



did not adequately respond to their complaint as required by Illinois law. The district filed its response to the parents' motion on October 31<sup>st</sup> and included an amended response to the complaint. On November 3<sup>rd</sup>, the undersigned issued an order finding that although the district's October 17<sup>th</sup> response had not fully addressed the parents' concerns, its amended response added further information. The district was granted leave to file a second amended complaint, which it did on November 7<sup>th</sup>.

The parties participated in mediation on November 5<sup>th</sup> but were unable to resolve the parents' concerns. The prehearing conference was held on November 12<sup>th</sup>, and the due process hearing was scheduled for February 2-6, 2015. On January 16<sup>th</sup>, the district requested that the hearing be continued to April 23<sup>rd</sup> because of the unavailability of two potential witnesses and recent administrative changes in the district that had occurred the prior week. The undersigned held a status conference to discuss the district's motion, which the parents strongly contested. After reviewing each party's position, the undersigned denied the district's motion.

On January 28<sup>th</sup>, the parents filed a formal motion to exclude several district documents. The district provided the disputed documents to the parents by the five-day disclosure date but had not provided them prior to that date. The parents asserted that the district had an ongoing obligation to provide all the student's records pursuant to their September 29, 2014 records request and to the undersigned's order to provide documents. The district argued that some of the documents were not student records and others had not been received by district's counsel until January 23<sup>rd</sup>. Additionally, the district stated that the Illinois Student Records Act does not impose a continuous production obligation. The undersigned addressed the parents' motion at the start of the hearing and, based on disclosure of the documents by the five-day disclosure date, denied the parents' motion.

The hearing was held on February 3-6, 2015 at the student's school.<sup>2</sup> The district provided court reporters throughout the hearing.<sup>3</sup> No transcript was issued prior to the date of this decision; therefore, the testimony referenced below is based on the undersigned's written hearing notes and memory. In rendering this decision, the undersigned has considered all documents entered into evidence, testimony by parties' witnesses, the parties' closing arguments and their suggested case law, as well as the hearing officer's independent research. This

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<sup>2</sup> The February 2<sup>nd</sup> hearing date was cancelled due to an emergency weather closing of the district's schools.

<sup>3</sup> Marie L. Rogers was the court report on February 3<sup>rd</sup> and 4<sup>th</sup>, and Renee Ruiz was the court reporter on February 5<sup>th</sup> and 6<sup>th</sup>.

decision is issued within ten business days after the hearing's conclusion, as required by Illinois law. 105 ILCS 5/14-8.02a(g55)(5).<sup>4</sup>

### **ISSUES AND REMEDIES REQUESTED**

The parents' complaint raises the following issues:

1. Whether the district failed to fully evaluate the student, including his visual-spatial and language deficits, and thereby failed to identify all of his educational needs;
2. Whether the district failed to provide all related services, including occupational therapy and speech/language therapy, in sufficient intensity and frequency required to meet the student's educational needs;
3. Whether the district failed to design a sufficient IEP that included specialized academic instruction and necessary related services to meet the student's educational needs;
4. Whether the district failed to propose an appropriate placement with sufficient specialized instruction and related services that includes a small, multi-sensory environment that provides pre-teaching, repetition, scaffolding, and integrated speech/language instruction to meet the student's educational needs;
5. Whether the student failed to make academic progress from October 7, 2012 through the present and if so, whether the district failed to account for his lack of progress by revising his IEP, as required by the IDEA; and,
6. Whether the district's above failures denied the student a free appropriate public education (FAPE).

For the above alleged denial of FAPE, the parents request that the hearing officer order the district to:

1. Place the student in a private, specialized school that has experience educating children with multiple learning and language disorders and has the resources and curriculum designed to meet the student's needs at district expense;

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<sup>4</sup> The ten days ended on February 16, 2015. However, that date is a national holiday and pursuant to Illinois law, the decision due date is then moved to the next business day, February 17<sup>th</sup>.

2. Provide transportation to/from the private school placement;
3. Provide compensatory education in the form of:
  - Reimbursement to the parents for outside therapy and academic tutoring they have provided (approximately \$5,000.00);
  - Substantial remedial tutoring in language arts and math (approximately \$10,000.00) and speech therapy (approximately \$10,000.00) for the district's failure to provide the student a FAPE for the past two years through the resolution of this dispute;
  - Evaluate the student in the areas of visual spatial deficits (OT) and Assistive Technology (AT); and,
4. Prepare an IEP that addresses the student's needs for specialized instruction and for the student's learning disorders, language disorders, and visual spatial deficits.

#### **FINDINGS OF FACT**

The student, who is currently in sixth grade, attends a district middle school and receives special education and related services as a student with a speech/language impairment and a specific learning disability. PD 87. When he was enrolled in the district in first grade, he had not been identified as a student with a disability. PD 350; SD 294. He attended summer school in 2011 and received a D- in both reading and math. PD 397, 398. The teacher's notes report that he "rarely/never" completed reading or math assignments and indicate "great concern" about his progress in both subjects. *Id.*

#### **Evaluations and IEPs**

When the student entered third grade in September 2011, he was evaluated for Section 504 services. PD 220. The evaluation determined that he had a fluency problem that impacted his comprehension and also had "focusing difficulties." *Id.* Although the 504 Evaluation Summary indicates that the student "does not have physical or mental impairment which substantially limits one or more major life activities," the district developed a Section 504 education plan. PD 219. The Plan's goal is to improve the student's reading and math skills through "instruction at his level in reading and math." *Id.* The instruction was to be provided in a small group three times/week for 30 minutes/session. *Id.* The

504 Plan also included accommodations and modifications of extended time, reading directions to the student, and breaks for classroom, district, and ISAT testing. *Id.*

The student was placed in the school's Response to Intervention (RTI) program several weeks after the Section 504 Plan was developed. PD 399; SD 267. RTI is a three-tiered regular education intervention, which provides computerized instruction in reading and math. Tier I is the lowest level and Tier III is the highest. When the student was referred to Tier II on October 10, 2011, he was reading at a first grade level. PD 399; SD 266, 267. The November 18, 2011 RTI progress report describes him as "very distracted" and "always moving." PD 410. A month later, the same teacher's progress monitoring form reports that the student had not made any progress for five consecutive weeks. PD 403. The teacher testified that she had talked with the student's parents about her concerns and "often" spoke with the district's special education director about the student. The special education director testified that although she was responsible for RTI, the school principal had initial responsibility for the program. Notably, none of the RTI Monitoring Forms is signed by the principal, even though each form has a signature line titled "Principal Signature." PD 592-602. The form does not require the signature of the special education director.

The student was referred to Tier III on December 12, 2011. PD 403. The student's third grade teacher testified that the student was having a "very hard time with math and reading" at that time. Although a few of the RTI progress monitoring forms show slight improvement, the majority document "no progress." PD 399-409. The reports state that the student does not retain information, needs 1:1 instruction, needs to focus, and is easily distracted. PD 403, 404, 406, 408, 409. The January 3, 2012 - March 27, 2012 Progress Monitoring Forms recommend that he be referred for a Case Study Evaluation (CSE). PD 599, 602. Those forms also report that he "can't distinguish between sounds," "still can't identify vowel sounds," needs to focus, and is easily distracted. *Id.* The evidence shows that despite many months of staff recommendations for a CSE, the district did not evaluate the student until his mother requested a CSE in May 2012, at the end of the student's third grade year. PD 637-641.

The initial CSE included a social development study, a classroom observation, an assessment of the student's academic and cognitive functioning, and a speech/language assessment. The social worker's report describes the teacher's behavioral concerns about the student: he was overly active, fidgety, easily excited and stimulated, and "yells out often" in class. PD 363; SD 175. The parent reported attention problems, concerns about somatic symptoms, and stated that the student was nervous and did not understand what he was being taught. PD 364; SD 176. The student confirmed the latter statement by stating that he did not understand what was being taught and had difficulty

understanding material even after asking for help. *Id.* The social worker testified that although the report and scores raised concerns, she had not recommended social work services for the student.

The psychologist used the Behavior Assessment System for Children, 2<sup>nd</sup> Edition (BASC-2) to assess the student's behavior. The BASC-2 is a rating scale, and the student's teacher, the mother, and the student each completed a rating form. PD 365, 368, 373.<sup>5</sup> The teacher's ratings yielded clinically significant scores in hyperactivity, school problems, attention problems, learning problems, and depression, and at-risk scores in internalizing problems, anxiety, and externalizing problems. PD 381, 382. The student's composite score on the BASC-2's Behavioral Symptoms Index was in the clinically significant range. PD 386. Although the psychologist did not appear as a witness, the school worker who was part of the initial evaluation team testified that attention was "definitely an area of concern" on the BASC-2. She confirmed the third grade teacher's statements noted in the initial evaluation, which report that the student was "overly active, fidgety...moves around frequently, verbalizes often, yells out often and is easily excited and stimulated." PD 363.

The psychologist used the Woodcock-Johnson III Tests of Cognitive Abilities and the Woodcock-Johnson III Tests of Achievement to assess the student's cognitive abilities and academic achievement.<sup>6</sup> On the cognitive assessment, the student showed low-average overall intellectual ability, with lower scores in cognitive processing and verbal knowledge and comprehension. PD 383, 384; SD 163, 164. The achievement testing revealed weaknesses in academic knowledge, "very limited" basic reading skills, and limited reading comprehension and math skills. PD 384; SD164. Based on this information, the psychologist found that the student had "very limited" skills in sight reading and quantitative reasoning. PD 385; SD 165. The report includes extensive instructional recommendations and interventions to address the student's deficits in word recognition, reading fluency, vocabulary, math calculation and problem

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<sup>5</sup> For clarity in the record, it is noted that these documents appear to be out of order. PD 365 identifies the teacher as the rater but includes only three of the seven pages. PD 365-367. One of the missing pages is a report of the scores, similar to the reports included with the student and parent ratings. PD 368 identifies the rater as "child"; however, on PD 371 the document that the report is based on the parent's rating. Similarly, PD 373 identifies the rater as the mother but PD 376 states that the report is based on the student's rating of himself. It is clear from this record, and was discussed at the hearing, that pages are out of order and must be read in the correct order to understand the information therein: PD 373 and PD 368 should be reversed. The district's evidence binder includes only one page of the BASC-2 SRP T Score Profiles, which is not labeled but appears to be the page from the student as rater (compare PD 374, SD 178).

<sup>6</sup> Although the parents subpoenaed the school psychologist, he did not appear as a witness or otherwise respond to the subpoena. The district reported that he was out of town caring for an ill relative.

solving, writing, and social communication. PD 386-388; SD 166-168. These recommendations include explicit phonics instruction. PD 387; SD 167.

The speech/language pathologist used the Goldman-Fristoe Test of Articulation, the Receptive One-Word Picture Vocabulary Test, the Expressive One-Word Picture Vocabulary Test, and the Test of Language Development-Intermediate, 3<sup>rd</sup> Edition (TOLD-I III) to assess the student's speech/language development. PD 393-396; SD 182-185. He determined that the student had above average receptive vocabulary, average expressive vocabulary, and slightly above average overall language development skills. PD 396; SD 185. At the hearing, the speech/language pathologist testified that he learned "after the fact" that the TOLD I-III he had administered was four years out-of-date. He used that test because it was the assessment that the district had. He testified that he was not concerned about the validity of the 2012 results because "test composites are universal" and "either he (the student) can do it or he can't."

This opinion was directly contradicted by the two independent evaluators who have evaluated the student. One of those evaluators, who is a licensed speech/language pathologist, testified that a test is not valid unless it is the most current version of the test. She further opined that it is not useful to use an outdated test. The other independent evaluator is a licensed psychologist with extensive experience as a neuropsychologist who evaluates children and adolescents, including students with speech/language deficits. She testified that the TOLD-IV was released "three or four years prior" to the date on which the district's initial speech/language evaluation was conducted. She testified that tests such as the TOLD are updated regularly and confirmed that scores on an out-of-date test are not valid. The district offered no evidence to contradict the testimony of these two witnesses. Therefore, the undersigned finds that the TOLD I-III was out-of-date when it was administered to the student; therefore, the student's scores on that assessment are invalid.

The district convened an eligibility and IEP meeting on May 29, 2012, at the end of the student's third grade year. PD 192; SD 17. The teacher reported that the student was functioning at a beginning second grade level in reading and first grade level in math and also noted that he was "overly active, fidgety with his hands and body, moves around frequently, touches other students frequently, verbalizes often, yells out often and is easily excited and stimulate." PD 201; SD 8. The mother also expressed concerns about attention problems and difficulties with homework. PD 202; SD 9. Based on the psychologist's evaluation, the district determined that the student had "processing deficits in short term memory and long term retrieval," which adversely impacted his academic progress. PD 198; SD 15. He was found eligible for special education as a student with a specific learning disability in basic reading skills, reading fluency skills, mathematical calculation, mathematical problem solving, listening

comprehension, reading comprehension, and written expression. PD 196; SD 13. He was not found eligible for speech/ language services. PD 197; SD 14.

The May 29<sup>th</sup> IEP has one reading goal and one math goal. PD 207, 208; SD 20, 21. Neither the reading nor math present level of performance (PLOP) contains any information on the student's processing deficits and how those deficits impact him in reading and math. *Id.* The reading goal, which states that the student "will understand and apply the knowledge of sounds, letters, and words to become independent and fluent reader," does not address his processing or memory deficits. PD 207; SD 20. The math goal, which states that the student "will make progress toward knowledge and sense of numbers and operations," also does not address his processing or memory deficits. PD 208; SD 21.

Although the PLOP statements do not provide any information on how the student's learning disability impacts his performance or his then-current levels in math and reading, they do state that the BASC-2 teacher rating form yielded scores in the clinically significant range and "suggest a high level of maladjustment." *Id.* Despite the psychological evaluation and the district's inclusion of this information in the student's PLOP statements, the district did not develop any goals on these identified problems or provide any services to address these needs.

The IEP requires modifications for classroom-based, district, and state assessments. PD 207-209; SD 20-23. The student's educational program includes placement in the general education classroom for all non-academic subjects for 400 minutes/week, co-taught reading (general education classroom with special education instruction) for 600 minutes/week, and co-taught math for 400 minutes/week. PD 211; SD 24. Required supplementary aids and services include extended time, chunking materials, having directions read, pacing and timing, and motivation/ reinforcement. PD 212; SD 25. The IEP also requires Extended School Year (ESY) in a general education classroom for 940 minutes/ week. PD 213; SD 26.

The IEP meeting for the student's fourth grade year was held on September 13, 2012. PD 180; SD 29. This IEP includes the following significant information: the student has "difficulty with focusing and is impulsive. (The student) went to summer school and his reading has improved. It is the focusing that contributes to difficulty with academics. He has difficulty with attending. (The student) needs prompting and reassurance to start his work. He is struggling in math, place value and math concepts of time, skip counting and number sense.... He lacks self-confidence and needs to be reassured." PD 181; SD 30. This information, which corroborates the teacher's BASC-2 ratings in the initial

evaluation, is not incorporated into the goals' PLOP statements nor is it addressed in the goals.

The PLOPs, goals, and benchmarks are identical to those in the prior IEP and, as before, do not address the student's specific learning disability - his processing and memory deficits. PD 183, 184, 207, 208; SD 20, 21, 32, 33. The district did not develop any new IEP goals to address the student's impulsivity, self-confidence and difficulty focusing, even though those problems are memorialized in the IEP.

On September 20, 2013, the district convened an IEP meeting to plan for the student's fifth grade year. PD 169; SD 41. The mother raised concerns about the student's focusing and attention problems and informed the district that the student had been diagnosed with attention deficit disorder (ADD) by his physician and prescribed medication for ADD. PD 170; SD 43. The mother also expressed concern that the student did not know his multiplication facts and had difficulty telling time. *Id.*

The PLOPs for each goal report that the student is two years behind (i.e., at third grade level) in reading, spelling, and math and not on grade level in writing. PD 161; SD 45. The student's recent ADD diagnosis is not included in this statement of functional performance. As before, there is no specific information on how the student's processing and memory deficits impact his academic performance or any specific information about his academic and functional performance to serve as a baseline. *Id.*

Neither the reading nor math goal addresses the student's processing or memory deficits. *Id.* The special education teacher testified that the IEP goals were carried over from the prior year. An examination of the record confirms her testimony - except for the date, the goals are identical. SD 32, 33, 45, 46. Three of the language arts objectives are also identical, and the fourth is essentially the same except for the omission of two prompts. SD 32, 45. The criterion for meeting each objective is increased from 70% to 80%. *Id.* The math objectives are also identical for both years, except for "problems with/without regrouping" in the first 2013 objective. SD 33, 46. The criterion is increased to 80% in 2013. *Id.*

The district did not make any changes to the amount of special education instruction provided to the student. PD 165; SD 49. ESY is not required. PD 178; SD 62. Although the IEP again memorializes the parent's concerns from the prior year, the IEP team did not address those concerns through any new services or goals. PD 170; SD 43. The evidence shows that no substantive changes were made to the student's IEP goals or educational program since May 29, 2012, when the student was first found eligible for special education and his first IEP was developed.

Three months later, on December 4, 2013, the district convened a second IEP meeting to address the mother's concerns about the September 20<sup>th</sup> IEP. This time the mother brought an educational advocate to the IEP meeting with her. PD 157; SD 53. The documents show that although a meeting was held, the district did not make any changes to the IEP: the conference report page is dated "12.4.13" but all the other pages are dated from the September 2013 meeting. PD 161-179; SD 56-63. There are no IEP notes memorializing the discussion that occurred at the meeting.

The educational advocate testified that she could not "understand where (the student) truly is" because there was no pertinent information in the IEP's PLOP statements, the goals were inadequate, and the district had not collected any data for the goals and benchmarks. This testimony is confirmed in a complaint that the educational advocate filed with the ISBE on December 19, 2013. PD 646-648. The complaint asserts that the December 4<sup>th</sup> IEP was "neither procedurally correct nor educationally useful" and did not comply with the IDEA. The complaint also states that the district informed the parent and advocate at the IEP meeting that "there are no progress monitoring tools being utilized in his classroom for reading or math." PD 647.

The complaint further states that the teacher disagreed with the 2012 recommendation by the psychologist for a phonics-based component in reading instruction. PD 647. The advocate requested an independent educational evaluation (IEE) at district expense by an evaluator who "will not simply provide data points from standardized assessments, but evaluate his skills, determine points of breakdown, inform both annual goals and objectives and specialized instruction and identify all areas of need" and an independent evaluation of the student's speech/ language functioning. *Id.* PD 648. The advocate also requested that the independent evaluator attend the IEP meeting to help the district prepare the IEP. *Id.*

The district agreed to the parents' IEE request and also agreed to the evaluator proposed by the parents and educational advocate. The IEE was conducted on April 14 and 22, 2014 by Dr. T. PD 520; SD 186. Dr. T. has both a master's and a doctoral degree in clinical psychology. She has been trained to administer and interpret a broad range of neuropsychological assessments to children and adolescents. She has been working as a neuropsychologist for 15 years and has assessed students who have a wide range of neurodevelopmental issues. She also is very familiar with the IEP process and meetings.

Dr. T. reviewed the district's initial evaluation and also interviewed the student's teachers. PD 521. The fifth grade general education teacher reported that the student was "very social and cooperative," "verbally capable of expressing what he does not understand," and had "good fluency" in reading.

However, he reported that the student "struggled with reading comprehension, sustaining attention, and comprehending multiple step directions." *Id.* He also reported that the student was "performing at the lowest level in the class when compared to his peers in reading, math, and written language." *Id.* The special education teacher reported that the student's strengths were "his ability to verbalize his thoughts and add to class discussions." *Id.*

Dr. T. noted that the student became anxious during the evaluation as tasks became more difficult or when he felt that he was not successful. PD 522. He made mild articulation errors. *Id.* His language skills were impacted by "word finding and expressive language weaknesses" such as using plurals and irregular verbs incorrectly. *Id.* He was motivated and cooperative during the testing, and Dr. T. opined that the evaluation results were a "valid indication of his current level of neurocognitive and neurobiological functioning." *Id.*

The independent evaluation assessed the student's attention and concentration skills, sensory motor skills, visual spatial skills, intellectual skills, language skills, academic abilities, learning and memory skills, executive functioning skills, social cognition, and emotional/behavioral skills. PD 522-529; SD 188-195. Although the student's global IQ was in the borderline range, Dr. T. cautioned that the score did not reflect his overall potential because he has "functional capabilities that significantly supersede his measured global IQ, but are hindered by specific and addressable underlying learning disorders." PD 529; SD 195. The report states that "(o)ne of (the student's) most notable deficits was his attentional skills, both in visual and verbal information. (The student) had significant difficulties with inattentiveness that make his (*sic*) error prone. He additionally has difficulty with attentional stamina that makes it hard for his (*sic*) to focus for an age appropriate period of time. Executive deficits were also noted through out testing, as well as memory issues that are negatively impacted by the variability of his attentional skills." PD 531; SD 197. The evaluation determined that the student has: specific learning disorders in reading, math, and written expression; a language disorder that includes both receptive and expressive deficits; and, attention deficit hyperactivity disorder, inattentive type. PD 529-531; SD 188-197.

The evaluation determined that the student was three years behind his same-aged peers in reading comprehension. PD 530; SD 196. Because of his difficulty processing sounds related to language, he reads below grade level and has decreased grade appropriate vocabulary. *Id.* His spelling skills are low average, and he has problems with decoding. *Id.* He has difficulty understanding math concepts and applying his knowledge to solve problems. *Id.* He also lacks some basic foundational math skills. *Id.* His language development shows "considerable" word finding difficulties and difficulty comprehending complex verbal information. *Id.* The evaluation found that the "lack of multisensory

learning strategies in all subjects has likely been a significant factor for (the student) failing to demonstrate the accrual of meaningful academic gains." PD 531; SD 197. Dr. T. also noted that the student's significant language issues were not addressed in the school setting and that he needs a higher level of intervention. *Id.* She testified that the student's executive functioning deficits are not addressed in his IEPs.

Based on these findings, Dr. T. recommended placement in a "smaller school program (with smaller class size and higher student to teacher ratio)" and an integrated approach that includes "speech and language therapy to address word finding, expressive language and pragmatic language, access to technology to support academics, and a multisensory approach to learning all academic subjects." PD 531, 532; SD 197, 198. She specifically recommended the Hyde Park Day School because its program: is intensively individualized, provides individual/small group/classroom instruction, has a multi-sensory classroom and technology in all academic settings, and has an executive functioning curriculum. PD 532; SD 198.

Dr. T. testified that when the results of her evaluation are compared to those in the district's initial evaluation, there is a decline in the student's full scale IQ. Although she stated that some of this difference could be accounted for by the use of a different IQ assessment, she opined that the decline could also be due to the fact that the student's deficits in attention, language, and learning have not been addressed in his educational plan. She further testified that the score differential indicates that the student is not making progress. Dr. T.'s evaluation determined that the student's reading comprehension skills are at a beginning second grade level, his basic math skills are at a mid-second grade level, and his spelling and written language skills are at a third grade level. PD 526; SD 192.

The independent neuropsychological evaluation was reviewed at the June 20, 2014 IEP meeting. PD 143, 144; SD 66, 67. Despite discussion about the student's receptive and expressive language disorder, visual/spatial processing deficits, and the impact of attention deficits on social and academic functioning, the district did not make any changes to the student's eligibility. PD 142-144; SD 65-67. The district also again found that the student's behavior did not impede his learning or that of others. PD 145; SD 68.

The IEP has one language arts goal, which is identical to that in his prior IEPs since his initial eligibility in third grade. PD 146, 207; SD 20, 69. The PLOP states that the student is three years behind in reading comprehension and has low average spelling skills. *Id.* The criterion for the objectives is increased from 70% to 80%. *Id.* The math PLOP states that the student's math skills are "below grade and age level expectations." PD 147; SD 70. The goal requires him to make progress in multiplication, division, and dividing fractions. *Id.* The objectives

are to state or write the correct answers for addition and subtraction and for basic multiplication facts, with a criterion of 80%. *Id.* Although this goal addresses the student's deficit in math foundational skills, it does not address his deficits in attention, self-monitoring, or memory, all of which are noted in the PLOP as part of his specific learning disability in math. PD 147; SD 70. The special education service minutes are the same as in his prior IEP. PD 150; SD 73.

The district's special education director testified that the June 20<sup>th</sup> IEP does not include any goals to address the student's problems in working memory, processing speed, visual attention, social language, or word finding, all of which are noted in Dr. T.'s report. This confirms the findings above, that the IEP does not address the student's deficits in these areas.

The June IEP indicates pending evaluations for central auditory processing, speech/language, and a review of Dr. T.'s evaluation by an occupational therapist to determine if the student needs an occupational therapy evaluation. PD 153-154A; SD 76-78. The evaluations for central auditory processing and speech/language were conducted during the summer between the student's fifth and sixth grade years. After an initial hearing evaluation, the student's auditory processing was assessed. PD 515-519; SD 205-209. The evaluation found that the student has "significant problems with decoding, non-verbal language processing, fading memory and to a lesser extent, tolerance, which may result in difficulties in auditory comprehension, reading, spelling, and short-term auditory memory." PD 516; SD 208. The evaluator made several recommendations for accommodations and specific recommendations for an ear level or FM system to help decoding and processing, specific training in auditory processing and reading such as Earobics or Lindamood Bell, and decoding training. PD 516, 517; SD 208, 209.

The independent speech/language evaluation consisted of a review of Dr. T.'s report by an independent speech/language pathologist. She testified that Dr. T.'s assessments were "appropriate and well-reported" and were tests that she would have used; therefore, she used Dr. T.'s evaluation as the basis of her report. Unlike Dr. T., however, she has never met the student. Based on her review of Dr. T.'s report, the speech/language pathologist determined that the student has an expressive and receptive language disorder that impacts his working memory, reading and decoding skills, comprehension skills, and pragmatic language skills. PD 285; SD 211. She testified that it is "extremely" important for the student to have speech/language therapy because his language deficits impact his ability to express himself and to communicate with his peers. He also has problems in decoding and word-finding. She testified that placement in a communication disorders classroom that uses a multi-sensory curriculum would be "ideal." She testified that the Lindamood Bell or Wilson programs would

be appropriate for the student. He also needs interventions to address his executive functioning and working memory deficits.

The June 20<sup>th</sup> IEP was never implemented because the district reconvened an IEP meeting on September 5, 2014, to review the above speech/language evaluation. PD 112; SD 81. Based on its review, the district changed the student's primary eligibility to speech/ language impairment and listed specific learning disability as a secondary disability. PD 111; SD 80. The IEP does not indicate the basis for determining that speech/language is the student's primary disability and changing specific learning disability to a secondary disability. The IEP incorporates the speech/ language evaluation's findings that the student has a receptive and expressive language disorder, poor pragmatic language skills, and deficits in working memory and auditory processing. PD 114, 115; SD 83, 84. The IEP team also reviewed a central auditory processing evaluation, which found that the student has a moderate processing disorder and significant problems in decoding and non-verbal language processing. PD 130; SD 99. Despite these changes, the student's diagnosed attention deficit disorder is neither included or addressed in the IEP.

The September IEP requires speech/language therapy for 40 minutes/ three times/ week in the special education classroom. PD 125; SD 94. Although the speech/language PLOP lists the student's receptive and expressive language disorder, difficulty with phonological awareness, and working memory, it does not provide specific levels of functioning related to these deficits. PD 121; SD 90. The goal to make progress in listening and speaking effectively by increasing "working memory, vocabulary, syntax, phonological awareness, making inferences, understanding figurative language, and problem solving" is not measureable because it has no baseline from which to measure. *Id.* There are eight objectives, each of which requires 8/10 trials. PD 121, 122; SD 90, 91.

The speech/language pathologist documents his services to the student on log sheets, which include the date, the session length, and whether the student received group or individual services. The logs also rate the student's responses and sometimes include the goal addressed during the session. The district's log sheets provide the following data about the frequency at which the services were delivered each week: week of 9.7.14 - session on 9.9.14 for 40 min.; week of 9.29.14 - sessions on 9.30.14 and 10.2.13, each for 40 min.; week of 10.6.14 - 10.9.14 for 40 min; week of 10.13.14 sessions on 10.14.14 and 10.16.14, each for 40 min.; week of 10.20.14 - sessions on 10.21.14 and 10.23.14, each for 40 min.; week of 10.27.14 - sessions on 10.28.14 and 10.31.14, each for 40 min.; week of 11.3.14 - sessions on 11.3.14 and 11.6.14, each for 40 min.; week of 11.10.14 - sessions on 11.10.14, 11.14.14, each for 40 min.; week of 11.17.14 - sessions on 11.18.14 and 11.21.14, each for 40 min.; week of 11.24.14 - sessions on 11.24.14, 11.25.14, and 11.26.14, each for 40

min.; week of 12.1.14 - sessions on 12.2.14, 12.5.14, each for 40 min.; week of 12.8.14 - sessions on 12.9.14, 12.11.14, each for 40 min.; week of 12.15.14 - session on 12.17.14 for 40 min; SD 328-336. Based on this evidence, the undersigned finds that the student did not ever receive speech/language services three times/week between September 2014 and December 2014, or the required service minutes, per his IEP.

The IEP team also revised the student's academic goals. The IEP has one reading goal, one writing goal, and two math goals. PD 117-120; SD 86-89. The PLOP statements for these goals include the student's NWEA scores from the prior year in the relevant subject area and a general statement that he is "below the norm for a 5<sup>th</sup> grade student." PD 117-220; SD 86-89. The PLOPs do not include any information on how the student's disabilities adversely impact his educational progress. The omission of this information is particularly important in light of the change of eligibility.

The reading goal is essentially the same as that in the student's 5<sup>th</sup> grade IEP: "understand and apply the knowledge of sounds, letters, and words to become an independent reader" (5<sup>th</sup> grade), and "make progress towards applying the knowledge of phonemic awareness to become a fluent reader and improve comprehension" (6<sup>th</sup> grade). SD 56, 85. The math goals in the two IEPs are also very similar: "make progress toward knowledge and sense of numbers and operations" (5<sup>th</sup> grade) and "make progress toward increasing his understanding of number sense by using strategies such as...." (6<sup>th</sup> grade). SD 57, 87. These academic goals have no baselines from which the student's growth can be measured. There are no goals that address the student's visual-spatial processing deficit, or attention and concentration problems, all of which are documented in the IEP.

The OT and AT evaluations, which had been agreed upon at the June 2014 meeting, were not conducted until December 2014. SD 212-225. The executive director of the educational cooperative, which conducted both evaluations, testified that the co-op could not conduct the evaluations earlier because it did not receive the required paperwork until December. The AT consultation was conducted with the student's teachers and included a classroom observation. PD 294; SD 221. The student trialed different AT devices during the consultation, including a talking word processor and a word prediction program. PD 297; SD 224. The AT consultant made an intermediary plan to provide special software for the student to use with his classroom teacher. PD 298; SD 225. The consultant was to "begin to explore" talking word processor and word prediction programs after the winter break. *Id.* Staff were encouraged to attend an AT training on one of the programs. *Id.*

The OT evaluation consisted of the Developmental Test of Visual Perception, 3<sup>rd</sup> Edition (DTVP-3), the Bruininks-Oseretsky Test of Motor Proficiency, 2<sup>nd</sup> Ed. (BOT-2), a sensory profile completed by the mother, and clinical observations. SD 212. Although the parent offered to provide her concerns about the student's OT needs, the evaluator declined her offer. SD 124. The occupational therapist determined that the student has deficits in fine manual control, visual perception, and sensory processing in the area of seeking. PD 105-109; SD 132-136. The report does not include any recommendations.

The IEP team met on December 18, 2014 to review the AT consultation and the OT evaluation. PD 87, 97; SD 113, 124. The IEP team also revised the student's academic goals. The annual writing goal does not include any objective information on measuring progress for this goal. SD 143. Additionally, when the PLOP and the goal are read sequentially, it appears that the student would be going backwards: the PLOP states that the student "completes his assignments with 80% accuracy with a minimum of two verbal prompts" while the goal requires 70% accuracy in 3/5 attempts with multi-sensory prompts and cues. *Id.* Because the objectives require the same criteria as the goal - 70% accuracy in 3/5 attempts - the goal does not require any growth in skills. SD 143, 144. Although the reading PLOP indicates that the student is reading at a fourth grade level, the annual goal does not include objective information on how the goal of making "progress towards reading with understanding and fluency" will be measured. SD 142. The benchmark criteria all require the same measure as the goal: 70% accuracy on 3 out of 5 passages. *Id.*

The math PLOP states that the student "struggles" with multiplying and dividing decimals to the hundredths place and that his accuracy increases when he is provided prompts, cues, and reassurance. SD 147. However, there is no information on the student's actual current level of performance. The goal requires him to multiply and divide decimals to the hundredth place with regrouping, including money-based problems, at 70% accuracy in 3/5 trials. *Id.* The criterion for each objective is the same as that required in the goal; thus, there is no requirement for progress throughout the year. *Id.*

As in the prior IEP, speech/language services are to be provided in the special education classroom for 40 minutes three times/week. SD 156. The speech/ language goals are: to answer "wh" questions, to use context clues to define vocabulary and draw inferences, and to retell/ sequence stories or multi-step directions. SD 145, 148, 149. The goal and benchmarks require 80% accuracy in 3/5 consecutive sessions. *Id.* Each goal's PLOP provides the level at which the student is currently functioning for the goal. SD 145, 148, 149. For example, he is currently able to respond to "why" questions with 65% accuracy in 3/5 sessions with minimal to moderate verbal cues. SD 145. The objectives are tied to the goal, and each objective has a criterion for measurement. SD 145,

148, 149. The speech/language pathologist testified he works with the student either in a group or individually. The determination of whether the student receives an individual or group session is made by the speech pathologist and is based on his availability. He does not work on the student's pragmatic language skills because those are addressed by the social worker.

The log sheet for January 2015 indicate that the following services were provided to the student in this time period: week of 1.5.15 - sessions on 1.6.15 for 40 min.; week of 1.12.15 - sessions on 1.13.15, 1.15.15 for 40 min. each; week of 1.19.15 - sessions on 1.20.15 and 1.22.15 for 40 min. each. SD 337-338. The evidence shows that the student did not receive the required three sessions/week or the required service minutes in January 2015.

For the first time, the IEP includes a social work goal to address the student's pragmatic language skills. The goal's PLOP states that the student has difficulty putting his thoughts into words and staying on the topic of conversation; however, there is no objective measure of "difficulty" to serve as a baseline for goal progress. SD 146. The goal is to increase conversational skills, as shown by staying on topic and asking follow-up questions in 4/5 attempts at 80% accuracy, with prompts and cues. *Id.*

#### Student Progress

The special education teacher testified that the student showed improvement over his fifth grade year; however, she also testified she did not have any data to support this statement. The record shows that the student did not meet either of his IEP goals that year and, although the progress reports state that he made sufficient progress, he did not meet any of his reading or math short-term objectives. PD 317-320; SD 297-309. A comparison of the reading objectives across the year shows fluctuation in progress and a decline on one objective. SD 306, 307. The math goal states that he made sufficient progress even though he did not meet the standard for any of the short-term objectives. PD 319-320, 322-323, 325; SD 298, 308. Because the majority of the narratives are the same for each reporting period, it is not possible to determine if he made progress. SD 308, 309. This evidence that student did not meet his IEP goals supports a finding that he did not make educational progress in fifth grade.

Similarly, even though the student did not meet his short-term objectives, the sixth grade progress reports indicate sufficient progress on each goal. SD 310-315. The reported progress in reading is based solely on the student's NWEA RIT score rather than on the IEP benchmarks. SD 310.

The student's scores on the Illinois Standards Achievement Test (ISAT) in 2012 and 2014 were below standards in reading and math in 2012 and 2014. His

2012 science score also was below standards. In 2013, his reading and math scores were at academic warning. PD 330-338.

The district uses the Northwest Educational Association (NWEA) assessment to track student progress within its schools. The district's assistant superintendent of curriculum and instruction testified that this is used to measure student growth as required by No Child Left Behind Act. The parties dispute how the NWEA data should be interpreted and whether it shows that the student made progress. The assistant superintendent testified that progress is measured the comparing the student's RIT score across the assessment data. Using this comparison, she testified that the student did make progress and at one point "far exceeded his expected growth." Although this data shows that he regressed between winter 2013 and 2014, she said that he then grew by 15 points by spring. She also testified that the student's percentile range could not be used to measure progress. However, she did agree that his percentile scores are very low for his grade. Dr. T. also is experienced with the NWEA. According to her testimony, the percentile scores do measure progress and in this instance show that the student has not made progress. The student's percentile scores in math are 1<sup>st</sup>ile for all the NWEA assessments except in Spring 2012, when his score was 3<sup>rd</sup>ile. SD 253. His reading scores show more variance, e.g. 3<sup>rd</sup>ile in Fall 2011, 12<sup>th</sup>ile in Spring 2012, 1<sup>st</sup>ile in Spring 2014, and 5<sup>th</sup>ile in Fall 2014. *Id.*

#### CONCLUSIONS OF LAW

The IDEA ensures that children with disabilities are provided a free appropriate public education (FAPE) and related services that meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d)(1)(A). A state's receipt of federal funding is conditioned on its compliance with the statute's policies and procedures to ensure, among other things, that school districts provide a FAPE to all children with disabilities between the ages of 3 and 21. 20 U.S.C. § 1412(a)(1)(A). A district must comply with both the IDEA's procedural and substantive requirements in order to provide a FAPE to a student. Board of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester Cnty v. Rowley, 458 U.S. 176 (1982).

A school district must develop an individualized education program (IEP) for each student who receives special education and related services. 20 U.S.C. §1414(d). The educational program set out in the IEP must be "individually designed" to meet the child's unique needs and "reasonably calculated to enable the child to receive educational benefit." *Id.* While a district is not required to provide "the best possible education, the child must receive more than a *de minimis* benefit." Todd v. Duneland Sch. Corp., 299 F.3d 899, 905 (7<sup>th</sup> Cir. 2002); Board of Educ. of Oak Park & River Forest High Sch. Dist. No. 200 v. Illinois

State Bd. of Educ. and Kelly E., 21 F. Supp. 2d, 862, 29 IDELR 52 (N.D. Ill. 1998).

Whether the district failed to fully evaluate the student, including his visual-spatial and language deficits, and thereby failed to identify all of his educational needs:

A district must use a “variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent” when it evaluates a student for special education and related services. 20 U.S.C. §1414(b)(2)(A). The assessment tools must be “technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.” 20 U.S.C. § 1414(b)(2)(C). The child must be evaluated in all areas of suspected disability. 20 U.S.C. §1414(b)(3)(B). The Illinois School Code requires a district to “present evidence that the special education needs of the child have been appropriately identified.” 105 ILCS 5/14-8.02a(g-55).

The uncontroverted evidence shows that district used an out-of-date assessment in its initial speech/language assessment. The testimony by the speech/language pathologist who conducted the initial evaluation, which minimizes the necessity of using current assessment tools, is outweighed by the testimony of the two expert witnesses who stressed that up-to-date assessment tools must be used to obtain valid results. Based on this evidence, the undersigned finds that the district’s initial speech evaluation did not fully evaluate the student because it used a technically unsound instrument, in violation of the IDEA requirements.

The parents also contend that the district’s occupational therapy (OT) and assistive technology (AT) evaluations were not conducted in a timely manner. The June 2014 IEP states that the occupational therapist will review Dr. T.’s evaluation to determine if an OT evaluation is warranted. SD 76, 78. The IEP also indicates that the student needs AT and that the AT specialist will review Dr. T.’s evaluation and “update” it as necessary. *Id.* The evidence shows that the OT evaluation was not done until mid-December 2014, six months after the district agreed to the evaluation. SD 212. The AT consultation was also done in mid-December 2014. SD 221. The evidence further shows that these evaluations were not done until December because the district did not provide the cooperative with the required paperwork in a timely manner. Each evaluation determined that the student needs services in the area evaluated. SD 215, 224, 225. A preponderance of the evidence shows that there was a six-month lapse between the district’s agreement to conduct these evaluations and the completion of the evaluations and that the lapse was due to the district’s failure to provide the paperwork in a timely manner.

Whether the district failed to provide all related services, including occupational therapy and speech/language therapy, in sufficient intensity and frequency required to meet the student's educational needs:

The evidence shows that the district did not provide the speech/ language services required in the student's September 2014 and December 2014 IEPs in the frequency and intensity required in those IEPs. The student received either one or two 40-minute sessions/week rather than three sessions/week as required in his IEP during the relevant time period. The evidence further shows that the service delivery mode, i.e. individual or group, was determined by the speech pathologist's schedule rather than by the student's needs.

There is no evidence that occupational therapy services began prior to February 3<sup>rd</sup>, when this hearing began.

Whether the district failed to design a sufficient IEP that included specialized academic instruction and necessary related services to meet the student's educational needs:

An IEP is a comprehensive educational plan for a child who needs special education and related services. In developing an IEP, the team must consider a number of factors, including the child's academic, developmental, communication and functional needs. The IEP must include the child's present levels of academic achievement and functional performance, measureable academic and functional goals designed to meet the child's needs that result from the child's disability and to enable the child to be involved in and make progress in the general education curriculum and meet each of the child's other educational needs that result from the child's disability. 20 U.S.C. §1414(d)(1) (A)(i)(II). The IEP must include a statement of the special education and related services and supplementary aids and services that will be provided for the child to make appropriate progress on the IEP goals. 20 U.S.C. §1414(d)(1) (A)(i)(IV). Special education is specially designed instruction to meet a student's unique needs and, to the extent practicable, must be based on peer-reviewed research. 20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. 300.39(a)(1). This definition specifically includes speech/language pathology services and physical and occupational therapy services. *Id.*

Based on the evidence in the record, the IEPs developed during the relevant time period do not include relevant and current information on the student's academic and functional performance. The September 13, 2012 IEP has the same PLOPs, goals, and benchmarks as the May 29, 2012 IEP. PD 183, 184, 207, 208; SD 20, 21, 32, 33. Although this might be due to the end of one school year and the beginning of the next, the September IEP does have new information on the student's functioning but not in the student's PLOPs, which are

used to develop the IEP goals. The new information is the student's difficulty focusing and attending "that contributes to difficulty with academics... He lacks self-confidence and needs to be reassured." PD 181, SD 30. The IEP goals do not address how his processing and memory deficits impact his specific learning disabilities and are not measureable. PD 183, 184, 207, 208; SD 20, 21, 32, 33. The benchmarks do not include measureable criteria. *Id.*

The fifth grade IEP has the same lack of specific information on the student's processing and memory deficits and how they impact the student's functional and academic performance. PD 161; SD 45. Although the mother told the IEP team that the student had recently been diagnosed with ADD, that information is not included in the PLOPs. *Id.* The testimonial and documentary evidence shows that the goals were carried over from the prior year; therefore, this IEP has the same deficiencies as the prior IEP. SD 32, 33, 45, 46. Although the criterion for the objectives is increased, there is no baseline from which progress can be measured. *Id.* In *J.D. and B.D. v. Crown Point Sch. Corp.*, 2012 WL 639922 (N.D. Ind. 2012), the court held that IEP goals that are not measureable may be cured by benchmarks that are "logical breakdowns" of the goals. Logical breakdowns exist when a goal and benchmark taken together "would allow someone unfamiliar with (the student's) IEP to implement them and assess" progress. *Id.* That standard is not met here, where the benchmark states only that the student will make progress and the benchmarks require him to state or write the correct answers or apply skills and summarize information. SD 45, 46. Additionally, none of the above IEPs identifies specially designed instruction that will be used to meet the student's unique needs. Instead, they call for "a variety of materials and texts." SD 20, 32, 56.

The problems with measurement and insufficient information continue in June 20, 2014 IEP, which has the same language arts goal as the prior IEPs. SD 20, 69. There is no specially designed instruction in this IEP.

Whether the district failed to propose an appropriate placement with sufficient specialized instruction and related services that includes a small, multi-sensory environment that provides pre-teaching, repetition, scaffolding, and integrated speech/language instruction to meet the student's educational needs:

The placement in the current IEP includes the following: special education math, reading, social studies, and science in a special education classroom for 1200 minutes/day five days/week; speech-language therapy 40 minutes/session three days/week; 30 minutes/month social work service; 30 minutes/month occupational therapy consult service and 30 minutes/week direct in the general education classroom; and, 40 minutes/day in general education (health, physical education, computers, art or music). SD 156. The IEP goals require multi-sensory

prompts and cues, graphic organizers, highlighting, and manipulatives and flashcards. SD 142-154.

Although both independent evaluators recommended specific research-based curricula to address the student's educational deficits and need for direct decoding instruction, the district has not included any research-based curriculum in the most recent IEP. The district's psychologist had recommended "explicit instruction in phonics" in his initial evaluation. SD 167. The parents' independent evaluator recommended the Wilson program in her testimony, and the independent speech/language pathologist recommended Wilson or Lindamood Bell.

The district did recommend integrated speech/language therapy in both the September and December 2014 IEPs. However, the evidence shows that those services were not provided as required in the IEP and thus the student's needs were not met.

Whether the student failed to make academic progress from October 7, 2012 through the present and if so, whether the district failed to account for his lack of progress by revising his IEP, as required by the IDEA:

There are no IEP progress reports in the record prior to the student's fifth grade year. The fact that the IEP goals are essentially identical in the third, fourth, and fifth grade IEPs supports a conclusion that the student did not make academic progress. SD 20, 21, 32, 33, 45, 46. The IDEA requires a district to review a student's IEP at least annually and revise the IEP to address lack of expected progress. 20 U.S.C. 1414(d)(4)(A)(ii)(I). Although the IEP team met annually, it did not revise the student's IEP goals in any substantive way over these years. One notable example of this is the district's failure to address the significant new information provided by the mother at the 2013 fifth grade IEP meeting, when she informed the district that the student had been diagnosed with ADD and was taking medication. PD 170; SD 43. Although the district had been put on notice of the student's attention and focusing problems in its initial evaluation two years prior and reminded of these deficits at fourth grade IEP meeting, it did not revise the goals and services to address this problem.

In addition to not revising the IEP goals, the district did not provide any related services to address the student's educational needs until September 2014, when speech/language therapy was added to the IEP. SD 94. To date, the student does not have a behavior intervention plan or goals to address his attention and focusing problems, which have been memorialized in every IEP since the initial evaluation.

Although the fifth grade IEP progress report states that the student made sufficient progress, he did not meet any of his IEP goals or objectives. PD 317-320; SD 297-309. As of the last available report on the sixth grade IEP, he had not met his short-term objectives, which belies the district's assertion that he has made progress. SD 310-315. The district relies heavily on the NWEA data to show that the student has made educational progress. However, the district has not explained why that progress has not resulted in progress on the IEP goals or why the student consistently measures at the 1<sup>st</sup> %ile across the majority of the NWEA reports.

Finally, although both the independent evaluators have recommended specific research-based curricula to address the student's educational deficits and need for direct decoding instruction, the district has not included any research-based curriculum in its two most recent IEPs. The district's psychologist recommended "explicit instruction in phonics" in his initial evaluation. SD 167. The parents' independent evaluator recommended the Wilson program in her testimony, and the independent speech/language pathologist recommended Wilson or Lindamood Bell. Although the district is not required to implement those particular recommendations, the law requires it to provide specially designed instruction, based on peer-reviewed research to extent practicable, to meet the student's unique needs. This it has not done.

Whether the district's above failures denied the student a free appropriate public education:

A district must comply with both the IDEA's procedural requirements and substantive requirements in order to provide a FAPE to a student. *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176 (1982). The district has made significant procedural errors - not fully evaluating the student in a timely fashion, not using technically sound assessments to evaluate the student, not revising the student's IEP to address new information provided by the parents and lack of progress - and those procedural errors have impeded the student's right to a free appropriate public education and caused a deprivation of educational benefits. 20 U.S.C. §1415(f)(3)(E)(ii)(I),(III). The district has also failed to develop IEPs for the student that provide him a meaningful education benefit and thereby has substantively denied the student a free appropriate public education.

The parties have made several arguments that do not fit neatly in the above issues and so will be addressed here. First the district argues that it has the right to choose the appropriate methodology to educate the student. *Lachmann v. Illinois State Bd. of Educ.*, 852 F.2d 290, 297 (7<sup>th</sup> Cir. 1988). This case is not about methodology but whether the proposed IEP provides the student with the specialized instruction and related services he needs to receive a FAPE. The parents have requested specially designed instruction and related

services to meet the student's needs and provide him a FAPE, but they have not requested a particular methodology. The district also insists that it is required to place the student in the least restrictive environment, which it insists is the local public school. However, mainstreaming is not required "at the expense of other IDEA educational requirements and is only applicable if the IEP meets IDEA requirements." Board of Educ. of Murphysboro Comm. Unit Sch. Dist. No. 186 v. Illinois State Bd. of Educ., 41 F.3d 1162, 21 IDELR 1046 (7<sup>th</sup> Cir. 1994). In this case, the hearing officer has found that the IEP does not meet the IDEA requirements.

The parents have requested compensatory education. Compensatory education is a prospective remedy for a past denial of FAPE. Reid v. District of Columbia, 401 F.3d 516, 524, 43 IDELR 32 (D. D.C. 2008). Although the Seventh Circuit has not adopted a standard for awarding compensatory education, the Northern District has used a flexible, individualized approach to determine how much compensatory education, if any, is necessary to restore the student to the point he would have been in if not denied a FAPE. Petrina W. v. City of Chicago Pub. Sch. Dist. 299, 53 IDELR 259 (N.D. Ill. 2009). In Demarcus L. v. Board of Educ. of the City of Chicago, Dist. 299, 2014 WL 948883 (N.D. Ill. 2014), the court denied the parent's compensatory education request because the parent had not proved how the requested compensatory education would sufficiently target the student's unique needs. Similarly, in this case the parents have requested a lump sum of money to pay for tutoring. The amount requested is based on the going rate for tutors in their area of residence. This is not the qualitative standard set out in Reid and required in Petrina W.

Finally, the parents have requested placement in a private therapeutic school for 2.5 years, which is the average time that a student stays in one of the therapeutic schools proposed by the parents. A student's IEP must be updated on an annual basis to ensure that it meets a student's unique educational needs. The parents have provided no authority for their request to do otherwise.

#### ORDER

1. The district shall place the student in a therapeutic day that provides special education and related services for students with a specific learning disability and speech/language impairment. Within five days of receipt of this Order, the district shall contact the [REDACTED], [REDACTED], and [REDACTED] to determine which school has an opening for this student. If more than one of these schools has an opening, the student shall be placed in the school that is closest to his home. The district shall complete all required paperwork to facilitate the placement in a timely manner and in no case more than one week after the paperwork is received.

2. The student shall be placed in the therapeutic day school for the remainder of this school year and summer 2015, and for school year 2015-16, including ESY 2016.
3. The district shall provide transportation to/from the therapeutic school on a daily basis.
4. The district shall provide all required assistive technology for the student.
5. The district and the private therapeutic school shall hold an IEP meeting within one week of the student's enrollment and prepare an IEP that includes specialized instruction and related services based on the independent evaluations reviewed in this due process hearing.
6. The district shall reimburse the parents for the amounts they have paid for speech/language therapy and occupational therapy evaluation, as itemized in the documents PD 677 and 678, totaling \$528.00. The parents shall provide the district a copy of the itemized bill, and the district shall provide the reimbursement within 30 days of receipt of the itemized bill.
7. The parents' request for compensatory education is denied as they did not provide the specific proof required in *Petrina W. and Demarcus L.*

Within 45 calendar days of receipt of this Order, the Posen Robbins School District 143 ½ shall submit proof of compliance to:

Illinois State Board of Education  
Program Compliance Division  
100 North First Street  
Springfield, Illinois 62777-0001

#### **REQUEST FOR CLARIFICATION**

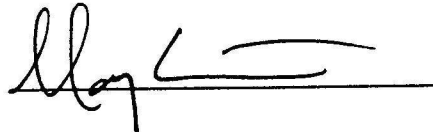
Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned-hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought. A copy of the request shall be mailed to the other party(ies) and the Illinois State Board of Education. After a decision is issued, the hearing officer may not make substantive changes to the decision. The right to request such clarification does not permit a party to request reconsideration of the decision itself, and the hearing officer is not authorized to entertain a request for reconsideration.

**RIGHT TO APPEAL**

This decision is binding on the parties unless a civil action is timely commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 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 is mailed to the parties.

IT IS SO ORDERED.

DATED: FEBRUARY 17, 2015



Mary Schwartz  
Impartial Hearing Officer



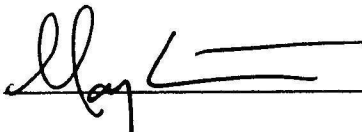
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the Final Decision and Order was sent by certified mail with return receipt prepaid and directed to the individuals listed below:

[REDACTED]

Mr. Andrew Eulass  
Due Process Coordinator  
Illinois State Board of Education  
100 North First Street  
Springfield, Illinois 6277-0001

before 6:00 p.m. on February 17, 2015.

  
\_\_\_\_\_

Mary Schwartz  
Impartial Hearing Officer

[REDACTED]