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**ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING**

[REDACTED]

Student,

Case No: 2014-0157

v.

Ann Breen-Greco, Impartial Hearing Officer

[REDACTED]

School District.

**FINAL DETERMINATION AND ORDER**

This matter is before the undersigned Hearing Officer for a due process hearing concerning the Parent's assertion that the District denied the Student a free, appropriate, public education (FAPE). The Hearing Officer has jurisdiction to hear and decide the matter under 105 ILCS 5/14-8.02a, 34 C.F.R. 300.506-509, 23 Ill. Admin. Code 226 Subpart G, and the Individuals with Disabilities Education Act, as amended, 20 U.S.C. 1415 et seq. ("IDEA"). The parties were informed of their rights pursuant to these statutes.

**PROCEDURAL BACKGROUND**

In this matter, Parents requested an independent educational evaluation (IEE) on September 20, 2013, asserting disagreement with the District's February 26, 2013, evaluation. In response to that request, the District filed a due process hearing request on September 25, 2013. Subsequently, Parent filed a due process hearing request on October 28, 2013. On December 2, 2013, the Hearing Officer received her appointment in this case, after the previous Hearing Officer had to recuse herself.

The parties informed the Hearing Officer that they had waived resolution but were pursuing settlement. The attorneys exchange the pre hearing disclosures by December 18 and on December 20, 2013, the Hearing Officer convened the pre hearing conference. The attorneys for the Parent and for the District were present.

Based on the necessity to review the evaluation reports and have an IEP meeting, which the parties projected would be set for the beginning of March 2014, and to allow additional time for the District to assign a different attorney to take over this case, it was clear that critical matters such as finalizing issues, relief, documents to be produced, and

the witnesses to be called for hearing could not be completed. The parties thus agreed to continue the pre hearing conference in order to finalize the issues and remedies for the due process hearing, if a hearing is necessary. The parties agreed on having a status on February 3. The agreed date and time for the continued pre-hearing conference was February 26, 2014.

The Hearing Officer held a status call on February 3 and the parties agreed on the hearing dates of April 8, 9, 10, and 11. The parties agreed on continuing the pre hearing until March 25 in order to conduct an IEP during the week of March 1. However, in response to the Hearing Officer's inquiry on March 24, the District informed the Hearing Officer that the IEP was set for April 1.

The Parent wished to proceed with the continued pre hearing. The District asserted that it did not wish to continue the pre hearing until after the IEP because it would impede the District's ability to appropriately prepare for hearing with respect to a document book and witness list. The District stated it would not waive any timelines. The Hearing Officer notes that the IEP is an opportunity for the parties to resolve the matter and that it is the parties who requested to continue the pre hearing until after completion of the IEP. Thus, completing the pre hearing prior to the IEP would negatively impact the parties right and responsibility to attempt to resolve the matter and also is problematic with respect to finalizing issues and relief.

In her order of March 25, the Hearing Officer noted that the statute requires that the pre hearing conference be "...convened no later than 14 days before the scheduled date for the due process hearing for the general purpose of aiding in the fair, orderly, and expeditious conduct of the hearing." 105 ILCS 5/14-8.02a(g40). In this case the pre hearing was convened on December 30, 2013, after exchange of pre hearing disclosures. Accordingly, the parties have had the information on documents and witnesses, as required by statute, since December 18. 105 ILCS 5/14-8.02a(g40).

The parties agreed to have the continued pre hearing on April 1, at 1:30 p.m. and exchange their books of documents at the IEP on April 1, prior to the pre hearing conference, which comports with the five-day disclosure rule. ILCS 5/14-8.02a(g-50). Thus, there are no matters regarding waiver of timelines involved with respect to either exchange of documents or holding of the hearing. The timeline was not extended in this matter because the hearing dates remained the same.

The Hearing Officer convened the continued pre hearing on April 1. The parties informed the Hearing Officer that the IEP had been completed but no issues were resolved. The Parents sent the District a counter offer and the District did not accept. Issues, relief, documents and witnesses were discussed during the continued pre hearing. The parties decided to hold the hearing for three days at one school and on the last day at the other school. Student attended, to accommodate witnesses at the two different schools. The Hearing Officer agreed to that arrangement. The continued pre hearing was finalized.

On April 3, 2014, the Hearing Officer issued an order extending the hearing for a half day, after initially responding to the parties' request for additional time by asking the parties to work out the scheduling of witnesses and length of testimony between them, as

had been discussed in the continued pre hearing. During the continued pre hearing on April 1 neither of the parties raised any concerns about scheduling witnesses. The Hearing Officer noted in her order that: this matter has been pending since the District filed its request for hearing on September 25, 2013; the parties exchanged lists of witnesses and documents by December 18; the pre hearing was convened on December 20 and continued at the request of the parties so that the evaluations could be reviewed and an IEP held; and on February 3, 2014, the parties agreed on hearing dates of April 8, 9, 10 and 11. The parties asked for reconsideration of the April 3 order, to obtain more time than the half day in addition to the hearing dates, but offered no new information regarding the need for additional time. The request was denied. The parties signed an April 8 Motion for Continuance, continuing the hearing to May 8 from 9:00 a.m. to 12:00 p.m. The hearing was held April 8, 9, 10, 11, and May 8. On May 8 the parties signed a continuance to June 6, 2014, to ensure the Hearing Officer retained jurisdiction for clarification purposes pursuant to the Illinois School Code, 105 ILSC 5/14-8.02a(h).

#### **ISSUES AND RELIEF REQUESTED**

The issues and relief were discussed in the continued pre hearing and are as follows:

##### **Issues:**

- (I) Whether the District failed to provide all of the Student's records;
- (II) Whether the District failed to provide a comprehensive evaluation through the present: including psychological, cognitive, academics, speech language, auditory processing, visual processing-fine, fine motor, gross motor skills, AT, sensory, functional behavior assessment, attention, executive functioning, adaptive, and other areas as noted in the IEEs;
- (III) Whether the District failed to develop a timely IEP which would: provide appropriate goals/accommodations, including assistive technology (AT) training for staff, Parent, Student; provide appropriate placement in the LRE and include related services of auditory, speech language, social emotional, and OT;
- (IV) Whether the District failed to provide ESY/program and services for summers 2012 and 2013
- (V) Whether the District failed to accurately report to Parent lack of Student's progress and implement response to the Student's lack of progress;

**Remedies:**

- (1) the District is to provide Student records;
- (2) the District is to reimburse Parents for the outside IEEs;
- (3) the District is to conduct social work and FBA evaluations, with Parent to select the evaluators;
- (4) the District is to convene an IEP:
  - a) to revise eligibility based on the review of the IEEs to determine Student eligible under Autism and Speech Language Impairment and provide speech and OT direct services at least 60 mpw each; b) to develop individualized and measurable goals/objectives with accurate present levels of performance, including modifications/accommodations; c) Student to participate in state and local assessment with accommodations rather than the alternative assessment; d) to identify direct and related services based on scientific researched based evidence including psychological, social work, transitional, speech/language, OT with group and individual services; e) to revise accommodations/modifications to include AT, visual and auditory processing, sensory and 1:1 paraprofessional supports; f) to include a safety plan; g) AT in class and training for Student, Parent and staff; h) lap top and/or iPad with apps for Student; i) if no appropriate placement is available in the District, Student will attend private school, such as [REDACTED] or [REDACTED] with normal developing language peers for Student;
- (5) compensatory education services of sufficient duration and intensity to restore the Student to the position he would have attained had the District provided him with FAPE, including 1:1 tutoring services beyond the regular school day by a certified special education teacher trained in scientific research based interventions for Autism for 60 minutes per session, twice a week for the period denied FAPE; 1:1 speech language services beyond the regular school day by a certified speech pathologist to address speech and auditory processing deficits 60 mpw, one time a week; 1:1 OT services beyond the regular school day by a certified OT 60 mpw, one time a week; additional assistive technology to assist the Student in all academic areas placed on a lap top or iPad with appropriate program interventions; 60 mpw for 92 sessions of direct AT training to the Student and Parent by a professional chosen by the Parent; additional recommendations as specified by experts.
- (6) attorneys fees.

**FINDINGS OF FACT AND ANALYSIS**

Both parties requested a hearing. The Parents have the burden of proof regarding the request for a due process hearing involving a denial of FAPE based on the United States Supreme Court ruling in *Schaffer ex rel. Schaffer v. Weast*, 126 S.Ct. 528, 537 (2005)

which was analyzed with respect to the relevant Illinois statute (the Illinois School Code) by the Northern District. *Kerry M v. Manhattan School Dist; and the Illinois State Board of Education*, U.S. District Court, Northern District of Illinois, IDELR 194 106 LRP 58547 (September 2006).

Pursuant to Illinois law and regulation, with respect to Parents' request for due process hearing, the District has the burden of presenting evidence that the special education needs for the Student have been appropriately identified and that the special education program and related services proposed to meet the needs of the Student are adequate, appropriate, and available. 105 ILCS 5/14-8.02a(g-55); 23 Illinois Administrative Code §226.625.

The District filed a hearing request pursuant to the relevant federal regulation in response to Parent's request for an IEE. "Federal regulations state that: 'A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency....' 34 CFR Sec. 300.502(b)(1). This regulation requires that if a parent requests an IEE, a district must either file a complaint to request a hearing to show its evaluation is appropriate or ensure that an IEE is provided at public expense unless the district demonstrates in a hearing that the evaluation obtained by the parent did not meet required criteria. 34 CFR 300.502(b)(2). With respect to its request for due process hearing, the District has a burden of proof for the appropriateness of its evaluation. 105 ILCS 5/14-8.02(b).

Parent essentially contends that the District failed to provide an appropriate and individualized evaluation in a timely manner in order to adequately identify the nature and extent of the Student's disabilities and develop an IEP for the Student, which would provide him an appropriate educational program/placement in the Least Restrictive Environment (LRE), which is a denial of FAPE.

## **FINDINGS OF FACT**

The Hearing Officer finds as follows:

**I.** The District failed to produce all the Student's records.

**II.** The District failed to provide a comprehensive evaluation through the present: including psychological, cognitive, academics, speech language, auditory processing, visual processing-fine, fine motor, gross motor skills, AT, sensory, functional behavior assessment, attention, executive functioning, adaptive, and other areas as noted in the IEEs; (a) the District's evaluations (psychological, speech/language, and OT) were inadequate and incomplete; (b) the District failed to identify his learning deficits; (c) the District failed to conduct a Central Auditory Processing (CAP) evaluation and identify his CAP deficits; (d) the District failed to identify his Occupational Therapy needs; (e) the District failed to identify in a timely manner and then provide appropriate assistive technology in the classroom setting and for all school work; although there was a

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computer lap top and ipad available to the Student, the appropriate programs were not provided. (f)the District failed to conduct an appropriate FBA.

**III.** The District failed to develop a timely IEP which would: provide appropriate goals/accommodations, including AT training for staff, Parent, Student; provide appropriate placement in the LRE and include related services of auditory, speech language, social emotional, and OT; (a) the Student's eligibility is misidentified; (b) goals were missing or inadequate or not properly categorized; (c) accommodations/modifications were missing or inadequate; (d) direct services were not included for some needs or were inadequate; (e) little or no AT was provided to address the Student's needs

**IV.** The District failed to provide ESY/program for the summer 2012 but provided ESY for summer 2013.

**V.** The District failed to accurately report to Parent lack of Student's progress and implement a response to the Student's lack of progress.

**VI.** The low incidence classroom with services is the appropriate placement for the Student.

**VII.** The District has not met its burden with respect to an appropriate evaluation.

**VIII.** The District has not met its burden with respect to presenting evidence that the special education needs for the Student have been appropriately identified and that the special education program and related services proposed to meet the needs of the Student are adequate, appropriate, and available.

**IX.** The Parent has met her burden of proof regarding the request for a due process hearing involving a denial of FAPE.

**X.** The District witnesses, with one exception, were credible.

**XI.** The Hearing Officer finds that Parent witnesses were credible and persuasive.

**XXI.** The Hearing Officer has no authority with respect to a request for attorneys' fees.

## **ANALYSIS**

### **I. The District failed to produce all the Student's records.**

IDEA requires a school district to allow parents or their representatives to inspect and review records “without unnecessary delay and before any meeting regarding an IEP, or any hearing...” 34 CFR §300.613(a). With respect to procedural violations of IDEA, only “procedural inadequacies that result in the loss of educational opportunity constitute a denial of FAPE.” *Evanston Community Consol. School Dist. No. 65 v. Michael M.*, 356 F. 3d 798, 804 (7<sup>th</sup> Cir. 2004); *Board of Ed. Of Township High School District No. 211 v. Michael R.*, 2005 WL 2008919 (N.D. Ill. 2005). IDEA-2004 which became effective on July 1, 2005, also requires that, where a procedural violation is alleged, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies: (I) impede the child’s right to a FAPE; (II) significantly impede the parents’ opportunity to participate in the decision making process regarding the provision of a FAPE; or (III) cause a deprivation of educational benefits. 34 CFR §300.513(a)(2)(ii).

Up to and including during the hearing, records were identified which the school did not provide to the Parent. This impeded the Parent’s ability to participate both in the decision-making process regarding the provision of FAPE to the Student and impeded her ability to participate in the process and present evidence at hearing. This process would include the resolution/settlement process where having such records might have assisted Parent in demonstrating to the District why she believed that the Student was being denied a FAPE. Thus, the Parent has met her burden in proving a procedural violation regarding denial of FAPE. 34 CFR §300.513(a)(2)(ii).

**II. The District failed to provide a comprehensive evaluation through the present: including psychological, cognitive, academics, speech language, auditory processing, visual processing-fine, fine motor, gross motor skills, AT, sensory, functional behavior assessment, attention, executive functioning, adaptive, and other areas as noted in the IEEs.**

With respect to its request for a due process hearing in response to Parent’s request for an IEE, the District has a burden of proof for the appropriateness of its evaluation. 105 ILCS 5/14-8.02(b). IDEA defines an evaluation as procedures mandated to determine whether a child has a disability and the nature and the extent of the special education and related services that a child needs. 34 CFR § 300.15. Based on IDEA requirements, the evaluation materials include those tailored to assess specific areas of educational need including that the district “use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information.” 34 CFR §300.304 (c)(2). IDEA requires that a full and individual evaluation include all components that are needed to identify a student’s disability and educational needs including related services. 34 CFR § 300.301(a). The Illinois School Code sets the standard of “a carefully completed case study.” 105 ILCS 5/14-8.02(b). The District has failed to meet its burden of proving the appropriateness of its evaluation.

The District did a number of evaluations when the Student first came to the school in January 2013 because his three-year re evaluation was due. Due to his behavior problems it was difficult to complete testing. A number of school staff testified that the use of certain words produced behavioral problems. The Student would bang on the desk, cry, fall to the floor, and scream. Based on Parent’s testimony, the issue of non-preferred

words began when the Student transferred from a suburban school. At the suburban school the Student had a teacher trained in Applied Behavior Analysis (ABA) who taught the Student to use phrases such as, "I want this, please" and to use the word, "yes." When he transferred to a public school his teacher felt he should learn less rigid phrasing and tried to dissuade him from using certain words. The Student developed an aversion to non-preferred words. Parent began to notice a problem at home.

Parent testified that she alerted school personnel that the testing would likely not get accurate results because the Student was "unhappy." She recommended postponing the evaluations but the school decided to proceed. She also contacted the District's Specialized Services Administrator (SSA) by email on January 15, 2013, to inform him that she did not think the school, "will be able (to) do accurate evaluations of him at this time." PD 396. He replied on the same day that he believed the evaluations should proceed, even though, he wrote, it can be noted, "that the results may not be completely reflective of his true ability due to his emotional state." PD 394. The record reflects that after these initial evaluations the school did not do any further evaluations even though the evaluators were not able to conduct full evaluations due to his behavior. His behaviors had abated somewhat after the summer of 2013 when he had attended ESY and the school could have considered additional testing.

The Parent's outside evaluators were able to conduct more successful evaluations, partly because of these changes in his behavior starting at the beginning of the 2013-2014 school year. The outside evaluations were far more detailed than the school evaluations--involving testing, findings, and recommendations.

### **PRIVATE EVALUATIONS**

All four evaluators found deficits and made recommendations, including goals for the IEP. The information on their testimony regarding the IEPs is reviewed in the third issue regarding the IEPs. The four evaluators testified at the hearing and their testimony about their findings and recommendations are reviewed below. The evaluators were credible and persuasive.

#### **(1) Speech/Language and Assistive Technology Evaluation**

**[REDACTED]** has been a speech/language pathologist since 1984 and obtained a PhD specialization in augmentative communication and child language in 1990. She teaches assistive technology use to graduate students in the Department of Human Development and Disabilities, to adapt curriculum for special needs kids. Her curriculum vitae is included in the exhibits, PD 645-649, as is her report. PD 635-643.

Parent contacted her for an evaluation of the Student which she conducted November 29, 2013, and an observation which she conducted on February 14, 2014. Prior to the evaluation she reviewed documents Parent provided. In reviewing previous documents, she noted the use of non-preferred words impacted his behaviors. PD 245-247. The use of non-preferred words provoked behaviors consistently for two years and created

anxiety. [REDACTED] believes that there is a lot more going on than word triggers. There was also a death in the family and transition issues.

Although in the evaluation she sometimes referred to him by his legal, non-preferred name, he did not mind. He was in a good mood, cooperative, and took short breaks at his own request. [REDACTED] determined that the testing results are a valid indicator of his achievements. PD 636. She found that the Student's deficit areas are extensive and require goals for auditory comprehension. Seeing his progress from the November evaluation to the February observation and seeing him in a class that could be a good place for him she believes that the school can make the current class work for him, but he needs a lot of services. He needs an increase in speech and language and to be compensated for lack of services in the past to make progress.

During her evaluation, she administered the Peabody Picture Vocabulary Test IV-B (PPVT-IV B). PD 636. He achieved a standard score of 91 and ranked in the 27<sup>th</sup> percentile, which indicates his receptive vocabulary is in the average range. She described the Student as quick and deliberate, giving appropriate answers. His expressive vocabulary, where a child is shown a picture and asked to name it, in contrast, reflected a standard score of 86, and a ranking in the 18<sup>th</sup> percentile which is below the average range. On responses, his expressive vocabulary is splintered, which is typical of a child with autism but his single word vocabulary is a strength.

[REDACTED] also administered the Test of Auditory Perceptual Skills-3 (TAPS-3) Taps 3. PD 637. This test looks at the ability to do three types of auditory processing: discrimination, memory, and cohesion. PD 637. The test is broken into three groups: the first is word discrimination, including phonological segmentation, and phonological blending. He tested in the average/high average range in ability to discriminate.

Second is the memory test which looks at numbers and sentences. His memory for numbers is in the average range but for sentences there is a below average discrepancy between the 37<sup>th</sup> and 9<sup>th</sup> percentile. His memory is rote skill, rather than processing and understanding what he is hearing. Processing words is more difficult and putting words in sentences is much more challenging for him. [REDACTED] testified that this is notable because rote memory is one of his skills but he does not always understand what he is repeating.

The third group of the test is looking at auditory comprehension and reasoning, where the subject is asked to remember and answer questions, to dissect information and explain it. Auditory reasoning, explained [REDACTED] involves understanding inference – i.e. the subject must understand a question regarding having a weekly birthday party and being able to answer by inference: a person cannot have a birthday party every week because a person has a birthday only once a year.

His standard scores were phonologic - 99, which is average; memory - 86; cohesion (auditory comprehension and reasoning) - 60, which is significantly impaired, reflecting that he has vocabulary but cannot always put it to use, especially when hearing something for the first time. PD 637.

The Student was also given the Clinical Evaluation of Language Fundamentals 5 (CELF 5), which looks at language from different parts, in a global way. PD 638. Based on the testing [REDACTED] found that the Student has no understanding of idioms, i.e. "it's raining cats and dogs." He takes language as having a very concrete meaning. His core language score is 73, reflecting that his generalized language skills are significantly below average (4<sup>th</sup> percentile). His receptive language score is 75, which is better than his expressive language score of 69 (with a percentile of 2) but both are significantly impaired. Language content and language memory index scores are different combinations of tests given. With respect to reading comprehension, the Student did not understand because he could not read enough to understand questions. His scores in CELF 5 show a range of 37<sup>th</sup> to first percentile, some skills in the average range and some at the very lowest range.

The Student could not pull deficits to average, even with his splintered skills. He demonstrated a significant language deficit. He had a standard score of 73 and anything less than 85 is below average. His scores on formulated sentences, where a picture prompt is given and the subject must use a targeted word to describe the picture, reflected difficulty. This is something new and not practiced and the picture is unrelated to the sentence. With respect to understanding paragraphs, he did not achieve a score, meaning that he got nothing right. He could answer no questions about the paragraph which was read to him. The Student did not understand how words go together, i.e. apples, bananas. His understanding of flexibility within language use is poor because his language is rigid. He showed errors with syntax and grammar. His abilities are deceptive.

[REDACTED] explained that percentile rank is a number between 1 and 100. 100 is the best and one is last. If the Student is at 25 he is in the middle. Between 16 and 85 is average; below 16 is significantly below average. His scores show he is at 1 or less or 9, which is at the very bottom end of the bell curve, and reflects a significant language deficit.

The Student had brought two trains to the evaluation and when he was stressed by writing four sentences and he had his trains talking to each other. The more complex the task, the more stressed he was, and the more the trains talked to each other. [REDACTED] could understand him. A sing song pattern is the only way he knows how to say something.

For AT there is no standardized test to give. It is an individual test because every child has different needs. [REDACTED] did the speech and language testing first so she knew his deficits. She was then looking for ways to provide technology to make the more challenging tasks less challenging and adapt the material so that it is available. His spelling and phonics skills are adequate. On a practical basis he can read, write, spell, manage simple structured writing without AT. On a practical level he does not need AT at school to do some tasks. He could complete spelling tests; use pencil, paper, workbook; his writing is legible; he can read without support. [REDACTED] testified that this means looking at AT for a different purpose than for students who cannot do those things. The Student has difficulty with longer, more complex texts and

cannot process them, even though he can read the words. If he is asked what he has read, he cannot relay it, which causes him frustration.

In the assessment, he could copy text but he “balded” when asked to write a story. The goal for AT is to give him strategies to make tasks less unpleasant. His AT is more complex because he does not have to use it all the time but it should be made available when he needs it. He will not always know when he needs it and thus he needs a cohesive presentation on AT across areas. He lacks the skill to find main ideas and process text, so his language skills impact comprehension. The use of AT will lessen the disparity. She tried several computer programs. He liked using the computer. The most successful programs he used were Write: Outloud 6, as well as Co:Writer 6. He was also particularly interested in word banks.

During her hour-long observation of the Student in his school autism classroom in February (PD 640), [REDACTED] noted she was pleasantly surprised at how much better he looked than at the evaluation in November. He had no “stim” things, i.e., trains. He was interacting with peers and doing well. His progress is notable at school. She was with the school speech pathologist who was with him for the 30 mpw of speech and language. The school speech pathologist said the Student has been a different person this year, even though he still “has moments,” but overall he is appropriate and functioning well in class. During the observation, he complied with requests to do his work, completed tasks, was able to independently transition between activities, and had appropriate interaction with peers, based on their skill level. He enjoyed being with peers. PD 640.

[REDACTED] noted he was able to complete a reading assignment of a paragraph and had the option of clicking so he could listen again. He had to answer three questions and he did, with the use of the technology. Screen Reading will assist him, giving him a sense of control. He can listen and repeat, and this is a good tool to help him expand his rigid way of looking at text.

She had a follow up conversation with his classroom teacher and the speech pathologist who confirmed that the Student has access to Raz Kids and Capstone computer programs that provide screen reading. PD 640,1. There was screen reading technology but she did not see the Student using these programs, although the teacher and pathologist stated he uses them “independently with success.” PD 641. With Capstone he can do some writing; he uses pencil and paper for short tasks. They also reported that when the Student selects preferred topics he writes lengthier stories. They both expressed interest in learning more. [REDACTED] testified that these programs are not enough because they are packaged programs--rote, not flexible. Based on her assessment, he needs screen reading material. The Student likes having things read to him. The screen reading technology would give him access to all material, past his level, especially higher comprehension. Additionally, he could use Bookshare.org, which comes with screen reading technology and can be accessed through a computer. She did not ask staff if they had screen reading. Word prediction program, Write: Outloud, and Screenwriter 6; are not packaged programs. Write: Outloud and Co Writer 6 allow him to write about new topics, as opposed to Raz Kids and Capstone. The class had computers and an iPad. The Student likes to use the computer.

In her Summary and Recommendations, she noted his strengths and weaknesses. His test scores show impairment. He demonstrates significant deficits with written language, which is limited. He requires 60 mpw to address deficits and he should continue in a small group social skills type class because he needs that. PD 642. He is getting 30 mpw of speech (PD 641) which she finds inadequate.

██████████ recommends: use of Write: Outloud and Co Write 6, word banks, structured writing and prompts. These programs require training and knowledge of options and a Bookshare.org subscription; there are free screen reading programs with Bookshare. The Student should have the option of listening to text to aid comprehension. She also recommends the Start to Finish series of books by Don Johnson. Additionally, she testified that he will need a personal laptop because reading and writing programs should move with him and he should have it at home too. She was impressed in his class at how much he tried to engage his peers.

She recommends an additional 60 mpw of AT because AT must be delivered in a careful way. AT support should be provided in as unobtrusive way as possible; he should have his supports with him and, if they are needed for mainstream curriculum, they can be put into his laptop. The curriculum should be changing and increasing in complexity and must be integrated well. These AT minutes should not be taken from something else. These minutes should be dedicated to getting the Student and staff trained. The biggest issue, according to ██████████, is training because implementation is critical. The technology must be integrated into the curriculum.

Comparing the Student to his peers in class, he is functioning in the middle. PD 643. ██████████ believes that he is in a good classroom and needs more support. With the necessary supports in place he can achieve and be successful. The older a child gets the harder it is to get language in place. The Student is in a good emotional place. His teacher likes him. The school speech pathologist likes him. ██████████ wants to close the gap because the Student is far behind, based on language skills, which are very impaired.

██████████ assessed the Student's skills as limited. He looks like he can do more than he can. If someone is reading below the 1 percentile, what you read, write, and learn, are limited, and below age limit. The Student does not understand what he hears. This would limit his ability to function in a regular class. Because he is now in a place where he can interact with peers, he could be included.

## **(2) Neuropsychological and Educational Evaluation**

██████████ is a pediatric neuropsychologist who holds a psychology license in Illinois. Her curriculum vitae is included in the documents (PD 632-34) as is her September 17, 2013, report which includes a school observation (PD 613-28) and an evaluation addendum, completed January 21, 2014, after she received the special ed teacher rating scale. PD 629-30. The special ed teacher indicated that she was "most concerned about (the Student's) unpredictable outbursts, use of made up words and

characters, inappropriate language, and aggressive tendencies.... 'His work and grades are not a true reflection of his actual ability, as he is much more capable than he displays,'...(his) behavior and outbursts hinder him from excelling.'" PD 629.

██████████ found that the Student has autism, impaired social interaction, and communication issues. She found that the Student has better non-verbal abilities than verbal. He struggles academically with reading comprehension but shows good memory. He has significant processing issues which poses problems in general education. Additionally, he is slow in many areas. He has stronger reading decoding skills and is better at rote learning. He has an expressive language problem which could be mirrored in written expression. He has a behavioral response when he has to write.

██████████ testified that she found that the Student has better non-verbal abilities than verbal. He struggles academically with reading comprehension but shows good memory. She noted in her school observation that he was using Raz Kids, a computer based program. PD 617. Her behavioral observations during the evaluation reflected initial resistance to non-preferred words. PD 618. Despite his frequently moving about the room, given his good effort and cooperation with most tasks and consistency of his behaviors, ██████████ determined her test results were considered to provide a valid indication of his current level of neuropsychological functioning. She noted, however, his scores on some language-based tasks may underestimate his true skills level due to his reluctance to guess on more difficult items. PD 618. Her diagnostic impressions are reported as autism, impaired social interaction, and communication issues. PD 621.

Based on his autism and associated educational needs, her education recommendation is that he continue to receive specialized services and interventions through an IEP in the school setting. PD 622. ██████████ disagreed with the school psychologist's diagnosis of Emotional Disorder (ED), testifying that the Student's problem with learning cannot be explained by that designation. His actions are not always a behavioral choice for him and are not associated with a primary emotional/psychiatric disorder. PD 622. His emotion regulation problems are secondary to ASD, rather than a primary condition. PD 621.

██████████ testified that for the Children's Inventory the Student's T scores are in the average range. He demonstrates some anxiety but not extreme enough to say he has clinical depression. PD 628. Additionally, her analysis of the teacher's report supports that the Student should not have the label of ED. PD 630. The Student's stereotype use of words is related to autism, not emotional disturbance. If he was out of touch with reality, having hallucinations, that would be ED. ██████████ testified that he is not seeing or hearing what is not there.

██████████ agrees with ██████████ and with the results from the CAP evaluation. The Student has significant processing issues which poses problems in general education. Additionally, he is slow in many areas. Thus, he needs a structured, self-contained setting. However, the Student has stronger math skills and for math he should have access to general education.

She administered the WISC-IV test and determined he has significant difficulty learning and remembering complex auditory-verbal information. She testified that wherever there are language problems CAPD should be ruled out because CAPD could exacerbate language issues. PD 622. Accordingly, ██████ recommended a CAP evaluation. For socialization and adaptability, she recommends that he continue to receive direct social work services. The speech language pathologist at school said the Student responded well to social thinking curriculum ██████ has concerns regarding the social work levels. His IEP should contain specific and measurable goals and objectives to improve his social skills and the quality of his social interactions. She recommends that social work minutes be increased to 60 mpw--30 individual and 30 in the cooking activity. She is recommending this increase in social work because of traumatic transitions he has sustained.

He has an expressive language problem which could be mirrored in written expression. He has a behavioral response when he has to write. With respect to visual motor sensory issues, the Student presents with sensory processing differences impacting behavior. PD 624, 25. She recommends accommodations as well as direct instruction in how to manage distress and regulate his responses to sensory input. Specific accommodation/recommendations should be made by an OT. PD 625.

In addition, the Student needs direct intervention to building skills, i.e., Wilson, Orton Gillingham; the Student should be offered three 30-minute sessions per week in reading and three 30-minute sessions for writing for two years. There should be comp ed for social work because it is inadequate, divided between individual and group sessions for coping strategies.

██████ reviewed the BIPs and thinks an independent BIP warranted. She testified that what is needed is an understanding of what function his behaviors are serving. PD 624. ██████ agrees with ██████ and with the results from the CAP evaluation. The Student has significant processing issues which poses problems in general education. Additionally, he is slow in many areas. Thus, he needs a structured, self-contained setting. However, the Student has stronger math skills and for math he should have access to general education.

She has made recommendations for academics, noting he has stronger reading decoding skills and is better at rote learning. Reading comprehension and fluency are impacted and the Student needs goals to improve both, plus a goal for written expression. His efficiency on timed versus untimed tasks reflects that he needs more time. Also, he learns better with visual aids. The Student has CAPD as documented by ██████.

She acknowledged he needs AT to build on his strong visual skills but believes that specific recommendations for the best AT devices should be deferred to an AT specialist.

██████ testified as to her concerns regarding the psychological evaluation by the school psychologist in February 2013. She found the description of the Student's strengths and weaknesses confusing. SD 230. For the WISC-IV scaled scores, 10 would be average; anything 8 to 12 is average. On block design his task scores are superior but picture concepts are low average. However, she testified that she was then confused with the

discussion section, where the school psychologist stated: "demonstrated high average abilities in the area of abstract nonverbal reasoning and problem solving." SD 231. [REDACTED] disputed this, testifying that none of the scores are in the high average range. The school psychologist stated the Student demonstrated strength in non verbal abstract reasoning. SD 232. [REDACTED] also disagreed with this statement. Although noting that generally speaking the Student's strengths are non verbal but to consider that as a strength despite higher level abstraction being more difficult for him is unfounded. It cannot be assumed abstract reasoning would come easier to him.

After a review of the school's Behavior Assessment System for Children-2 (BASC-2) print outs she had concerns because only the adaptive scales are included (SD 230); T scores for raters were not included. She reviewed those scores in a summary of scores provided on a different printout. PD 1257. The scale completed by a paraprofessional showed, in the validity index summary, "F - extreme caution." The index assesses whether a person exhibits an overly negative response style. Consistency also notes "extreme caution". In the Validity Index Item Summary this rater noted "often" encourages others to do their best but on a similar item, "brings out best in others", the rater noted "never." "Extreme caution" was also noted by another rater. PD 1288. Consistency is important because if the rater gives two contradictory answers, it raises a question of whether the rater has more than one view of the child and which is the real one. The purpose of this test by staff is to understand students in the school. Pd 1275.

She had concerns with the recommendations in the school psychological evaluation (SD 229) because of the recommended focus of instruction for ED. SD 233. [REDACTED] noted that she was concerned that the Student had 30 min and only at the end of the year was it increased to 60. There was an additional recommendation of counseling for depression and anxiety (SD 233) but she questioned why this was not implemented in the IEP.

She noted that reading comprehension and expression had not changed much. The staff report some positive changes with better emotion regulation in the classroom. [REDACTED] did not recommend comp ed because other evaluations were recommended: AT, OT, speech and language. She has now reviewed those evaluations and recommends comp ed. She noted that [REDACTED] recommends 60 mpw for AT.

During her observation of the Student, one student did make noise in the class but she did not see the Student negatively reacting. [REDACTED] questioned how much instructional time is going to cooking rather than curriculum. She also had a concern about grade level material, although the teacher stated that the Student was at grade level for math. There is a goal for comprehension in the IEP. The speech pathologist said he liked social stories. Superflex is part of social thinking curriculum and it is appropriate and the Student likes it. Staff indicate that they have seen improvement.

She reviewed the AT draft referral. In looking at the written expression portion she did not know how it would be determined what to check off Although he writes legibly it is difficult and time consuming. PD 1253 - 55.

██████████ noted that with respect to placement for the Student the self-contained class is appropriate for him, especially with a dedicated aide. PD 613. Her concerns are with curriculum, technology, and the level of related services.

### (3) Occupational Therapist Evaluation

██████████ an occupational therapist, conducted an evaluation of the Student, which was done November 25, 2013. PD 676-710. Her curriculum vitae is in the exhibits. PD 712-16.

Prior to the evaluation, she reviewed school and health records. PD 676-678. She testified that the Student's medical background showed a diagnosis of autism. He is on medication and with a growing child medication changes. He was cooperative on the first visit. He has a history of constipation and eczema. He could not put on lotion for the eczema because he could not control the container. He was stressed because his stepfather passed away and he had loved him. PD 677 – 678.

██████████ described her evaluation as an intensive school based evaluation and testified that her findings are valid and reliable. Quadrant summary scores reflect he needs more potent information/more time to respond to sensory information and has significant OT needs. His slow performance of gross bilateral tasks affects speed of task and mobility.

Additionally, she did an observation at school on December 13, 2013. The school OT accompanied her during the observation. PD 679. The special education teacher was present in the class. PD 680. The class was not noisy, although one student was making noises. The Student's paraprofessional was working with the Student. When she left the room, the other paraprofessional worked with him and the team worked well in that regard. The Student was completing a writing assignment. He objected to writing on the board. The special education teacher went over it with him but he complained again. Then he got switched to other work. He was on the computer for math problems. He worked on a work sheet for math which may have acted as an organizer. PD 680. He was having a problem with his skin and the paraprofessional took care of it seamlessly. He spent a lot of time on erasing. ██████████ suggested using a dry erase board and the teacher said it was a great idea.

██████████ found the teacher to be supportive. Using an example of the computer, ██████████ showed her how to make things more efficient. ██████████ told the teacher that the Student used an ipad at her clinic. The teacher showed her apps for the computer which ██████████ determined were not at a high enough level for the Student. She had Capstone and compass learning. ██████████ also told the teacher that he liked speech recognition. The Student was at an ipad when ██████████ used speech recognition. Initially, the Student was just saying the word "Sochi" for the program. ██████████ then suggested that he use the word, "Olympics," and when the Student used that word the program worked for him. He put in grammar marks, editing his work, which he likes to be perfect. ██████████ told the teacher that the Student needs training for speech to text. He is slow at the computer, one handed, and does not like it. ██████████ focused on access to make a task pleasurable.

As an OT she looks at self-care in school and at home, particularly because it is something that can affect occupation issues. PD 683. What he does with hygiene will affect his life. The first time he was with [REDACTED] he dropped his pants before going to bathroom. She also noted he does not know how to sequence through hand washing, does not have the motor skills to wash hands and needs a cue. He cannot use a fork. She had a discussion with the school OT about this. PD 683. The OT said the Student is independent in self care but he did not know about the Student dropping his pants and was not aware that the Student he did not know how to wash his hands. The OT also told [REDACTED] that the OT has an iPad and Cowriter. The OT told her that he was familiar with the use of AT and said he would look into [REDACTED]'s recommendations.

[REDACTED] observed the Student being directed to go places, or hold the pillow, or use the ball. She did not see encouraging of communication. Comparing programs such as, Alert, which is "How Does Your Engine Run" and "Zones of Regulation" she designated "Zones" as a more mature, school based, and can be used outside of school. PD 684. She recommends this for the Student.

[REDACTED] noted very little interaction of students. PD 685. She did not see the Student talk with other students or be encouraged to talk with others. Based on her observation, she believes changes are needed to improve the Student's access to producing text and to the teacher's utilizing more mature curriculum for written communication. PD 685. Technology plays a big role for students like the Student and it is her opinion that the OT should use AT with the Student.

[REDACTED] testified that her evaluation produced valid results. PD 686. For the sensory part of testing, the Student was not a good interviewee for this and Parent filled it out. PD 687. His quadrant summary scores demonstrate that he needs more information than most people, particularly more concentrated cues but more cues would be overwhelming. PD 689. [REDACTED] asked Parent to create a list of self-care tasks that would be helpful to a school therapist in considering his needs. PD 691.

The Student completed a task of sentences with CoWriter (SOLO6), Draft Builder, and Write Out Loud. PD 692. His speed of task and mobility is affected by poor core rotation and slightly low tone through the core. PD 694. The results of her assessment, according to [REDACTED], reflect that the Student has strong skills but some weaknesses. PD 696. His categorization skills are not great and could have an impact in class.

The Student needs to be taught how to manage, for community and pre vocational purposes, particularly because he is 12. The school is doing pre transition goals to plan for the future, which is the point of OT. PD 701-707.

[REDACTED] determined that the consultative basis of the Student's school-based occupational therapy to address self regulation related to sensory processing differences do not appear to cover the multitude of concerns that need to be addressed. PD 707. She recommends that a school occupational therapist develop long-term and short-term goals and provide a mixture of direct and consultative services for all areas. Goals must be specific and matched to appropriate Areas of Need in the IEP. She recommends that a

school occupational therapist who is well versed in sensory integration theory continue to work with the Student and his school team, teachers, and parents to develop appropriate strategies, and begin to include the Student to provide him with tools to use to assist him. PD 707.

For service delivery, she recommends school based OT services. The Student needs programming for sensory purposes. PD 709. 60 mpw should be put in the IEP. This is to make him more independent. PD 710. He has motor needs a school OT could address but he could hold a job. She recommends consultative services of 45 mpm for OT.

For compensatory services after school, to work on self-care skills, keyboarding, building awareness of sensory needs, he should receive 30 mpw for the school year because what he has is too limited and there is behavior that did not need to happen.

After reviewing the February 26, 2013, school OT evaluation, [REDACTED] testified that it lacked depth. PD 288 – 290. The educational section, classroom expectations, and access to school environment did not mention the Alert program. For self-care no deficits were noted, although it is indicated that he cannot tie shoes, and there is no goal for that. Nothing is included about the Student dropping his pants or not washing his hands which is not normal. In the school records, it states that organizational skills are a problem but there is nothing in the OT evaluation about this.

The statement that the Student can work within the confines of school without aversions suggests he has no sensory needs. However, in the Standardized Assessment it states, with respect to how the Student responds to sensory information, that he has low tolerance to sensory input and that may preclude learning. School factor 4 shows definite difference as two deviations away from standard, which reflects availability for learning, and shows the Student is withdrawn. The sensory profile shows the Student needs a lot more support or better, exceptional support. The school OT made only one recommendation: a visual schedule. PD 290. MS. Block believes this is not adequate.

She reviewed data collection sheets because an OT looks at time task performance to determine self regulation. SD 789 – 848. She saw information regarding the Student at 10:00 a.m. every day consistently having difficulty and inconsistent difficulty in the afternoon. He does not have too much difficulty transitioning into school. She would look at the task at 10:00 a.m. to see what could be done to alleviate the difficulty. OTs would do this and [REDACTED] has done it. She observed the Student to have self-regulation issues, although a “meltdown” could be either autism or self-regulation.

One recommendation is more time for task completion--for manual needs, not answering questions. The Student is not capable of using the computer well. Ms. Block expressed the hope that if the OT sees need for AT the OT would alert the team to request it. However, in the school OT evaluation, the OT (PD 288) did not refer to AT. In his progress notes the OT is fulfilling his consultative minutes.

#### (4) Central Auditory Processing Evaluation

[REDACTED] a clinical audiologist, did a central auditory processing (CAP) evaluation on the Student on January 15, 2014, and wrote a report of the evaluation. Her report is included in the documents, PD 650-61, as is her curriculum vitae. PD 663-75.

[REDACTED] testified that a CAP evaluation shows how the brain uses information. CAP by definition is what the central auditory nervous system does with what it hears. CAP needs to be assessed in a series of tests for skills. The central component of the evaluation involves tasks that overwork the auditory system to see how well it works. Testing requires almost a soundproof booth and equipment which meets professional standards, to control variables. The results of the Student's standard hearing test indicate normal hearing. PD 650-651. He could recognize speech with background target noise but had difficulty when the noise became louder and lip-reading cues did not help. The Student participated in everything but had inconsistent eye contact. He needed some redirection but did respond to direction. PD 651. There was no issue with non-preferred words.

Her diagnosis reflects that the Student had adequate peripheral functioning but experienced difficulty in discrimination. He has a decoding deficit and deficit in binaural integration/separation. PD 652. She defined the tests as valid and the results are reliable.

She reviewed his April 1, 2014, IEP, and noted he is diagnosed with autism and emotional disability (ED). PD 1176. She testified that not all kids with autism have CAP problems. CAP problems can affect academics. Discrimination problems in particular have an adverse effect on reading, spelling, written language, and also impact vocabulary. Binaural integration and separation has a significant impact on communication skills, creating a disconnect between what one hears and what is.

An auditory language issue affects ability to communicate with peers and can lead to depression. PD 652. Poor discrimination happens before one is aware of it. PD 652. A listener has difficulty extracting key information which is a binaural problem. Pragmatic skills affect social communication. Rules can be explicit and implicit but some kids need that to be taught to them and the same is true with creative writing.

[REDACTED] reported that the testing results indicate the presence of central auditory-language processing disorder, specifically impaired auditory discrimination and auditory-language association that placed the Student at risk for meeting the language, learning and listening demands of a middle school environment without ongoing intervention. The results suggest that the current intervention plan is not meeting his processing and/or communication needs and should be adjusted. PD 654.

She recommends aural rehabilitation to improve auditory perceptual and related skills, which can be provided by a speech language pathologist and should include: discrimination training and use of visual cues. She also recommends that Fast Forward would be appropriate because of his discrimination problem and age. Additionally, she notes that he needs multi sensory reading because he has a CAP deficit and needs explicit

systematic teaching. PD 654. She recommends multi-sensory programs for reading with which she is familiar. PD 655.

Based on diagnostic testing, she also has recommendations for accommodations and modifications in the classroom, for his deficits, including seating near and facing the speaker; a multisensory, experiential learning environment; having the Student paraphrase instructions. PD 655-56. Her goals for aural rehabilitation should be implemented, including recognizing running speech, discriminating minimally contrasted phoneme pairs, recognizing words without visual cues. PD 657-658. She also noted goals that would be helpful. PD 659-660.

██████████ testified that two District audiologists do CAP assessment and she is confident the District has the appropriate environments. If the Parent requested a CAP assessment, the District could do it. She noted that similar accommodations can be used for students with autism and CAP. She has made recommendations for accommodations which would work in school. She did not see the Student in class but this would not change the recommendations because they are made on the basis of his deficit, although she acknowledged she does not know how his deficit is impacting him in his school environment. A student with CAP deficits can make progress and can make his/her own accommodation naturally. She does not know if the Student does. With respect to the impact of communication skills, similar communication skills can be seen in children with autism. The Student could be at risk for fatigue and it occurs in every child with CAP but she does not know if the Student has fatigue in school and does not know if he can compensate for his deficit. The Student cannot meet common core goals in speaking and listening but she does not know how he is in the academic setting.

When ██████████ wrote goals she indicated PLOP with respect to his deficit but does not know how he is doing. PD 657.

She testified that there are some accommodations and modifications in his IEP that would assist with CAP, which would provide support to student. SD 1347 – 1350. Previous IEPs also had some.

The District did not conduct a CAP evaluation. ██████████, the outside neuropsychologist, recommended that Parent have the CAP evaluation. District witnesses have acknowledged that ██████████'s CAP evaluation was considered and some recommendations adopted. The Hearing Officer has found ██████████'s testimony and the evaluation to be persuasive.

### **DISTRICT EVALUATIONS**

The Hearing Officer has reviewed the testimony and evaluations of the District personnel. Although these witnesses were credible their evaluations in general were incomplete, lacked the depth of the outside evaluations, failed to identify the Student's needs, and failed to make recommendations which could be utilized as appropriate goals.

The District did not conduct a CAP evaluation. The three evaluations conducted— speech/language, psychological and OT-- are reviewed here.

### **(1)Speech and Language**

There were a number of differences between the school speech and language evaluation and the private evaluation. Most importantly the private evaluation included an AT evaluation. The District has not yet done an AT evaluation. It contends the Parent has not signed the consent when it was given to her this year. However, the District never sought to do an AT evaluation at any other time.

The school's February 19, 2013, speech and language evaluation's two-page report did not include the Peabody or TAPS-3. The evaluator only did two subtests of her test because non preferred words in the test upset him. The summary and recommendation states he has a communication impairment that adversely affects educational performance but it contained no recommendations. Direct services could not be given because of his behavior but she now finds he should receive direct services but disagrees with the amount recommended by the private evaluator. No AT recommendations are made because the District has not conducted its own AT evaluation. She saw a decrease in receptive language which affected the Student and this was addressed through consultative services.

A year later when the private evaluator completed her February 16, 2014, evaluation (with a nine-page report) which included an observation, the Peabody, TAPS-3, and AT testing with the use of several programs, the Student's behavior was more under control. According to [REDACTED], the Student's test scores show impairment, with significant deficits with written language, which is limited. She is concerned about the past lack of direct services and the current level of 30 mpw of speech which she finds inadequate. He requires 60 mpw to address deficits and he should continue in a small group social skills type class because he needs that. [REDACTED] recommends significant AT use and 60 mpw of AT services.

[REDACTED] was able to do more comprehensive testing because the Student's behaviors caused no problem at this time. Thus the Hearing Officer finds that her testing results and recommendations are persuasive.

### **(2)Psychological**

A primary difference between [REDACTED]' evaluation and [REDACTED]'s is the fact that [REDACTED] concluded the Student should be eligible for ED. He stated he was unwilling to subsume anxiety under autism. He acknowledged he did not know that at six the Student had been identified with anxiety disorder and there was depression in the family. The Student had difficulty in various settings and has a different universe with preferred language and to communicate one must use his language. That does not fall under the

autism spectrum, according to the school psychologist, because he was not comfortable with the degree to which the behaviors were affecting the Student's performance. He also based this on Parent's reports as well. The objective was to explain things seen at school to help the Student. It is not the school psychologist's intent to label children with classifications but his outbursts had to be considered. Some of the behaviors he displayed are not in the autism spectrum and would subject him to discipline. The alternate universe the Student functions in prompted the psychologist to make the ED recommendation to the team. He also felt it gives the Student additional protections, with respect to discipline. There are not the same protections under autism because it does not reflect the degree of emotional outbursts.

██████████ disagreed with the school psychologist's diagnosis of Emotional Disorder, for a number of reasons: the Student's problem with learning cannot be explained by that designation; his actions are not always a behavioral choice for him and are not associated with a primary emotional/psychiatric disorder; her analysis of the teacher's report supports that the Student should not have the label of ED; the Student's stereotype use of words is related to autism, not emotional disturbance; if he was out of touch with reality, having hallucinations, that would be ED; he is not seeing or hearing what is not there.

The Hearing Officer finds ██████████'s explanation more persuasive, particularly in light of the fact that ██████████' explanation and reasons specifically relating to the Student do not comport with the definition of Emotional Disability: (includes schizophrenia but does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance) means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

- An inability to learn that cannot be explained by intellectual, sensory, or health factors;
  - An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
  - Inappropriate types of behavior or feelings under normal circumstances;
  - A general pervasive mood of unhappiness or depression; or
- A tendency to develop physical symptoms or fears associated with personal or school problems.

*Illinois State Board of Education Reference*

██████████ also notes that an individual can have depression and not be ED. ██████████ testified that an auditory language issue affects the ability to communicate with peers and can lead to depression.

The Hearing Officer accepts ██████████'s determination that the Student's behavior is part of the autism spectrum. The Hearing Officer also finds ██████████'s evaluation to be far more inclusive and comprehensive with respect to testing than ██████████ three-page report. Thus, the Hearing Officer finds her more persuasive than the school psychologist.

### **(3)Occupational Therapy**

The Hearing Officer finds the most serious concerns with the school OT evaluation and the school OT's testimony. In the two and a half page February 26, 2013, report, the school OT reflects no testing, notes no deficits (other than the Student cannot tie his shoes), and makes one recommendation for AT: visual schedule. He testified that the outside evaluator wanted to demonstrate why software would be a good choice. The school OT witnessed her trying to get the Student to say a sentence into the device. The school OT testified that the Student kept "screaming 'Sochi' " into the machine, and thus the school OT did not think it was appropriate. The outside OT also made recommendations on organizing but the school OT testified that he can advise the teacher and thus there is no need for direct services on his part. The IEP had accommodations - a graphic organizer for writing. The teacher never expressed concerns and the school OT never observed problems with organizing or saw it impacting his ability to learn.

The Hearing Officer finds this testimony regarding the software demonstration to be far different than that of the outside OT who testified that initially, the Student was just saying the word "Sochi" for the program. Because "Sochi" is a name, the outside OT suggested that he use the more generic word, "Olympics." When the Student used that word the program worked for him.

The OT's evaluation and report were devoid of any information regarding the Student's needs and recommendations that would assist him. The Hearing Officer, based on his testimony and his evaluation and report, finds the OT lacked credibility. The Hearing Officer finds the outside evaluator's testimony both credible and persuasive. It demonstrates the need for direct services at school with an OT who will take the time needed to help the Student overcome an initial obstacle, if a device does not immediately work for the Student. The Hearing Officer rejects the school OT's contention that there is no need for direct services also in light of the fact that the school OT was not aware of the Student's self care issues.

The private evaluator's 35-page report of February 28, 2014, reviews testing, skills assessment, and the use of AT programs. The outside OT's recommendations for direct services and specific use of AT are persuasive.

### **The District did not conduct an FBA, AT assessment, or a CAP evaluation.**

The FBA is part of an evaluation. 34 CFR Sec. 300.502. The District failed to conduct an appropriate FBA despite the Student's behaviors. His after-school care person instituted her own plan. [REDACTED] of the [REDACTED] testified she worked with the Student after school. She said he was "violent" every day and hit her. She instituted a behavior plan and the behavior improved. She was concerned when

talking with the Student's special ed teacher that the special ed teacher would say, in front of the Student, that the Student had a difficult day. If the Student became upset at the special ed teacher's use of non preferred words, the special ed teacher would tell him that she is an adult and can use whatever words she chooses. ██████████ found alternate ways to say things. She relayed to staff that his behavior was improving and she felt he could work at a higher level.

The District also failed to conduct an AT assessment. The District failed to identify in a timely manner and then provide appropriate assistive technology in the classroom setting and for all schoolwork. Assistive technology device is any item, piece of equipment or product system used to increase, maintain, or improve the functional capabilities of a child with a disability. 34 CFR 300.5. Although there was a computer laptop and ipad available to the Student, the appropriate programs were not provided.

The IEEs contained findings and recommendations which support a need for assistive technology for the Student. ██████████ found that he needs a cohesive presentation on AT across areas. The goal for AT is to give him strategies to make tasks less unpleasant. She recommended a laptop with specific programs. ██████████ testified that he needs AT to build on his strong visual skills but believes that specific recommendations for the best AT devices should be deferred to an AT specialist.

██████████ testified that technology plays a big role for students like the Student and it is her opinion that the OT should use AT with the Student. Although he does not have to use AT all the time it should be made available when he needs it.

The District also failed to conduct a CAP evaluation, although it is noted that the outside CAP evaluator testified that the District has two audiologists and an appropriate environment in which to conduct such an evaluation.

The IEE evaluators presented reports which detailed the testing used and their findings and made recommendations to enable the Student to progress. The evaluators have extensive experience and their testimony was persuasive. Despite an assertion by the District that at least one outside evaluator, the speech/language pathologist, made recommendations to "maximize" the Student's potential, that evaluator testified that she recognized the District need only supply some educational benefit to the Student and her report should not be interpreted otherwise. Nothing in the District's evidence refuted the evaluations.

The District has not met its burden in showing its evaluation was appropriate.

**III. The District failed to develop a timely IEP which would: designate appropriate eligibility; provide appropriate goals/accommodations, including AT training for staff, Parent, Student; provide appropriate placement in the LRE and include related services of auditory, speech language, social emotional, and OT.**

The Student has had an IEP since 2011 which indicated he was eligible for services due

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to autism, speech/language impairment. In [REDACTED] he was in the gen ed setting with services. He transferred to the current school when he "aged out" of the previous school. Parent was offered a number of school options pursuant to the No Child Left Behind (NCLB) law. On his first day at the school Parent selected, a staff member brought the Student into the self contained, low incidence classroom because the Student became upset in his class when a teacher in the gen ed used a non-preferred word. The Student has a list of words—non-preferred--that provoke behaviors. On an interim basis Parent agreed to the Student's placement in the low incident classroom, where he has remained.

Prior to his attendance at the current school the Student had been in gen ed with only accommodations and modifications. PD 231. Parent testified to her ongoing concern that since the Student has been in the District schools that he was not receiving appropriate services to address his eligibility. His IEP for March 23, 2011, notes that AT is necessary but no AT evaluation was required. PD 169. The only AT provided him was a seat cushion and weighted vest. PD 169. No AT has been provided to address his needs with respect to learning. She also testified as to the lack of appropriate goals in the IEPs and the recognition in the IEPs that the Student did not function in some areas, such as comprehension, at grade level.

In general, the District staff who work with him all expressed interest in seeing him progress. There was testimony that he had made progress. However, this assertion lacked evidentiary support, although his behaviors improved. Had the District put in place a transition plan for him to attend the current school, some of the severity of the behavior problem might have been averted. The previous school offered to have the speech language therapist from that school attend with Student on his first day. The current school rejected that offer. Parent also wanted to get pictures of the teachers and the classroom for a book to show the Student. The school denied the request. While the school may have had good reasons to not have anyone take pictures of the teachers for a book, it was incumbent on the school to try and develop its own transition plan which was not done. On his first day when he was put in the gen ed setting he had a behavior episode which resulted in his being placed in the low incidence classroom, where he has remained.

The special ed teacher in the low incidence classroom acknowledged that his behaviors impeded making improvement and he was not able to receive as much instruction as the special ed teacher would have liked. She testified that at the June 6, 2013, IEP, the team discussed the possibility of the Student going to day school based on his behaviors. Based on Parent not being amenable to private school, the team decided against it. The District agreed to a dedicated one on one aide for the Student and one was provided. The special ed teacher saw changes when the aide provided services. This aide followed him to ESY (in the summer of 2013) and he still has a one on one aide. Specials are in the morning for music, gym, and drama. The Student had a lot of behavior problems and ended up not being able to go to his specials. Starting for this school year he is going to specials with his one to one aide.

She testified that the Student's behaviors have now abated. If there is an outburst it is not "full blown." His list of words was reduced to four. He seems calm and adjusted to

school. He is able to access school differently and able to participate. The team has discussed working with the Student for transition to gen ed by the beginning of next year, at least for math. The April 1, 2014, IEP states that the Student's significant emotional challenges impact his ability to transition to gen ed. He continues to need a small class. The team should consider transition to gen ed as behavior improve. SD 1343. The Student's teacher will use gen ed curriculum in a separate class and then will introduce him into gen ed math. She has not noticed the Student scratching his skin this year or putting his hands down his pants or punching anything recently. Pinching is still relevant, as are sensory breaks, drinks of water, and the use of the stress ball. Revisions to the April 1, 2014, will be made in June.

The special ed teacher testified that the school is a place of stability for him. He depends on it, feels safe, and has relationships. If he were to leave the school and lose one more thing in his life it would be problematic. She has seen him blossom and there would be no opportunity for positive gen ed peers in a private day school. If he stays in the current school, he will make more progress.

The school counselor/case manager testified that the previous school offered to have their speech therapist come to the current school to help with non-preferred words. However, the Principal talked with the team and the team felt it would be disruptive, especially after the two-week winter break and the team felt it could address issues. The Principal testified that she relied on the team to make that decision.

The case manager testified as to the incident when the Student first arrived. The Student hit the gen ed teacher and was placed in the low incidence classroom. The school sent a letter to the Parent and the Parent said she did not want his behaviors documented in a letter and would write her own letter. The team felt it would be good to get a new evaluation and held an assessment planning session. Parent mentioned concerns about testing. SD 1093.

Parent was in agreement with the placement in the low incidence class (SD 265) and there was shared para professional support across school settings. The school offered a separate day placement because the Student experienced loss and was struggling at school. The school thought it best to have a separate day school for more support. However, the Parent was opposed to a separate day school. The school then gave the Student a dedicated aide for the entire day and also asked to have the aide go to ESY with him. This was a special request because the aide was dedicated to the Student. The Student returned to school for the 2013-2014 school year with a dedicated aide.

The school social worker testified that she worked to complete the domain sheet on December 9, 2012. She did not test him because he demonstrated a high level of anxiety and she felt trying to get him to answer questions would make him more anxious. She did not work with the Student on an individual basis because of his difficult transition to the school. She believed that pulling him out of the class seemed not productive but working in class would be different. For the social work evaluation of February 29, 2013, she reviewed his records. His stepfather had just died and grief-counseling services were provided to the Student. She talked with his teachers. The Student was continuing to adjust to the new school. His emotional meltdowns interfered with his

ability to access instructions. ED was added to his eligibility of autism and he was eligible for direct services. She questioned whether the school could handle his "emotional state." Parent did not share the concern and did not want him to leave the school. For the June 24, 2013, the school social worker felt there needed to be an increase in social work services and inclusion of an additional social work goal. The team increased social work services and the social work goal was added.

The second school social worker testified that she gives the Student direct social worker services. She testified that she made progress with the Student, in sessions one on one with other peers and in a larger group. His outbursts are less frequent and shorter. She testified that the school is an appropriate place for him and testified there would be regression if he had to make a transition. He is able to access the curriculum and is doing high school level math.

All four of Parent's evaluators found that the IEPs did not provide appropriate goals, accommodations, or services. Their testimony with respect to the IEPs is based on their comprehensive evaluations and is persuasive. Both the speech language pathologist, [REDACTED], and Parent's occupational therapist, [REDACTED], have worked with school districts to develop IEPs.

(1) Parent's speech language pathologist, [REDACTED], testified that she has completed IEPs in speech/ language and AT and has provided AT training for public schools.

[REDACTED] found that the Student's deficit areas are extensive and require goals for auditory comprehension. He does not understand information in text which is needed to answer questions. He does not understand cohesion or inferencing; he must be taught to look for visual clues. Goals are needed for auditory processing and reasoning, semantic language, categorization, syntax. He does not understand higher-level syntax; his semantic, syntactic language and higher-level auditory processing skills are all well below age level expectations. PD 641. He demonstrates significant deficits with written language. His reading skills are also poor for longer more complex material. PD 641. [REDACTED]'s goals are different than speech language goals and it should be Dr. Ferre or an audiologist to comment on those goals but should not be included in speech goals.

[REDACTED] testified that she has recommended a lot of speech minutes for the Student, based on her evaluation, but accessing curriculum is basic. The Student does not understand how words fit into the big picture and she is concerned about his ability to read text. In text above 2<sup>nd</sup> grade there is inferencing and his language issues are impacting his ability to move forward. His language is limited and he needs to understand the big picture, which can be taught. He needs 30 mpw after school to link his skills. 60 mpw of AT can be incorporated throughout the day.

[REDACTED] testified that for two years the Student was not getting enough speech and he should be compensated for two sessions of 30 mpw, for 60 hours.

Referring to the Student's IEP for March 25, 2012 (PD 245), she testified that the speech/language goal does not address his deficit areas: "(The Student will demonstrate comprehension of a story at his level by retelling the story with the use of a story map he has completed in 4/5 attempts given no more than two prompts.)". PD 262. His direct services for speech/language are listed as 30mpw. PD 265. His social work services are listed as to be delivered monthly. PD 264. ██████████ recommends social group services for the Student by the speech pathologist, to promote language and language understanding. She describes pragmatic language as social language--all of the non-verbal language, not necessarily vocabulary, that connects someone with others, such as not interrupting, maintaining topic. She describes these social skills as language based. It is her opinion that the social work goal ("The Student will interact with his peers in social work group 9 out of 10 times.") and benchmarks do not meet these needs. PD 264.

In referencing the IEP for the next year, March 5, 2013, (PD 317-350), ██████████ found no (direct) speech and language services. PD 341. She also testified that the social work goal addresses few needs ("The Student will demonstrate the ability to use appropriate words to express his strong feelings including stating 'no thank you' or 'I do not want to do that'" five out of five opportunities.") She noted that the social worker, not the speech/language pathologist, is responsible for that goal. PD 329-340. She testified that she would expect a speech language goal for the social group. She found no specific speech and language goals in the IEP. In accommodations and modifications, for speech/language, it states: the SLP will check in with SPED teacher to see how the Student is progressing in the classroom emotionally and behaviorally and if necessary the teacher and SLP will collaborate to work on his needs. PD 324. She defined the 30 mpm for this consultation as "woefully inadequate." PD 341. There are two accommodations listed for speech/language ("Explain non-literal language within context; give the Student choices when asking inferential questions") ██████████ would recommend for accommodations that the Student should be given choices for writing topics and if given a choice of preferred or non-preferred words expectations of writing could be graded differently. She also noted there is nothing on auditory processing of information, i.e. repeating instructions. She is concerned about the Student because autism is a language-based disorder and if this is addressed successfully, the child will function better. He needs to understand nuances of speech. His behavior is rigid because he understands everything in a rigid way. She testified that the speech language pathologist is a crucial member of the team.

In reviewing the Student's IEP for June 24, 2013 (PD 352), she noted that speech/language services were consultation only: speech pathologist to special education teacher 15 mpm and 5 mpm for special education teacher to paraprofessional. PD 373. None of the minutes were in the social group. There were no goals to address his deficits.

██████████ also testified that the Student's April 4, 2014, IEP (PD 1176) contained direct speech/language services of 60 mpw and 15 mpm consultation. The speech/language goals in her opinion did not address the Student's deficits in language ("Given a one-two sentence curriculum based passage the Student will identify

the key words or main idea in seven out of ten trials given choices.”) PD 1200; (“The Student will identify the meaning of figurative language, i.e., idioms or multiple meaning words, within the context of a sentence given choices in four out of five trials.”), PD 1201. The goal of just teaching idioms will not solve the problems. In the area of need for speech and language (PD 1200) area there is a reference to the Central Auditory Processing (CAP) evaluation, which the Student had after he saw [REDACTED], that demonstrated deficits in auditory discrimination and auditory language association.

[REDACTED] reviewed the IEPs prior to her class observation and spoke to the school speech-language pathologist about the Student’s minutes. The school speech/language pathologist indicated that she was not supposed to be providing minutes because it was not in the Student’s IEP but she was providing them because she felt he needed them. [REDACTED] commented on so few minutes and the speech/language pathologist informed her that some students get none.

After seeing his scores and looking through some IEPs, [REDACTED] testified that she does not know why he only got 30 mpw speech initially and then none. “Autism kids have speech needs.” When he is in a routine good place he seems to be functioning better than he is. “But things fall apart because he does not have the core language and cannot process auditory. When his behavior deteriorates he needs more speech, not less.” She would like to see him get a lot now.

He is getting 30 mpw of speech (PD 641) which she finds inadequate. He requires 60 mpw to address deficits and he should continue in a small group social skills type class because he needs that. PD 642. The speech pathologist told her he is getting 30 mpw; she described it as Superflex.

[REDACTED] made AT suggestions because they are necessary for his current setting. His AT needs are unique because he does not need to use AT all the time. He can tolerate being taught with peers while learning new and challenging things. If he is using the classroom computer in the corner of the room, then he is not engaging with peers. What he does with peers in class is less than what he could do with his own laptop. This would give him the ability to achieve in a way that he is not now achieving. She does not know if he is making progress in his current setting. In the Student’s class, the students were working on computers, as a separate activity. If the Student is reading in a small group, he needs to have his material and AT with him.

She recommends an additional 60 mpw of AT because AT must be delivered in a careful way. AT support should be provided in as unobtrusive way as possible; he should have his supports with him and, if they are needed for mainstream curriculum, they can be put into his laptop.

She also acknowledged that special education teachers can work on inferential language and reading comprehension and anyone can work on idioms. However, when recommending services for inferential language, it is more appropriate for speech and language pathologists to do it, since they are trained to do it.

██████████ testified that for two years the Student was not getting enough speech and he should be compensated for two sessions of 30 mpw, for 60 hours. With respect to Comp Ed and her phrase about maximizing the Student's potential (PD 643), ██████████ testified that districts are not required to maximize potential but to provide education. The word "maximize" not to mean anything over and what would be expected, but what would allow him to achieve his potential. She used it because she thinks he can excel.

**(2) Parent's pediatric neuropsychologist, ██████████** testified that she has concerns regarding the social work levels. For socialization and adaptability, she recommends that he continue to receive direct social work services. His IEP should contain specific and measurable goals and objectives to improve his social skills and the quality of his social interactions. She recommends that social work minutes be increased to 60 mpw--30 individual and 30 in the cooking activity. She is recommending this increase in social work because of the traumatic transitions he has sustained.

She had a concern with the April 1, 2014, IEP goals i.e., the goal of the Student using self talk, deep breathing or monitoring his internal state for self regulation. P 1196. She recommends additional time for testing of 50%. PD 1189.

**(3) Parent's occupational therapist, ██████████**, reviewed the Student's IEPs. She has developed school IEPs in this area. In the March 15, 2012, IEP, for independent functioning, ██████████ testified that accommodations would be a start but she would do more. PD 255. If needed, support would occur throughout the day. Under independent functioning OT services are for 15mp, consultation/collaboration only. In the March 5, 2013, IEP, for 5<sup>th</sup> grade she determined that accommodation/modification of just having the Student take a movement break is not enough to address the Student's issues regarding self regulation; there is no support for the Student to self advocate. PD 324.

In the June 12, 2013 IEP (PD 352) she found that accommodations for independent functioning were insufficient. PD 362. It involved just having the paraprofessional guiding the Student to class and ██████████ was unclear as to why that is there. There were no direct OT services. PD 373. She asserts that the Student should have direct services. The services in this IEP indicates consult between OT and the special ed teacher for ten mpw and five mpm between the special ed teacher and paraprofessional. ██████████ testified that this is not enough time to train someone which is what the OT would be doing; this cannot be accomplished in this time, particularly in light of needs regarding self care, utensil manipulation, and integrating AT to eliminate outbursts around writing.

Similarly, in the April 1, 2014, IEP, (PD 1176) for independent functioning, she found that the accommodations were limited to movement and transition to other places with

the paraprofessional and thus were not appropriate. The Student needs AT. The OT has been working with him for a while.

There are no OT services listed. PD 1202. The 10 mpm consult with special Ed teacher and five mpm with the paraprofessional (the same as the June 2013 IEP) are not sufficient. The OT knows there are deficits that affect the Student academically and socially. Going forward different goals and more minutes are needed.

The Hearing Officer finds [REDACTED]'s testimony and recommendations regarding the Student's IEPs persuasive based both on the fact that she has worked with school districts to develop IEPs and her extremely detailed evaluation provided substantive information on the Student's needs.

(4) [REDACTED], Parent's audiologist, reviewed the Student's IEPs as part of her CAP evaluation. She noted that there is no extended time for tests in his April 1, 2014, IEP. Social sciences, drama, music, and PE do not have appropriate accommodations listed. PD 1184-7, 1189. In this IEP [REDACTED] did not see baseline data to provide information. Ten trials would not cover it. PD 655-656. The District lists the accommodation that the Student needs to repeat what he has heard. In the IEP [REDACTED] testified it should say that he needs to paraphrase, to gauge if he understood. The IEP also lists as an accommodation the need for the Student to advocate for himself, which [REDACTED] testified is not an accommodation but a goal. For math, the same type of accommodations are listed. [REDACTED] thinks his school day should have extended time.

If directions are not followed, staff should consider misinterpretation rather than noncompliance. [REDACTED] believes this should be in the IEP. PD 655. She did not find it in the BIP either. PD 1207,8. In reviewing the April 1, 2014, IEP goals (PD 1190-1201) she had a number of concerns. The goals in English language arts are not appropriate. The goal about using a writing prompt and structuring a paragraph [REDACTED] defined as a writing goal. PD 1190. The goal about reading instructional-level text is a reading goal. PD 1191. The goal on use of visual cues is a benchmark for goals [REDACTED] wrote, but she testified that it is not a goal and is not appropriate the way it is written. PD 1192.

For the goal [REDACTED] wrote about recognizing running speech presented under a variety of listening conditions, she also wrote benchmarks about the use of visual cues (PD 657) and identification of sentences. PD 658. She emphasized how important it is to do all benchmarks to cover all outcomes. Under functional performance, she determined that the data does not tell how the Student is functioning for CAP. PD 1192. The assessment conducted by the school speech pathologist is an informal assessment of the auditory process, conducted in a quiet environment which does not tax the auditory system, so she does not know what the purpose was. She did not find that it provided a baseline. With respect to the service provided in this area, [REDACTED] testified that either the special education teacher or speech language pathologist can implement the plan.

[REDACTED] noted the absence of a goal for CAP for independent functioning.

██████████ wrote goals for speech language (PD 658) and although the speech/language IEP page references her CAP evaluation, the goal in the IEP is different. PD 1200. ██████████ has written a goal in steps to progress through the hierarchy. Keywords and main ideas contained in the IEP goal are not the same. The IEP reflects no baseline for the Student for CAP. PD 1200.

██████████ testified that the language goal might address the impact of association on language but ██████████ did not test his language so she cannot tell if he needs a goal for figurative language. PD 1201. For aural rehabilitation she determined that he needs 60 mpw. PD 1201. In reviewing his records she found it hard to tell when testing was done because there were no dates. There was pervasive mention of impaired language from the earliest records and a decrease in his skills. Some records showed above average, then below acceptable levels. ██████████ testified that this is not supposed to happen.

His March 23, 2011, IEP (PD 163), when he was in the fourth grade, reports comprehension at the third grade level. PD 165. There are some appropriate accommodations for the Student: preferential seating, repeat back, and explaining directions, which may reflect someone's concern for a weak auditory system. PD 173-77. In her review of this IEP she did not see a goal on CAP. PD 180-197.

She also reviewed the October 10, 2011, IEP, for his fourth grade, which was held to revise the March 23, 2011, IEP. PD 208. The IEP states that his comprehension is at third grade level. PD 209. He has the same accommodations as in previous IEPs. PD 219. He also has the same IEP goals. PD 22-30. The next IEP on March 15, 2012, also for fourth grade (PD 245), according to ██████████, reflects that he learns best when information is taught visually or kinesthetically. PD 247. She did not see goals for CAP. PD 258-264.

The March 5, 2013, IEP for fifth grade contains accommodations, some of which are similar to ██████████'s, i.e., explaining non literal language, which is consistent with the accommodation of use of clear language, giving verbal directions in clear steps, asking the Student to summarize—these accommodations show the auditory problem is being addressed. PD 323-327. In her review of the IEP goals she did not see goals for CAP. PD 331-340.

In the June 24, 2013, IEP, testing results for the Student showed weakness in passage comprehension, scoring at a 1.7 grade level. PD 354. She defined the accommodations as appropriate for CAP, still requiring an explanation of literal, giving him choices. Academics still require clear steps in direction, which shows there is a concern regarding auditory processing skills. She did not see goals for CAP. PD 365-372. In her opinion, the accommodations noted for the Student are not enough. But his deficits are now known and that can inform accommodations. By doing differential diagnosis the problem is defined and accommodations can be planned to meet the needs of this child, although accommodations alone won't address his needs. ██████████ testified that her goals should be in the IEP because he needs remediation for auditory processing problems.

The outside evaluators' criticism of the IEPs are detailed and persuasive. The Student's lack of progress is attributable to the fact that the IEPs do not provide adequate or appropriate goals and do not include sufficient or appropriate services to address his needs. The IEP must be tailored to the Student's needs as identified in the evaluations in order to determine the appropriate remedies. As ██████ aptly testified, "There is an array of possible help for any listener struggling with skills and it is an inefficient use of resource just to try something to see if it works."

It is the IEP that must reflect the appropriate educational placement. In this case the evaluators and the school staff are in agreement that the low incidence classroom in the current school is appropriate. The Student must be given intense direct services, AT, and compensatory services to be able to access educational benefit.

The Parent has met her burden in presenting evidence that the school did not provide adequate or appropriate IEPs which is a denial of FAPE.

**IV. The District failed to provide ESY/program and services for summer 2012. The District did provide ESY/program and services for summer 2013.**

The special ed teacher from the Student's previous school testified that the Student's behaviors diminished but not completely, even with supports. He acknowledged that the Student "lost his routine over the summer" and "transitions were difficult for him." The Student needed support from the para professional in the gen ed setting—cueing, modeling, providing reinforcement. He further testified that ESY would not have helped the Student because there would be different staff members at the school. In the March 15, 2012, IEP, the Student was deemed not eligible for ESY. SD 208

The previous special ed teacher's testimony reflects that the team did not appropriately consider ESY. As noted above, Parent is a special education teacher. Nonetheless, it has not been asserted and cannot be concluded that she would have had the ability to provide educational structure at home for the Student's needs, particularly in light of his behavioral and physical problems. The District did not provide ESY for the summer of 2012 as required by law based on the Student's specific needs.

Although Parent asserts that the District did not provide ESY in the summer of 2013 for the Student, the District provided evidence that the Student did attend ESY. SD 301. The teacher assistant who helped with the Student in the low incidence classroom class last year testified that when the Student had a difficult time if a word he did not like is used the Student would hit the desk, throw himself to the floor, scream, and yell. The assistant would take him to the resting area to calm him or talk to him. He developed a "very nice" relationship with him, testifying that the Student "is a very nice boy and if you know how to deal with him he will be a good student."

The assistant attended ESY with the Student as his dedicated aide, although it is not customary for an aide to go to ESY. Because he had a good relationship with the Student he was asked to go. The first teacher in ESY did not understand the Student's preferred

words, which created problems. The Student was changed to another classroom and the second teacher adopted the assistant's recommendations on talking with the Student. The assistant testified that the Student had no trouble transitioning into a different school for ESY. He made progress at ESY and his behaviors abated. The Student did not attend the first week of ESY, which was six weeks long. The assistant was there the first week but the Student was not. Parent testified that she had been informed there was no aide for the Student so she kept him out of ESY. The assistant testified that he now sees the Student in the morning and he is more calm and confident.

The District has also included ESY in the April 1, 2014 IEP. PD 1205.

**V. The District failed to accurately report to Parent lack of Student's progress and implement response to the Student's lack of progress**

The IEPs, as noted in III above, reflects the District's failure to report to Parent lack of Student's progress and implement a response to the Student's lack of progress.

The Parent has met her burden in proving by a preponderance of the evidence that the District failed to provide the Student a FAPE by not identifying the Student's needs, not developing an appropriate IEP, not providing ESY for the summer of 2012, failing to report to Parent the lack of Student's progress, and failing to implement a response to the Student's lack of progress.

**CONCLUSIONS OF LAW**

**Appropriate evaluations**

The District filed a hearing request pursuant to the relevant federal regulation in response to Parent's request for an IEE. "Federal regulations state that: 'A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency....' 34 CFR Sec. 300.502(b)(1). This regulation requires that if a parent requests an IEE, a district must either file a complaint to request a hearing to show its evaluation is appropriate or ensure that an IEE is provided at public expense unless the district demonstrates in a hearing that the evaluation obtained by the parent did not meet required criteria. 34 CFR 300.502(b)(2).

With respect to its request for due process hearing, the District has a burden of proof for the appropriateness of its evaluation. 105 ILCS 5/14-8.02(b). In this case the District has not met its burden. IDEA defines an evaluation as procedures mandated to determine whether a child has a disability and the nature and the extent of the special education and related services that a child needs. 34 CFR § 300.15. Based on IDEA requirements, the evaluation materials include those tailored to assess specific areas of educational need including that the district “use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information.” 34 CFR §300.304 (c)(2). IDEA requires that a full and individual evaluation include all components that are needed to identify a student’s disability and educational needs including related services. 34 CFR § 300.301(a). The Illinois School Code sets the standard of “a carefully completed case study.” 105 ILCS 5/14-8.02(b). The District was aware that its evaluations were not complete because testing could not be done in some instances due to the Student’s behaviors. The District had a responsibility to ensure that its evaluation was completed at a time when the testing could be done in order to understand the Student’s specific needs so that they could be addressed.

The District accordingly must reimburse the four outside evaluators’ IEEs. *Board of Educ. of Murphysboro Comm. Unit School Dist. No. 186 v. Illinois State Board of Educ.*, 41 F.3d 1162, 1169, P6 (7<sup>th</sup> Cir. 1994) (“...parents may be reimbursed for only one publicly funded evaluation for each school district evaluation with which the parents disagree.”)

The District must also pay the outside evaluators for their time to be spent helping develop the IEP. The Hearing Officer is ordering the outside evaluators to be included to help develop the IEP. The outside evaluators did not participate in the last IEP even though their evaluations reports were discussed and the Hearing Officer has found that the resulting IEP was inadequate. Their presence will help ensure that their recommendations are incorporated into the new IEP. Their services in working on the IEP is encompassed as a “related service” to assist a child with a disability to benefit from special education. 34 CFR Sec. 300.34. The IEP is the key to enabling a child with a disability to benefit from special education, pursuant to the *Rowley* standard.

Additionally, the FBA is part of an evaluation. 34 CFR Sec. 300.502. *Harris v. District of Columbia*, 50 IDELR 194, p. 4, 561 F. Supp.2<sup>nd</sup> 63 (D.C 2008). (“In view of the IDEA’s statutory framework and the centrality of the FBA to development of a successful IEP, this Court agrees with plaintiff’s contention that the FBA is an ‘educational evaluation’ as stated in Section 300.”) The District failed to conduct an appropriate FBA and will pay for an independent FBA.

### **Denial of FAPE**

The District has the burden of presenting evidence that the special education needs for the Student have been appropriately identified and that the special education program and related services proposed to meet the needs of the Student are adequate, appropriate, and available. 105 ILCS 5/14-8.02a(g-55). The District failed to meet its burden in not conducting a full evaluation as required by law, as noted with respect to its failure to meet

its burden regarding the appropriateness of its evaluation. Accordingly, the District could not address problems which it has not identified. *Board of Education of Oak Park & River Forest High School District Number 200 v. Illinois State Board of Education and Kelly E.*, 21 F. Supp. 2d 862 (N.D. Ill. 1998) (“The Level I Hearing Officer found that the School District failed to conduct an appropriate evaluation....”p. 10)

The Parents, however, have the burden of proof regarding the request for a due process hearing involving a denial of FAPE based on the United States Supreme Court ruling in *Schaffer ex rel. Schaffer v. Weast*, 126 S.Ct. 528, 537 (2005) which was analyzed with respect to the relevant Illinois statute (the Illinois School Code) by the Northern District. *Kerry M v. Manhattan School Dist.*; and the *Illinois State Board of Education*, U.S. District Court, Northern District of Illinois, IDELR 194 106 LRP 58547 (September 2006). The Hearing Officer has determined that the Parents have met their burden.

In *Hendrick Hudson Dist. Bd. of Education v. Rowley*, 458 U.S. 176 ( 1982), the United States Supreme Court has set the standard to determine whether a child has been given a free appropriate public education (FAPE) under the IDEA. The *Rowley* standard requires that an IEP must be “ ‘reasonably calculated to enable the child to receive educational benefits.’ 458 U.S. at 206,7.” *T.H. v. Board of Education of Palatine Community Consolidated School District 15*, 55 F. Supp. 2d 830, 841 (N.D. 1999). The Hearing Officer’s determination as to whether the IEP was reasonably calculated to enable a child to receive an educational benefit is based on whether the District’s IEP for the Student identified his needs/eligibility and offered services to address those needs as required by statute.

In *Rowley* the United States Supreme Court has articulated a two-prong test to determine whether a child has been given a free appropriate public education under the IDEA. The first prong is whether the school district complied with the procedural requirements of the IDEA. Second, the Hearing Officer must determine whether the IEP was reasonably calculated to enable a child to receive an educational benefit. That determination is based on whether the District’s IEP for the Student identified his needs/eligibility and offered services to address those needs as required by statute. In this case, the determination that the Hearing Officer must make is whether the Student’s IEP was reasonably calculated to meet the *Rowley* standard.

#### **(I)Procedural Requirement**

With regard to the first prong, the Parents asserted a procedural violations in the IEP development that precluded access to a FAPE for the Student. However, even if violations occurred, only “procedural inadequacies that result in the loss of educational opportunity constitute a denial of FAPE.” *Evanston Community Consol. School Dist. No. 65 v. Michael M.*, 356 F. 3d 798, 804 (7<sup>th</sup> Cir. 2004); *Board of Ed. Of Township High School District No. 211 v. Michael R.*, 2005 WL 2008919 (N.D. Ill. 2005). IDEA-2004 which became effective on July 1, 2005, also requires that where a procedural violation is alleged, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies: (I) impede the child’s right to a FAPE; (II) significantly impede the parents’ opportunity to participate in the decision making process regarding the provision of a FAPE; or (III) cause a deprivation of educational benefits. 34 CFR 300.513(a)(2)(ii).

The Hearing Officer found that up to and including during the hearing, records were identified which were not provided to Parent. This impeded Parent's ability to participate both in the decision-making process regarding the provision of FAPE to the Student and impeded her ability to participate in the process and present evidence at hearing. This process would include the resolution/settlement process where having such records might have assisted Parent in demonstrating to the District why she believed that the Student was being denied a FAPE. Thus, the Parent has met her burden in proving a procedural violation regarding denial of FAPE. 34 CFR 300.513(a)(2)(ii).

## (II) Substantive Component of a Legally Sufficient IEP

To determine whether the District complied with the second prong—the substantive component of a legally sufficient IEP—the Hearing Officer must find that the District's IEP for the Student identified his needs/eligibility and offered services to address those needs as required by statute. To meet the *Rowley* standard the IEP must be developed based on an evaluation that meets statutory requirements.

The Hearing Officer has found that the District did not conduct an appropriate evaluation to identify the Student's needs and that the IEPs developed were inadequate to address the Student's needs. Thus, there was no IEP reasonably calculated to enable the Student to receive educational benefits that were more than nominal. Without an adequate IEP the Student could not attain an appropriate public education under IDEA that would produce progress, not regression *T.H.* The Student's IEPs from September 2011 to the current IEP fail to meet the *Rowley* standard.

The District failed to provide ESY for the summer of 2012. ESY must be provided if the Student's IEP team determines that the services are necessary for the provision of FAPE. 34 CFR Sec. 300.106. A number of factors must be looked at when considering such services—some of which specifically pertain to the Student, in addition to regression/recoupment, such as a child's behavioral and physical problems and the ability of parents to provide educational structure at home. *Johnson v. Independent School District No. 4 of Bixby*, 921, F.2d 1022 (10<sup>th</sup> Cir. 1990). In *Johnson*, the court overturned an administrative proceeding and district court, finding that they relied on insufficient information to determine whether the child needed a summer program because they looked only at past regression and recoupment problems. The *Johnson* court factors were adopted by the Illinois State Board of Education and made available to school districts by way of memorandum dated November 20 2001, and made available by the District in a bulletin dated January 3, 2005 (Amended Bulletin No. 4). The District bulletin specifically notes "An extended school year may be necessary when a student is likely to experience regression in areas of learning crucial to his or her attainment of self-sufficiency and independence during extended breaks." The Parent has met her burden in presenting evidence that the District did not provide ESY for the summer of 2012, which is a denial of FAPE.

Additionally, IDEA regulations state that AT is part of a child's special education, related services or supplementary aids and services. 34 CFR § 300.105. Failure to consider or provide for AT is a violation of IDEA. *Kevin T, W.T., and K.T v. Elmhurst Community School Dist. No. 205; and the Illinois State Board of Education*, 2002 U.S. Dist. LEXIS 4645 (ND 2002.)

IDEA regulations also require a school to provide Parents a progress report on a student's IEP goals. 34 CFR Sec. 300.320. The Hearing Officer has made a finding that the District did not provide progress reports to the Parent.

The preponderance of the evidence in this case supports Parent's assertion that the District failed to conduct an appropriate evaluation and denied the Student a FAPE by failing to develop an IEP to provide him educational benefit. Parent has met her burden pursuant to statute and case law in demonstrating that the District failed to provide the Student a FAPE and is entitled to relief.

#### **Placement/Location**

All witnesses are in agreement, including the outside evaluators, that the Student's current school is the appropriate location for his placement, which is the low incidence classroom, to include services as recommended by the outside evaluators and as ordered below. District personnel and outside evaluators believe that the Student will function best in this environment and that a change to another school might provoke a regression in behavior. So long as the appropriate services are provided, this is the appropriate placement. Parent's request for a list of three other possible public school placements is denied.

#### **Least Restrictive Environment (LRE)**

To meet IDEA requirements, the School Code and implementing regulations, the District must provide the Student with a FAPE in the least restrictive environment (LRE). The law mandates placement in the LRE and mainstreaming to the maximum extent appropriate but not at the expense of FAPE. "Under the IDEA, children with disabilities must be mainstreamed with non-disabled peers to the extent possible.... (mainstreaming) was not developed to promote integration with non-disabled peers at the expense of other IDEA educational requirements and is applicable only if the IEP meets IDEA minimums.... In implementing the LRE mandate, each school district must maintain a continuum of program options, which range from regular classrooms with supplementary aids to separate schools and residential facilities. See 34 C.F.R. 300.551(b)(1). Thus, the regulations contemplate that mainstreaming is not required in every case." *Board of Education of Murphysboro Community Unit School District v. Illinois State Board of Education*, 41 F.3d 1162, 1168 (7th Cir. 1994).

Prior to attending his current school the Student had been in the gen ed setting with accommodations and modifications. However, when he transferred to the current school he was placed in a low incidence classroom because of behavior issues and has remained

in this setting. All testimony and documents support a determination that the Student must continue in this setting. However, he must have an intensity of services that will help him progress and move to a gen ed setting as soon as feasible. The Student does well in math and this will be an opportunity for him to progress into the gen ed population with appropriate services. The LRE for the Student at this time will be the low incidence classroom with sufficient and appropriate services, including but not limited to speech/language direct services, OT, AT, and CAP remediation, that will help him progress and meet appropriate goals in the IEP.

### **Remedy/Relief Request**

Parent is entitled to the following relief:

### **Records**

The District will produce the following records for Parent:

- 1) Emails (including attachments) between District speech pathologist listed on SD 463; 8/21/2013 entry.
- 2) Emails between District audiologist and District speech pathologist/case manager with attachment of 3 CAP goals; SD 483-484, 3/27/2014 entry.
- 3) Emails between District audiologist and speech pathologist with message on attached research and the attached research; SD 484, 3/27/2014 entry including article from American Speech language-Hearing Association.
- 4) NCLB documents: notice sent to the school and other District administrators such as the SSA-November 2012; notice sent to Parent November 2012; email exchange between the school and NCLB department; Parent application for NCLB transfer.
- 5) ESY data for determination for Summers 2012 and 2013; and for summer 2014.
- 6) ESY progress report for Summer 2013.

### **IEP**

The District must convene an IEP to include the four outside evaluators who conducted thorough evaluations and two of whom have participated in developing IEPs in schools: a)to revise eligibility based on the review of the IEEs to determine Student eligible under Autism and Speech Language Impairment; b)develop individualized and measurable goals/objectives with accurate present levels of performance, including modifications/accommodations to meet his needs; c)to have the Student participate in state and local assessment with accommodations rather than the alternative assessment; d)include appropriate services. The District must reconvene the IEP after the completion of the FBA report.

### **Services**

The District must provide direct and consultative, individual and group services, as recommended by the outside evaluators to address the Student's deficits.

**AT**

The District must provide AT in class and training for Student, Parent and staff and a lap top and/or iPad with apps for Student.

**Reimbursement for IEEs**

The District must reimburse the four outside evaluators' IEEs.

**Payment to Outside Evaluators for Participation in the IEP**

The District will pay the outside evaluators for their time to be spent helping develop the IEP.

**FBA**

The District will pay for social work and FBA evaluations, with Parent selecting the evaluator.

**ESY**

Student is entitled to ESY, which is currently included in the April 2014 IEP. If the comp ed services detailed in the order can be available to the Student for ESY 2014, they can be included. However, the Hearing Officer will not order this because Parent did not make the specific request and it may not be possible to have everything in place for the ESY summer 2014.

**Compensatory Education**

The District will provide comp ed services for two years.

Based on the evidence, the Hearing Officer makes the following conclusions of law:

**I.** Parent offered evidence that met the criteria for a procedural violation with respect to school records and a denial of FAPE—that the procedural inadequacies significantly impeded the Parent's opportunity to participate in the decision making process regarding the provision of a FAPE. 34 CFR 300.513(a)(2)(ii).

**II.** With respect to its request for due process hearing, the District failed to meet its burden of proof for the appropriateness of its evaluation. 105 ILCS 5/14-8.02(b). A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency....' (34 CFR Sec. 300.502(b)(1)) unless the district demonstrates in a hearing that the evaluation obtained by the parent did not meet required criteria. 34 CFR 300.502(b)(2). The District failed to demonstrate that the Parent's evaluation did not meet required criteria.

III. The District violated its obligation, in compliance with applicable law, to offer the Student a free, appropriate public education (FAPE). IDEA 20 U.S.C.A. sec. 1400(d)(1)(A). The District failed to meet the standard the United States Supreme Court articulated--a two-prong test to determine whether a child has been given a free appropriate public education under the IDEA. *Hendrick Hudson Dist. Bd. of Education v. Rowley*, 458 U.S. 176 (1982). The District must ensure a FAPE is available to each child with a disability who resides in the state and is enrolled in the District and requires special education and related services, to accord with 34 CFR 300.101 through 300.103. The District violated its obligation to provide education and services according to the child's individualized education program. 34 CFR 300.39(a); 223 Ill. Admin. Code 226.50.

**ORDER:**

In light of the fact that Parent has set the date of September 30, 2014, for the completion of the FBA, the Hearing Officer is including that date in the order. Additionally, Parent asks for an IEP meeting to consider the FBA by October 15, 2014, acknowledging that school will be ending the middle of June 2014 and regular school year will begin at the end of August 2014. However, Parent also requests an order for the District to convene an eligibility/IEP meeting within the 20 days of this order to change the IEP and include the outside evaluators in that IEP meeting. The Hearing Officer interprets this to mean Parent requests an IEP to be convened within 20 days of this order and then seeks to have the IEP reconvened by October 15, 2014, to incorporate the FBA and develop a BIP.

1. The District is to conduct a social work and FBA with Parent selecting the evaluator, to be completed (including the report) at the latest by September 30, 2014, not to exceed the cost of \$3,500, including the evaluator's participation in an IEP meeting to develop an appropriate behavior intervention plan (BIP).
2. The District is to convene an IEP within 20 days to include all of the outside evaluators in the IEP.
3. The District must revise eligibility based on the review of the IEEs to determine Student eligible under Autism and Speech Language Impairment.
4. The District must develop an appropriate IEP with individualized and measurable goals/objectives and accurate present levels of performance based on the Student's eligibility and identified educational needs including appropriate modifications/accommodations, based on the outside evaluators' recommendations, which will enable the Student to make progress.

5. The IEP must include a plan to provide access to the general education academic class in math, as soon as the appropriate behavior plan is in place.
6. The IEP must include related services in the amounts specified in the IEE reports (page numbers are included so that the IEP team can ensure inclusion of the appropriate services)— as follows: a) provide speech/language direct services of 60 mpw and 30 mpw of group services (PD 642); b) OT direct services for at least 60 mpw (PD 709), to include work on speech recognition software such as *Dragon Speaking Naturally* (or other appropriate speech to text software) (PD 682), use of *How Does Your Engine Run* or *Zones of Regulation*, or *Alert* (PD 705), 45 mpw OT consultative services—sensory, AT technologies and access, life skills (PD 690), using utensils for feeding (PD 705), choosing weather-appropriate clothing (PD 706); Text Production-goal for keyboarding, speech recognition (PD 706); organizing/management skills (PD 706).
7. The IEP must include assistive technology 60 mpw, including classroom implementation and training to Student, Parent and staff as required (PD 709); lap top and/or iPad for the Student with Write:Outloud 6 and Co:Writer 6, screen reading software; Start to Finish series, Bookshare.org, windows based-internet access, scanning and printing capabilities (PD 642).
8. The IEP must include CAP direct services 60 mpw in two 30-minute sessions for aural rehabilitation (PD 657-658) and the following materials: *Differential Processing Training Program* and *Processing Power* (PD 658).
9. The IEP must state that the Student will participate in the state and local assessment with accommodations.
10. The IEP will include 1:1 paraprofessional support as currently contained in the IEP.
11. The IEP will include transportation with a bus aide as currently contained in the IEP.
12. The IEP will include ESY services for the summer of 2014 as currently contained in the IEP.
13. The District must provide compensatory services based on the recommendations of IEE providers, after the school day, for two years and during ESY, with appropriate transportation or reimbursement to Parent for transportation up to two trips (to/from service provider). The services to be provided are as follows: 1:1 tutoring services by a certified special education teacher trained in scientific research based interventions to address reading comprehension and written language, for two hours weekly for 80 sessions; b) 1:1 speech language services by a certified speech pathologist to address speech and auditory processing deficits 60 mpw—two 30-minute sessions a week for 80 hours; c) 1:1 OT services by a certified OT 30 mpw, for self care, keyboarding

skills and speech recognition skills; d) 40 hours of direct AT training to Student and Parent by a professional chosen by Parent.

14. The IEP is to be reconvened no later than October 15, 2014, to consider the FBA and develop a BIP.

15. The District is to reimburse the outside evaluators as follows:

██████████, psychological - \$4,000 (PD 631); ██████████, speech/AT evaluation - \$1250 (PD 644); ██████████, OT - \$3125 (PD 711); ██████████, CAPD - \$600 (PD 662.) The outside evaluators, including the behavior evaluator, are to be paid for their time in helping develop the new IEP.

Within 30 school days the District shall provide to ISBE proof of compliance with this order, with respect to the initial IEP. The District shall provide to ISBE proof of compliance with this order, with respect to the reconvened IEP for the consideration of the FBA and for the BIP development, by November 3, 2014.

**RIGHT TO REQUEST CLARIFICATION:** Either Party may request clarification of this decision by submitting a written request for such clarification to the 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. A copy of the request shall be mailed to the other parties 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.

**FINALITY OF DECISION:** This decision shall be binding upon the parties unless a civil action is commenced.

**RIGHT TO FILE CIVIL ACTION:** 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 105 ILCS 5/14-8.02a(i) that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision was mailed to the party.

This Decision and Order entered May 16, 2014.

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Ann Breen-Greco, Impartial Hearing Officer



Email: [annbreen-greco@sbcglobal.net](mailto:annbreen-greco@sbcglobal.net)

**APPENDIX A**

■  
Student  
vs.

Case No. 2014-0157

CPS  
School District

|                               |            |
|-------------------------------|------------|
| Child ■■■■■■■■■■              |            |
| Attending School- CPS Agassiz |            |
|                               |            |
| Child's Parent(s) ■■■■■■■■■■  | Petitioner |

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**CERTIFICATION OF THE RECORD –  
HEARING OFFICER RESPONSIBILITIES**

**A. RESPONSIBILITY.**

1. Hearing Officer. The Hearing Officer has the sole responsibility for certifying the record for all cases to which the Hearing Officer is assigned.

2. Timing. After issuance of an Order of Withdrawal, Order of Dismissal or Decision, Hearing Officers shall certify and return the organized record to the ISBE. Hearing Officers shall provide the ISBE a record certification, along with the complete record within thirty (30) calendar days of the issuance of the Order of Withdrawal/Dismissal or Decision, as the case may be.

3. Form. The Hearing Officer shall certify the record using the attached Form “Certification of the Record.”

**B. CONTENTS OF THE RECORD.**

1. Content of Certification. Hearing Officers shall include in the record all exhibits submitted by any party that were admitted into evidence, all pleadings, motions, briefs, or other documents filed with the Hearing Officer, all orders, the Decision and any correspondence between the Hearing Officer and the parties/counsel as provided below at B-2.

2. Correspondence. The Hearing Officer will not include any letters, emails or facsimiles as part of the record except for letters, emails and facsimiles requested for inclusion by a party and included in the party’s five-day disclosures. The Hearing Officer has the discretion to include any other letters, emails or facsimiles into the record prior to the end of the hearing. The Hearing Officer should include in the record any letters, emails and facsimiles that document the basis for any rulings, relate to compliance with any IDEA or Illinois legal requirements, or might be relevant to any possible basis for appeal.

3. Evidence Excluded From the Record. Any exhibits, or portions of the verbatim record, that the Hearing Officer during the course of the hearing allowed as a separate record for the purposes of appeal, shall be so marked or identified, noted in the certification, and accompany the record. Any other proposed exhibits or documents not admitted into the record shall be destroyed or returned to the party who provided the proposed exhibit or document.

CERTIFICATE OF SERVICE VIA CERTIFIED MAIL

I, the undersigned Ann Breen-Greco, certify that on May 16, 2014, a copy of the Final Decision and Order was served upon the following persons via certified US Mail delivery by depositing the same in the United States Mail, in an envelope securely sealed, postage prepaid, return receipt requested and legibly addressed to the addresses set forth below:

[REDACTED]

[REDACTED]

**Andrew Eulass  
Due Process Coordinator  
Illinois State Board of Education  
Division of Special Education Services  
100 N. 1<sup>st</sup> Street  
Springfield, IL 62777**

Dated: May 16, 2014

Signed:

Ann Breen-Greco

[REDACTED]