



The Pre-hearing conference was held on April 20, 2015, and hearing dates were established. The dates were subsequently modified based on the availability of various participants. The hearing commenced on July 14, 2015, and concluded on August 17, 2015.

## **JURISDICTION**

This hearing officer has jurisdiction under 20 U.S.C. 1415, 34 C.F.R. 300.507 and 105 ILCS 5/14.8.02a.

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## **ISSUES**

1. Did the School District evaluate the Student in a timely and sufficiently comprehensive manner to assess the Student in all areas related to his suspected disability and to identify all of the Student's special education and related services needs?
  2. To what extent, if any, should the School District be held responsible for the cost of independent educational evaluations (IEEs) obtained by the Parent at her expense in the following domains: (a) speech and language pathology and assistive technology; (b) occupational therapy; (c) neuropsychology and (d) audiology?
  3. Since December 17, 2012, has the School District developed, revised and implemented individualized education programs ("IEPs") for the Student that have provided a free appropriate public education ("FAPE") by meeting the Student's educational and related services needs that result from his specific learning disabilities?
  4. Should the Student receive compensatory services from the School District and, if so, what should the nature, amount, duration, and educational setting of such services be?
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5. Did the School District violate the Parent's procedural rights in any of the following ways:
    - (a) failing to provide the Parent with prior written notice relating to the denial of direct services to the Student in the areas of language arts, reading, and writing;
    - (b) failing to accurately and objectively report the Student's lack of progress after December 17, 2012, to the Parent;
    - (c) failing to provide the Parent with a complete set of the Student's records in a timely manner as requested by the Parent and her counsel; and
    - (d) failing to provide full and meaningful information to the Parent regarding the Student's educational performance and progress so that she could meaningfully participate in the decision-making process at IEP meetings and other meetings with School District personnel, and,if any or all of these violations occurred, did they deny the Student's right to a FAPE, significantly impede the Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or cause a deprivation of educational benefit to the Student?

## STANDARD OF PROOF

The standard of proof in impartial special education due process hearings under IDEA is preponderance of the evidence. 20 U.S.C. §1415(i)(2)(C)(iii). Under this standard, the party seeking relief must establish that the fact sought to be proved is more probable than not.

## FINDINGS OF FACT

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1. Student started at the School in the 2011-2012 school year in the 3<sup>rd</sup> grade.
2. In 2011-2012 Student failed to meet district-wide standards to advance to the 4<sup>th</sup> grade and was required to attend summer school in 2012 in order to advance.
3. Parent raised concerns about the Student's academic performance with his 4<sup>th</sup> grade teacher, ██████████, and principal, ██████████ in October, 2012, and asked for an IEP. She was told that they had to collect response to intervention (RTI) data before an IEP would be considered. Parent's concerns about the Student's math deficits and a lack of focus were shared by ██████████ (PD 355, 357, Testimony of Parent). The Parent was not provided a written notice of denial of her request at that time and she was not given a written notice of procedural safeguards until June 7, 2013. (SD 194, Testimony of Parent). The RTI data shared with the Parent consisted of two pages of simple addition problems completed by the Student in February, 2013. (SD 446-447). (Testimony of Parent).
4. The Notice of Consent for an initial evaluation of the Student was provided and signed by the Parent on April 24, 2013. (SD 3).
5. The School District's School Psychologist, ██████████ evaluated the Student in May, 2013. (SD 8-13). The referral was based on academic difficulties and attention issues. His grades were 4 Ds, an F and an C at the time of referral. (SD-5). Ms. ██████████ found learning deficits in math, reading, reading fluency, spelling, working memory and writing. She did not administer the written language subtest of the KTEA-II to the Student. (Testimony of Pettett; SD-14). A school social work evaluation (SD 153-155), Learning Environment Screening (SD 156-161) completed by Ms. ██████████ and a school nurse assessment (SD 150-152) were the other components of the School District's individualized evaluation of the Student in May, 2013. The School District did not conduct evaluations of the Student in the areas of speech/language, occupational therapy, audiology or assistive technology. A referral for an assistive technology evaluation was made in June, 2015. (Testimony of ██████████). A visual skills evaluation of the Student has been recommended. (Testimony of ██████████, School District's Occupational Therapist). Neither Ms. ██████████ nor Ms. ██████████ have ever worked with the Student. (Testimony of ██████████ and ██████████).
6. The Student was determined eligible for special education on June 7, 2013, and his initial IEP was developed at a meeting held on that date and completed on June 10, 2013. The Parent participated in the meeting. She was not provided a copy of the School District's evaluation reports prior to or during the meeting. It was Parent's testimony that she did not receive these documents until records were released to her in 2015. The IEP document was not shared with her as it was being prepared. (Testimony of Parent). The Student was found eligible due to specific learning disabilities affecting math, reading, reading fluency, and writing. The IEP provided direct special education services for 120 minutes per week in math, 120 minutes per week in math direct services in his general education classroom, and 15 minutes per month of

consultation for math between the general education teacher and the special education teacher. Goals were prepared for math. Accommodations and modifications were offered for language arts, English and reading, but there were no goals written and no allocation of direct special education service minutes to address those areas. (PD 55). Extended School Year services were not recommended for the Student in 2013. (PD 57).

7. During the 2013-2014 school year, the Student did not receive all of the direct special education services in math required by his IEP due to an unfilled position at the School.

(Testimony of Parent, PD 63, PD 360). Ms. [REDACTED], the special education math teacher, started in October, 2013, and left in late January, 2014. (Testimony of Wells).

8. The School District convened an IEP review meeting on June 6, 2014. (PD 61). The Parent participated in the meeting. The Student's academic areas of need were noted as math, English/Language Arts, and social/emotional. (PD 65). Specifically, he had difficulty with multi-syllable words and comprehension. He was able to write simple sentences without detail. It is clear he needed supports in the language arts. He also continued to have difficulty in math. His direct special education services in math were increased to 300 minutes per week. (PD 71). He continued to receive accommodations and modifications in the language arts and English and in his academic courses, but no goals or direct special education services in those areas. Again, ESY was not recommended. (PD 71 and 73).

9. In the fall of 2014, the Parent was concerned about the Student's poor spelling, low test scores, incomplete work, reading and language arts, and inability to understand context cues, and general difficulty understanding his academic material. She sought goals and direct special education services for the Student in language arts, English and reading. She reached out to the IEP case manager, school principal, and, finally to the Central Administrative Office of the School District. A meeting was convened on November 18, 2014, in an attempt to address her concerns. (Testimony of [REDACTED] and Parent). She was offered after school tutoring and consultation services with the Student's teachers, but no direct special education service minutes in her areas concern were offered. (Testimony of Parent). The Parent made a request on November 4, 2014, to access the Student's classrooms for purposes of observation. (PD 76-77).

10. After she filed her request for a hearing the Parent retained private evaluators to conduct IEEs of the student in 2015. The IEEs were completed prior to an IEP meeting on June 22, 2015. The IEEs were conducted by: [REDACTED] an occupational therapist; Janet Marsden-Johnson, a speech language pathologist; [REDACTED] a neuropsychologist; and [REDACTED], an audiologist.

11. The credentials of the Parent's independent evaluators were testified to and included in the Parent's exhibits. They are found to be qualified evaluators in their respective disciplines and credible expert witnesses.

12. The School District has not provided direct occupational therapy services to the Student to date. The Student currently requires, and has required since December 17, 2012, direct services to the Student and consultative services to teachers, other school personnel serving the Student and the Parent from an occupational therapist to address deficits including the following as identified by [REDACTED]. (a) organization/planning; (b) sensory integration; (c) pencil grasp; (d) posture; (e) written expression/note-taking; and (f) visual processing. (PD 468-513).

13. The Student would benefit from the use of assistive technology ("AT") services to address his occupational therapy needs including devices and programs to assist him with written communication such as Draft Builder.

14. [REDACTED]'s charges are reasonable, customary and appropriate for the services she rendered on behalf of the Student at the Parent's request. (PD 514).

15. [REDACTED]'s finding that the Student has a language processing deficit affecting higher language skills such as multiple meanings, semantics, idioms, syntax, and comprehension is sustained. (Testimony of [REDACTED]). It is supported by her audiology testing procedures (PD 431-437), [REDACTED]'s testing results in May, 2013, (PD 9-10), the speech and language IEE conducted by [REDACTED], and the testimony of various witnesses about his learning deficits and lack of focus. Dr. [REDACTED]'s testimony that the Student's central auditory processing deficit is genetic and should have been evaluated and addressed previously, and her recommendation that the Student receive direct multisensory services from a speech and language pathologist to address his language processing deficit, are found to be credible. They are supported by Dr. [REDACTED]'s recommendations. The School District's audiologist, [REDACTED], reviewed Dr. [REDACTED]'s report, accepted Dr. [REDACTED]'s findings and diagnosis, and has had no other involvement with the Student. (Testimony of [REDACTED]).

16. Dr. [REDACTED]'s charges are reasonable, customary and appropriate for the services she rendered on behalf of the Student at the Parent's request. (PD 438).

17. Dr. [REDACTED]'s neuropsychological evaluation of the Student was comprehensive and appropriate. Her test results are sustained and consistent with other testing of the Student including the School District's school psychological evaluation in 2013, the other assessments obtained by the Parent, the Parent's observations and concerns about the Student's academic performance, and the observations of the Student's teachers and other school personnel who worked with and observed the Student. The Student is average and above average in a number of skill areas tested. However, the Student has specific learning disabilities with impairments affecting decoding, reading comprehension, reading fluency, phonological awareness and auditory working memory. His written expression is impaired beyond the single sentence level. His math calculations fluency skills are impaired. (PD 535). The Student has "mild" learning impairments, but the combination of learning disorders makes addressing the Student's educational needs more complex. (Testimony of Dr. [REDACTED]). The School District's school psychological evaluation of the Student was not appropriately comprehensive because it failed to evaluate his written expression and reading fluency, and failed to refer him for an occupational therapy evaluation based on his performance on his standard score of 80 on psychomotor processing. He also should have been referred for a speech and language evaluation. (Testimony of Dr. [REDACTED]).

18. Dr. [REDACTED]'s charges are reasonable, customary and appropriate for the services she rendered on behalf of the Student at the Parent's request. (PD 545).

19. [REDACTED]'s speech and language evaluation of the Student based on testing and observation was appropriate in nature and scope. Her testing results confirm Dr. Ferre's determination that the Student is deficient in higher language skills (figurative language, multiple meanings, idioms, sarcasm). This is demonstrated by his below average scores on the semantic relationships and structured writing subtests of the CELF-5 and the figurative language test of the CELF-5 Metalinguistic Test. (PD 454, 455; testimony of [REDACTED]). He also

demonstrates poor word discrimination and phonological segmentation as shown on the results of the TAPS-3. This impacts his reading, spelling and writing. These findings are consistent with Dr. [REDACTED]'s test results and finding of a central auditory processing disorder. These findings also explain the Student's difficulties with classroom function and misunderstanding of instructions and directions. (PD 456; testimony of Marsden-Johnson). Dr. [REDACTED]'s and Dr. [REDACTED]'s recommendations regarding the need for direct speech and language services to the student to address his language processing disorder are sustained. (Testimony of Ferre and Marsden-Johnson). The School District's speech and language pathologist, Dr. [REDACTED], testified that she had no concerns with Dr. [REDACTED]'s testing or results. She disagreed with the recommendation of direct speech and language services and stated that a special education teacher would be able provide those services to the Student. She stated that she has never met or tested the Student. The School District has not provided or offered direct speech and language services to the Student.

20. Dr. [REDACTED] also utilized some assistive technology programs during her evaluation. I find Dr. [REDACTED]'s recommendation that the Student would benefit from assistive technology in a number of areas including production and quality of written work, reading, note-taking and organization to be valid. (Testimony of [REDACTED]; PD 459). I also find, based upon her testimony, that a three-month trial of various assistive technology programs would be appropriate and that these programs should be available to the Student and used at his option in all academic settings and overseen by an assistive technology coordinator. (PD 459).

21. Dr. [REDACTED]'s charges are reasonable, customary and appropriate for the services she rendered on behalf of the Student at the Parent's request. (PD 462).

22. The Student failed to meet the promotion standards based on district-wide assessment scores and academic performance in 2014-2015 and was required to attend summer school in 2015 in order to advance to the 7<sup>th</sup> grade. (PD 79).

23. The School District convened an IEP meeting for the Student on June 22, 2015. Parent attended the meeting with her attorney. (PD 81). Occupational therapy services were considered based on [REDACTED]'s occupational therapy IEE. (PD 84). Parent's IEE evaluators were invited to participate in the meeting. However, Dr. [REDACTED], Dr. [REDACTED] and Dr. [REDACTED] were unable to attend. There were technical difficulties with the telephone connection for Ms. [REDACTED] impeding her participation. (Testimony of [REDACTED]). Needs were noted in all academic areas and classes including math, English/Language Arts, and Social/Emotional. An assistive technology evaluation referral was made. It was noted in the IEP, and testimony by teachers and others also indicated that the Student's behavior is not disruptive of his learning or that of other students and that he is not a safety risk to himself or others. (PD 93).

Accommodations and modifications were offered in English and Language Arts and Math, and similar services were offered in his science, social science and language classes. (PD 95-96). Math goals and benchmarks were written. (PD 99-102), This was the first IEP in which goals were prepared for the Student in reading, (PD 103-106); writing organization and structure (PD 107-108); and occupational therapy (PD 109). The special education service time allocation was as follows: Math= 300 minutes/week in direct special education services ; Language Arts/English/Reading=600 minutes/week in regular classes; Occupational Therapy=15 minutes per week in regular classes and 15 minutes per week in direct services, plus 45 minutes per quarter in consultation with teachers. There were also minutes allocated for consultation in all

academic areas and courses, and 30 minutes per month were allocated for school social work consultation.. (PD 113).

24. The IEP of June 22, 2015, does not address the Student's language processing deficits and does not provide for direct speech and language services. (Testimony of ██████████ and ██████████). It does not provide any direct school social work services to the Student to address his social/emotional issues (see discussion below). It fails to provide any direct special education services to the Student in the areas of Language Arts, Reading and English to address the deficits identified by the School District's school psychologist and Dr. ██████████. It does not contain any goals or benchmarks for the use of assistive technology or describe how the Student will use assistive technology. It lumps all of his occupational therapy needs under the category of "independent functioning" without breaking out his various occupational therapy needs into more manageable components. (Testimony of ██████████ PD 113).

25. In the area of social and emotional development, the Student has been diagnosed with Post-Traumatic Stress Syndrome (PTSD) and an anxiety disorder. (Dr. ██████████'s SASS evaluation report, PD 425-430). Dr. ██████████'s findings were consistent with the diagnosis of Dr. ██████████ in December 2014. (PD 535). There is ample testimony in the record that this has had an impact on his educational progress. (Testimony of Parent, Testimony of ██████████). The Parent obtained Dr. ██████████'s assessment on her own and has obtained private therapy for the Student. The Parent has not requested that the School District consider the assessment of Dr. ██████████ at an IEP meeting. (Testimony of Parent). The underlying causes of the anxiety and PTSD were not fully discussed during the hearing, but the PTSD seems to have come about as a result of an incident or incidents that took place during visits with his father's family. (Testimony of Parent; PD 425-430). The Student has received some school social work services starting in the 2013-2014 school year. Ms. ██████████, a school social worker employed by the School District who has just retired, testified that she saw him as part of a group she was counseling on anger issues in 2013-2014. Under the June 2014 IEP, fifteen minutes per month of school social work services were added. Ms. ██████████ would see the Student on a monthly basis just to check in to see how things were going. He did not seek her out. There was a "meltdown" involving the Student and another student on March 25, 2015, and she intervened. The IEP of June 22, 2015, calls for 30 minutes per month of consultation services by the school social worker. Dr. ██████████ strongly recommends the provision of direct school social work services to the Student after an updated school social work evaluation. (PD 538). The record supports Dr. ██████████'s recommendation. In addition, Dr. ██████████ testified and reported that the Student's language processing disorder adversely affects his peer relationships and will continue to do so because of his inability to understand higher level language usage such as sarcasm. As a result, the Student misunderstands jokes, teasing and other higher language that peers use and that will impact social interaction. (Testimony of ██████████).

26. In regard to the Student's educational placement, Parent is requesting that Student be placed in ██████████ School for two years of compensatory services. (Testimony of Parent). ██████████ is a therapeutic day school in ██████████ Illinois serving students in the Chicago area who have specific learning disabilities and related disorders. It offers assistive technology, speech and language therapy, and occupational therapy. (Testimony of ██████████, ██████████ School Director). ██████████ serves students with disabilities who require intensive remediation. (Testimony of ██████████). The Student has visited ██████████ School and has been accepted. (Testimony of Parent and ██████████). He is currently first on a waiting list for junior high school admission. (Testimony of ██████████).

The Student would derive benefit from attending [REDACTED] School. (Testimony of [REDACTED] and [REDACTED]). The Student also benefits from general education opportunities with non-disabled peers and non-academic activities with non-disabled students, which he will not experience at [REDACTED] School. (Testimony of [REDACTED], [REDACTED], [REDACTED] and others). The Student has mild learning deficits. However, they are multi-faceted and together have a significant impact on his educational progress in math, reading comprehension, reading fluency, written expression, focus and social and emotional development. The Student's achievement levels are inadequate for his cognitive ability, age and grade level in math, reading, language arts and writing. His PTSD and anxiety disorder also require direct related services. However, the Student can be educated in a public school setting, with a substantial increase in direct special education services to address all of his needs, appropriate related services and assistive technology. (Testimony of Dr. [REDACTED], SB 536).

## **CONCLUSIONS OF LAW**

### **Child Find**

The School District did not meet its child find obligations in regard to the Student in a timely manner. 34 C.F.R. 300.111. Child find is an affirmative responsibility of the School District, and includes an ongoing review of each child's performance and progress by teachers and other professional personnel. 23 Ill. Adm. Code 226.100. The Student's academic problems were apparent in the 3<sup>rd</sup> grade when he failed to meet the academic requirements necessary to advance to the 4<sup>th</sup> grade and was required to attend summer school. His academic difficulties continued into 2012-2013 when the Parent shared her concerns with the teacher and principal in October. The teacher, Ms. [REDACTED] shared the Parent's concerns about math and focus. The Student's grades were poor. The collection of RTI information may have been appropriate, but the Parent should have received written notification of the refusal to initiate an evaluation of the Student, and of her procedural safeguards when she requested an IEP in October, 2012. 20 U.S.C. 1415(b)(3)(B). The Student was evaluated, but not until May, 2013, and an IEP was finally developed for the Student in June, 2013 to be implemented starting in 2013-2014.

### **School District Evaluation Procedures**

Under IDEA, evaluation procedures must be sufficiently comprehensive to identify all of the child's special education and related services needs. The child must be assessed in all areas related to the suspected disabilities. 34 C.F.R. 300.304. The School District's evaluation of the Student in the Spring of 2013 was inappropriate because it was incomplete in nature and scope. First, it did not assess a full range of academic functioning, including written expression skills. Second, it should have included an occupational therapy evaluation, a speech and language evaluation and an audiology assessment. Additionally, the Student's need for assistive technology was not evaluated. Therefore, the School District has failed to meet its burden of establishing that its evaluation was appropriate.

### **Independent Educational Evaluations**

The Parent has the right to obtain an IEE at public expense if the Parent disagrees with the School District's evaluation and the School District evaluation is found not to be appropriate. 34 C.F.R. 300.502. The IEE obtained by the Parent at her expense in occupational therapy, audiology, neuropsychology, and speech and language pathology/assistive technology was conducted by qualified professionals. The assessments were comprehensive and appropriate in

that the evaluators utilized valid testing procedures and assessed the Student in all areas related to his suspected disabilities. The IEE identified the nature and extent of the Student's disabilities and made specific recommendations as to how his educational and related services needs should be met in an educational setting. The costs of the various components of the IEE were customary and reasonable. The IEEs should be provided at public expense. 34 C.F.R. 300.502. This hearing officer has the authority to order payment by the School District for the reasonable costs of the private evaluations because the School District failed to conduct an appropriate evaluation of the Student.<sup>3</sup> Schaefer v. Weast, 546 U.S. 49, 61 (2005). Florence County School Dist. Four v. Carter, 510 U.S. 7(1993).

### **Free Appropriate Public Education (FAPE)**

The Student has specific learning disabilities and must be provided a free, appropriate public education (FAPE). 20 U.S.C. 1401(3)(A)(i), 1401(30), 1412(a)(1), 1413(a)(1). FAPE consists of specialized instruction and related services that are individually designed to provide educational benefit to the Student. Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982). In order to offer FAPE the Student's IEP "must respond to all significant facets of the student's disability, both academic and behavioral." Alex R. ex rel Beth R. v. Forrestville Valley Community Unit School District No. 221, 375 F.3d 603 (7<sup>th</sup> Cir. 2004).

Under the Illinois School Code, in a special education due process hearing the School District is required to present evidence that the special education needs of the Student have been appropriately identified and that the program of special education 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 School District has failed to meet its burden of establishing that it has provided and is offering to provide FAPE to the Student. On the other hand, the Parent has met her burden of proving that the Student has not been provided FAPE, on a number of grounds, including the following:

First, the Student's specific learning disabilities were not completely evaluated and understood until the various components of the IEE were completed prior to the June 22, 2015, IEP meeting, two years after the initial IEP was developed for the Student. Second, none of the Student's IEPs, including the June 22, 2015, IEP, address his language deficits through appropriate and measurable goals and direct speech and language therapy services. Third, the only special education instructional minutes offered the Student have been in math, while only general education classroom accommodations and modifications without specific goals have been offered in the areas of language arts, English, reading and writing. These are areas in which he very clearly has identified deficits and requires direct service minutes and measurable goals. Fourth, the IEPs have not appropriately addressed the need for occupational therapy services. The 2013 and 2014 IEPs did not provide for any occupational therapy services; he had not been evaluated in that domain until the IEE in 2015. Following ██████████'s assessment, the 2015 IEP team attempted to incorporate occupational therapy services in the area of independent functioning. However, the amount of proposed occupational therapy is inadequate based upon Ms. ██████'s recommendation and the goal area is too broad and needs to be broken down into

<sup>3</sup> The private evaluators and the Parent testified that invoices have been sent to the Parent and full payment is due on all of the evaluations.

sub-areas with goals for each. Furthermore, the IEP does not adequately address the impact of his PTSD and anxiety disorder on his academic progress and social and emotional development. In addition, none of the IEPs prepared for him have provided for assistive technology.

Because the IEPs for the Student have not provided FAPE, substantial changes need to be made to the IEP.

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### **Procedural Violations and FAPE**

Under IDEA, when procedural violations are alleged, the hearing officer may find that the child did not receive a FAPE only if the procedural inadequacies (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, or (3) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a) (2). However, even if a denial of FAPE due to procedural violations is not found, the hearing officer is not precluded from ordering a local educational agency to comply with the procedural requirements of IDEA. 34 C.F.R. 300.513(a)(3).

The Parent alleges the following procedural violations: (1) failure to provide her with prior written notice of the denial of direct special education services for the Student's specific learning disabilities in language arts, reading, and writing; (2) failure to accurately report to her the Student's lack of academic progress after December 17, 2012; (3) failure to provide her with a complete set of student records in a timely manner; and (4) failure to provide full and meaningful information regarding the Student's performance and progress so she could meaningfully participate in the decision-making process at IEP meetings and other meetings.

Because it has already been determined that the Student was denied a FAPE on substantive grounds, the discussion on alleged procedural violations will be brief.

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First, during the 2012-2013 school year, when the Parent asked for an IEP, the Parent should have been provided written notice of the School District's refusal to conduct an evaluation and a written notice of procedural safeguards. The delay in initiating a consent for evaluation until April, 2013, set the process back about six months, four of which were within the Statute of Limitations period that commenced on December 17, 2012. It is reasonable to conclude, based on the record, that the Parent would have likely pursued other avenues of assistance (e.g., IEEs, advocacy) sooner had she received proper written notice of the denial and notice of her procedural safeguards in a timely manner. The collection of RTI data does not relieve the School District of the responsibility to provide proper written notice and notification of procedural safeguards to the Parent. 34 C.F.R. 300.503(a) and (b), 300.504.

The other noteworthy procedural inadequacy in this case is the failure to provide the Parent with a copy of the School District's evaluation reports in advance of the June, 2013, IEP meeting. Parent testified that she did not see these reports until January, 2015, when student records were released to her pursuant to her records request. Lacking this information, the Parent was unable to meaningfully participate in the June, 2013, meeting.<sup>4</sup>

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<sup>4</sup> Parent also testified that the school psychological evaluation was not discussed at the June, 2013, meeting. This is implausible because the very purpose of the meeting was to determine eligibility and prepare an IEP. The information from Ms. [REDACTED]'s report was essential to the meeting. This also conflicts with Ms. [REDACTED]'s testimony.

The alleged failure to provide the Parent with accurate information about the Student's academic performance may have been due more to the absence of an appropriate evaluation of the Student and a lack of understanding of his disabilities on the part of his teachers. This did not deny him FAPE, but communication with the Parent is an important element of service delivery and is addressed in the Order.

The Parent raised the issue of access to student records in her DPCN and her counsel raised the issue several times prior to the hearing. Without a doubt, the Parent has a right to examine the Student's records. 34 C.F.R. 300.501(a). This hearing officer made it clear prior to the hearing that during the hearing the Parent or her counsel would be given an opportunity to raise the issue of a specific missing record or set of records and ask for appropriate sanctions and other relief upon the assertion that the missing record or records denied the Parent a full and fair opportunity to present her case. There was no mention during the hearing of a missing record affecting the Parent's ability to present her case in a full and meaningful way. Therefore, the alleged failure to provide access to all student records will not be considered in this decision.

### **Compensatory Services and Placement**

An award of compensatory services is an equitable remedy that may be ordered for a Student under IDEA. *Minor T.G. v. Midland School Dist.*, 848 F.Supp. 2d 902(C.D. Ill. 2012). Following *Reid v. District of Columbia*, 401 F.3d 516(D.C. Cir. 2005), Illinois District Courts have adopted a qualitative rather than a quantitative approach in determining the nature and amount of compensatory services. *Petrina W. v. Chicago Public School Dist.* 299, 2009 WL 5066651(N.D. Ill. 2009). The qualitative approach uses a flexible analysis of the individual needs of the student rather than a mechanical calculation of hours based upon the period of time the student is denied a FAPE. See, e.g. *Mary T. v. School Dist. of Philadelphia*, 575 F.3d 235 (3<sup>rd</sup> Cir. 2009).

The Student is entitled to compensatory services. The question is what compensatory services are necessary to restore the Student to the position he would have been in had the School District provided him with a FAPE since December 17, 2012. *Petrina W.* The Student's compensatory services needs are mainly in the areas of reading, reading fluency, written expression, occupational therapy and speech and language therapy. In math he was denied a significant amount of direct special education services in 2013-2014 due to a staff vacancy. These are areas of significant need requiring remediation.

Specific time recommendations were offered by the Parent's IEEs. For example, [REDACTED] recommended 60 minutes of direct occupational therapy each week plus 45 minutes per week compensatory services for two years. (Testimony of [REDACTED]). Her recommendation seems to combine the qualitative with the quantitative approach. Ms. [REDACTED] recommended 30 minutes per week and 15 minutes per month of occupational therapy consultation. Dr. [REDACTED] recommended 45 minutes of direct speech and language therapy per week plus 15 minutes per week of consultation. In fashioning an order on compensatory services, this hearing officer will make an effort to follow the qualitative approach consistent with the recommendations of the IEEs while considering the needs of the Student and his time and energy limits.

The Parent is requesting placement for two years at the [redacted] School, a therapeutic day school in [redacted], Illinois, for compensatory services. IDEA requires that, to the maximum extent appropriate, children with disabilities must be educated with non-disabled children. 20 U.S.C. 1412(a)(5), 34 C.F.R. 300.114. This includes the opportunity to participate in extra-curricular and non-academic activities with non-disabled students. 34 C.F.R. 300.117. The School District is required to offer a continuum of alternative educational placements. It is also required to ensure that each child with a disability has the supplementary aids and services appropriate and necessary for the child to participate with non-disabled peers in general education and in nonacademic settings. 34 C.F.R. 300.115, 300.117.

[redacted] School is too restrictive of a placement for the Student. The School District is able to provide a FAPE to the Student in a public school setting that is less restrictive than a therapeutic day school. The testimony and exhibits in this case clearly indicate that he does not have behavioral issues, is not disruptive to other students in his classes and is not a safety risk. With the IEP changes, direct special education, related services and assistive technology that are being ordered in this decision, the Student should be able to receive a FAPE in a public school.

Parent's own expert witness, Dr. [redacted] put it best when she stated in her report and testified that: "His educational needs should be able to be met within the public school system provided that: 1) substantial changes are made to his IEP to address multiple areas of need, 2) his placement is appropriately staffed and has the resources to provide special education instruction in math, reading, and writing for a student at his instructional level, and 3) empirically supported academic interventions are utilized to address gaps in his reading, writing and math skills." (PD 536).

## ORDER

1. Within 40 days of the date of this Order the School District shall pay the IEE providers for the cost of the independent evaluations of the Student obtained by the Parent at her expense in the following amounts:

[redacted] (Audiology): \$650.00  
[redacted] (Speech and Language/Assistive Technology): \$1,700.00  
[redacted] (Occupational Therapy): \$4,815.00  
[redacted] (Neuropsychology): \$7,625.00

2. Within 20 days of the date of this Order, the School District shall convene an IEP meeting for the Student for the purpose of developing a new IEP for the Student that provides the following:

- a. The Student's educational placement shall be in his current public school unless the Parent agrees to a placement in a different public school;
- b. The Student will continue to receive no fewer than 300 minutes per week of direct special education services in math with specific measurable goals and benchmarks based on his present levels of performance and the use of individualized teaching strategies such as the use of manipulatives and hands-on activities.
- c. The Student will be provided no fewer than 300 minutes per week of direct special education instruction to address English, language arts, spelling, reading comprehension, reading fluency and written expression with goals and benchmarks written in each of these areas that are measurable and based on his present levels of performance as determined by recent evaluations and teacher reports. The special

reading instruction shall utilize a phonics-based approach such as Orton-Gillingham or Wilson and be provided by a teacher who is trained in the phonics-based approach being used.

- d. Student shall receive at least 45 minutes per week of direct speech and language therapy by a licensed speech and language therapist to address his higher language processing disorder with measurable goals and benchmarks based on present levels of performance. In addition, the speech and language therapist shall provide at least 15 minutes per week of consultation services for the Student's teachers regarding the therapy he is receiving and the classroom supports and modifications he may need to achieve the speech and language therapy goals .
- e. The Student will receive at least 45 minutes per week of direct occupational therapy services from a licensed occupational therapist with measurable goals and benchmarks to address the deficiencies identified in [REDACTED]'s evaluation report including organization and planning, visual and sensory processing, written expression, posture and pencil grasp. The occupational therapist will assist the teachers in modifying text density and font size of the Student's written materials per Ms. [REDACTED]'s recommendations. The IEP will also provide at least 15 minutes per week of occupational therapy consultation with the Student's teachers and with the Parent so that they understand and are able to appropriately implement the occupational therapy strategies for the Student.
- f. Direct school social work services of no fewer than 30 minutes per week on an individual basis shall be provided to the Student to address his PTSD and anxiety disorder, and at least an additional 15 minutes per month of social work consultation shall be provided to the Student's teachers and other staff working with the Student. The IEP shall provide for an updated social work assessment (if consent is provided) that includes a review of the York and Rea-Gandrey reports and interviews with the Parent and Student. The direct and consultative services shall be provided even if a new assessment is not conducted. The social worker will work cooperatively with the speech and language therapist in addressing the impact of the Student's language processing disorder on his socialization skills. The social worker will also work in cooperation with the Student's private therapist, if any, if the proper consents are executed.
- g. In his other subjects (science, social studies, PE, art, music, etc.) the Student shall be educated in the general education program with appropriate individualized supports, modifications and accommodations in accordance with his IEP.
- h. Assistive technology shall be made available to the Student in all academic settings and supervised by an assistive technology coordinator or independent assistive technology consultant. The Student shall be provided with the necessary equipment and software such as a laptop computer or iPad that will allow him to trial use various programs for writing, grammar spelling, text reading, note-taking and organizing for up to 90 days until he and the assistive technology coordinator or consultant determine which programs are most beneficial and appropriate for him. The School District may conduct its own assistive technology evaluation for the Student if the Parent consents, but the implementation of this subparagraph h. shall not be delayed pending an evaluation by the School District. The assistive technology coordinator or consultant shall provide consultation to the Student's teachers and to the Parent so that they understand what he is using and how and why he is using it. Home use of the device and software shall be permitted in accordance with applicable policies and procedures of the School District, if any.

- i. The Student shall be provided ESY services for at least 6 weeks in 2016 (per his current IEP).
- j. Compensatory services shall be provided to the Student as follows: (i) a total of 104 one-hour math tutoring sessions implementing his IEP goals and benchmarks and instructional modifications through the end of August, 2017; (ii) a total of 104 one-hour reading tutoring sessions in accordance with his IEP reading goals and benchmarks using a phonics-based reading program delivered by a person who is trained in the phonics-based program through the end of August, 2017; (iii) ESY services for at least 6 weeks in 2017; (iv) 30 minutes per week of direct occupational therapy services implementing his IEP goals during the ESY programs in 2016 and 2017; (v) 30 minutes per week of direct speech and language therapy services implementing his IEP goals during the ESY programs in 2016 and 2017; (vi) direct special education services to address his written expression deficits in accordance with his IEP goals and benchmarks during the ESY programs in 2016 and 2017; direct phonics-based special education reading instruction implementing his IEP goals during the ESY programs in 2016 and 2017.
- k. The Parent's IEE evaluators shall be invited to the IEP meeting held pursuant to this Order (and subsequent meetings if necessary to complete the IEP) to assist in the development of goals, benchmarks, modifications and accommodations for the Student. The School District shall make all necessary arrangements to schedule the time and date of the meeting(s) to accommodate the schedules of the IEE evaluators so that they are able to participate in person or to meaningfully participate by conference call or videoconference. At the Parent's option a meeting may be held in the absence of one or more of the IEE evaluators.
- l. The School District shall ensure that the Parent is kept informed of the Student's academic and social/emotional performance and progress on a regular basis. The Parent shall be provided progress reports via e-mail by a designated IEP team member, preferably the case manager, a special education teacher or social worker, at least once per month, and more frequently if there are concerns about the Student's performance. The IEP shall provide for such regular communication with the Parent.
- m. The new IEP shall be fully implemented as soon as possible, but no later than 45 days after the date of this Order.

## **COMPLIANCE**

Pursuant to 105 ILCS 5/14-8.02a(h), the School District shall (a) submit evidence of compliance with this Order to the Illinois State Board of Education no later than 45 days after the date of receipt of this Order, except that evidence of compliance with the compensatory services and ESY provisions of this Order shall be submitted to the Illinois State Board of Education upon the completion of those services in accordance with this Order.

## **NOTICE OF THE RIGHT TO REQUEST CLARIFICATION**

Pursuant to 105 ILCS 5/14-8.02a(h) either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification shall specify the portion of the decision for which clarification is sought. A copy of the request shall be mailed to all other parties and to the

Illinois State Board of Education Program Compliance Division, 100 North First Street, Springfield, Illinois 62777. The right to request 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.

**NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i) any party aggrieved by this Hearing Officer's determination may bring a civil action in any State court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within one hundred and twenty (120) days from the date the decision is mailed to the party.

ENTERED this 27th day of August, 2015.

[REDACTED]

Philip C. Milsk, Impartial Hearing Officer

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

FAX: ([REDACTED])

[REDACTED]

**CERTIFICATE OF SERVICE**

I, Philip C. Milsk, Impartial Hearing Officer, hereby certify that the foregoing Final Decision and Order was served upon the following parties and counsel of record in this matter by certified mail on August 27, 2015:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Andy Eulass, Due Process Hearing Coordinator  
Illinois State Board of Education

[REDACTED]

[REDACTED]

Philip C. Milsk, Impartial Hearing Officer