

[REDACTED]

**RECEIVED**

MAY 08 2013

**SPECIAL EDUCATION  
SERVICES**

ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING

In the Matter of:

[REDACTED] by his parents/guardians,  
[REDACTED]

&

**New Trier Township HSD # 203,**  
Local Education Agency .

ISBE Case No.: 2013 - 0220

W. David Utley  
Impartial Hearing Officer

**DECISION**

The Hearing in the above captioned matter took place on February 26, 2012, February 28, 2013 and March 13, 2013 at the [REDACTED] and on April 17, 2013 at the offices of the firm of [REDACTED]. The parties had been 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 father, [REDACTED] and the School District was represented by [REDACTED] Esq. of Franczek Radelet

**A. Procedural Background**

The Parent's Request for an Impartial Due Process Hearing was dated November 12, 2012 and submitted on the Student's behalf by the Law Firm of [REDACTED]. The School District, through its Attorneys, [REDACTED] responded to the Parent's Due Process Request on November 19, 2012. The Hearing Officer received his appointment in this matter on November 16, 2012. An initial status conference was held over the phone on November 26, 2012. The parties held a mediation session in this matter on December 18, 2012 but the parties were not able to resolve the issues of the Due Process Request. On December 19, 2012, the law firm withdrew its representation and the parents proceeded *pro se*. A subsequent status conference call was held on January 4, 2013 and a Pre-Hearing Conference was scheduled for February 7, 2013 at the offices of [REDACTED]. The Pre-Hearing Conference was commenced on February 7, 2013 but due to clarifications as to certain issues, the Pre-Hearing Conference was continued and completed on February 12, 2013. The parties agreed to hearing dates of February 26, 2013 and February 28, 2013. The Hearing was held on these dates and, due to longer than anticipated testimony of the witnesses, an additional date was scheduled for March 13, 2013. This matter was concluded on April 17, 2013.

At the Hearing, procedurally, the parties agreed and stipulated to admission of the parent document book [PD 01 to PD 27] and the school district document book [Tab 1 through Tab 49]

and for admission of all the documents contained therein. Both document books were admitted into evidence.

The Parent called the following witnesses: The Student's father; [REDACTED] Director of Special Education; [REDACTED] Special Education Teacher; [REDACTED] Director of the Upper School; [REDACTED] Director of Research and Assessment; and [REDACTED] Neuropsychologist.

The School District called the following witnesses: [REDACTED] Director of Special Education; [REDACTED] Case Manager; [REDACTED] Reading/Writing Seminar Teacher; [REDACTED] Special Education Teacher; [REDACTED] English Teacher; [REDACTED] Adviser; [REDACTED] School Psychologist; [REDACTED] School Psychologist; [REDACTED] Speech Pathologist; and [REDACTED] Speech Pathologist.

#### **B. Issues**

1. Whether the reading/reading comprehension and writing support services provided by the School District as per the IEP's dated January 13, 2010, April 29, 2011 and February 29, 2012 provided directly for intensive multi-sensory remediation of his identified deficiencies in language, reading and written expression.
2. Whether the reading/reading comprehension and writing support services provided by the School District as per the IEP's dated January 13, 2010, April 29, 2011 and February 29, 2012 are adequate to achieve, in part, the stated IEP Post-Secondary Outcome.
3. Whether the School District provided the Student with a Free Appropriate Public Education (FAPE) that addresses his diagnosed and documented language based learning disability.
4. If not, whether [REDACTED] is an appropriate placement in the least restrictive environment.

#### **C. Proposed Relief**

1. A Finding that the School District did not provide the Student with a FAPE;
2. Award payment of the cost of [REDACTED] for the current school year and two additional years as compensatory education/placement.

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

1. June 10, 2009 [REDACTED] Public School Re-Evaluation [PD 20]

Although conducted on June 10, 2009 certain portions of the [REDACTED] Public Schools IEP are instructive. The Student's areas of weakness included processing speed; working memory;

reading including decoding and comprehension; expressive/oral language including word finding skills and vocabulary; and reading and written expression. He needed additional time to process information as he works at a slow pace and is a concrete learner rather than an abstract one. For accommodations, the Student was allowed use of extended time and use of a calculator as well as class notes. He was not to be administered any Scantron tests. For assessments directions need to be clarified. He was to have a reader for word problems and essay questions and was to be provided with word banks

2. January 13, 2010 8<sup>th</sup> Grade Articulation/Individualized Education Program [PD 11]

Present levels of academic achievement and functional performance: The school district expressed concerns with the Student's rate of speech, pronunciation of multi-syllabic words and adequate breath support. The Student's specific learning disability impacts his reading comprehension, writing organization and executive function.

Although no special factors were deemed needed or any linguistic accommodations were needed, the Student did require supplementary aids, accommodations and modifications including extended testing time - 1.5; no Scantron as the Student is unable to transfer answers; access to class notes; and assistive technology keyboard for classroom; and a reader for tests.

The Student is to receive 1925 mpw of total instruction time of which 640 mpw was outside of the general education setting. The resource program was considered his placement option. He was recommended for a double period special section English in an effort to provide him reading remediation along with his English curriculum and further recommended double period Algebra and co-taught biology and co-taught history.

#### Goals and Objectives/Benchmarks

Reading, Reading 01: The Student has difficulty with reading comprehension. No goals or objectives/benchmarks were listed.

Speech Language, Articulation - Communication Repair: The Student was able to read 10 sentences with appropriate rate of speech, pronunciation of multisyllabic words and with adequate breath support (?). His goal was to independently use strategies (reduced rate, supported breath and clear syllables) to prepare communication breakdowns.

Writing, Pre-Writing: Currently, the Student cannot independently employ pre-writing strategies to organize his thoughts. He currently does not edit his writing for the following components: sentence structure, complete communication of his ideas, and punctuation. His goal was to independently employ a pre-writing strategy on a given essay assignment and then read his completed work looking to make corrections in sentence structure, completeness of ideas and punctuation.

Time Management: The Student does not break down assignments into small segments which have clear goals. His goal was to independently break down assignments into small segments which have clear goals.

3. January 26, 2011 Progress Report [30 SD 296]

On the Students Writing - Pre-Writing goal, the Student met the benchmark for the first period; on his Speech/Language - Articulation and Communication Repair goal, the Student also met this benchmark with the therapist noting that he will slow down and repeat himself when asked but still drops off the final syllables in multisyllabic words; and as to Time Management, the Student also met this benchmark.

4. April 20, 2011 Assistive Technology Evaluation [29 SD/267]

By history, the Student has experiences with several different forms of assistive technology including books in audio format as well as Kurzweil and similar programs. He preferred audio formatted books for longer difficult novels.

The Student was given a reading probe at the 6<sup>th</sup> grade reading level. He read at a rate of 121 words per minute with 14 miscues which suggested instructional/frustration level. He struggled physically pronouncing and forming words as he read aloud. His reading became more labored the longer he read. The physical activity of reading the passage was difficult for him. On a writing task, the more difficult tasks for him were letter and word retrieval as well as short-term memory issues.

Recommendations included Bookshare, audio tapes use and/or audio files for the books he has been assigned to read for class and access to a computer with special education software relative to word retrieval.

5. April 29, 2011 Individualized Education Program [PD 10]

Secondary transition

The Student will attend a college of his choice and be employed in a career of his interest.

Goals and Objectives/Benchmarks

(1) Reading and reading comprehension: The Student has difficulty with reading comprehension which inhibits his ability to consistently understand what he reads. His reading goal is to use active reading skills (e.g., annotating, highlighting, note taking etc.) to increase comprehension in 5 of 5 trials.

(2) Speech/Language and Articulation: The Student does not independently use the phonological properties of unfamiliar words in order to correctly articulate, store and write target words. His goal is to independently analyze curricular vocabulary by (1) auditorily segmenting words into syllables (2) say syllables out loud as he types/writes letters and (3) identify morphological structures and give the meaning of written words with 80 % accuracy.

(3) Speech/Language and Expressive Language: The Student has difficulty sequencing main ideas and details orally and in writing. Difficulties with tense and communicating cause and effect relationships also impact his event retelling and curricular discussions. His goal was to independently sequence words to correctly express the intended time relationship between ideas/events.

(4) Writing, Pre-Writing: The Student cannot independently employ pre-writing strategies to organize his thoughts. Currently, he does not edit his writing for the following components: sentence structure, complete communication of his ideas, and punctuation. His goal was to independently employ a pre-writing activity on a given essay assignment and will read his completed work looking to make corrections in sentence structure, completeness of ideas, and punctuation.

(5) Social/Emotional, Social Skills: The Student has difficulty expressing himself appropriately and recognizing social cues from others. His goal was to increase his social communication skills by recounting experiences with appropriate emotions and recognizing social cues.

(6) Time Management: The Student does not break down assignments into small segments which have clear goals. His goal was to independently break down assignments into small segments which have clear goals.

Consideration of Special Factors and Supplementary Aids, Accommodations and Modifications: Student will receive assistive technology devices and services; class notes provided; 1.5 extended testing time; preferential seating in close proximity to the teacher; computer access for essays, essay tests, access word prediction software, Kurzweil and writing software; assistive technology: books in auditory format required; and no Scantron as the Student is unable to transfer answers

The Student is to receive 1925 mpw of total instruction time of which 800 mpw is outside of the general education setting.

6. September 21, 2011 Bookshare Individual Membership Request Form [24/SD238]

Bookshare provides accessible electronic books and materials to individuals with legally qualifying disabilities.

7. PLAN/ACT Score [PD 3]

On October 12, 2011, the Student took the PLAN (pre-ACT) test. He received an "11" on his English subtest, a "14" on the mathematics subtest, a "10" on the reading subtest and a "14" on the science subtest. This composite score was a "12" and his estimated ACT Composite Score Range was "12 - 16". The least selective/open schools had typical admissions starting at "16" and ranging through "21". The more traditional programs started at "18" and went to "24". Successful college sophomores in majors related to the Students preference had ACT composite scores of "20 - 24".

8. November 10, 2011 Progress Report [21/SD 229]

On the Student's Writing - Pre-Writing goals, the Student was progressing but did not meet the benchmarks for this marking period; on the Reading - Reading Comprehension goal, the Student did not meet the benchmark; on his Social/Emotional - Social Skills, he was progressing but still had not met this benchmark; on his Speech/Language - Articulation goal, the Student met this benchmark; on his Speech/Language - Expressive Language goals, the Student met this benchmark but was still in need of moderate prompting; and on this Time Management goal, he did not meet this benchmark.

9. February 29, 2012 Speech and Language Evaluation [15/SD 196]

This was for the three-year re-evaluation for determination of eligibility for speech and language services. At this point, the Student was receiving 80 minutes per week of speech and language interventions. Past speech/language instruction focused on the decoding skills, reading comprehension, synthesis of information and executive functioning skills. Teacher reports indicated only minimal concerns with the Student's receptive language skills. However, a few teachers indicated difficulty with vocabulary in understanding subject content. Although the Student was familiar with the strategy of segmenting syllables and uses it with the therapist, he apparently does not always make use of it in his content classes. There was little concern about Joe's expressive language skills in his classes. He needs though to continue focus on systematically organizing key information so he can effectively summarize it in either oral or written in but format.

The Student continues to be eligible for school based speech/language therapy. Going forward, the speech pathologist wanted the Student to (1) demonstrate understanding and use strategies such as Expanding Expression Toolkit and graphic organizers to generate an oral or written summary of information he had read; (2) continue working on segmenting multisyllabic words and syllables to aid in defining, retaining and recalling vocabulary; and (3) continue working on intelligibility strategies to prevent or repair communication breakdowns.

10. February 29, 2012 Individualized Education Program [PD 9]

On February 29, 2012 the School District conducted a triennial re-evaluation, IEP review and transition planning for the Student.

The Student was diagnosed a Specific Learning Disability in February 2006. His deficit areas included reading comprehension and written expression. Performance on standardized tests indicated that reading and writing skills were in the borderline to low average range. The Student was progressing at a significant slower rate than expected.

Academic achievement: The Student's grades in 9<sup>th</sup> grade and first semester of 10<sup>th</sup> grade were mainly "B's" and "C's". He was enrolled in special education classes for all his major subject areas with the exception of plane geometry. Per the CTP4 High School Placement Test administered December 12, 2009, the Student's scores in math computation and qualitative math

were in the average range and below average in reading when compared to local norms. Compared to national norms, they were in the average range for reading and math computation and above average for qualitative math. On the PLAN test administered October 12, 2011, he scored in the 30<sup>th</sup> percentile in English, at the 38<sup>th</sup> percentile in math, at the 27<sup>th</sup> percentile in reading for a composite score at the 33 percentile.

#### February 28, 2012 Weschler Individual Achievement Test - Third Edition (WIAT III)

The Student's academic scores have remained relatively stable since the last evaluation with some modest improvement in comprehension and written expression. Reading comprehension was compromised by his inability to pronounce several words and his inferential reading comprehension was poor. On the subtests, Word Reading, Essay Composition and Reading Comprehension were low average and Sentence Composition and Pseudo Word Decoding were borderline. In Sentence Composition, the Student scored at the 6<sup>th</sup> percentile, in Pseudo Word Decoding at the 8<sup>th</sup> percentile, in Word Reading at the 12<sup>th</sup> percentile and in Reading Comprehension and Essay Composition at the 13<sup>th</sup> percentile.

#### February 28, 2012 Weschler Adult Intelligence Scale- Fourth Edition (WAIS IV)

The Students intelligence scores have vacillated over the past several years with the latest test results showing overall similar scores as was noted in his 4<sup>th</sup> grade private evaluation. Although he showed relative strength in his perceptual skills, he had a continued deficit in processing speed. His vocabulary is at the lower end of average range (25<sup>th</sup> percentile). His ability to describe social situations is borderline (5<sup>th</sup> percentile). He remains a concrete thinker with abstract issues more of a challenge. The Student scored at the 23<sup>rd</sup> percentile (low average) in verbal comprehension; 45<sup>th</sup> percentile in perceptual reasoning (average); 30<sup>th</sup> percentile (average) working memory index; and at the 8<sup>th</sup> percentile (borderline) processing speed. His full IQ scale was at the 19<sup>th</sup> percentile (low average).

#### Speech/Language Evaluation - Communication Status

See # 9 above.

#### Social/Emotional Status/Social Functioning

The Student is a kind young man with a good sense of humor. He is eager to please his teachers at school and form connections with his peers. He has worked on social skills building including reading social cues and reading social scenarios. He will benefit from participation in social skills group where he is able to practice emotional identification and expression as well as social cue reading with peers.

#### Secondary Transition

The Student wants to attend college to study criminal justice and be employed as a law enforcement officer

### Eligibility Determination

The Student is progressing at a significantly slower rate than expected. The Student's score was significantly discrepant (although Illinois no longer uses this criterion). His disability significantly affects his performance in basic reading, reading expression and written expression. (Emphasis added)

### Goals and Objectives/Benchmarks

(1) Reading and Reading Comprehension: The Student has difficulty with reading comprehension which inhibits his ability to consistently understand what he reads. His reading goal is to use active reading skills (e.g., annotating, highlighting, note taking etc.) to increase comprehension and 5 of 5 trials. [Same as the April 29, 2011 IEP]

(2) Speech/Language and Articulation: The Student does not independently use the phonological properties of unfamiliar words in order to correctly articulate, store and write target words. His goal is to independently analyze curricular vocabulary by (1) auditorily segmenting words into syllables (2) say syllables out loud as he types/writes letters and (3) identify morphological structures and give the meaning of written words with 80 % accuracy. [Same as the April 29, 2011 IEP]

(3) Speech/Language and Expressive Language: The Student currently has difficulty providing pertinent details and sequencing orally and in writing. His goal was to independently use strategies (Expanding Expression Toolkit, graphic organizers, etc.) to provide specific descriptors (group, function, look like, parts, etc.) when defining vocabulary, describing personal events/activities, and when summarizing information he has heard or read.

(4) Social/Emotional, Social Skills: The Student struggles to read social cues from peers across contexts and connecting in an age-appropriate manner. His goal was to increase his social communication and relationship building skills by identifying his emotions as they relate to his experiences in conversation and using perspective-taking strategies to recognize social cues..

(5) Time Management: The Student does not break down assignments into small segments which have clear goals. His goal was to independently break down assignments into small segments which have clear goals. [Same as the April 29, 2011 IEP]

(6) Writing, Pre-Writing: The Student does not independently complete a brainstorming activity before writing a draft. His goal was to independently complete the brainstorming activity (e.g., web, graphic organizer, and outline).

Consideration of Special Factors and Supplementary Aids, Accommodations and Modifications: Student will receive assistive technology devices and services; 1.5 extended testing time; preferential seating close proximity the teacher; computer access for essays, essay tests, access word prediction software, Kurzweil and writing software; assistive technology: books in auditory format required; no Scantron as the Student is unable to transfer answers; and class notes provided.

The Student is to receive 1925 mpw of total instruction time of which 1200 mpw is outside of the general education setting.

11. Parent Request for Change of Level [11/SD 121]

On May 31<sup>st</sup>, 2012 the parents requested a transfer from English 2 E to English 2. The Student's advisor commented that "this worries me".

12. June 8, 2012 Progress Reports [9/SD 116]

On the quarterly progress dated June 8, 2012, the Student was progressing but had not yet met his Writing - Pre-writing goal as of the first reporting period; was progressing but had not yet met his Reading - Reading Comprehension benchmark [same as the November 10, 2011 benchmark]; was progressing but had not yet met his Social/Emotional - Social Skills benchmark although the social worker noted that the Student was doing well with visual and verbal prompts in sessions but needed to continue to develop perspective taking skills for more abstract social scenarios; had met his Speech/Language - Articulation benchmark [same as the November 10, 2011 benchmark which he met] although the speech pathologist noted that he needed to consciously slow down his speech; he met his Speech/Language - Expressive Language benchmark with the speech language pathologist noting that he had demonstrated understanding of a systematic strategy called EET to provide details about vocabulary and curricular concepts; and had met his Time Management benchmark by breaking down assignments into small segments.

13. July 20 & 24 2012 Neuropsychological Evaluation - Dr. Lori Tall [PD 17]

The parents requested [REDACTED] to evaluate the Student to gain insight into where he is functioning relative to previous testing and also compared to peers. [REDACTED] administered a series of tests including Comprehensive Test of Phonological Processing; Gray Oral Reading Test, Fifth Edition; the Minnesota Multiphasic Personality Inventory - 2; Test of Adolescent/Adult Word Finding; Test of Language Competence, Expanded Edition; Weschler Adult Intelligence Scale, Fourth Edition; Weschler Individual Test of Achievement, Third Edition; and Wechsler Memory Scale, Fourth Edition.

The Wechsler Adult Intelligence Scale Fourth Edition revealed that his Verbal IQ was a standard score of 91, his Performance IQ was 107; his Processing Speed was 105; Working Memory was 96 and his Full Scale IQ was 99. In 2006, the Weschler Intelligence Scale for Children Fourth Edition was administered with the Student receiving the following scores: Verbal Comprehension 85; Perceptual Reasoning 112; Working Memory 74; Processing Speed Index 83 and Full Scale IQ of 87.

The Student is intellectually competent but struggles with many aspects of learning which significantly interfered with the effectiveness of his efforts. Although his non-verbal reasoning skills continue to be an area of strength, his relative difficulties with language and language-based academics (reading and written language) lead him to achieve at a lower level than

anticipated. Expressive language is the primary source of the challenge but he also struggles with receptive language. Memory deficits were observed but mainly revolve around new learning and aspects of disorganization and poor planning that interfered with his ability to efficiently acquire, encode and access information. One of his most notable deficits was with processing speed and attention/comprehension skills, both in visual and verbal information. He also has significant difficulty with inattentiveness that makes him error prone. Academically, he is 7 to 8 years behind same age peers in reading comprehension. The primary basis for this is his struggles over time with reading. He struggles with phonological awareness and working memory tasks.

Despite the school districts best attempts at support and intervention, the Student has shown little academic progress and continues to struggle function in the same level as his peers. He continued to demonstrate significant learning issues in reading, written language and receptive and expressive language. The lack of intensive strategies in multisensory learning strategies in all subjects has likely been a significant factor for the Student failing to demonstrate the accrual of meaningful academic gains despite participating in special education. Placement in a therapeutic residential school that specializes in educating children/adolescents with severe language and learning issues will provide him the appropriate multisensory techniques that will assist him in developing the academic skills necessary to compensate for his underlying learning disorders.

Recommendations at school include a multisensory programming such as Wilson to address the Students foundational skills and phonological processing, speech and language therapy to address relevant issues detailed in the report, use of technology such as Bookshare and accommodations for standardized testing including the use of the computer for all written portions, taking each section on a separate day, having instructions read to him, having test questions read to him and breaks during the test. In addition, although referenced at home, he should receive weekly speech/language therapy program for 60 minutes per session or twice a week services for 30 minutes per session.. In addition, the Student should receive direct intervention (at home) in the area of language formation with specific strategies to increase awareness of errors in semantics or syntax for both oral and written language forms; teaching in elements of good storytelling information; sentence construction and expansion; and helping to develop his own stories. ██████████ suggested graphic organizers to assist in visualizing how to organize and connect all the information together. He would also benefit from direct instruction on appropriate conversational skills.

14. July 23, 2012 ██████████ Assessment [PD 16]

As part of the admissions process, the Student underwent a series of tests to determine his appropriateness for the ██████████. The Student was administered the following tests:

IOTA Word List Test. Errors by the Student included incorrect file sounds, word substitution and instances of p/q confusion. His grade equivalent was 4.2

█████████ Non-Word Test Score. The Student had very significant difficulty with phonetic decoding of unfamiliar words. Errors consisted of consonant and vowel confusion, addition/omission of

phonemes and syllables, misapplication of pronunciation rules, incorrect affixes, transpositions, and whole word substitutions. He made 23 errors for a 33% success rate.

Slosson Oral Reading Test - Revised. The Student correctly identified words by sight with little evidence of decoding strategies such as sounding out, syllabication, etc. He received a standard score of 62, an age percentile of 1<sup>st</sup> percentile and a grade equivalent of 4.6.

Gray Oral Reading Test 4<sup>th</sup> Ed. The Student's oral reading was very slow, effortful and error-prone. Decoding errors included full word substitutions, addition/omission of words and phonemes, and inaccurate affixes, and consonant and vowel sound confusion. He also experienced significant difficulties with understanding text that was not entirely due to weak decoding and fluency. He is in need of intensive, explicit, multisensory instruction in decoding, fluency, and comprehension strategies.

	Grade Equivalent	Age Percentile	Standard Score
Rate	6.4	9 <sup>th</sup>	6
Accuracy	5.0	5 <sup>th</sup>	5
Fluency	5.7	1 <sup>st</sup>	3
Comprehension - 5	2.4	1 <sup>st</sup>	3
Comprehension - 7	3.7	2 <sup>nd</sup>	4
Oral Reading Quotient		<1 <sup>st</sup>	58

Morrison - McCall Spelling Test (Written). The Student scored a grade equivalent of 4.9. Errors were characteristically dysphonetic.

Test of Written Language - 4 Ed. The Student was asked to write the best story he could based on a provided picture. He was allowed a five minute planning period followed by a 15 minutes writing time. He spent two minutes for planning and nearly 10 minutes composing but wrote only a simple story of one paragraph that contained a sequenced plot. His immature print was difficult to read due to inconsistent spacing, poor letter formation and inaccurate spelling.

	Grade Equivalent	Age Percentile	Standard Score
Contextual Conventions	4.0	16 <sup>th</sup>	7
Story Composition	3.0	16 <sup>th</sup>	7
Spontaneous Writing Quotient		12 <sup>th</sup>	82

15. August 29, 2012 Individualized Education Program [PD 8]

The IEP team met on August 29, 2012 to discuss the outside evaluation that was provided by the parents as well as the parent's request for the district to support the Student's placement in a residential school for students with learning disabilities. The parents shared that the Student had

struggled a great deal academically and also had some social issues with getting along with other kids. An outside child psychologist shared that the current school setting may not be the best placement to help the Student make progress. He was then evaluated by a neuropsychologist who determined that the Student's reading level was at 4<sup>th</sup> or 5<sup>th</sup> grade reading level. Testing also predicted an ACT score of the 14 to 15 which was concerning to the parents. According to the father, previous school evaluations have uncovered similar results suggesting that the school-based interventions have not been successful in helping the Students to improve academically. Based on this, the parents began investigating other options that might help in progress. One of the selections was the [REDACTED] School which was a residential facility which works specifically adolescent males with learning disabilities.

The speech language pathologist advised that she had been working with the Student on multi-syllabic articulation and was using a multisensory approach to vocabulary and concepts. Based on her review of the outside evaluation, she felt that those findings aligned pretty well with the IEP services and goals and saw nothing that the school was not already doing or could do. The Director of Special Education shared that the recommendations from the outside evaluation were already being implemented or could be further incorporated at the school and that there was nothing indicating a residential placement. The resource teacher shared that the Student made a lot of nice progress with note taking, with working on vocabulary, reading comprehension and had worked with him on organization. He was progressing on his IEP goals. It was the team's opinion that the Student was making progress and that the school was providing appropriate support. All team members agreed the current IEP addressed his needs. As such, placement at New Trier was his appropriate placement and a private day placement or residential placement was not warranted. The family advised that they were taking the Student to the Gow School the following day.

16. Student Transcript [PD 2 and 32/SD 292 - 293]

The Student received a total of 11 credits for his attendance at [REDACTED]. His weighted grade point average was 2.4907 and unweighted grade point average was 2.547 for his fourth semesters. For his freshman year (2010 - 2011) first semester, the Student received a "C" in English 1-E; a "B -" in Kinetic Wellness; a "C+" in Algebra 1 (double period); a "B-" in Environment/Geoscience - E; a "B- " in World History; and a "P" in Resource Seminar. For the second semester, the Student received a "B - " in English 1-E; a "B - " in Kinetic Wellness; a "C" in Algebra 1 (double period); a "C" in Environment/Geoscience - E; a "B- " in World History; and a "P" in Resource Seminar. For his fall semester sophomore year, he received a "B" in Health, a "A" in Creative Cuisine, a "Pass" in Resource Seminar, a "C-" in Biology - E, a "C-" in Plane Geometry and a "B-" in English 2-E. For his spring semester, he received an "A" in Kinetic Wellness, and "A" in Creative Cuisine, a "Pass" in Resource Seminar, a "C-" in Biology-E, a "B-" in Plain Geometry, a "B +" in English 2- E and a "Pass" in Reading and Writing Support. [SD292 - 293]

17. [REDACTED], 2012 - 2013 profile [PD 1]

[REDACTED] is a comprehensive four-year high school in [REDACTED] and [REDACTED], Illinois approximately 16 miles north of [REDACTED]. It serves [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18. Special Education at [REDACTED] [PD 6]

[REDACTED] provides a full continuum of services to students who are found eligible for special education. Its goal is for all students to become self-aware, self advocating and independent learners. The special education department serves students who have an individual education plan (IEP). Special education services are provided within the least restrictive environment to the greatest extent possible. Enrollment in any special education courses is based upon recommendations from an IEP team meeting. There are special education courses in reading, writing, mathematics and social skills. A resource seminar provides the students with strategies related to goals and objectives identified in their IEP. In addition, they provide transition services, extended school services and related services such as speech and language, social work, assistive technology, physical and occupational therapy, orientation and mobility, adaptive kinetic wellness, psychological services and support from instructional assistants.

19. List of Representative Colleges Offering Criminal Justice/Law Enforcement Study [PD 4]

The parent provided a listing of a college freshman class profile – middle 50 % ACT scores. Of the top 20 criminal justice programs in the United States based upon the father's research, the lowest middle 50 % ACT score ranged from 19 to 23. For the state of Illinois, the lowest middle 50 % ACT score ranged from 18 through 23.

20. International Dyslexia Association - Matrix of Multisensory Structured Language Programs [PD 7]

The International Dyslexia Association works to provide information to the public regarding informed, evidence-based reading instruction and professional development for teachers and intervention specialists. As part of its programs, it makes available information relative to many effective, sequential, sensory, structured language programs. Intervention and remediation researchers report that the most effective programs of instruction, at all ages, explicitly address multiple components of oral and written language learning in an integrated manner including phonological awareness; vocabulary development; reading comprehension skills and strategies; beginning and advanced decoding skills, with spelling included; reading fluency; handwriting; grammar; written composition; and strategies for learning. Those programs include the following: Orton - Gillingham Approach; Alphabetic Phonics; Association Method; Language!; Lexia-Herman Method; Lindamood -Bell; Project Read; Slingerland; Souday System; Sounds in Syllables; Spalding Method; Starting over; and Wilson Foundations and Wilson Reading.

21. [REDACTED] Information [PD 12]

The [REDACTED] is the nation's oldest college preparatory school for dyslexic/learning different Students. The school's mission is to provide for education of young men with an emphasis on the remediation of dyslexia through reconstructive language. It is a boarding school of approximately 150 Students with 44 full and part-time teachers. It is chartered by [REDACTED]

[REDACTED] and accredited by the [REDACTED]. It holds membership in the National Association of Independent Schools, the College Board, International Dyslexia Association and the Learning Disabilities Association. Its curriculum in the 10<sup>th</sup> grade includes Reconstructive Language; English 10; Global Studies II; Chemistry, Algebra I, Algebra II or Geometry; Fine Arts Elective; Computer Elective and Health Elective. For a 11<sup>th</sup> grade, Students take Reconstructive Language, English 11 or Journalism; US History; Biology or Science Elective; Algebra II, Geometry or Pre - Calculus; Fine Arts Elective; Science Elective; Math Elective; Computer Elective; and Other Elective.

22. The [REDACTED] [PD 13 and PD 14]

[REDACTED] is the core course at the [REDACTED]. It was designed by [REDACTED] in the 1920s in collaboration with renowned neurologist, [REDACTED]. Reconstructive Language teaches analytic language skills, primarily the printed or written word. In grades 9 and 10, phonics is mastered in conjunction with vocabulary words, spelling and practice in oral reading. In grades 11 and 12, [REDACTED] covers advanced concepts in morphology, etymology and linguistics.

The curriculum breaks down the phonological (sound structure), morphological (meaning structure), orthographical (spelling rules/patterns), syntactic (grammar) and semantic (meaning) structures of the English language. Explicit instruction, drill and much practice in application are employed to improve students' ability to work with the printed and spoken word. The program centers on structured instruction, memorization and recitation with much drill and practice putting the concepts to use in application. Dyslexic students have individually different but related language difficulties requiring individualized diagnostic approach. The small classes and afternoon tutorials give the flexibility to address these needs

23. [REDACTED] Costs [PD 5]

The Parent showed the [REDACTED] residential tuition at [REDACTED] laptop the of [REDACTED] books speech and instrumentals [REDACTED] and estimated travel of six trips at [REDACTED] a trip for a total of [REDACTED]. The total of these is [REDACTED].

24. Progress Report for 2<sup>nd</sup> semester English [19/SD 223 - 224]

The Student's Progress Report for 2<sup>nd</sup> Semester English showed that he received a B+ for his Semester grade. This was made up of his homework, quizzes, debate and final exam. He scored 27 out of 40 on the final exam which was graded as a D +. The final exam made up only less than 10 % of the Student's grade.

## **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 reading/reading comprehension and writing support services provided by the School District as per the IEP's dated January 13, 2010, April 29, 2011 and February 29, 2012 provided directly for intensive multi-sensory remediation of his identified deficiencies in language, reading and written expression.**

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* presents a two prong test relative to a Free and Appropriate Public Education (hereinafter "FAPE"), the first which looks to any procedural violation and the second which implicates a meaningful educational benefit. In this matter, there is no issue of a procedural violation. Rather, the parents dispute the second prong of the *Rowley* standard, a substantive benefit. In terms of the Student's reading, reading comprehension and writing support services as provided through the Individualized Education Program (hereinafter "IEP"), the parents aver that the District failed to provide an IEP that is calculated to allow the Student to benefit from his educational experience in terms of language, reading and written expression.

The Student first attended [REDACTED] for the academic year 2010 - 2011. Prior to his attendance there, a team made up of representatives of both the [REDACTED] as well as the [REDACTED] met to discuss the Student and his IEP in an 8<sup>th</sup> grade Articulation

Meeting on January 13, 2010<sup>1</sup>. [Finding of Fact # 2] At that point in time, the Student's diagnosis was Specific Learning Disability. In attendance at that meeting was [REDACTED] on behalf of the high school district. [REDACTED] transcript, p. 676] The [REDACTED] personnel expressed concerns with the Student's rate of speech, pronunciation of multi-syllabic words and adequate breath support and noted that the Student's Specific Learning Disability impacts his reading comprehension, writing organization and executive function. At that point in time, [REDACTED] as part of this meeting, should have been aware of the Student's needs in reading. But the team failed to include and/or develop any reading goal for the Student. Goals were developed for (1) Speech/Language, Articulation - Communication Repair, (2) Time Management, and (3) Writing, Pre-Writing but no reading goal was formulated for the Student although there was an area for a goal and objectives/benchmarks to be created As such, there were no direct services suggested or provided to assist the Student with his reading and writing deficiencies. There were no accommodations, supplementary aids and/or modifications proposed at this time relative to the Student's known issues regarding reading and writing. [Finding of Fact #2] The Student's placement was considered to be resource seminar for 200 minutes per week as well as English in a special education self contained classroom for 400 minutes per week with 40 minutes per speech/language services. [Finding of Fact # 2] Although apparently an oversight as no one at the high school became aware of this omission [REDACTED] transcript, p. 103 - 104], the district claims that, even without goal and objectives/benchmark, the Student was provided reading and writing remediation through the resource program and the special education English section in which he was enrolled. [REDACTED] transcript, p.104- 105]

It was not until over a year later, April 29, 2011, that the IEP team met again to discuss the Student and formulated additional goals for the Student. At this time, the IEP team devised one reading goal for the Student which was to "use active reading skills (e.g., annotating, highlighting, note taking etc.) to increase comprehension in 5 of 5 trials". Tangentially, the Student also had goals in Speech/Language and Articulation. In terms of articulation, the team noted that he did not independently use the phonological properties of unfamiliar words to correctly articulate, store and write target words. His goal was to independently analyze curricular vocabulary by (1) auditorily segmenting words into syllables (2) say syllables out loud as he types/writes letters and (3) identify morphological structures and give the meaning of written words with 80 % accuracy. Although other goals were established for the Student, these are the only ones for reading/vocabulary. [Finding of Fact # 5]

Ultimately, on January 24, 2012, the Student's mother expressed concern about the Student's skills in reading and writing. The case manager suggested enrolling the Student in the Reading and Writing Support class offered in special education. This was implemented in the second semester, 2012. [Finding of Fact # 11]

The IEP team again met on February 29, 2012 for a re-evaluation, IEP review and transition planning for the Student. At that time, his performance on standardized tests indicated that his reading and writing skills were in the borderline to low average range. As to his present level of

---

<sup>1</sup> This date pre-dates the 2 year statute of limitations relative to actions pursuant to 34 C.F.R. 300.511 (e) so no relief is available although the implementation of the IEP does carry over into the appropriate statutory period.

performance, the team thought that his reading comprehension inhibited his ability to consistently understand what he reads. His Reading and Reading Comprehension goal and Speech/Language and Articulation goal were repeated word for word from the April 29, 2011 IEP. [Finding of Fact # 5, 9, 10] [REDACTED] justified this repetition of the same and/or similar goals over the years as the Student's reading and writing skill level changed over the years as the course material becomes more difficult and his reading and skill level will also have changed. [Transcript p. 107]

Although the school district put certain reading and speech/language goals in place for the Student, the school did not address the underlying problem(s) [REDACTED] transcript, p. 270]. As noted, the Student scored in the lower percentiles on various tests which suggested merely using active reading skills such as annotating, highlighting, and note taking would not improve his reading. His father pointed out that doing more of the same and not focusing his instruction on where it needs to be - on remediation of his reading skills - will not move the bar forward at all and that the Student will not make progress on his various goals.

The IEP should be structured to produce progress for the Student. Such factors as achievement of passing grades and regular advancement grade to grade typically show satisfactory progress. *Alex R. Ex re. Beth R. v. Forrestville Cmty. Unit Sch. Dist. No. 221*, 375 F. 3d 603, 615 (7<sup>th</sup> Cir. 2004), *Jaccari J. v. Br. of Educ. of City of Chicago, Dist. No. 299*, 690 F. Supp. 2d 687, 701-702 (N. D. Ill. 2010) Here, the Student was passing his courses. His grades ranged from "C-'s" through "A's" depending upon the course. He passed his freshman year courses and obtained a total of 5.75 credits. By the end of his sophomore year, he had passed all of his courses and again obtained a total of 5.25 credits. At that point, he had a total of 11 graduation credits. His unweighted grade point average was 2.5478. [Findings of Fact # 16]

However, grades can often be a subjective measurement rather than an object measurement. Based upon the information provided as a representative sample for the Student's progress in English, his final semester 2012 grade was a B+. However, this grade was an average of all of the work they did in class, much of which was material such as homework, stories, newspaper, etc. that was prepared with assistance. For his homework, the parents had provided tutoring for the Student 3 times a week. He received help with his homework in resource although he often chose to save his work to be done at home with the tutor. [13/SD 0159; Schneiders, transcript, p. 29] He received a D+ on his final exam [19/SD 223- 224] which was done without the support of the resource teacher and/or his tutor. [Findings of Fact # 24] As such, it is reasonable to infer that the assistance received with the tutor as well as in resource contributed to the grade that he received. It is also reasonable to infer that without that assistance that his homework and assignment grades would not have been at the level received.

As the courts have noted, it requires more than a nominal benefit for the student. *T. H. v. Bd of Ed of Palatine Comm. Consol. Sch. Dist. 55* F Supp. 830 (N.D., Ill. 1999). 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 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

However, [REDACTED] believes that the [REDACTED] could provide sufficient supports and instruction to the Student. [Tall, transcript, p. 436, 439] In fact, [REDACTED] made certain recommendations which were similar to those the undertaken by the school district with reference to the Student. For example, she recommended accommodations for standardized testing to include the use of the computer for all written portions, having instructions and test questions read to him, and having sufficient breaks during testing. She also recommended the use of technology such as Bookshare and graphic organizers to assist in visualizing how to organize the information and instruction on appropriate conversational skills. The School District recommendations in the Student's IEPs included similar accommodations and modifications. [Findings of Fact # 2, 5, 10, 13]

In [REDACTED]'s opinion, lack of an intensive multisensory learning strategy such as Wilson or Slant was one of the significant factors for the Student failing to make satisfactory and meaningful academic gains despite participating in special education. [Finding of Fact # 13] However [REDACTED] [REDACTED] has not observed the Student in school, has not spoken with any of the Student's teachers, has not spoken with the school psychologist serving the Student, has not spoken to the speech pathologist or the social worker and has only seen the Student during her evaluation. [REDACTED] transcript p. 283] Even though she has not observed the Student, she has reviewed the various IEP and other information.

According to the International Dyslexia Association, a multisensory structured language program is "simultaneously visual, auditory, and kinesthetic-tactile to enhance memory and learning. Links are consistently made between the visual (*what we see*), auditory (*what we hear*), and kinesthetic-tactile (*what we feel*) pathways in learning to read and spell." In the opinion of the various school district staff and personnel, [REDACTED] was providing a multisensory environment for the Student through his IEP's and his instruction. [See [REDACTED] transcript, p. 93; [REDACTED] transcript, p. 312 - 322; [REDACTED] transcript, p. 459; [REDACTED] transcript, p.556 - 557]. Although certain teachers were providing a multisensory teaching environment with the Student, there was not the constant, intense program such as Wilson or Slant, etc. which was provided as demanded by that particular program. However, based on her review, [REDACTED] has opined that the Student has never gone through a structured multisensory reading or written language program which focuses on remediation. [REDACTED] transcript, p. 276] This is confirmed in the testimony of [REDACTED] [REDACTED] transcript p. 271 - 272] who has testified that he modified the program for various reasons and does not present it as designed.

Although the school district teachers and other staff and personnel opined that the Student has made progress, was receiving passing grades and was promoted from freshman to sophomore year, the objective testing done by both the school district as well as the outside evaluators show that the Student is making, at best, minimal progress in his ability to read and comprehend what he reads and at worse, almost no progress on his reading/reading comprehension. Findings of Fact # 1, 2, 4, 5, 10, 13, 14] The testing conducted by [REDACTED] in July, 2012, immediately prior to his placement in the [REDACTED] showed that the Student's reading comprehension probably varies from 4<sup>th</sup> to 5<sup>th</sup> grade and that his written language skills are approximately the same - 4<sup>th</sup> or 5<sup>th</sup> grade level. When the Student entered [REDACTED] his reading comprehension skills were essentially the same. [REDACTED] transcript, p. 154 - 155] His reading goals provide for assisted and compensatory strategies relative to reading but do not address his underlying

deficiencies and deficits [Findings of Fact # 1][Tall, transcript, p. 270]. As such, the Student's reading/reading comprehension and writing support services provided by the School District as per the IEP's dated January 13, 2010, April 29, 2011 and February 29, 2012 failed to provide for intensive multi-sensory remediation of his identified deficiencies in language, reading and written expression.

As the Parents have pointed out, [REDACTED] has failed the Student in one of the most basic areas of the curriculum - Reading and Reading Comprehension. Although the School District can claim that the Student is making progress, passing his courses and being promoted, the various testing done over time show no significant improvement in his ability to actually read. The goals provided in his IEPs do not effectively address this. The goals almost assume that he knows the basics of reading and yet the objective testing performed show that the Student is borderline, low average, etc. in basic skills of reading and reading comprehension and associated skills. The focus of the School District's effort has been on compensatory strategies and not on remediation.

The School District through its IEP team(s) has apparently worked hard to formulate appropriate IEPs for the Student. For the remainder of the non-reading and non-speech/language goals and programs, the School District has done a reasonably good job. Even at that, the School District has implemented some of the recommendations of [REDACTED] in their reading and writing goals but they have not formulated a goal to address her main concern about the Student - his reading and reading comprehension with the need for an intensive multisensory learning strategy such as Wilson or Slant that would allow the Student to make satisfactory and meaningful academic gains. [Finding of Fact # 13]

Although the Parents have requested compensatory education in the form of two years tuition reimbursement for the [REDACTED] as more set forth below and based upon the facts of this case, it would not be appropriate. However, compensatory education in the form of additional reading supports for the Student in line with the recommendation of [REDACTED] for an intensive multisensory learning strategy such as Wilson or Slant would be appropriate. Based upon [REDACTED] suggestions that the Student should have minutes devoted to receiving instruction in one of the multisensory reading programs - a specific amount of time per day taking him through that multisensory reading program - the Student would benefit from a specific multisensory reading program such as Wilson, Slant, etc as set out in the International Dyslexic Association's material [Findings of Fact # 20; [REDACTED] transcript, p. 276]. If the Student elects to return to New Trier High School, the School District is required to provide one of the International Dyslexic Association's multisensory reading programs for the Student. The School District will include this multisensory reading program in his academic minutes per week. They are required to provide this program at an intensity of 50 minutes per day with a specifically program trained individual who is certified in that program. Upon re-enrollment, the School District will hold an IEP team meeting within two (2) weeks of his re-enrollment which will included the Parents and the appropriate members previously involved with the Student, if available, to determine the specific multisensory reading program to be used with the Student. If no faculty member at [REDACTED] [REDACTED] has the necessary training and certification (and based upon the testimony adduced at the hearing, there is no individual currently employed at [REDACTED] that does have this training), the School District will provide, within 3 weeks of the IEP meeting, a trained

certified reading specialist to provide this multisensory reading program to the Student. Within 3 weeks of that IEP meeting, the chosen program will be provided as required pursuant to the instructions of that particular program. The "eclectic" offering provided to the Student previously in Wilson is not acceptable. The selected program will continue for a period of up to three (3) years or until such time as the Student completes the program or graduates. The three year period is based upon the amount of time that will be necessary to bring the Student up to a reasonable reading rate. Currently, based upon the [REDACTED] curriculum that the Student is re-starting his sophomore year and will need three years of intensive instruction on a daily basis to remediate his reading deficiencies, this three additional (3) years (or other as set forth above) of intensive multisensory reading instruction in the chosen program on a daily basis would seem appropriate.

This issue as to the goals in the various IEP's as to reading and reading instruction is found in favor of the Student. It is not meant to suggest that the remainder of the IEP's were deficient.

**2. Whether the reading/reading comprehension and writing support services provided by the School District as per the IEP's dated January 13, 2010, April 29, 2011 and February 29, 2012 are adequate to achieve, in part, the stated IEP Post-Secondary Outcome.**

The Student's post secondary outcome was to attend a four-year college and have a career in law enforcement [PD9]. The parents were concerned that his reading/reading comprehension and writing support services provided for the Student in the various IEP's were inadequate to prepare him for this outcome. Specifically, on the PLAN test, a pre-ACT test, the Student did not receive the scores necessary for meeting his post - secondary outcome. The parents believe that the estimated ACT composite score range would not allow the Student to meet his post secondary outcome as the least selective/open schools had typical admissions starting at "16" and ranging through " 21". More traditional programs started at "18" and went to "24". Successful college sophomores in majors related to the Student's preference had ACT composite scores of "20 - 24". [PD 3] [Finding of Fact # 7, 19]

The parent provided a listing of freshman class profile – middle 50 % ACT scores for programs in criminal justice. Of the top 20 criminal justice programs in the United States, the lowest middle 50 % ACT scores ranged from 19 to 23. For the state of Illinois, the lowest middle 50 % ACT scores ranged from 18 through 23. In neither of those types of programs would the Student be admitted based upon a estimated ACT Composite Score Range was "12 - 16". [PD 4] [Finding of Fact # 7, 19] Given these range of scores, the parents were concerned that the Student would not be accepted at any program.

Measurable postsecondary goals included in the Student's transition plan must be based upon age-appropriate assessments related to employment, education or training, and, as needed, independent living. 23 ILAC 226.230 (2007) Here, the parents are not concerned at this point as to the goals for the post secondary outcome. Rather the parents are concerned that the current IEP's are not sufficiently crafted as to the Student's reading/reading comprehension and writing support services to allow the Student to qualify for his post secondary choices. The parents posit that a multisensory reading and language program for the Student to assist in his reading/reading

comprehension and writing support would go a long way to improving the probability that the Student would make acceptable progress in his schoolwork, would score more appropriately on the ACT test and be accepted into a criminal justice program.

This issue subsumes much of the discussion and conclusions in issue number one above. However, the result in issue one do not necessarily translate to this issue. If the school district's IEPs have not been sufficiently crafted to meet the Student's unique needs in reading/reading comprehension, language and writing, one assumption is that the Student will not score sufficiently high on the ACT test and that therefore will not be accepted into a criminal justice program. However there are other just as likely reasons for scores on the ACT test. The school districts IEP's could be appropriately crafted and yet the Student might still score at a lower level on the ACT test. Admittedly, no school district can guarantee a post secondary outcome nor does the IDEA required such a result.

As such, although sufficiently crafted IEP goals to meet the Student's unique needs in reading, reading comprehension, language and writing may, in part, assist in achieving the Student's post secondary outcome/goal, there are too many variables to come to the only conclusion that failure to provide appropriate reading/reading comprehension, language and writing supports would or would not allow the Student to achieve such results.

As such, this issue is found in favor of the school district.

3. **Whether the School District provided the Student with a Free Appropriate Public Education (FAPE) that addresses his diagnosed and documented language based learning disability.**

The "Individuals with Disabilities Education Act", 20 USC Sections 1400 et seq. [hereinafter IDEA] was enacted:

"(1) (A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;  
(B) to ensure that the rights of children with disabilities and parents of such children are protected ...."

To satisfy the IDEA, the state must provide a "personalized instruction with sufficient support services to permit a handicapped child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the state educational standards, must approximate grade levels used the state's regular education and must comport with the child IEP ..." *Bd. of Ed. v. Rowley*, 458 U.S.

Typically, a FAPE is appropriate if it provides some educational benefit and can be construed to be appropriate for the individual child. It does not have to provide the best possible education nor does it matter that the placement chosen by the parents may be better than that provided by the school district. *Heather S. v. State of Wis.*, 125 F. 3d 1045, 1057 (7<sup>th</sup> Cir., 1997); *James D. v. Bd of Educ. Of Aptakasic – Tripp Cmty. Consol. Sch. Dist. No. 102*, 642 F. Supp. 2d 804, 816

(N.D. Ill. 2009). The method by which educational benefits can be provided to the Student and can be tailored to the Student's unique needs is through the Individualized Education Program (IEP). As noted above, an IEP must be reasonably calculated to provide educational benefits that is something more than trivial and should produce progress rather than regression. *Alex R. Ex re. Beth R. v. Forrestville Cmty. Unit Sch. Dist. No. 221*, 375 F. 3d 603, 615 (7<sup>th</sup> Cir. 2004), *Jaccari J. v. Br. of Educ. of City of Chicago, Dist. No. 299*, 690 F. Supp. 2d 687, 701-702 (N. D. Ill. 2010). To make such a determination, courts will often look to: "(1) the child's potential; (2) whether his IEP's were tailored to his unique needs; (3) whether his IEP provided access to specialized services; (4) ...; and (5) whether the child achieved progress during the relevant time period." *Jaccari J. v. Br. of Educ. of City of Chicago, Dist. No. 299*, 690 F. Supp. 2d 687, 701-702 (N. D. Ill. 2010).

Here, pursuant to the testing done by the [REDACTED] district, the testing more recently done by the school district for the Student's re-evaluation, and the testing done by the outside evaluators, the Student's intelligence range is from low average to average. [Findings of Fact # 5, 10, 13] [Stone, transcript, p. 432] He has had early childhood intervention at age 3 due to delayed speech and has continued in special education services since that time. [Finding of Fact # 2] Commencing with his attendance at [REDACTED] he was provided with various IEP's including a re-evaluation in February 2012. By and large, those IEP's were tailored to the Student's disability and addressed areas of deficiency for the Student. [Findings of Fact # 2, 5, 10] However, as noted above in issue one, as to his reading/reading comprehension goal, the IEP's were deficient in that they do not account for his underlying difficulties in reading, language and writing. Under the standard of making progress on his goals, the Student was progressing from grade to grade and achieving passing marks in his courses, the typical indicia of progress. [Finding of Fact # 16]

Since the Student has been at [REDACTED] he had an Initial Eight Grade Articulation on January 13, 2010. [Finding of Fact # 2] He has had an annual IEP review on April 29, 2011 and the triennial IEP review on February 29, 2012. [Finding of Fact #5, 10] At each of those IEP meetings, the school district developed goals and objectives/benchmarks for the Student. From the January 13, 2010 IEP, the Student was to receive 640 minutes per week of special education services including 40 minutes of speech/language services. The IEP team developed goals in Speech Language, Articulation/Communication Repair; Time Management; and Writing, Pre-Writing. [Finding of Fact # 2]

Towards the end of his freshman year, on April 29, 2011, the IEP team met again for a review/revision and transition planning. [Finding of Fact # 5] At that meeting, various goals were developed for the Student in reading/reading comprehension; social/emotional, social skills; speech/language, articulation; speech/language, expressive language; time management; and writing, pre-writing. Accommodations were provided. His speech/language minutes were increased to 80 minutes per week and his Special Education minutes were 800 minutes per week. [Finding of Fact # 5]

The following year, on February 29, 2012 the Student's triennial re-evaluation and IEP review/revision was prepared. As part of this re-evaluation, the Student was assessed in various areas including social/emotional status and social functioning, academic achievement and

communication status. Assessments included the following instruments: Weschler Individual Achievement Test - Third Edition (WIAT III); Weschler Adult Intelligence Scale- Fourth Edition (WAIS IV); and a Speech and Language Evaluation. At that meeting, various goals were developed for the Student in reading/reading comprehension; social/emotional, social skills; speech/language, articulation; speech/language, expressive language; time management; and writing, pre-writing. In addition, accommodations were provided. His special education minutes were increased to 1200 minutes per week and he was scheduled for Extended School Year in the summer. [Findings of Fact # 10]

Although I have found that the reading/reading comprehension goal and, tangentially, the speech/language - articulation goal were partially adequate to assist the Student in these areas, I have found that they failed to address the underlying problems that the Student has with sufficient intensity. This does not negate the laudatory aspects of the remainder of his IEPs and the fact that the Student was ostensibly progressing and making some progress relative to his goals. What the Student needed was intensive work in his reading and particularly reading remediation. Was there still work to be done - certainly. But based on the typical criteria that the Student was passing his courses and was making progress from year to year, the school district was providing a FAPE to the Student.

This issue is found in favor of the school district.

4. **Whether [REDACTED] is an appropriate placement in the least restrictive environment.**

The parents became disenchanted with the progress that the Student was making at [REDACTED] [REDACTED] based upon their own observations as well as the private evaluations conducted of the Student. [REDACTED], transcript, p.29, 30] Although the Student was progressing from grade to grade and was earning passing marks in his courses, the parents were very concerned about his reading. [REDACTED], transcript, p. 51] The PLAN test was most likely an impetus to their concern. [REDACTED] transcript, p.41] Not feeling that the Student was making sufficient progress at [REDACTED] to allow him to get into a four-year college and pursue a career in law enforcement, the parents sought out the services of a neuropsychologist, [REDACTED] [REDACTED] to provide them with information about both the Student's functioning as well as support for a potential placement(s) for him. [Finding of Fact # 15] Based upon all the information available to them, the Student's parents elected to enroll the Student at the [REDACTED] [REDACTED], transcript, p. 33] Prior to that enrollment, the parents, through their then attorneys, sent a 10 day notice to the school district advising of their intent to enroll Student at [REDACTED] Thereafter, the school district conducted a IEP meeting with the parents where the parents shared the private evaluation of the Student by [REDACTED] with the IEP team. In addition to the academic areas, the parents also were concerned about social issues that the Student had in getting along with others. After reviewing the neuropsychological report, the IEP team felt that the data contained therein pretty well aligned with the IEP services and goals that were being provided to the Student. They did not believe that a residential placement was necessary for the Student. In fact, all of the team members agreed that the current IEP addressed the Student's needs. The family advised the team that they were transferring the Student to [REDACTED] the following day. [Finding of Fact # 15]

The [REDACTED] in [REDACTED] is the nation's oldest college preparatory school for dyslexic/learning different Student's. The school's mission is to provide for education of young men (and now young women) with an emphasis on the remediation of dyslexia through reconstructive language. It is a boarding school of approximately [REDACTED] Student's with [REDACTED] full and part-time teachers. [Finding of Fact # 21]

As noted in *John Doe v. The Board of Education of Tullahoma City Schools*, 9 F.3d 455 [20 IDELR 617], "[t]he Act requires ... the educational equivalent of a serviceable Chevrolet to every handicapped Student". Although the parent requested a Cadillac, the court concluded and held that the board was "not required to provide a Cadillac and that the proposed IEP is reasonably calculated to provide educational benefits ... and, is therefore, in compliance with the requirements of the IDEA". Although [REDACTED] may take umbrage to any comparison to a Chevrolet, there can be no doubt that the [REDACTED] is the equivalent of a Cadillac if not a Mercedes, Audi or BMW.

The Student is exactly the type of Student that the [REDACTED] is intended to work with. [REDACTED] transcript, p. 237; [REDACTED] transcript, p. 179] The program at [REDACTED] is successful for many reasons including the class size with an average student to teacher ratio of 6 to 1; a very clear and specific mission with clearly defined profile of the students they work with who are intellectually capable but their achievement has been hindered by language-based learning disability; and an experienced faculty whose tenure averages 13 years. [REDACTED] transcript, p. 173 - 174] The student body are all students with dyslexia. [REDACTED] transcript, p. 174, p. 192]

[REDACTED] is at the core of the [REDACTED] curriculum. It was designed by [REDACTED] in the 1920s in collaboration with renowned neurologist, [REDACTED] Reconstructive Language teaches analytic language skills. [Findings of Fact #22] Although the reconstructive language program may be akin to or a variant of the Orton - Gillingham program, it is only used at the [REDACTED] and therefore its efficacy is difficult to compare to other multisensory structured programs. The program at [REDACTED] is highly structured and predictable. Every student takes reconstructive language dependent only upon their ability, placement in a particular class and how many years they have attended the school. [REDACTED] transcript, p. 173] The educational programs at [REDACTED] are not individualized to the needs of the Student. [REDACTED] transcript, p. 200 ] The Student is not undergoing any social work services at the [REDACTED] Not all of the [REDACTED] staff are certified as special education teachers. The school does not write IEP for students. [Kelly, transcript, p. 200]

Although [REDACTED] indicated that the Student has seen some mixed results including progress while there for the first six months of his attendance, typically it takes between 1 to 2 years to see progress and results. [REDACTED] transcript, p. 228] In the case of *C.L. v. Scarsdale Union Free Sch. Dist.*, 58 IDELR 227, 112 LRP 14564 (S.D. N.Y., 2012), that court had the occasion to consider the parents' requests for private placement. Among the items that it looked at was the issue of progress. The court noted that,

"While 'the child's progress is relevant to the courts review, such progress does not itself demonstrate that a private placement was appropriate.' ... Furthermore, 'the test for the

parents private placement is that is appropriate, not that it is perfect,' *Warren G. ex rel. Tom G. V. Cumberland Cnty. Sch. Dist.*, 190 F. 3d 80, 84 (3<sup>rd</sup> Cir. 1999), and parents 'need not show that a private placement furnishes every special service necessary to maximize the child's potential.' *Frank G. v. Bd. of Ed.*, 459 F. 3d 356, 365, (2<sup>nd</sup> Cir., 2006). Rather, parents must show that the placement 'provides educational instruction specifically designed to meet the unique needs of a handicapped child, supported by such services as necessary to permit the child benefit from instruction.'" *C.L., supra*

This was further reinforced in *Gagliardo v. Arlington Cent. Sch. Dist.*, 489 F. 3d 105 (2<sup>nd</sup> Cir. 2007), "such progress [referring to academic progress] does not itself demonstrate that a private placement was appropriate. *Berger v. Medina City Sch. Dist.* 348 F 3d 513, 522 (6<sup>th</sup> Cir. 2003) ('[E]vidence of academic progress at a private school does not itself establish that the private placement offers adequate and appropriate education under the IDEA. '); *Rafferty v. Cranston Pub Sch Com.*, 315 F. 3d 21, 26 – 27 "(1<sup>st</sup> Cir. 2002). Indeed even where there is evidence of success, courts should not disturb the state's denial of IDEA reimbursement where, as here, the chief benefits of the chosen school are the kind of educational and environmental advantages and amenities that might be preferred by parents of any child, disabled or not. A unilateral private placement is only appropriate if it provides 'education instruction *specifically* designed to meet the *unique* needs of the handicapped child". *Frank G. v. Board of Education.* 459 F 3d 365 (2<sup>nd</sup> Cir. 2006)". See also *R.C. v. Bd. of Ed. Of Hyde Park Central School District*, 50 IDELR 225, 108 LRP 39851 (S.D. N.Y., 2008).

The program at [REDACTED] is not individualized for this particular Student. He is taking the same academic program as every other Student at [REDACTED]. The only difference is that placement in a particular class is dependent upon ability and how many years they have attended the school. He is not receiving social work services as provided for in the [REDACTED] IEP's. [Kelly, transcript, p. 207]

In determining the appropriateness of a residential placement, "the IDEA's requirements that an appropriate education be in the mainstream to the extent possible ... may be considered by the hearing officer in determining whether the placement was appropriate.' ... see also *Schrieber v. E. Ramapo Cent. Sch. Dist.*, 700 F. Supp. 2d 529, 549 n.10 (S.D.N.Y.) (' given role that mainstreaming may play in assessing the appropriateness of a private placement, the Second Circuit's two-part test for determining whether a district's IEP provides less restrictive environment may also be useful in determining the appropriateness of parental placement. The test asks: '(1) whether a Student can be satisfactorily educated in the regular classroom with the benefit of supplemental aids and services;' and (2) if the school district was justified in removing the Student from the mainstream classes, 'whether the school has included the child in school programs with non-disabled children to the maximum extent appropriate.'" *C.L., supra*.

Here, the Student will be educated with only those Student's that have the same disability as he has. As the school has a population of only approximately 150 Student's [Finding of Fact # 21], there is no opportunities for him to interact with non-disabled peers as he would be able to at [REDACTED]

Although [REDACTED] opined that the [REDACTED] school would be the best placement for the Student, she also felt that [REDACTED] could significantly improve the Student's reading by devoting minutes in his IEP to receiving instruction in one of the multisensory reading program's, whether it was Orton - Gillingham, Slant, or a similar program from beginning to end. [REDACTED], transcript, p. 276] A reason for the residential component of the [REDACTED] was due to the distance from the [REDACTED] area to [REDACTED] [REDACTED], transcript, p. 35] The residential component itself was unnecessary other than the distance that was involved. The Student did not need a residential placement. Rather, he needed intensive remediation and compensatory strategies in reading.

Based upon the factors considered above, including the fact that the Student did not need a residential placement but rather needed intensive reading instruction, the fact that the Student was not receiving all of the services at the [REDACTED] that he would've received at [REDACTED] and the fact that the [REDACTED] does not offer the Student the opportunity to be involved with his non-disabled peers, all of these obviate against the [REDACTED] as being an appropriate placement for the Student.

As the Court in *Ganje v. Depew Union Free Sch. Dist.*, 60 IDELR 43, 112 LRP 55810 (W.D.N.Y, 2012) noted,

"Moreover, even if I were to conclude that the [REDACTED] offered better programs for J. M.G., that would not render the District's IEP inadequate. 'School districts 'need not provide the optimal level of services, or even a level that would confer additional benefits, since the IEP required by the IDEA represents only a 'basic floor of opportunity' ... While it is certainly understandable that a parent would want the absolute best for their Student in his education, "the IDEA does not guarantcc an education 'that provides everything that might be thought desirable by a loving parent'"

As such, even though I do not need to decide this issue since the Student received a FAPE at [REDACTED] this issue is found in favor of the school district and the school district does not have to award tuition reimbursement of the cost of [REDACTED] for the current school year 2012- 2013 or for two additional years as compensatory education/placement.

## **G. ORDER**

1. The School District committed a violation which resulted in a loss of educational opportunity for the Student in the April 29, 2011 and February 29, 2012 IEPs. This issue is found in favor of the parents and Student:

- A. If the Student does re-enroll at the [REDACTED] the School District shall convene an IEP meeting within fourteen (14) days of said re-enrollment to determine a structured multisensory reading instruction program such as Wilson, Slant, etc. as found in Exhibit 7 of the Parent's Document Book. The IEP team will include the Student's parents and appropriate members of the Student's prior IEPs if available as set forth in Section F 1.

- B. The School District will provide this program at an intensity of 50 minutes per day (or normal instructional period) with a specifically program trained individual who is certified in that program. If no faculty member at [REDACTED] has the necessary training and certification, the School District will provide, within 3 weeks of the IEP meeting, a trained certified reading specialist to provide this multisensory reading program to the Student.
- C. Within three (3) weeks of that IEP meeting, the chosen program will be provided as required pursuant to the instructions of that particular program. The "eclectic" offering provided to the Student previously in Wilson is not acceptable.
- D. The selected program will continue for a period of up to three (3) years or until such time as the Student completes the program or graduates.
2. Other than as to the Reading and Speech/Language components, the School District's IEPs provided educational benefits to the Student. As there are too many reasons as to success or failure on the ACT or SAT tests, the issue as to the Student's Post Secondary Outcomes is found in favor of the School District. The School District need not take any action relative to this as to this Student.
3. The School District did provide a Free Appropriate Public Education for the Student. The School District need not take any action relative to this as to this Student.
4. The School District is not obligated to pay for the Student's residential educational placement at the [REDACTED] for the school year 2012 - 2013 or for an additional two (2) years of payment for the Student's residential educational placement as compensatory education.. This issue is found in favor of the School District and the School District need not take any action relative to this as to this Student.
5. The School District shall provide proof of compliance with this Order to the Illinois State Board of Education, Compliance Division, no later than July 1, 2013.

[REDACTED]  
W. DAVID UTLEY  
Impartial Hearing Officer  
Dated this 29<sup>th</sup> day of April, 2013

450 West Schaumburg Road - 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 April, 2013

450 West Schaumburg Road - 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 parties/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 April 29, 2013.

[REDACTED]

Via First Class Mail – Certified Only

[REDACTED]

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

[REDACTED]  
W. DAVID UTLEY  
Impartial Hearing Officer

450 West Schaumburg Road - 681487  
Schaumburg, IL 60168  
(847) 321-1044