

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

**ERIC A.**

**vs.**

**CHICAGO PUBLIC SCHOOLS  
District #299**

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)  
) **Case # 004514**  
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) **Kathleen Plesko**  
) **Impartial Hearing Officer**  
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**DECISION & ORDER**

In a letter dated April 25, 2005 Attorney Michael A. O'Connor requested an impartial due process hearing on behalf of his clients, Ray and Karen A., concerning their son Eric A. who had nearly completed seventh grade at Chicago Public Schools (CPS) #299 Lincoln Elementary School (LEA). The Illinois State Board of Education (ISBE) received the request on May 4, 2005. The Impartial Hearing Officer (IHO) in turn received it on May 5, 2005; the IHO mailed a pre-hearing conference packet to the Parties on May 9, 2005.

The pre-hearing conference was reset to accommodate the Parties' schedules and was held on June 17, 2005, with Mr. O'Connor representing the Parents/Student and Ms. Tracy Hamm representing the Chicago Public Schools (herein known as District).

On June 22, 2005 Ms. Hamm via facsimile and regular mail presented a Motion to Compel addressing the need to hold an Individualized Education Plan (IEP) to consider findings and recommendations of the Parent acquired Independent Educational Evaluation (IEE). The District had not received a copy of the IEE until June 6, 2005, according to Ms. Hamm, very close to the end of the school year.

In response, Mr. O'Connor indicated a willingness to participate in an IEP meeting as long as doing so did not further delay the hearing. The IHO granted the Motion to Compel with the conditions requested by Mr. O'Connor, i.e., no further delay in these proceedings and that documents presented at the IEP be made part of the record without regard to the five-day rule. He also requested that District staff be subpoenaed, which request was denied. The IEP meeting convened on August 12, 2005.

On July 25, 2005 the IHO signed and returned to Mr. O'Connor subpoenas requested to compel witnesses attendance at the hearing set for August 16-19, 2005. At hearing, Ms. Hamm delivered four (4) documents from District staff indicating they

could not attend. Unavailability of these witnesses caused a fourth day of hearing, scheduled and held in Chicago on September 7, 2005.

On June 23, 2005 the Parties requested and were granted a continuance of the hearing date due to scheduling conflicts and witness availability.

A second brief pre-hearing teleconference was held on July 15, 2005 wherein the Parties tried to find more immediate alternate hearing dates. The Parties were unable to identify mutually available dates and left the original hearing dates intact.

As the hearing began on August 16, 2005, Ms. Hamm offered a preliminary oral Motion to Enter Into the Record documents that were considered at the August 12, 2005 IEP meeting and the documents were so entered in accordance with the IHO's original order in response to the Motion to Compel and the Reply.

The hearing was stenographically recorded by Mr. Julius Carter. At least one Parent was present throughout almost all of the proceedings.

Parents' documents are denoted by "PD" followed by the document number; District documents are paginated without further identification and will be cited by "p." and number only.

Mr. O'Connor, assisted by Dawn Boers, called as witnesses for the Parents: Dr. Michelle Rosen, Neuropsychologist; Ms. Ann Byrne (Social Worker); Mr. Arnell Brady, Speech/Language Pathologist; Mr. Roy A., Father; Mrs. Karen A., Mother; and Eric A., Student, and Dr. Rosen and Mrs. A. again on rebuttal. Ms. Hamm, with Laura Zangara as second chair, called: Ms. Margaret Goodwin, Case Manager; Dr. Lynda Wait-Stone, Psychology Coordinator; Ms. Rosie Black, Special Education teacher; Ms. Vera Boline, Language Arts/Social Studies teacher; Allison Fox, School Psychologist; Rebecca Seeber, Speech Pathologist; and Lauren Torres, Social Worker.

## **ISSUES PRESENTED AND REMEDIES REQUESTED**

### **Parent/Student Issue**

Mr. O'Connor asserts that the District failed to provide a free and appropriate public education (FAPE) during the 2003-04 and 2004-05 school years. The District failed to provide an adequate and accurate three-year evaluation of the Student in October 2004. Furthermore, he asserts: failure to identify the nature and severity of the Student's learning disability (LD), particularly regarding delays in processing speech and weakness in visual motor integration; and failure to adequately assess, provide, and subsequently to discontinue speech/language services; failure to assess assistive technology; and occupational therapy needs.

Mr. O'Connor also alleges that the District failed to provide proper methodology and appropriate related services of sufficient intensity to facilitate academic progress; that the District "masked" the student's lack of progress through modifications of testing and grading; and that the 2003-04 and 2004-05 IEPs failed to list goals, state present performance, and provide subjective measures of performance.

### **Requested Remedy**

Mr. O'Connor requests that the IHO order: the District to provide the Parent a copy of any school record that has not been provided prior to the hearing; the District to pay for placement at a private therapeutic day school such as Cove School in Northbrook,

Illinois; the District to pay for the neuropsychological evaluation obtained by the parents from Dr. Michael Rosen; the District to provide accelerated and intensive assistive technology support to the Student as a compensatory education service; and the District to convene an IEP meeting for the purpose of implementing all the above.

### **District Response**

Ms. Hamm denied that the District failed to provide FAPE during the 2003-04 and 2004-05 school years. She specifically denied that the District “masked” the Student’s lack of progress through modifications of testing and grading. She also denied that the Student has “pragmatic skills that are seven years behind chronological age,” as asserted in Mr. O’Connor’s June 17, 2005 e-mail (followed by U.S. Mail) to Ms. Hamm and the IHO. The District asserts that appropriate diagnostic testing and educational and related services were, and will continue to be, provided.

## **TESTIMONY**

At the outset it must be said that all participants unequivocally described the Student as “pleasant,” “easy going,” “respectful,” “enthusiastic” or like terms, a perception confirmed by the IHO. While the Parents indicated that he had but one friend, and the Student himself said that he had only “one true friend,” his teachers felt that since his recent participation in football games during lunch hour his peer interactions had improved; indeed, he was invited to play by his peers. He also successfully handled a shared locker assignment, and the other student deferred to him in that relationship. With respect to Language Arts/Social Studies the Student felt “normal” when he was “keeping up a little bit” with other students, i.e. doing whole, as opposed to modified assignments..

The Student’s Parents have become increasingly concerned about the Student’s high anxiety level, apparent embarrassment, grade modification per IEP, and the continuing high level of assistance he requires with his homework. Parents were helping with homework every night of the week; indeed the Student testified that he worked on homework almost always from 5:00 p.m. to 10:00 p.m., and sometimes until midnight. The homework issue had been brought to the attention of District personnel, by the Parents rather than by the Student. Ms. Black, special education resource teacher, and Ms. Boline, LA/SS teacher, offered to help and modified and shortened assignments, but the Student insisted on completing entire assignments as given to the regular education students. Thus he would forego play and “all he does is homework” according to his Mother (whose homework record, kept at the recommendation of the Student’s social worker, is fairly consistent with this assertion). (PD 258) At the same time, the Father is very concerned that reduced/modified assignments may reduce anxiety but will fail to increase the Student’s level of literacy. Parents were also concerned about the notation on his progress reports that said, “grades modified by IEP”.

At the October 2004 IEP meeting, having expressed the her concerns, the Mother learned that speech therapy would be discontinued, according to her understanding, based on the LEA’s perception that the Student was not benefiting from it. Several of the teachers expressed surprise that the Student was having problems.

Despite some improvement, the Father felt that Student continued to feel inferior, having only one friend (an assertion repeated by the Student). On the other hand, the

Student is athletically talented and when he plays football at school the other children interact with him in a positive way. While the Father felt that LEA personnel were responsive to the family's concerns, the Parents were very impressed with Cove School and the Mother described it as "too good to be true" in its provision of LD and socialization interventions while "feel[ing] like a regular school."

Concerned about perceived inadequacies in the October 2004 three-year evaluation of the Student, and at the recommendation of Dr. Laaperi, who had been suggested to the Parents by the Student's summer school teacher at the end of third grade, the Parents sought out Anne Byrne, a private Licensed Clinical Social Worker, in November 2004. The Student's presenting problems were lack of self-confidence and lack of social skills. Ms. Byrne opined that the Student had improved in the previous four or five months, but continued to experience social anxiety and feelings of inadequacy, suffering from a social/emotional disorder of sufficient severity that it compromised his ability to achieve in school. She considered that he needed social work services at school and would benefit from a therapeutic day school, which could offer enhanced encouragement and socialization, and less isolation and embarrassment. Ms. Byrne referred the Student to Dr. Michelle Rosen, Ph.D., pediatric neuropsychologist.

Dr. Rosen's neuropsychological evaluation of the Student took place over several days in February and April of 2005 when he was in the seventh grade. She observed the Student in the classroom but did not interview any school personnel; her interviews were limited to the Parents and the Student. Dr. Rosen describes the Student as a "tall, sweet-natured twelve year-old boy who appears his chronological age...he exhibited a pleasant, although somewhat guarded mood at times...". (PD 304) In her summary report Dr. Rosen indicates that the Student is functioning overall within the average range of intellectual ability with no significant difference between his verbal and non-verbal scores. She does note "significant impairments in receptive and expressive language, word retrieval, oral expression and pragmatic skills". (PD 313) She further identifies a significant weakness overall when information is presented in an auditory/verbal modality alone without any visual cues. (PD 313) She also noted decreased processing speed, low executive functioning skills, and inflexibility.

Dr. Rosen observes that the Student performs better with an unlimited amount of time and that his skills "quickly decline when required to complete work quickly and efficiently as is typically expected in regular school and work environments". (PD 315) Her final DSM IV diagnoses (Mixed Receptive Expressive Language Disorder; Learning Disorder, Not Otherwise Specified) are reasonably consistent with those identified by the District's October 18, 2004 Eligibility Determination. (p. 13-14)

Dr. Rosen offered a belief that the Student would fall "farther and farther behind" in his current placement. She emphasized Student's extreme anxiety at school but especially during nightly homework, and his dependency on his Parents, particularly his Mother, for assistance and direction. Dr. Rosen summarized Student's processing as being so slow and requiring so much repetition that his processing might be as much as ten minutes behind language. Thus, he often feels and seems lost. Dr. Rosen concluded that the Student would probably always have slow processing but that it could improve with intense intervention.

Dr. Rosen conceded that the Student's prognosis in his current placement would be likely to improve with more intensive interventions. Although she recommended a

“small classroom with a low teacher to student ratio” (p. 234), she would not define that term, nor in turn her recommendation for “more forceful” remediation. Expressing reservations about academic accommodations, stating that they should be reduced, she nonetheless deferred to educators to develop a methodology for doing so.

Like Ms. Byrne, she stated that Student’s prospects would improve with a private therapeutic day program; Mr. O’Connor specifically asked this question in the context of Cove School. Cove School had not, however, been indicated in her written report, Dr. Rosen confirmed for the IHO. Dr. Rosen acknowledged that while many of her recommendations have been incorporated into the August 12, 2005 IEP, it addressed the Student’s reading deficit as a “reading problem when it’s really a language problem.”

Ms. Margaret Goodwin, counselor and case manager, identified a variety of records necessary to and culminating in the November 7, 2001 IEP (p. 135), which IEP identified the Student as eligible as a student with LD and speech/language disabilities. She indicated that the Psychoeducational Evaluation of October 2001 (p. 183-219) performed by Dr. Laaperi and others was consistent in large part with assessments performed by the District. Dr. Laaperi’s diagnoses were Reading Disorder (Reading Comprehension) and Disorder of Written Expression. (p. 198) Following review of School Psychologist Leslie Baker’s review of that external evaluation there was an Amendment to the IEP, on April 3, 2002 to reduced math tests and homework, shorten Science and Social Studies tasks, and grade work based on quality rather than quantity. (p. 130)

This IEP was revised on September 27, 2002 (increased language arts instruction, Student not to be graded in handwriting on his report card, continued extra time on written assignments and tests) (p.125); and amended on November 1, 2002 (cooperative grading by special and general education teachers). (p. 120, §16) The record of the Student’s grades was modified significantly by the special education teacher only, in 2001-02. (p. 247) Ms. Goodwin described the Student’s grades overall as “B”. His performance on the Iowa Test of Basic Skills (ITBS) demonstrates progress in reading and writing in 2003-04, showing he was within promotional range and the exceptional range for math.

In the September 27, 2004 Domain Meeting the social/emotional status of the Student was not considered a relevant domain for the student because no observation or complaint made it relevant. (p. 85) The speech pathologist determined on October 18, 2004 that the Student had “articulation, fluency, oral motor skills, and pragmatic reasoning skills all within normal limits.” (p. 80) While it was determined that the Student has an “expressive language [illegible] disability,” the same report indicates that the communication disorder does not “adversely affect his educational performance.” Thus in the subsequently developed IEP it was concluded “speech-language intervention is not recommended as the areas of deficit can be and should be targeted in [illegible] environments by parents and teachers in regular environments.” (p. 13) In the same IEP Assistive Technology is “not required.” (p. 17) Ms. Goodwin nonetheless concluded that in comparing sixth and seventh grade ITBS scores the Student has made obvious improvement and thus demonstrated that the IEA’s interventions as articulated in the IEPs have had a positive educational benefit.

When the Parents requested Due Process, and having in hand Dr. Rosen’s report, the District acted to develop a new IEP. A pre-hearing conference was eventually held

on June 17, 2005; the hearing was set for August 16, 2005; and an IEP meeting was held on August 15, 2005. A new significantly altered IEP, in large part in response to Dr. Rosen's report and evaluation, ensued. It requires an Assistive Technology assessment, test taking strategies, reading instruction, organization and time management instruction, social work services, reinstatement of and an increase in the previously provided speech-language services, as well as modifications and accommodations District personnel believe to be consistent with Dr. Rosen's report. Ms. Goodwin added that the IEP team will re-convene in the fall to discuss compensatory services, and the transition to high school, although on cross-examination she opined that the Student will not likely be eligible for compensatory services, not having suffered a ten-week break in services; thus the issue was not directly addressed in the IEP.

Ms. Goodwin stated how the IEP addressed Dr. Rosen's recommendation (a) for "...a small classroom with a low student to teacher ratio." (p.234) Ms. Goodwin replied that the Student will spend one period (forty-five minutes) in a special education classroom. With respect to Dr. Rosen's recommendation (b) (p. 234), Ms. Goodwin indicated that the District had services for retention and recoupment through Extended School Year (ESY) services. (p. 322) She conceded that the new IEP did not address specific areas of Dr. Laaperi's report (p. 200), including recommendation for the use of Visualization/Verbalization (Lindamood/Bell) to remediate the Student's weaknesses in oral vocabulary, word retrieval and deficits in reading comprehension; or the provision of other enumerated services in that report.

Ms. Allison Fox, a qualified, certified school psychologist, assessed the Student on September 30, 2004 and October 7, 2004. Part of that evaluation was the Kaufman Test of Educational Achievement, on which the Student scored in the above average grade level range in Math and Spelling, but below grade level in reading. His composite score was 7.3 grade equivalent and he was in the 7<sup>th</sup> grade. (p. 30) The Wechsler` Abbreviated Scale of Intelligence (WASI), administered at the same time, determined the Student to be in the average range of intelligence. His visual processing scores are described as "slightly below average" (p. 30) in one section of the report and "slightly above average" (p. 31) in another section, but the former is closer to Ms. Fox's real impression. He was determined to be "well below average in terms of processing speed when compared to his age mates."

Ms. Fox qualified the Student for special education services as learning disabled, specifically identifying processing speed and reading comprehension. She administered the PIAT, which assessed the Student's processing speed at the first percentile, a score she described as "severe." She did not administer the Grey Oral Reading Test. The Student's Visual Motor Integration Test (VMI) scores indicate an age equivalency of 10-3 and a chronological age of 12-5. (p. 30) Ms. Fox considered her evaluation as consistent with Dr. Rosen's, except "she [Dr. Rosen] talked more about language expression." She and the IEP team agreed that Student could be effectively educated in the least restrictive environment in accordance with the IEP.

Dr. Lydia Wait-Stone, Psychologist Coordinator for Cluster II, offered that the psychological evaluation written by the school psychologist, Dr. Fox, on October 7, 2004 and the neuropsychological report provided by Dr. Rosen were consistent in finding the Student's academics and intelligence to be in the average range. Dr. Wait-Stone attended the August 15, 2005 IEP meeting to ensure that the IEP was responsive to the Rosen

evaluation, and indeed it was developed side-by-side with the report. The revised IEP addresses social-emotional, organizational and time management, speech-language, reading, test taking, etc., and is focused on remediation in order for the Student to derive educational benefit. The Student has already received benefit from previous educational interventions; the Student's reading comprehension had improved by more than two years of achievement in less than two years of time. She thinks services provided by the District as stated in the "excellent and responsive" IEP will result in educational benefit in the least restrictive environment (LRE). The IEP authorizes Extended School Year services (ESY), which she described as beneficial rather than necessary.

Dr. Wait-Stone, having attained a Bachelor's Degree in Psychology, a Master's Degree in Education, and a Ph.D. in Counseling and Educational Psychology, is not a neuropsychologist. With respect to Dr. Rosen's recommendation of a "small classroom...low student to teacher ratio" she thinks the Student needs to be with his peers and isolation with disabled children would be "a disservice." She also disagreed with Dr. Rosen's recommendation (c) ("requires a classroom where the content, methodology, and delivery of instruction is adapted to insure his access to, and progress in, the general curriculum, and to help him advance towards gaining his annual goals") (PD 317), asserting that the Student has had educational benefit, consistent with his intelligence, and has grown academically.

Ms. Rosie Black, the Student's special education teacher for two years, concludes from his performance, input from his language arts/social studies (LA/SS) teacher, his reading materials, and his reading skills exercise books, that the Student is making steady progress. (p. 250-252) The Student was given extra time (consistent with Dr. Laaperi's recommendations), and sometimes would bring regular classroom homework into the resource room. He wanted to finish regular education assignments before starting special education so the special education teacher and the LA/SS teacher coordinated modifying his assignments. His language arts grades were also modified using the special education scale in 2003-04. She stated that the Student would continue to gain educational benefit under the revised IEP.

Ms. Vera Boline, LA/SS teacher, agreed that educational benefit would result from the new IEP. Although she had tried to modify assignments for the Student, he "always" did the entire assignment. He was accorded extra time for tests, either in the hall or with Ms. Black, and she did require him to complete significantly fewer book reports than the other students, but the books were moderately difficult.

District speech pathologist Rebecca Seeber provided the rationalizations for discontinuing speech and language services in past IEPs, including the Student's improvement in meeting goals, his anxiety at being "singled out" when removed from class for services, and a determination that his deficits were part of his learning disability. Review of Dr. Rosen's report led her to reconsider; the new IEP adds 120 minutes per month of direct/consultative services in a separate class, 40 minutes per month of services in regular class, and 15 minutes per month of consultative services. (p. 331) It directly targets pragmatic reasoning, retrieval, supralinguistic, and oral expression issues.

## APPLICABLE LAW

The law applicable to the facts in this matter is set forth in the Individuals with Disabilities Education Act (IDEA), 20 USC sec.1400, et seq., and its federal regulations, 34 CFR 300.507 et seq, the School Code of Illinois, 105 ILCS 5/14 - 8.02 et seq., and state administrative rules, 23 Ill. Admin. Code 226.636. The Local School District (LEA) is required to prove that it properly identified the nature and severity of the Student's disability, and, if appropriate, that it offered the Student a free and appropriate public education in the least restrictive environment, consistent with procedural safeguards. The essence of FAPE is the provision of an education that is reasonably calculated to provide the Student with educational benefit. Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176 (1982)

Rowley set forth a two-pronged method for evaluating whether a school has complied with special education law. First, there must be procedural compliance with the statute. Second, more importantly, the individualized education plan (IEP) developed consistent with these procedures must be reasonably calculated to enable the student to receive educational benefit.

Each school district is responsible for actively seeking out and identifying all children from birth through age twenty-one within the district who may be eligible for special education. Important to the instant case, the district is also responsible for ongoing reviews of each child's performance and progress. Teachers and other professional personnel conduct these reviews in order to refer those children who exhibit problems, which may interfere with their educational progress and/or their adjustment to the educational setting. 23 Ill. Admin. Code 226.100(a)(2)

A complete IEP must cover all domains—health, vision, learning, social and emotional status, general intelligence, academic performance, communication status and motor abilities. A student's educational performance means academic achievement but also addresses the child's ability to establish and maintain social relationships and experience sound emotional development in the school environment. The district must arrange for such tests and other evaluation procedures necessary to develop any additional information as needed. 23 Ill. Admin. Code 226.75; 226.120 (2003) Districts shall reevaluate any eligible child as warranted or when a parent or teacher so requests, but at least once every three years and any time before determining that a child is no longer eligible. 23 Ill. Admin. Code 226.190 (2003)

A specific learning disability is "a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations..." 105 ILCS 5/14-1.03(a)

Illinois regulations define the disability Emotional Disturbance as a condition exhibiting one or more of the following characteristics over an extended period of time and to a marked degree over an extended period of time and to such degree that symptoms adversely affect educational performance: An inability to learn that cannot be explained by intellectual, sensory, or health factors; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of anxiety or

unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. 23 Ill. Admin. Code 226.75

A district is entitled to establish its own curriculum and instructional techniques as long as they successfully meet students' needs, providing FAPE. If the district does not develop and/or implement an IEP that provides the student with FAPE, parents may request that the district pay for private instruction and/or related services in order to provide FAPE, or they may request compensatory education. Florence County School Dist. V. Carter, 510 U.S. 374 (1993); Burlington School Committee v. Massachusetts Dept. of Educ., 471 U.S. 374 (1985). While the IEP must be provided in the least restrictive environment "to the maximum extent appropriate," the law also allows removal to more restrictive environment as necessitated by the nature and severity of the child's disability. 105 ILCS 5/14-8.02(d) (2002) While the District's curriculum and techniques must provide "educational benefit," that requirement is not the equivalent of providing the "most" beneficial possible services or requiring that the student achieve his highest potential. Board of Educ. of Murphysboro Community Unit School Dist. No. 186 v. Ill. St. Bd. of Educ., 41 F.3d 1162, 1167 (7<sup>th</sup> Cir. 1994), *citing*, Board of Educ. of Sch. Dist. No. 21 v. Ill. St. Bd. of Educ., 938 F.2d 712, 715 (7<sup>th</sup> Cir. 1991), *cert. denied*, -- U.S. --, 112 S. Ct. 957, 117 L.Ed.2d 124 (1992).

## CONCLUSIONS/FACTS

1. The Student has average overall intelligence and has a learning disability, reading disorder, disorder of written expression, and processing deficits. He is 13 years old and about to enter 8th grade.

2. The Student's November 2001 IEP was based on updated assessments, including a school nurse report, social assessment, speech/language assessment, school psychological evaluation, learning environments assessment, LD observation report, and central auditory processing assessment. That IEP was amended in April 2002 to include recommendations from Dr. Laaperi's independent evaluation of the Student. Other amendments occurred in September 2002 and November 2002.

3. The Parents attended the October 2003 IEP meeting. This document referenced ITBS and ISAT scores as a measure of his standing. The Parents expressed concern on the IEP was that Student's "workload may contribute to his anxiety and [he] may feel that he can't keep up or produce."

4. The LEA failed in the 2003 and 2004 IEPs to identify the need for an assistive technology assessment. Such an intervention might have enhanced his learning, made him feel more independent, and freed his Parents from the nightly ordeal of reading his assignments to him.

5. In the September 2004 Domain Meeting the LEA did not designate Social/Emotional status as a relevant domain. By this time the Parents were being more vocal about the Student's anxiety, frustration, and embarrassment. His teachers knew that he was compulsively completing whole, as opposed to modified assignments. This behavior caused distress for the whole family. The Parents helped him extensively for hours nightly.

6. Speech pathologist Rebecca Seeber thought the Student needed speech pathology services. She testified credibly that she was reacting to the Parents' concerns

about the Student's anxiety about being removed from classrooms and singled out as someone who required special assistance when she did not recommend these services. In this instance, it was Ms. Seeber's belief, consistent with that of the IEP team, that Student's social/emotional response to being singled out over-rode his need for her services.

7. In the two instances when the Parents' provided outside evaluations, Dr. Laaperi's and Dr. Rosen's, the LEA through the IEP teams, incorporated aspects of them into the IEP or amendments thereto. In fact, one of the recommendations for very generous extra time (200%) came directly from Dr. Laaperi's evaluation. Parents are now expressing concern about this type of accommodation or modification. The accommodation/modifications in earlier IEPs were not intended to "mask" his lack of progress anymore than the Parents generous homework assistance was.

8. While Student's reading level remains a concern, he has demonstrated educational benefit overall in the past. His private social worker said that he has improved over the last several months. His teachers report social progress at school. His Father and several teachers noted positive interactions.

9. His teachers further said that Student completes work in less time and has mastered his goals and benchmarks, which are then upgraded to continue to challenge and advance him.

10. The admittedly last minute IEP meeting held on August 15, 2005, the Friday before the Due Process Hearing, is comprehensive. It includes speech/language and social work services, includes an Assistive Technology assessment, and addresses extensive remediation and accommodations.

11. There is no document or testimony on the record that indicates that Cove School has a program that would meet the Student's needs. Dr. Rosen's testimony on the subject was tentative: "*if*" (emphasis added) that school [Cove] provides language intensive intervention and speech pathology services in the instructional model."

12. The preponderance of the evidence is that the LEA met its obligation to provide FAPE in the LRE. The IHO agrees with the educators who testified that it would be a disservice to the Student to remove him from his peers and place him among a segregated group of children with disabilities. This mannerly, attractive, and articulate Student of average intelligence deserves an opportunity to continue recent progress in making his way among his peers. However, inadequacies in the previous IEP's in question merit compensatory services.

## **ORDER**

1. The District will pay for Dr. Rosen's evaluation, which was used to craft a solid, comprehensive IEP.

2. The IEP team will convene in the first fifteen (15) school days after receipt of the Order to discuss compensatory services, including, but not limited to, tutoring and supplemental instruction in the use of assistive technology.

It is so ordered.

## **RIGHT TO REQUEST CLARIFICATION**

Either party may request clarification of this decision by submitting a written request to the undersigned Hearing Officer within five (5) days of receipt of this decision pursuant to 105 ILCS 5/14-8.02(i). The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party and to the Illinois State Board of Education. *The right to request clarification does not permit a party to request reconsideration of the decision itself, and the Hearing Officer is not authorized to entertain a request for reconsideration.*

## **RIGHT TO FILE A CIVIL ACTION**

This decision is binding upon the parties unless a civil action is commenced. Either party to the hearing aggrieved by the Hearing Officer's final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 ILCS 5/14-8.02(i), a civil action may be brought in any court of competent jurisdiction within 120 days after the mailing of this decision.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Kathleen Plesko  
Impartial Hearing Officer