upon release from the hospital, Student was not returned to a foster home. Rather, he was assigned to ██████████ on May 9, 2011 due to the severity of his behavioral and emotional issues, and ██████████, who has a doctorate degree in psychology, became his case manager at ██████████. She took Student to School B to enroll him in school on May 18, 2011, at which time she provided a copy of the February 22, 2011 IEP prepared at School P, but she was turned away and told to provide further information, which she did. (C.M.)

A Student Transfer Form signed by School B's Principal was dated April 29, 2011. (██████████; P86) On May 18, 2011, A.G., the case manager at School B, telephoned P.D., the counselor at School P, who was filling in for School P's absent case manager. P.D. forwarded Student's records, which she described as "minimal" and which included only the prior District's IEP of May 26, 2010 and maybe a cumulative card, but not the District's IEP dated February 22, 2011, to A.G. at School B. A.G. reviewed Student's May 26, 2010 IEP and November 15, 2010 Action Plan from his previous District's TDS placement on May 24, 2011. Because the records received from School P did not include the February 22, 2011 District IEP provided to her by C.M., on May 25, 2011, A.G. requested that P.D. look for further records, which she did, but she did not locate any further records for Student. She did advise A.G. that Student had been hospitalized and that he did not want to go to Math and Science classes while at School P. due to the departmentalized schedule. (██████████; P102-106)

██████████ returned to School B on May 26, 2011 with Student, but the school was not prepared for Student, and while waiting in the hallway, Student fought with another boy and lifted a chair and threatened him with it. ██████████ was asked to take Student home, which she did. (C.M.; A.G.; P107)

Student began attendance at School B on May 27, 2011 as a 6<sup>th</sup> Grader in general education classes pursuant to the February 22, 2011 IEP, with 2 goals for speech and social work at a rate of 15 minutes per week and no behavior intervention plan, even though ██████████ had reviewed the May 26, 2010 IEP calling for complete removal of Student from the general education setting. (██████████; P105) School B reported Student absent 10 out of 13 days between May 27, 2011 and June 16, 2011. No meetings were convened in regard to Student's programming. (██████████; D212)

Student advised ██████████ that he did not want to attend school because of frequent teasing. (██████████) Because of nightly bedwetting, Student has an aroma of urine, which affects his self-esteem and makes him reluctant to get out of bed in the mornings. ██████████ On one occasion, due to his encopresis, diagnosed in the summer of 2011, he had a bowel movement in his clothes at school and had to return home to shower and change clothes. It was hard for Student to change clothes. He got confused in the hallways and didn't know which class to go into. Teachers talked too much and too fast for him to understand, and he had difficulty moving from assignment to assignment and finishing his work. He was embarrassed that other students would get mad because the teacher had to slow down for him, and he could not read or do work at his age and grade level. (██████████; P357)

██████████ who has a masters degree in social work and is also certificated as a school social worker in Illinois, became Student's case manager and therapist at ██████████ on June 21, 2011 and has remained in that capacity since that date. Student was enrolled in summer school at School B in the summer of 2011, but he attended only a few days. Because she believed that Student required a TDS placement, she requested of the Vice Principal at school B enrollment of Student in a TDS. She was told that there were no case managers available to initiate a summer evaluation. Student was hospitalized in June 2011 due to physical aggression and self-harm. ██████████ was advised that Student had missed too much summer school to obtain any credits, so he did not return in July. ██████████

In the Fall of 2011, Student was enrolled in general education as a 7<sup>th</sup> Grader at School B, even though he had not completed Grade 6, because he had already been held back a year in the previous district. He was once again required to transition from regular education classroom to classroom and still had only the February 22, 2011 "speech only" IEP. He was unable to transition, and he continued his school avoidance behaviors. When he did attend, he was frequently tardy, and his [REDACTED] case manager was called at least once a week to pick him up from school early due to his behavior. [REDACTED]; P124)

A referral for special evaluation of Student was approved on September 12, 2011. The referral acknowledged Student's previous therapeutic placement, reported his current grades as all Fs, and reported that Student was unable to read, copy from a book, complete his class work independently, follow instructions or routines, or participate in classroom discussion appropriately. (P122-123) An assessment plan was completed, and Student's surrogate Parent signed the proffered consent for evaluation on September 27, 2011. (D60-62)

District's special evaluation of Student consisted of a review of his records, interviews of Student and his providers, and assessments in the domains of health, social/emotional status, general intelligence and academic performance, communication status, and motor abilities. (D61) The social work assessment was conducted by [REDACTED] on October 6, 2011, the psychological assessment by [REDACTED] on October 3 and October 18, 2011, and the occupational therapy assessment by C.P. on October 20, 2011 at [REDACTED] rather than in the school setting. (S.C.; R.P.; C.P.; P126-141, 345-360; D90-92)

A Learning Environment Screening, dated November 7, 2011 and signed by [REDACTED] School B's Case Manager, noted that Student's decoding and reading comprehension skills were at a 2<sup>nd</sup> grade level, his math skills were below grade level, he had poor memory for printed words, poor retention of new vocabulary, and slow labored reading fluency. He had difficulty writing sentences and paragraphs, poorly formed handwriting, and he avoided writing, drawing, and copying. His spelling was poor and inconsistent. Preparing outlines and organizing written assignments was an area of difficulty. His written expression was disorganized. He had a short attention span, he was unmotivated and inattentive in class, was visually attracted to unimportant details, and had poor organizational skills. He also seemed disoriented in time. (A.G.; P205-209)

[REDACTED] is a direct hire occupational therapist for District. She performs evaluations and implements IEPs for students with fine motor, sensory motor, and sensory processing needs. In her assessment of Student, the only standardized test administered was the Beery Developmental Test of Visual-Motor Integration, on which Student scored in the low range. However, because, in [REDACTED]'s "informal functional assessment", Student was able to use scissors, use a tripod grasp, print and write his name, print the alphabet and a six word sentence, and in spite of her observation of his slow processing speed, she determined that Student did not require occupational therapy services. In her report, she failed to acknowledge Student's IEP of May 26, 2010 requiring 30 minutes per week of occupational therapy services. She did not administer a sensory screening or otherwise assess Student's sensory needs. Her only recommendation was to provide extra time for printing assignments and for completing tasks. She does recommend an assistive technology assessment for Student, and she does acknowledge that a sensory assessment can help "tease out" sensory from behavioral issues. She further acknowledges an occupational therapist's responsibility to assess adaptive functioning, including a child's ability to follow school routines, such as moving from class to class with peers and transitioning down the hallway independently. [REDACTED], D90-92)

An IEP meeting was convened on November 7, 2011 to review the results of the evaluation and develop an IEP for Student. (P210-261) At the end of October, during the few weeks before the IEP meeting was held, Student was placed in a special education classroom for students with learning and/or emotional disabilities for part of the school day. He attended school during that time, but he was frequently tardy and was able to do very little work, even using 1<sup>st</sup> and 2<sup>nd</sup> Grade level materials, and he required constant 1:1 attention. The special education teacher in charge of that classroom was not invited to and did not attend the November 7, 2011 IEP meeting. She felt that Student required a high structure environment-- a smaller classroom

where he could receive more time and attention-- more structure than she and her classroom were able to provide for him. She expressed her concerns to the administration. (██████████ P146-147)

Upon presentation of the assessment results at the November 7, 2011 IEP conference, Student was determined eligible for special education and related services in the categories of learning disability and emotional disability, and an IEP was developed for him, which included academic, social/emotional, and communication goals and a behavior intervention plan. (P210-261) The following placement determination was made: "General education with special education support over 60% of the school day outside of the general education setting in a general education school." (P253) He was to be provided the related services of direct speech/language therapy in the amount of 30 minutes per week and social work services in the amount of 22 minutes per week. (P252) A written Dissent to the IEP placement determination, signed by the School B Case Manager, ██████████ Student's attorney, and ██████████ Student's ██████████ was submitted on November 7, 2011, advising that they did not agree that the IEP placement was appropriate for Student and that he required TDS placement in order to receive FAPE. (██████████ P262)

Student continued to attend School B following the development of the new IEP in the same special education classroom with S.W. and her classroom aide, ██████████ or 73% of his school day. Although he attended school, he was regularly tardy, he did little work, he required the constant 1:1 attention of staff, and his behavior deteriorated further, including aggression and violence toward staff and other students. Because he refused to leave the class for science, they attempted to work on Science with him in the special ed class room. He made no meaningful academic progress. (██████████ P146-204, 263-267)

An IEP meeting was held on January 23, 2012, resulting in change of Student's placement to a separate day school. (P282-331; P332) On February 10, 2012, District issued a written notice to Parent that Student was to be enrolled at a designated TDS. He was so enrolled and began attendance on February 17, 2012. (██████████ P333)

██████████ an experienced clinical and school psychologist, reviewed Student's records and observed him in his current therapeutic setting at the request of Parent's counsel in order to determine the nature and extent of remediation that Student requires in this matter. She recommends that compensation be provided to focus on Student's severe reading deficits, specifically direct individual ██████████ instruction by a certified ██████████ instructor for one hour per day for five days per week over a period of two years outside of the regular school day. She reasons that Student now has to spend his school day not only trying to learn the material currently being presented, but that he must learn **how** to learn and also to try to make up for all that he was unable to learn in the past year because of inappropriate programming. ██████████ ██████████, an *Orton-Gillingham* based program, is the best available program to address Student's significant encoding and decoding deficits in order to read at an acceptable level. ██████████ P335) Her review of Student's records and observation of Student in his current educational placement revealed that District has not conducted a central auditory processing assessment nor an appropriate occupational therapy assessment, both of which should be done to address Student's learning disability programming and his adaptive behavior deficits. ██████████

### **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 the initial issue relating to District's alleged failure to place Student in the least restrictive environment, and District bears the burden as to whether it appropriately denied the request for an independent occupational therapy assessment at public expense. It is concluded that the preponderance of the evidence favors the Parent on both issues presented for hearing in this matter.

**1. District failed to place Student in the least restrictive environment in which he could receive a satisfactory education from January 3, 2011 until February 17, 2012, and Student is entitled to educational services in compensation for the deprivation that occurred because of District's violation.**

Parent has sustained her burden of persuasion on the issue of District's failure to place Student appropriately for over one year, effectively depriving him of any meaningful educational benefit during that time. 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 Student's parents. *Hendrick Hudson Dist. Bd. Of Ed. v. Rowley*, 458 U.S. 176 (1982) The school district is required to follow procedures that are designed to allow the 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, where they occur, 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)*

Local school districts are required to make available a continuum of placement options to meet the needs of their special education students, including, inter alia, separate schools and home or hospital instruction. *23 ILAC 226.300(2007)*; *34 CFR 300.39 and .115(2006)* Each special education student is to be placed in the least restrictive environment in which he can receive a satisfactory education along the continuum. In regard to selection of a placement in the student's least restrictive environment, or *LRE*, the *IDEA* and the *Illinois School Code* and the regulations attendant thereto require that, to the maximum extent appropriate for the individual child, the child's placement shall provide him with the opportunity to be educated with nondisabled children. However, when the nature or severity of a child's disability require it in order to appropriately educate the student and address his unique needs, placement is to be made in a more restrictive environment, which may provide limited or no access to typical peers. *105 ILCS 5/14-8.02(d)(2011)*; *20 U.S.C. 1412(a)(5)(2005)*; *23 ILAC 226.240(2007)*; *300.114(2006)*

When a student who is eligible for special education and related services transfers into an Illinois school district from another school district within the state of Illinois, as occurred in the instant matter, and a copy of his *IEP* from the former district is provided at the time of or prior to his enrollment, the receiving district may adopt the *IEP* prepared for the child by the former district. If it does not adopt the existing *IEP*, however, it must give the Parents the required written notice of its intention to develop a new *IEP* providing the student with a free appropriate public education in the least restrictive environment in accordance with state and federal statutes and regulations within 10 days of Student's enrollment and convene an *IEP* meeting for that purpose. While the new *IEP* is under development, the district must implement services comparable to those described in the *IEP* from the former district. *23 ILAC 226.50 (2007)*; *20 USC 1414(d)(2)(C)(2005)*; *34 CFR 300.17, .101-103(2006)*

The preponderance of evidence in the instant case supports Parent's contention that District failed to adhere to the statutory procedure for educating a special education student transferring in from another Illinois school district with an existing *IEP*. It chose not to adopt the May 26, 2010 that was provided upon Student's enrollment, it did not develop any type of replacement *IEP* for Student for almost 2 months after his enrollment, and it did not provide services that were in any way comparable to those provided by Student's previous *IEP*. That procedural violation in and of itself resulted in the deprivation of educational benefits to Student during his enrollment in District's elementary schools P and B, and therefore constitutes a violation of Student's right to a free appropriate public education.

Additionally, District's failure to appropriately address Student's significant educational needs in a separate day school, or in any semblance of a therapeutic milieu, clearly the only placement in which Student could receive the special education and related services his unique

needs required, during his enrollment in District violated Student's substantive right to receive a free appropriate public education in the least restrictive environment. There is no doubt from the evidence presented at hearing that the nature and extent of Student's disabilities were so severe as to require placement in a separate day school from the time he enrolled in the District, having been placed in a therapeutic day school for many years previous to his transfer into District's schools, since the age of six. The arguments made by District in defense of its failure to do so are not persuasive. Z.L.'s testimony attempting to explain School B's failure to program for Student's needs appropriately due to confusion was not credible and is not supported by the rest of the evidence in this case. Nor is the argument that Student's programming was done inappropriately because of Student's own behavior in the form of absenteeism and school avoidance meritorious. In fact, in addition to the testimony of Student's current and prior state social services providers, the report of psychological evaluation and the testimony of the school psychologist and the Student's 7<sup>th</sup> Grade teacher, all of whom testified credibly, support Parent's position here that Student's needs were significant and were not able to be met in a regular elementary school setting, even with removal from the general education classroom for most of the school day. Without question, a therapeutic placement should have been provided from the outset of Student's enrollment in the District in order for him to receive any meaningful educational benefit.

Since Student did not receive any meaningful educational benefit from his placement in District's elementary schools from January 3, 2012 until February 17, 2012, at which time he began attending a therapeutic day school, he is entitled to provision of compensatory educational services at District expense. The compensation must be designed with consideration of Student's unique needs and circumstances and in an effort to place Student in the same position he would have occupied had District not violated his rights under the *IDEA* and the *Illinois School Code*. *Petrina W. v. City of Chicago Public School Dist. 299*, 53 IDELR 259 (N.D. Ill. 2009)

C.J. reviewed Student's records and observed him in his current therapeutic setting in order to determine the nature and extent of remediation that Student requires in this matter. She recommends that compensation be provided to focus on Student's severe reading deficits, specifically direct individual *Wilson Reading System* instruction by a certified *Wilson* instructor for one hour per day for five days per week over a period of two years outside of the regular school day. She reasoned that Student now has to spend his school day not only trying to learn the material currently being presented, but that he must learn **how** to learn and also to try to make up for all that he was unable to learn in the past year because of inappropriate programming. *Wilson* instruction will address his significant need to learn how to read at an acceptable level.

Furthermore, considering the evidence of Student's severe deficits in the ability to encode and decode words and his reading comprehension and fluency skills and the impact this learning disability has had on his behavior, *Wilson* instruction is the most appropriate way to address the development of phonemic awareness efficiently and successfully. District has not yet conducted an audiological assessment of Student's potential central auditory processing disorder, in spite of the red flags that indicate the need for same, and the current IEP does not appear to offer Student any type of intensive instruction to address his inability to encode and decode and to facilitate any meaningful progress in his severely delayed language skills. The compensatory services requested are therefore appropriate to address Student's needs in relation to the District's violation.

District argues that the amount of compensation awarded should somehow be reduced because of Student's absenteeism and also because he did allegedly receive some form of tutoring while hospitalized during the month of March, 2011 even though he did not have an appropriate IEP at that time. However, as the *Petrina W.* court reasoned, a flexible, individualized approach is more consonant with the aim of the *IDEA* than a formulaic calculation based on days of deprivation. Under the facts of this case, C.J.'s recommendation is reasonable, but it must be awarded in a form that takes into consideration holidays and the need for some flexibility in scheduling for the Student and the *Wilson* instructor(s) to be retained. The order below seeks to provide that flexibility.

**2. District failed to conduct an appropriate occupational therapy assessment of Student and has therefore inappropriately denied Parent's request for an independent occupational therapy assessment of Student at public expense, entitling Student to an independent occupational therapy assessment at District expense.**

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. A variety of assessment tools and strategies must be used to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining not only whether the child has one or more of the qualifying disabilities under the IDEA, but also to provide the appropriate educational programming for the child in the event that he is eligible for special education and related services. *20 USC 1414(b)(2004); 23 ILAC 226.110(2007); 34 CFR 300.15, .304, .305(2006)* If a parent disagrees with the school district's evaluation of her child, she has the right to request an independent educational evaluation at public expense. An IEE, as it is known, provides a parent with the opportunity to obtain her own evaluation of her child to counteract the evaluation obtained by a district when she suspects that the district's evaluation has not discerned the true identification or nature of a student's disabilities and/or his resulting needs. The school district has the option of initiating an impartial due process hearing within 5 days of parent's request to show that its evaluation is appropriate if it chooses to stand by its evaluation rather than fund the requested IEE. If hearing upon the issue of District's denial of the Parent's request for IEE results in a finding that the District's evaluation was not appropriate, Parent is entitled to an IEE at District's expense. *20 USC 1414(a)(2004); 105 ILCS 5/14-8.02(b)(2010); 23 ILAC 226.180(2007); 34 CFR 300.502(2006)*

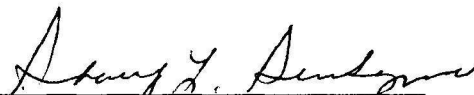
The IDEA identifies a number of related services that are to be provided if necessary to allow a child in need of special education to benefit from special education, including occupational therapy, which may be required to address functions lost or impaired due to illness, injury, or deprivation, and/or to improve his lost or impaired ability to perform independent functioning tasks. *23 ILAC 226.75(2007); 34 CFR 300.34(a) and (c)(6)(2006)*

The preponderance of the evidence in the instant case supports Parent's contention that the occupational therapy assessment performed by the District's occupational therapist on October 20, 2012 and reflected in her report of that evaluation dated October 28, 2011, was inappropriate for a number of reasons. The District therapist made erroneous assumptions about Student's past occupational therapy services, and her assessment was cursory, especially in light of the school psychologist's findings and the many concerns recited in the Learning Environment Screening regarding Student's written expression, disorganization, inattentiveness, and disorientation. Additionally, Student was sensitive to loud noises, and he was unable to transition independently within the school setting. She neglected to appropriately assess Student's sensory processing and sensory integration needs, in spite of clear indications that such an assessment was necessary, and she ignored her own results of assessment of Student's visual motor integration deficits and his slow processing speed in denying his need for O.T. services. She was among the least credible witnesses presented at hearing in this cause, and her lack of credibility and the fact that she appears to have based her denial of O.T. services to Student primarily on the basis of his ability to use scissors, grip a pencil, and print and write his name and a brief sentence during her assessment at his residence. Her report and testimony therefore support Parent's request for a comprehensive independent occupational therapy assessment of Student. The independent assessor will be able to address Student's individual needs as a young man who can likely benefit from a qualified occupational therapist's recommendations and possible direct therapy in the areas in which he currently struggles, as described above, including his adaptive behavior, sensory issues, attention and executive functioning. She will also be able to make recommendations regarding appropriate assistive technology and for Student's transition planning, which will be required in near future.

**IT IS THEREFORE ORDERED:**

1. That, beginning no later than May 21, 2012, Student shall be provided with direct individual [REDACTED] instruction at District expense by a certified [REDACTED] [REDACTED] instructor or instructors of Parent's choice for a period of two (2) calendar years from the date the instruction begins at a frequency of five (5) calendar days per week for 1 hour per day outside of his regular school hours in compensation for District's failure to place Student appropriately from January 3, 2011 until February 17, 2012, and that any instruction that is not provided as ordered due to the instructor's unavailability, holidays occurring during the week, or lack or failure of transportation, if necessary for Student to receive instruction, shall be made up, even if it must be scheduled beyond the designated two year period.
2. That District shall provide or otherwise bear the expense of safe, reliable transportation, if needed, to and from the location of the Student's Wilson Instruction.
3. That the aforesaid [REDACTED] is to be provided in addition to, and not in lieu of, any extended school year services required to address Student's significant academic deficits and otherwise provide the Student with FAPE during the summers of 2012 and 2013.
4. That Student shall receive an independent occupational therapy assessment, including in school observation and preparation of written report, by a certified occupational therapist of Parent's choice at District expense, that the independent evaluator shall be allowed access to Student's educational placement and the staff therein in assessing Student, and that an IEP conference shall be convened to consider the results of that assessment no later than June 20, 2012.
5. That the aforesaid [REDACTED] instructor(s) and independent occupational therapist shall be invited to participate in Student's future IEP meetings at District expense.
6. That District shall provide proof of its 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 June 21, 2012.

DATED: April 20, 2012

  
Stacey L. Stutzman  
Impartial Hearing Officer

APPENDIX TO DECISION AND ORDER  
(Case No. 2012-0234)

Parent Documents used at hearing:

P 1 - 10 Eligibility Determination of 6/4/09  
P 11 - 33 IEP of 5/26/10  
P 37 - 54 IEP of 2/22/11  
P 56 - 74 IEP of 2/22/11  
P 75 - 78 Incident Report of 2/28/11  
P 79 - 85 Hospital correspondence and attendance documentation, 3/9- 3/31/11  
P 86 Student Transfer document of 4/29/11  
P 87 - 101 Youth Services Mental Health Assessment of 5/11/11  
P102 - 109 School Case Manager's notes and emails of 5/18-6/1/11  
P110 - 121 Youth Services Individual Treatment Plan of 5/27/11  
P122 - 123 Student Referral of 9/12/11  
P124 Anecdotal Record of 9/15/11  
P126 - 141 Report of Psychological Special Evaluation of 10/24/11 (Draft Version)  
P142 - 144 Social Work Evaluation of 10/6/11  
P146 - 181 Teacher Anecdotal Records of 10/21/11-1/19/12  
P182 - 204 Classroom Aide Anecdotal Records of 10/31/11-1/18/12  
P205 - 209 Learning Environment Screening of 11/7/11  
P210 - 218 Eligibility Determination of 11/7/11  
P219 - 261 IEP of 11/7/11  
P262 Dissent to IEP of 11/7/11  
P263 - 267 Case Manager Anecdotal Records of 11/8/11-1/17/12  
P270 - 271 Hospital Behavior Evaluation Scale of 11/15/11  
P282 - 331 IEP of 1/23/12  
P332 Day Placement Approval Form of 1/24/12  
P333 Therapeutic Day School Placement Referral of 2/10/12  
P335 Resume of Witness [REDACTED]  
P340 - 342 Occupational Therapy Evaluation report of 10/28/11  
P343 Attendance Record 2011-2012  
P345 - 360 Report of Psychological Special Evaluation of 10/24/11 (Final Version)

District Documents used at hearing:

D 60 Consent for Reevaluation dated 9/27/11  
D 61 - 62 Assessment Plan of 9/12/11  
D 90 - 93 Occupational Therapy Evaluation report of 10/28/11  
D212 - 214 Student Profile Enrollment and Academic Record  
D217 Attendance data dated 11/16/11

**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 April 20, 2012 before 5:00 p.m.

  
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Stacey L. Stutzman  
Impartial Hearing Officer