

**ILLINOIS STATE BOARD OF EDUCATION<sup>1</sup>  
IMPARTIAL DUE PROCESS HEARING**

CHRISTOPHER J,	)	
Student,	)	
	)	
vs.	)	CASE NO. 4948
	)	
CITY OF CHICAGO SCHOOL	)	Mary Schwartz
DISTRICT 299,	)	Due Process Hearing Officer
Local School District.	)	

**DECISION AND ORDER**

This matter is before the undersigned hearing officer on the parent’s request for a due process hearing. This hearing officer has jurisdiction pursuant to the Individuals with Disabilities Education Improvement Act (“IDEIA”)<sup>1</sup>, 20 U.S.C. § 1400 *et. seq.*(2004), 105 ILCS 5/14-8.02a *et. seq.*, and 23 Il. Adm. Code § 226.600 *et. seq.* The parties have been fully advised of their rights pursuant to these statutes and regulations.

**Procedural Background**

The parent, through her attorney, filed a due process request on March 17, 2006. The district received the parent’s request that same day. The Illinois State Board of Education (“ISBE”) appointed this hearing officer via letter on March 23, 2006. This hearing officer received her appointment letter on March 24<sup>th</sup>. On March 27, 2006, this hearing officer sent a preliminary scheduling order to the parties. The hearing officer made initial contact with the parties and set a telephone status conference call for April 20, 2006, after the end of the mandated resolution period.

The district filed its response to the parent’s request on March 27, 2006. The district then agreed to conduct a full individual evaluation (“FIE”) and hold an individualized education program (“IEP”) meeting to consider the results of the FIE.

The pre-hearing conference was scheduled for June 16, 2006. On June 15<sup>th</sup>, the parent filed a motion for an interim educational evaluation (“IEE”) and a continuance of the pre-hearing conference. The pre-hearing conference was continued to August 15<sup>th</sup>. The undersigned hearing officer issued an interim order on June 30, 2006,

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<sup>1</sup>The effective date of the IDEIA was July 1, 2005. Prior to that date, the Individuals with Disabilities Education Act of 1997 (“IDEA 1997”) was in effect.

denying the parent's request because she did not want to evaluate the need for an IEE without testimony from both parties. However, the order provided that the parent could renew her request at hearing or the hearing officer could *sua sponte* order an IEE.

On August 12, 2006, the parent filed a pre-hearing statement. The district objected to the statement, arguing that it raised issues not stated in the original request. The hearing officer ruled that the statement was an amended request; therefore, pursuant to statute, the hearing timeline recommenced. 20 U.S.C. § 1415(c)(2)(E)(ii) (2004). The district filed its amended response on August 24, 2006. The pre-hearing conference occurred on September 14, 2006, via telephone conference call. The pre-hearing conference report was issued on September 15, 2006.

The due process hearing was held on October 3, 5, and 6, 2006. At the start of the hearing, parent's counsel requested that one witness be permitted to testify by telephone because she was out of town for unexpected medical reasons. The district objected, asking for in-person testimony because of a concern that the witness has a potential conflict of interest in this case<sup>2</sup>. The parties agreed to add an extra hearing day so the witness could testify in person. The hearing officer also asked the district to recall one of its witnesses that day for questioning by the hearing officer. The final hearing day was held on October 16, 2006. This decision is issued within ten days of the close of the hearing, as required by statute.

The parent in this matter was represented by Michael O'Connor, Esq. The district was represented by Tracy Hamm, Esq.

### **Issues Presented and Remedies Sought**

#### **Parent's Issues**

The parent contends that the district did not provide the student a free appropriate public education ("FAPE") from March 17, 2004, through the present time in that the district:

1. Failed to conduct timely and adequate assessments of all areas of potential disabilities, with the result that the student's educational program for this period did not address, or addressed inadequately, the student's learning impediments;
2. Failed to provide essential related services for the student including assistive technology, occupational therapy, and social work services;

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<sup>2</sup>The witness, Ms. Kathy Fouks, provided an independent educational evaluation of the student. Ms. Fouks is also principal of Acacia Academy, the private therapeutic school requested by the parent.

3. Failed to identify and utilize effective teaching methodologies with a sufficiently intensive level that would enable the student to make progress commensurate with his cognitive skills;
4. Failed to offer a complete curricula in the areas of reading, language arts, math, social studies and science, with the result that the student did not make academic progress.

The parent also argues that the May 15, 2006, IEP developed for the student is flawed in that it:

1. Determines the student to be cognitively impaired based on a psychological assessment that did not adequately assess the student's cognitive skills;
2. Fails to identify the student as learning disabled;
3. Provides goals for academic progress that fail to address the need for remediation of essential skills that the student lacks, and incorrectly assumes that the student is functioning at an academic level commensurate with his cognitive skills;
4. Fails to offer related services in assistive technology and social work services;
5. Offers inadequate levels of speech/language and occupational therapy services; and,
6. Fails to offer compensatory services for the denial of special education services during the two previous years.

As relief for the above, the parent requests:

1. Private therapeutic day school placement at public expense;
2. Direct the district to pay for the independent educational evaluations in the areas of speech/language, cognitive skills and academic skills, and further direct the district to pay for the evaluators' time in presenting testimony at the hearing, and attending any IEP meeting ordered to consider their evaluation reports;
3. Direct the district to offer related services in speech/language, occupational therapy and assistive technology in sufficient intensity to allow the student access to educational opportunity;

4. Direct the district to provide compensatory education services for loss of FAPE during the past two years, with such services to include:
  - a. 1:1 tutoring at home by a certified special education teacher for two hours per week for two years;
  - b. additional 60 minutes per week service from a speech/language pathologist for two years;
  - c. assignment of a graduate student selected by the parent to mentor and assist the student for four hours per week outside of regular school for 24 months. The graduate student/mentor will be supervised by a faculty member, and they will regularly communicate with the parent and school staff, and attend IEP meetings during that period, at a cost not to exceed \$12,000.
5. Direct the district to convene an IEP meeting that will consider the results of evaluations and implement the foregoing relief; and,
6. Other relief that will be determined after the receipt of additional school records.

In response, the district asserts that:

1. The district held an eligibility conference on May 15, 2006, during which assessments were discussed relating to the student's cognitive, academic, speech/language, social and health needs. The IEP team determined that the student was eligible for specialized services in the areas of occupational therapy (60 minutes per week) ("mpw"), speech/language (120 minutes/month) ("mpm"), language arts - reading comprehension (200 mpw), language arts - writing/spelling (200 mpw), mathematics - numerical operations (200 mpw), mathematics - math applications (200 mpw), biological and physical sciences (200 mpw), and social sciences - United States history (200 mpw). This determination was based on the student's performance on his assessments as well as reports from his classroom teachers regarding his comprehension of material in both science and social studies.
2. Prior to May 15, 2006, no requests for assistive technology for the student had been made. Additionally, the district asserts that it made three requests as to whether it could administer additional evaluations the parent had requested; however, the parent refused that offer.
3. Regarding social work services, the district asserts that the social work assessment determined that the student's classroom behavior was manageable and that placement in a more structured classroom environment would provide him the appropriate supports for any social

emotional needs.

4. As to occupational therapy services, the district's recommendation of 60 mpw to address the student's difficulty with written expression will address the areas of weakness identified in the IEE;

5. The district asserts that both the general education and special education teachers utilize effective teaching methodologies with sufficient intensity, through the use of educational materials that provide research based instruction.

6. The district's FIE determined that the student was eligible under mild cognitive delay, which was consistent with some of the IEE findings. The district offered to convene another IEP meeting to consider and incorporate findings from the parent's IEE.

7. The district also offered to discuss compensatory services necessary to address its failure to timely evaluate the student.

### **Findings of Fact**

The student is a thirteen year old seventh grader at Bouchet Academy. PD. 66.<sup>3</sup> His birth date is November 15, 1992. SD. 49. He lives with his adoptive mother and biological and adoptive siblings. SD. 39.

### **District Evaluations and IEP Meetings<sup>4</sup>**

The student's first grade teacher referred him for an initial evaluation because of a concern about his speech/language. A speech/language assessment was conducted on February 11, 2000. PD. 050. The student's chronological age ("CA") was 7 years, 3 months. The examiner reported the following scores:

	Standard Score (SS)	Age Equivalency (AE)
Peabody Picture Vocabulary Test (PPVT)	54	3.02
Expressive Vocabulary Test (EVT)	83	5.10

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<sup>3</sup> In this decision, parent's documents are cited as PD followed by a page number, and district's documents are cited as SD followed by a page number.

<sup>4</sup> Under the IDEIA, the statute of limitations is two years. Information regarding services prior to March 17, 2004, is provided as background information on the student's educational history.

Oral Written Language Scales (OWLS)		
Listening Comprehension	82	5.8
Oral Expression	78	5.0
Total Test	160	5.7

The examiner found that the student had a mild to moderate delay in receptive and expressive language skills, including difficulties with grammatical structure of noun-verb agreement, verb tenses and pronoun usage. She also diagnosed an articulation problem. PD. 169-170.

An IEP meeting was held on March 3, 2000, to consider the results of the evaluation. The parent did not attend the meeting. The IEP team determined that the student was eligible for speech/language services. The IEP provided for 50 mpw of direct speech/language services. An articulation goal and a language goal were developed to address the student's speech/language problems. PD. 79-86.

The March 2, 2001, IEP maintained the level and type of services listed in the prior IEP. The objectives developed to assess the student's progress on the language goal were: "demonstrate understanding of pronouns his/hers", and "produce short sentences using present progressive verb tense." PD. 70-76.

At the February 28, 2002, IEP meeting, direct services were reduced to 30 mpw. The student has met his articulation goal, and services were continued for language therapy. The prior year's objective regarding present progressive verb tenses was continued, and two new language objectives were added: "identify beginning/middle/end of short stories when presented orally/visually" and "identify and express main idea when presented with short stories orally/visually." PD. 151.

The first triennial re-evaluation was conducted on February 27, 2003. The student's CA was 10.3 years. On the PPVT-III, he received a SS of 64, with a percentile ranking of 1.0 and AE of 6.0 years. He received an AE of 7.8 on the Goldman Fristoe Articulation Test. The examiner determined that the student had a moderate to severe language delay with below age level expectancies in expressive and receptive language functions. She reported that the student was difficult to engage in therapeutic and academic activities, easily distracted, and needed to be re-directed. The report indicates that the student's teacher had reported that the student had difficulty remaining motivated to complete his assignments and was reluctant to participate. PD 145-146.

An IEP meeting was held on March 4, 2003, to consider the results of the re-evaluation. The mother attended the meeting and expressed a concern about the student's expressive language skills. The IEP provided for direct services for 60 mpw. Only one language goal was developed, which used the same present progressive verb

tense objective as on the prior two IEPs. The IEP specified that the classroom teacher should re-enforce and model the correct verb tense and noun-verb agreement in classroom activities. The IEP also noted that the student had difficulty following directions, maintaining focus, putting ideas on paper and switching from one task to another. He also was described as easily distracted, especially by extraneous noises. The IEP lists the student's May 2002 ITBS scores. PD. 133-144.

An IEP revision meeting was held on November 19, 2003. The mother attended the IEP meeting. The IEP identifies the student as having a moderate to severe language delay. The revised IEP decreased the direct service to 30 mpw because of the student's distractibility and reluctance to participate in speech/language therapy. One language goal was developed, which emphasized comprehension of curriculum related vocabulary. PD. 125-127.

At an annual review held on March 3, 2004, the prior year's IEP goal was maintained. The objectives developed for that goal are the same objectives as those in the March 2, 2001 IEP. Direct service minutes are listed in two different places, once as 60 mpw and another as 45 mpw. The student's ITBS score is noted. The IEP provides that the classroom teacher should re-enforce the correct verb tense and noun-verb agreement. The mother attended the IEP meeting. PD. 112 -124.

The record of the February 7, 2005, IEP is incomplete. The speech pathologist produced two pages of that document at the hearing, which she stated is all she has of the IEP. The objectives listed on the IEP are identical to those on the March 2004 IEP. The direct service time is reduced to 30 mpw. The mother did not attend the IEP meeting. PD. 98A, B.

A second triennial evaluation occurred on February 6, 2006. The student's CA was 13.2 years. The evaluator reported the following results on the assessment:

	SS	%rank	AE
PPVT-III	67	1	7.3
EVT	66	5	7.7
OWLS			
Listening Comprehension	64	1	6.6
Oral Expression	61	0.5	6.0
Oral Composite	60	0.4	6.3

Although the student's articulation skills were within normal limits, he continued to exhibit receptive and expressive language deficits. The evaluator recommended a change in service from direct to consultative because the student had stated that he did

not want to go to speech and had been reluctant to respond during the evaluation. She also recommended a referral for a Full Individual Evaluation ("FIE"). PD 66-67. The results of the re-evaluation were considered at an IEP meeting held on February 7, 2006. The mother attended the IEP meeting. The IEP indicates that the student's performance was at the first grade level. PD. 33-47.

### **District's Full Individual Evaluation and May 15, 2006 IEP**

A FIE was conducted in March and April 2006, when the student was in sixth grade. The social assessment notes that the student was exposed to drugs in vitro. The student had behavior problems in third and fourth grades, and the student himself stated that he did little work in fourth grade. Adaptive behaviors were reported as below age level but not problematic. SD. 37-41. The school nurse reported that the student's developmental milestones were delayed, including speech development. No current health or medical problems were reported. Per teacher's report to the nurse, the student did not have discipline problems at school. However, the mother reported that the student had been suspended several times and had started a fire in a closet at home. SD. 44-47. An occupational therapy evaluation found that while the student had adequate gross motor skills to complete and participate in school-related activities, he did have significant fine motor deficits. On a test of visual-motor integration, the student standard score of 74 and an age equivalency of 7.6 years. SD. 33-36.

The school psychologist's evaluation was conducted on April 28, 2006. The academic history notes that the student had repeated third grade, has a history of poor and failing grades but good attendance, and has no record of interventions. Per the teacher's report, the student did not attempt to complete class or homework assignments. The school psychologist observed the student in his classroom and noted that he seemed unmotivated, had nothing on his desk, and quietly listened to his classmates present oral reports but seemed uninterested in their reports. She reported that during her test administration, the student showed flat affect, was annoyed at being evaluated but



was eventually able to establish rapport. SD. 50-52. The following results were obtained on the psychological evaluation:

**Kaufman Test of Educational Achievement - Brief Form ("KTEA-Brief")**

	SS	%rank	Grade Equivalent
Mathematics	66	1	2.8
Reading	69	2	2.3
Spelling	63	1	1.9
Composite	66	1	2.4

The evaluator found that the student was achieving at the mid-second grade level and had academic skills in the lower extreme of the KTEA.

**Wechsler Intelligence Scale for Children - Fourth Edition ("WISC IV")**

<u>Verbal Comprehension</u>	<u>SS</u>	<u>Perceptual Reasoning</u>	<u>SS</u>
similarities	2	block design	6
vocabulary	2	picture concepts	5
comprehension	3	matrix reasoning	3
<u>Working Memory</u>	<u>SS</u>	<u>Processing Speed</u>	<u>SS</u>
digit span	3	coding	7
comprehension	1	symbol search	2

<u>Composites</u>		<u>%tile</u>	Verbal IQ	55
verbal comprehension	55	0.1	Performance IQ	67
perceptual reasoning	67	1	Full Scale IQ	53
working memory	54	0.1		
processing speed	70	2		

The examiner stated that the student's overall performance was extremely low. He showed no significant difference among his verbal subtest scores.

PPVT-III: SS 81 10<sup>th</sup> %tile

The examiner stated this score showed moderately low ability, with receptive language skills better developed than expressive language skills.

Beery Developmental Test of Visual-Motor Integration: SS 75 5<sup>th</sup> %tile

This score is in the borderline range and shows visual-motor integration deficits.

Overall, the school psychologist found that the student showed sub-average

intelligence and significant limitations in adaptive functioning. The report states that the student's academic functioning was commensurate with his measured intellectual ability, indicating a mild cognitive delay. The report notes that the student's adaptive behavior was very low in communication, home/living, social/interpersonal skills, self-direction, and use of community; however, the examiner did not provide any scores for this latter assessment.

An IEP meeting was held on May 15, 2006, to consider the FIE results. The mother and her attorney attended the IEP meeting. After a review of the FIE, the student was determined to have a mild cognitive impairment and a speech/language impairment. An instructional program providing 400 mpw of special education in both language arts and math and 200 mpw of special education in both science and social studies was recommended. Recommended related services were 60 mpw of occupational therapy and 30 mpw of speech/language therapy. SD. 25

Goals were developed for each subject area of instructional service and for related services. The student's present level of performance ("PLOP") in reading comprehension lists a reading level at grade 2.3, with better decoding skills than comprehension skills. The goal developed is "read a selected text with fluency by understanding and applying word analysis, vocabulary skills and answering WH questions with 80% accuracy." For writing and spelling, the student's PLOP states that he is unable to independently write a paragraph with a topic sentence and supporting details. His spelling was at a 1.9 grade equivalency. The goal developed was to "summarize text with a main idea and three supporting details using one or two sentences for the main idea and one or two sentence for supporting details with correct spelling and minimal teacher support." SD. 19-20.

For math calculations, the student's PLOP reports weak skills in addition and subtraction, with a grade equivalency at 2.8. The goal developed is to solve addition, subtraction and multiplication problems with double and triple digits. In math applications, the student was at a 2.8 grade level. His PLOP indicates that he cannot solve math word problems involving time, money and measurement. The goal developed was to solve math word problems involving time, money and measurement with 80% accuracy. SD. 21-22.

In biological and physical sciences, the PLOP states that the student needs maximum teacher support to answer factual questions about science topics. The annual goal is for the student to demonstrate understanding of scientific inquiry and experiments by answering a few factual questions with minimal teacher support. The PLOP for social sciences also indicates that the student needs maximum teacher support to answer factual questions. The goal developed is for the student to demonstrate an understanding of the basic principals of United States government, measured by answering a few factual questions with minimal teacher assistance. SD. 23-24.

The IEP team recommended extended school year (“ESY”). Modifications or accommodations were recommended for the student to participate with non-disabled peers in gym, library, computer and lunch. Modifications or accommodations were also recommended for state and local assessments. Under compensatory services, “yes” is checked in answer to a question asking whether special education services were interrupted, delayed or not provided. The section further states that the parent requests a therapeutic placement as compensatory services. SD. 14, 29,31.

### **School Report Cards<sup>5</sup>**

The student’s first grade report card notes that he “struggles academically” and was “not achieving at level.” PD. 003. He received an “F” as a final grade in reading, listening, speaking, proofreading, handwriting, mathematics, science, and social studies and a “D” in writing and an “A” in art. PD. 004. The student repeated third grade. PD. 66. In grades three through five, he continued to receive failing grades of “D” or “F” in reading, writing, spelling, handwriting, and mathematics. PD 006, 008, 91, 92, 108. His sixth grade report card indicates that he turned in no assignments in reading, writing or math for the second quarter; his second quarter grades were “F” in reading, writing, mathematics, science and social studies. PD. 91.

On the student’s sixth grade report card, the parent wrote the following comments in the first two quarters: “Please follow up my previous requests and consents for a full case study evaluation. (The student) is in need for resource or self contain service” and “Continue to pursue a full case study evaluation.” PD. 94.

### **Iowa Test of Basic Skills (“ITBS”)**

The student’s ITBS scores from grades three through five are as follows:

Year	Vocabulary	Reading Comprehension	Math Concepts	Math Problem Solving	Math Computation
Spring 2002	SS 161 / %13	SS 170 / % 25	SS 146 / % 21	SS 143 / % 3	SS 175 / % 28
Spring 2003	SS 166 / % 19	SS 165 / % 19		SS 165 / % 19	
Spring 2004	SS 165 / % 7	SS 148 / % 1	SS 147 / % 1	SS 149 / % 2	SS 184 / %20
Spring 2005	SS 139 / % 1	SS 170 / % 8	SS 153 / % 1	SS 168 / % 6	SS 185 / %2

PD. 009, 013, 107, 108.

### **Independent Educational Evaluations (“IEE”)**

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<sup>5</sup>The student was in third grade for academic years 2001-02 and 2002-03; fourth grade in 2003-04; fifth grade in 2004-05; sixth grade in 2005-06; and, seventh grade in 2006-07.

The parent had the student assessed by private evaluators prior to the due process hearing. A summary of these evaluations follows:

*Speech/Language and Assistive Technology Evaluation*

The student was evaluated by Dr. Janet Marsden-Johnson on July 24, 2006. Dr. Marsden-Johnson is a licensed speech language pathologist in Illinois and also has a Type 10 special education certificate. She is on the faculty at the University of Illinois, Chicago, and also has a private practice. Dr. Marsden-Johnson reported that the student worked diligently throughout the four hour testing period. She believed that the evaluation yielded an accurate assessment of the student's speech and language abilities. Results on specific assessments are as follows:

	SS	%rank	AE
PPVT IIIA	54	0.1	6.03
Expressive One Word Picture Vocab. Test	67	1	6.11
Adolescent Word Test			
Brand names	67	1	
Synonyms	69	2	
Signs of the times	68	1	
Definitions	*	*	
TOTAL	62	1	
	SS	% rank	AE
Adolescent Test of Problem Solving	<55	<1	
Test of Auditory Perceptual Skills			
Word Discrimination	5	5	
Phonological sequence	5	5	
Phonological blend	1	<1	
# Forward	1	<1	
# Reversed	8	25	
Sentence memory	1	<1	
Auditory comprehension	6	9	
Auditory reasoning	*	*	
Test of Written Language			

Vocabulary	4	2	
Spelling	1	1	
Style	1	1	
Contextual conventions	1	<1	
Contextual language	1	<1	
Story Construction	1	<1	

\* student not able to complete this part

Dr. Marsden-Johnson assessed the student as having significant global deficits in all areas of speech and language development. His scores were in the profoundly delayed range on the PPVT IIIA and the EOWPVT. He has very poor knowledge of words and relationships between words. His understanding is at a concrete level, and he has significant difficulty with problem solving. His vocabulary skills, grammatical skills, and word knowledge are very impaired. His written communication is significantly below age level expectations. He has significant difficulty with auditory processing tasks including memory, discrimination, and reasoning. Based on these findings, Dr. Marsden-Johnson recommended intensive intervention in speech/language services and learning disability services.

Dr. Marsden-Johnson also conducted an assistive technology (“AT”) evaluation. Even with the assistance of AT devices, the student found it difficult to create a story. He had difficulty with syntax and word order in sentences. He was able to spell some words correctly when using AT support whereas he had not been able to spell the words correctly without such support. Dr. Marsden-Johnson reported that AT support would help motivate the student, provide him with necessary auditory and visual input, and provide him with a new approach to speech and learning. PD. 288-302.

*Psychological Evaluation*

An independent psychological evaluation was conducted by Debra Weid-Lenardi. Ms. Weid-Lenardi is a school psychologist at Acacia Academy in LaGrange Highlands, Illinois. Ms. Weid-Lenardi has a master’s degree in school psychology from Illinois State University and approximately 20 post graduate hours. She has a Type 23 certificate. She has been a school psychologist for 23 years. Although she currently works at Acacia, she spent the majority of her career in the public schools.

Ms. Weid-Lenardi reported that the student was cooperative throughout the testing. He repeated instructions to himself, appeared to be trying to do his best, provided little spontaneous speech, and showed some signs of anxiety. She indicated that the results obtained were valid and reliable indicators of the student’s current functioning.

Comprehensive Test of Nonverbal Intelligence (CTONI)

Subtest                      SS                      Composite Score      Quotient              %tile

Pictorial Analogies	4	Nonverbal	85	16
Geometric Analogies	7	Pictorial	79	9
Pictorial Categories	7	Geometric	94	35
Geometric Categories	11			
Pictorial Sequences	9			
Geometric Sequences	9			

On the CTONI, the student's subtest scores ranged from the second to the 63<sup>rd</sup> percentile. His overall scores suggest low average composite nonverbal intelligence. He showed statistically significant discrepancies between pictorial and geometric analogous abilities and between pictorial and geometric categorization. The report notes that the student's poor language ability may have affected his performance, resulting in large discrepancies. PD. 325-327.

*Psychoeducational Evaluation*

Ms. Kathy Fouks performed an independent psychoeducational evaluation of the student. Ms. Fouks has a bachelors degree from the University of Wisconsin and a masters degree in education and reading from Northern Illinois University. She also has a number of postgraduate hours in education. She is on the board of the Illinois Learning Disabilities Association and a member of several other professional organizations. She is the principal at Acacia Academy and the clinical director of the Achievement Center, which is Acacia's after-school tutorial program and diagnostic center.

Ms. Fouks gave the student a comprehensive academic achievement test, an assessment of cognitive ability, reading assessments, and several assessments to identify various processing deficits. She found the student was quiet and cooperative throughout the five hour evaluation, which took place over two days. He sub-vocalized to process questions asked and used his finger to follow a line as he read. Below is a summary of the test results.

Beery/Buktenica Developmental Test of	SS	%rank
Visual Motor Integration - Full Format	74	4
Visual Perception	95	37
Motor Coordination	94	34

**L-C Dominance and Awareness Test**

Normal awareness of left/right sides with right had, foot and eye dominance

**Horner-Throop Auditory Discrimination Test**

Adequate auditory discrimination; could not hear the difference between final v-th, initial and final f-th, and short vowels e-l.

Slingerland Specific Language Disability Test - Form D

The student made very few errors on this test. No significant directionality confusions were shown.

Slosson Oral Reading Test

<u>Grade level</u>	<u>Accuracy</u>
Primer	90%
1	95%
2	70%
3	45%
4	0

The Slosson measured the student's ability to read words in isolation without the aid of context clues from meaningful paragraphs. He reached a frustration point at the third grade level and had a mid-first grade word recognition level.

Gray Oral Reading Test

On this test, passages were read orally to the student, who then had to orally answer comprehension questions from memory. He reached a word recognition frustration point at the third grade level.

Woodcock-Johnson III Tests of Cognitive Abilities: Broad Processing/Cognitive Scores

	SS	%rank	AE
Gia	70	2	8.5
Verbal Ability	77	6	8.11
Thinking Ability	73	4	8.1
Cognitive Efficiency	68	2	8.6
Comprehension-Knowledge	SS	%rank	AE
Comprehension - Knowledge	77	6	8.11
Long term Retrieval	65	1	6.10
Visual spatial Thinking	99	47	13.1
Auditory Process	64	1	6.3
Fluid Reasoning	82	11	8.6
Process Speed	62	1	8.7
Short term memory	82	11	8.3

Woodcock-Johnson III Tests of Achievement: Global Achievement Test Scores

	SS	%rank	AE

Total Achievement	46	<0.1	7.8
Broad Reading	57	0.2	7.5
Broad Math	72	3	9.2
Broad Written Language	51	<0.1	7.3

### **Burden of Proof**

Pursuant to Illinois statute, the district “shall present evidence that the special education needs of the child have been appropriately identified and that the special education program and related services proposed to meet the needs of the child are adequate, appropriate, and available.” 105 ILCS § 14-8.02a(g). The parent, however, retains the burden of proof. *Schaffer v. Weast*, 126 S.Ct. 528 (2005).

### **Applicable Law**

A free appropriate public education is defined as special education and related services that are specially designed to meet the unique needs of a student with a disability. 20 U.S.C. § 1401(9), (29) (2004); 23 Il. Adm. Code § 226.50. Whether a student has been provided with a FAPE requires a two-step analysis: first, whether the district has complied with statutory procedures; and second, whether the IEP developed is reasonably calculated to enable the student to benefit from the special education and related services. Bd. of Educ. v. Rowley, 458 U.S. 176 (1982). A student must receive more than a nominal benefit from the FAPE provided. T.H. v. Bd. of Educ. of Palatine Comm. Consol. Sch. Dist., 55 F. Supp. 830 (N.D. Ill. 1999). Procedural inadequacies that result in a loss of educational opportunity also result in a loss of FAPE. Evanston Comm. Cons. Sch. Dist. No. 65 v. Michael M., 356 F.3d 798 (7<sup>th</sup> Cir. 2004). (“Michael M.”)

A district must use a variety of assessment tools and strategies when evaluating a student and must assess the student in all areas of suspected disability. 20 U.S.C. § 1414(b)(2)(A), (3)(B) (2004); 23 Il. Adm. Code §§ 226.120, 226.130. A re-evaluation must be conducted if the district determines that the student’s educational or related service needs warrant a reevaluation. 20 U.S.C. § 1414(a)(2)(A)(I) (2004);<sup>6</sup> 34 C.F.R. § 300.536 (1999). Re-evaluations shall review existing evaluation data, current classroom based assessments and observations, observations by related service providers, and local or state assessments. 20 U.S.C. § 1414(c)(1)(A)(2004); 34 C.F.R. § 300.533(a) (1999). The IEP team is to use such data to determine if the student needs any additions or modifications to his IEP. 20 U.S.C. § 1414(c)(1)(B)(iv) (2004).

A specific learning disability is “a disorder in one or more of the basic

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<sup>6</sup>The IDEA 1997 mandates that reevaluation occur “if conditions warrant” but at least once every three years. 20 U.S.C. § 1414(a)(2)(A) (1997).



psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.” 20 U.S.C. § 1401 (30)(A). (2004). The term does not include a learning problem that is primarily the result of mental retardation. 20 U.S.C. § 1401 (30)(C) (2004); 23 Il. Adm. Code § 226.75. Illinois law requires that the determination of a specific learning disability be conducted in accordance with federal regulations, which require that: “ the student is not achieving commensurate with his age and ability level in one or more areas, if provided with appropriate learning experiences for the student’s age and ability level; and, that the student has a severe discrepancy between achievement and intellectual ability in one or more of the following areas - oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematics calculation, or mathematics reasoning.” 34 C.F.R. § 300.541 (1999).

A district must ensure that “an assessment of a student’s functional capabilities and whether they may be increased, maintained or improved through the use of AT devices and services where warranted by a student’s suspected disability.” *Letter to Fisher*, 23 IDELR 565 (OSEP 1995). An assistive technology (“AT”) device is “any item, piece of equipment, or product system. . . that is used to increase, maintain, or improve functional capabilities of a child with a disability.” 20 U.S.C. § 1401(1)(A)(2004). Assistive technology service is “any service that directly assists a child with a disability in the selection, acquisition or use of an assistive technology device.” 20 U.S.C. § 1401 (2)(2004). Assistive technology service includes evaluating a child to determine if AT is needed and training or technical assistance for the child and, where appropriate, the child’s family and professionals who provide services to the child. 20 U.S.C. § 1401 (2)(A), (E),(F)(2004). The school district must furnish AT devices prescribed in a student’s IEP. 23 Il. Adm. Code § 226.750 (a)(1).

An IEP is a comprehensive statement of the student’s educational needs and the specially designed instruction and related services necessary to meet those needs. Burlington Sch. Comm. v. Dept. of Educ., 471 U.S. 359 (1985). The IEP must contain the student’s present level of performance, including a statement of how the student’s disability affects his involvement and progress in the general curriculum; a statement of measurable annual goals and short-term objectives; and, a description of how the student’s progress on annual goals will be measured. 20 U.S.C. § 1414(d)(A)(i)(I)-(III) (2004); 34 C.F.R. § 300.347(a)(1), (2),(3),(7)(I) (1999); 23 Il. Adm. Code § 226.230(a) (1)-(3). In developing the IEP, the IEP team must consider whether the student requires AT devices and services. 34 C.F.R. § (a)(2)(v) (1999); 23 Il. Adm. Code § 226.220 (a). A student’s IEP must be reviewed at least annually and revised as appropriate to address any lack of expected progress toward annual goals and in the general curriculum. 34 C.F.R. § 300.343(c)(2)(I)(1999); 23 Il. Adm. Code § 226.200(d), (f)(1) - (4).

Among the procedural safeguards afforded to parents of children with disabilities is the right to obtain an independent educational evaluation of the student at public

expense. 20 U.S.C. § 1415(b)(1) (2004); 23 Ill. Adm. Code § 226.180. Reimbursement for an IEE is allowed where the parent shows that the district's evaluations were not appropriate. Michael M., 356 F.3d 798 (7<sup>th</sup> Cir. 2004). Prevailing parents may not recover the costs of experts or consultants. Arlington Central Sch. Comm. v. Dept of Educ., 126 S. Ct. 2455 (2006).

### **Conclusions of Law**

#### **I. Did the district provide the student with a FAPE from March 17, 2004, to the present time?**

##### **A. Did the district conduct timely and adequate assessments of the student in all areas of potential disability?**

A district must reevaluate a student if the student's academic or related service needs warrant such a reevaluation. 20 U.S.C. § 1414(a)(2)(A)(i) (2004). The question here is whether the student demonstrated academic or related service needs such that a reevaluation was warranted.

The record of the student's academic performance between 2004 and the present time reveals a clear pattern of academic failure. He received grades of "D" or "F" in reading, writing, spelling, handwriting, and mathematics in academic years 2003-04 and 2004-05. PD. 108. For the first two quarters of 2005-06, he did not turn in any assignments in writing and math, and he received "D" or "F" in reading, writing, math, and social science. PD. 91. The sixth grade teacher testified that the student's multiplication skills were "iffy", division skills were "shaky" and that he was not able to read without the teacher's help. The speech/language paraprofessional testified that when the student was in fifth grade, he had difficulty following instructions and keeping up with his lessons.

The student's ITBS scores declined significantly during this time period. In 2004, his vocabulary percentile was at the 7<sup>th</sup> percentile, having dropped from the 19<sup>th</sup> percentile the year before. He was at the first percentile in reading in 2004, whereas he had been at the 19<sup>th</sup> percentile in 2003. His math problem solving dropped to the 2<sup>nd</sup> percentile in 2004 from the 19<sup>th</sup> percentile in 2003. In 2005, his vocabulary score dropped to the 1<sup>st</sup> percentile and his math computation to the 2<sup>nd</sup> percentile. PD. 107, 108.

Dr. Mary Pat Brady testified regarding the ITBS scores. Dr. Brady has been a school psychologist for the district for 17 years. She has a Ph.D. in school psychology and has four certifications from the ISBE. She also taught special education teacher for one year. Dr. Brady stated that the ITBS measures academic progress. She testified that the student's ITBS scores showed that he had not made good progress since third grade. She further testified that she was "surprised" that he had not received special

education prior to May 2006.

In addition to his academic struggles, the student had difficulty in his speech/language services. The district's speech/language pathologist, Ms. Hong, testified regarding the student's progress in speech/language services. Ms. Hong has a masters degree from Northern Illinois University, a Type 73 certificate and an Illinois license as a speech/language pathologist. She has worked for the district for 27 years. She conducted the initial speech/language assessment on the student and provided direct services to him during his first two years in speech/language therapy. She supervises the paraprofessional who currently provides services to the student. Ms. Hong testified that the student had made "slow" progress over his years in speech therapy.

District speech assessments show that on the student's 2003 speech/language re-evaluation, he scored at the first percentile on the PPVT. On his 2006 reevaluation, he received the same PPVT-III score. Although the PPVT conducted and scored by the school psychologist for the FIE reports a SS of 81 and a 10<sup>th</sup> percentile ranking, Dr. Marsden-Johnson reviewed that assessment and stated that the results on that test were invalid because the test had not been administered correctly. The school psychologist who administered the exam was not called to testify.

The speech/language paraprofessional's progress notes detail the student's behavioral problems during therapy sessions, including being disruptive, not paying attention, and refusing to attend services. PD. 61-63. The progress notes also indicate that in January 2006, the student "continued" to exhibit difficulty constructing sentences. PD. 96. In February 2006, the speech/language professionals recommended that the level of service be changed from direct to consultative because of the student's resistance to services, even though he continued to demonstrate a significant deficit in receptive and expressive language. PD. 33-47.

Side by side with this record of failing grades, decreasing scores on standardized assessments, and written documentation of teacher and related service provider concerns is testimony from district personnel and the parent that they considered that the student should be re-evaluated and/or requested evaluations. The sixth grade teacher testified that he had made a referral of the student. Likewise, Ms. Hong testified that she had considered requesting a FIE for the student three or four times in the past two years and had suggested a FIE to other staff, including the student's teacher, last year. The parent wrote two requests for an evaluation on the student's report card and testified that she had made repeated requests for an evaluation. None of these requests was acted on.

Although the speech/language paraprofessional testified that the student received some type of school based intervention last year, such intervention does not relieve the district from its obligation to reevaluate the student when it knew of his new or increased needs. Scott v. Dist. of Columbia, 45 IDELR 160 (Dist. Col. 2006). The

hearing officer finds that the parent has shown by a preponderance of the evidence that the district failed to evaluate the student in a timely manner. This failure denied the student a FAPE.

The next issue raised by the parent is whether the district's 2006 FIE adequately assessed the student in all areas of potential disability. The district's psychological evaluation consisted of four assessments: the KTEA - Brief Form, the WISC - IV, the VMI and the PPVT-III. The school psychologist's report states that on the WISC-IV, the student has sub-average intelligence and no significant difference between his subtest scores. The psychological report states that the Vineland II Adaptive Behavior Scales was given but provides no score for that assessment. The report does indicate that the student scored very low in communication, home/living, social/interpersonal skills, self-direction, and use of community resources. SD. 50-52. The school psychologist who administered the assessment did not testify at the hearing.

Dr. Mary Pat Brady testified for the district regarding its psychological evaluation. Dr. Brady has never met the student. She did not review any records on the student, including the IEE evaluations and, in fact, was only called to testify the day before she appeared. Although the hearing officer found Dr. Brady's testimony credible, she also finds the testimony limited. Dr. Brady has no personal knowledge of this student and limited knowledge of his educational history, including past and current evaluations.

Dr. Brady testified that based on her review of the 2006 psychological report, the student has a sub-average IQ and is performing very close to what one would expect given his intellectual ability. She testified that this report indicates he has a mild to moderate cognitive delay.

Dr. Brady noted some irregularities in the way the district's examination was administered or scored. She testified that the long form of the KTEA is usually used on initial evaluations, and the brief form used on reevaluations. She also testified that an assessment of a student's adaptive behavior, both in school and at home, is an essential part of an evaluation for cognitive delay. She said that she would have provided scores for the Vineland if she had given the whole test; however, if she had given only part of the test, she might not report a score. Based on the information available to her, Dr. Brady was unable to explain why the student had scored much higher on the 2006 PPVT than he had scored any other time on that test. Dr. Marsden-Johnson later testified that her review of the PPVT protocols completed by district's psychologist showed that the test had been incorrectly administered, which resulted in the student's inflated score.

The evaluations provided by the parent's independent evaluators consist of a comprehensive speech/language assessment, a non-verbal intelligence test, numerous reading and processing assessments, and cognitive and achievement tests. Dr. Marsden-Johnson testified that the student has a profound delay in expressive and receptive language. Her report details his impairments in vocabulary, grammar, written

communication, word knowledge, and auditory processing. PD. 288-302.

Ms. Weid-Lenardi assessed the student using the CTONI, which she testified is designed to assess nonverbal intellectual abilities. She stated that the student's scores on the CTONI showed a low average IQ. The psychoeducational evaluation given by Ms. Fouks consisted of the Woodcock Johnson tests of achievement and cognitive abilities as well as numerous reading assessments and perceptual tests. The student's scores on the Woodcock Johnson tests of achievement and cognitive ability add further support to the diagnosis of learning disability. Ms. Fouks testified that the student's cognitive skills are stronger in visual, non-verbal areas than in verbal areas. Based on her assessment in conjunction with the CTONI scores, she stated that the student has an average to low average IQ. His academic skills are on the first grade level. He has extremely depressed verbal skills and significant receptive and expressive language delays.

The testimony presented about the district's psychological evaluation raised several concerns about the testing. According to the district's own witness, the brief form of the achievement test given to the student is usually used on re-evaluation, not on an original assessment. Because this was the district's first full assessment of this student, and because the district knew of student's serious academic difficulty, the use of the short form seems seriously flawed. The testimony of the district's witness regarding omission of an actual score on the adaptive behavior assessment also raises concern, particularly when the witness testified that this is an essential part of a diagnosis of cognitive impairment. Finally, testimony presented raised questions as to whether the PPVT had been administered correctly.

Moreover, the district assessment did not address a question central to this student's disability: how does his long-standing, severe language problem impact his intellectual functioning and academic performance? The independent evaluations were directed toward answering this question. Dr. Marsden-Johnson testified that the student has given up because he had poor communication skills for such a long time. Ms. Weid-Lenardi used a test specifically designed to test people who, like this student, have significant language problems. Ms. Fouks presented testimony regarding the impact of the student's disability on his academic achievement, particularly in the area of reading. Although the district had expressed concern prior to the hearing regarding possible bias on the part of Ms. Fouks, the hearing officer heard nothing in the testimony nor noted anything in her report that raised such a concern.<sup>7</sup> Based on the evidence and testimony presented, the hearing officer finds that the district's evaluation did not adequately assess the student in all areas of suspected disability. Further, the lack of an adequate assessment denied the student a FAPE.

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<sup>7</sup>The district was concerned that Ms. Fouks might have a conflict of interest in this matter because she was hired by the parent as an independent evaluator, and the parent is asking for a private placement at Acacia Academy, where Ms. Fouks is principal. Ms. Fouks did testify that admissions to Acacia are decided by a committee, of which she is a member.

B. Did the district provide all essential related services, including assistive technology, occupational therapy and social work, which were required to provide the student with a FAPE?

A district's failure to consider whether a student requires an AT evaluation or provide AT services for a student with a disability is a violation of the IDEA<sup>8</sup>. Kevin T. v. Elmhurst Comm. School Dist. No. 205, 2002 U.S. Dist. LEXIS 4645 (N.D. Ill. 2002) ("Kevin T."). The district's assertion that the parent never requested an AT evaluation puts the responsibility on the wrong party. Although the district must consider a parent's input in the evaluation process, the onus is on the district to ensure an individualized evaluation that assesses all suspected areas of disability. Kevin T., note 3, quoting M.C. v. Cent. Reg'l Sch. Dist., 81 F.3d 389, 397 (3<sup>rd</sup> Cir. 1996) ("a child's entitlement to special education should not depend upon the vigilance of the parents . . . rather it is the responsibility of [the school] to ascertain the child's educational needs, respond to the deficiencies, and place [the child] accordingly." District personnel testified that the IEP team did not discuss whether the student needed an AT evaluation. Discussions at IEP meetings centered on whether the student should be allowed to use "low-tech" AT devices such as a calculator. The district's occupational therapist testified that she considers "high-tech" AT devices for writing when occupational therapy does not help remediate a student's fine motor problems.

Results from the independent AT evaluation show that AT devices are helpful to this student. Dr. Marsden-Johnson's report discusses how the student performed using AT during the evaluation. He was able to spell words using AT that he had been unable to spell without such support. His motivation increased when he was using the AT devices. PD. 291. Dr. Marsden-Johnson testified that it was "essential" that AT be incorporated into the student's language therapy and imbedded in his curriculum. She stated that AT devices could help pre-teach concepts to the student, which would help him receive information in an organized fashion and not be overwhelmed by information received in the classroom.

The occupational therapy evaluation conducted in May 2006 was done to address concerns with the student's "fine motor and visual perceptual skills." The evaluation found that the student, now almost 14 years old, has difficulty printing simple sentences. He has problems with spacing, sizing legibility, and letter formation. PD. 230. These

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<sup>8</sup>The IDEIA requires that a hearing officer find that a student did not receive a FAPE only if the alleged procedural violations impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision making process, or caused a deprivation of educational benefit. 20 U.S.C. § 1415(f)(3)(E)(ii)(2004).

problems in handwriting were not new. The student had received a failing grade in handwriting fourth and fifth grades. PD. 108. His fifth grade teacher testified that the student did not turn in any written work for two quarters. No one investigated whether at least part of this difficulty was due to student's difficulty with handwriting. The district's argument that it has now provided an occupational therapy evaluation and has recommended occupational therapy services for the student does not address the lack of timeliness of an occupational therapy evaluation.

The district's social worker testified that she met with student and with his mother as part of her May 2006 evaluation. She also made a home visit, spoke with the student's teacher, and observed the student in class. The social worker did not recommend social work services because, in her opinion, the student did not demonstrate a severe behavior problem and his behavior did not impact his academic performance. She stated that the behavior modification program utilized by the student's sixth grade teacher was effective and benefitted the student.

The parent introduced some evidence showing that the student has had a couple suspensions at school and has shown disruptive behaviors during speech/language therapy and sometimes in the classroom. From the evidence and testimony provided, it is not clear to this hearing officer that the parent's concerns about these behaviors are best addressed through social work services. Teachers and related service providers have described this young man reluctant to talk. The independent evaluators testified that he was hesitant to talk and answered questions but did not engage in spontaneous conversation. Social work services are, at their core, "talking" services. Dr. Marsden-Johnson recommended that the student receive 30 mpw in group language therapy, which would provide a supportive group setting in which he could work on social skills and other issues. A speech/language pathologist is trained to work with and understand students with severe language problems. School social workers do not necessarily have this kind of training or experience. Given this student's language deficits, his needs would be better met in a group situation such as that recommended by Dr. Marsden-Johnson. Therefore, the hearing officer finds that social work services were not essential to providing the student with a FAPE.

Current evaluations clearly show the need for AT devices and services and for occupational therapy services. The student's problems necessitating such services are not new. The district has had evidence of the student's severe language problems and fine motor problems at least from 2004; therefore, the hearing finds that the parent has shown by a preponderance of the evidence that assistive technology and occupational therapy are essential related services and the failure to provide these essential services denied the student a FAPE.

C. Did the district fail to identify and utilize effective teaching methodologies at a sufficiently intense level to enable the student to make academic progress, and fail to offer the student a complete curricula, which resulted in the student's lack

of progress?

The failure to fully evaluate a student leads to inadequate programming. Bd. of Educ. of Oak Park and River Forest H.S. Dist. No. 200 v. Kelly E., 21 F. Supp. 2d 862, 875 (N.D. Ill. 1998) (“Kelly E.”). As the court stated in *Kelly E.*, “An appropriate education specific to a disabled child’s needs must begin with full recognition of the disability and assessment of its extent. School authorities cannot properly address problems which they do not understand.” *Id.* The student in this due process matter, who is now in seventh grade, reads at mid-first to mid-second grade level. His math skills are similarly low. Until shortly before this due process hearing, he had never received special education. His IEP provided only for speech/language therapy. No evidence has been introduced regarding any teaching methodologies used between March 2004 and September 2006. Based on the student’s report cards and ITBS scores, it is clear that he did not make academic progress during that period of time. It logically follows, therefore, that whatever teaching methodologies had been used during that time period were not effective for this student.

The methodology issue arises because of the student’s current placement in a cross-categorical classroom and the parent’s request for placement at a private therapeutic school. The student was placed in his current classroom several weeks before this due process hearing. His placement was based on the district’s assessment of the student as having a mild cognitive impairment.

The student’s current special education teacher has a degree in special education from Southern Illinois University. She has both a standard teaching certificate and a special education teacher certificate. Her classroom has ten students who are identified as cognitively impaired or learning disabled; some students also having E/BD as a secondary disability. The teacher testified that her reading instruction focuses on teaching inferences, context clues, word knowledge and fluency. She tries to get students to relate what they read to themselves. She also testified that she uses the SRA series about twice a week for teaching reading. This series is designed to work on specific reading skills. The teacher also testified that she has a tape recorder so that the students can listen to a story and then answer questions on the story; however, she stated that she has not started to use this yet. The teacher testified that she has given the student a fourth grade reading book so that he “has something to strive for.” In math, the class works on place values, rounding numbers and reviews basis math facts. The teacher described the student as somewhat playful with no major behavioral problems. She stated that he daydreams and she has to remind him to get back on task.

Ms. Fouks testified that the SRA series is a supplement to basal readers and emphasizes vocabulary and comprehension. She testified that it would not be effective for this student because it is too general for his reading needs. She testified that the student needs a reading program individualized to his needs. Further, she testified that the student could not read a text at the fourth grade level as his skills are at the mid-first to beginning second grade level.



The district asserts that methodology is left to the district to decide. Lachman v. ISBE, 852 F.2d 290 (7<sup>th</sup> Cir. 1988). This argument misses the point. Rowley holds that “questions of methodology are for resolution by the States” when there has been a determination that the requirements of the IDEA have been met. Rowley, 458 U.S. 176 (1982). See also E.S. v. Indep. Sch. Dist. No. 196, 27 IDELR 503 (8<sup>th</sup> Cir. 1998). As discussed above, this hearing officer has already determined that the district did not meet these requirements.

As to the student’s current placement, the requirements of IDEIA also have not been met. The student’s current placement is based on a determination that he has a mild cognitive impairment. The IEP developed for him also was based on that determination. As discussed below, the hearing officer finds that the student is learning disabled, not cognitively impaired. Credible testimony has been presented that this student’s individual reading needs cannot be met in his current classroom. The student’s current IEP has one reading goal, which addresses reading fluency through applying word analysis, vocabulary skills and answering WH questions. SD. 19. Based on the testimony of Dr. Marsden-Johnson and Ms. Fouks, one reading goal is insufficient to address this student’s significant deficits. Both testified to the student’s need for intense intervention to address these deficits. Credible evidence has been presented that methodologies that would be effective for *this* student have not been identified and implemented by the district. His IEP does not reflect the individualized planning required by the law.

Regarding the parent’s assertion that the district has not offered the student a complete curricula, no evidence has been presented to that effect. The curriculum has contained the standard elementary school subjects. The student’s lack of progress, which has been clearly demonstrated, is not related to curricula offerings. Rather, it is related to inadequate assessments of the student’s problems followed by lack of special education and essential related services to address this student’s individual needs.

**II. Was the district’s May 15, 2006, IEP flawed in that it incorrectly identified the student as cognitively impaired, failed to address the student’s need for remediation of essential skills, failed to offer AT and social work services, offered inadequate levels speech/language and occupational therapy services, and failed to offer compensatory services?**

A. Identification of student’s disability

The IEP team identified the student as cognitively impaired based on the district’s 2006 psychological evaluation. As discussed in the prior section, the hearing officer has found that the district’s evaluation did not adequately assess this student. The hearing

officer also found that the independent evaluations did provide an adequate assessment of the student. The independent evaluations identified the student as learning disabled. The hearing officer finds that the parent has sustained her burden of proof of this issue and shown that the student should be eligible for special education as learning disabled and speech/language impaired.

B. Goals do not provide for remediation of essential skills

The academic goals on the student's May 2006 IEP address reading comprehension, writing/spelling, numerical operations, math application, biological and physical sciences, and United States history. SD. 19-24. The student's teacher, related service providers and administrative personnel testified that the student would benefit from these goals.

The parent's experts presented a different picture. Ms. Fouks testified that the reading goal was too global and beyond the student's current level of ability. The goal identifies the student as currently reading at the 2.3 grade level; Ms. Fouks assessed his reading level as mid-first grade to second grade level. The writing goal states that the student is unable to write a paragraph with a topic sentence; Ms. Fouks testified that the student is not yet writing in sentences. The math goal states that the student will solve addition, subtraction and multiplication problems with double and triple digits. Ms. Fouks testified that the student's skills are not at that level. The testimony of the student's sixth grade teacher confirmed the student's low level of reading and math achievement. Dr. Marsden-Johnson testified regarding the need for imbedding assistive technology into the curriculum to help remediate the student's skills. Her assessment summary provides a list of strategies, such as pre-teaching new concepts and providing visual information related to the subject being taught prior to the actual teaching, that she believed would help this student learn to read and write. The goals developed by the district do not contain any such individualized plans for the student to help remediate the essential reading, writing and mathematical skills he is lacking.

The law requires that IEP goals must related to the student's disability, be individualized to the student's unique needs, be designed to enable the student to make progress. 20 U.S.C. § 1414(d)(1)(A)(i)(II) (2004). The goals in the May 15<sup>th</sup> IEP were based on a determination that the student was cognitively impaired. As such, the goals assume that the student's PLOP reflects that impairment rather than skills that can be remediated. The hearing officer has found that the student is eligible under specific learning disability and that he has not received a FAPE between 2004 and the present time. Because of this, he needs remediation of basic academic skills such as reading, writing and mathematics. The May 15<sup>th</sup> goals do not provide for remediation of these basic skills.

C. Failure to offer AT and social work as related services

As discussed above, the hearing officer has found AT is an essential related

service (see discussion under section B, Issue 1). Because the May 15<sup>th</sup> IEP did not offer AT as a related service, it did not fully address the student's individual needs. The hearing officer also has found that social work is not an essential related service at this time.

D. Inadequate levels of speech/language and occupational therapy services offered

The student's IEP provides for 120 mpm of language therapy and contains one language goal: "the student will increase ability to orally communicate during curriculum related activities." SD. 18. Ms. Hong testified that the student would benefit from this goal.

Dr. Marsden-Johnson testified that the IEP goal is not adequate because it does not cover all the student's needs. She stated that the student needs intense language services because his language issues have never been adequately addressed. Dr. Marsden-Johnson testified that the student has been working on the same goal since he began receiving speech/language services in first grade. A review of the student's speech/language goals for 2004 and 2005 confirm that these goals are the same as his 2001 language goal. Dr. Marsden-Johnson testified that she found it "troubling" that the student had been working on the same objective since first grade. She stated that if the goal had not been mastered, something was wrong in the way it was being taught. She further testified that the student's speech/language goals were inadequate because they did not address his receptive language needs. Dr. Marsden-Johnson recommended that the student receive 90 mpw of language therapy, divided into 30 mpw of individual language therapy, 30 mpw of group language therapy, and 30 mpw of language therapy utilizing AT devices.

Given the severity of the student's expressive and receptive language problem, and credible testimony regarding his need for intense services, the hearing officer finds that the speech/language goal is inadequate as to content and insufficient as to the minutes of service necessary to address the student's severe disability.

The occupational therapy goal calls for 60 mpw of direct service, focused on developing writing skills. Although it is clear that the student has significant problems with handwriting, no testimony was presented regarding the need for more minutes of services than those provided for on the IEP. Additionally, some of the student's motor issues can be addressed under AT services. Therefore, the hearing officer finds that the level of occupational therapy services provided is sufficient.

E. Failure to offer compensatory services

Compensatory services are awarded as future services for a district's failure to provide the student a FAPE. Michael M., 356 F.3d 798 (7<sup>th</sup> Cir. 2004). Although the district's IEP form provides a space for consideration of compensatory education, the

IEP does not indicate that the IEP team considered compensatory services. However, the hearing officer notes that in a letter dated August 24, 2006, district's counsel offered to discuss "compensatory services necessary to address the District's failure to timely evaluate" the student. This offer acknowledges the district's obligation to provide compensatory services. The failure of the district to discuss compensatory services at the IEP meeting, especially in light of its letter offering to discuss compensatory services, is a *de minimis* violation.

Based on the above evidence and testimony, the hearing officer finds that the parent has shown by a preponderance of the evidence that the May 15, 2006, IEP was flawed in that it failed to identify the student as learning disabled, failed to develop goals that would provide adequate remediation of essential skills, failed to offer AT services, and offered an inadequate amount of speech/language services. The hearing officer finds that the level of occupational therapy services offered was adequate and likewise finds that at this time, social work services are not required.

In closing, the hearing officer commends counsel in this matter on their ability to work together and maintain professional decorum throughout pre-hearing procedures and at this due process hearing, despite their often disparate views on the law and facts in this case.

### **Order**

1. Within ten (10) school days of receipt of this Decision and Order, the district is to convene an IEP meeting to incorporate into the student's IEP a determination that the student is eligible for special education and related services on the basis of a specific learning disability and speech/language impairment, as determined by the individual educational evaluations.

2. The IEP is to reflect a placement for the student at Acacia Academy beginning immediately after the IEP effective date. The IEP is also to reflect ESY at Acacia; if that school does not have an ESY program, the IEP team in conjunction with the parent must determine another appropriate ESY placement.

3. The IEP is to provide for the following related services:

- a. Speech/language services: 90 mpw, provided as 30 mpw in each category of individual, group, and AT services;
- b. Occupational therapy: 60 mpw of individual OT service; and,
- c. Assistive technology services: district must provide AT equipment necessary for the student's classroom and home use, including training for the student and parent, as necessary.

4. The IEP is to include a goal addressing the student's difficulty completing and turning in written work, both in-class and homework assignments. This goal should incorporate either a communication book or some regular, systemized method for

informing the parent about the student's assignments, progress, and compliance with turning in assignments.

5. The district is to provide transportation for student's attendance at Acacia Academy, including ESY, or with parent's consent, reimburse parent's transportation costs at the applicable state reimbursement rate.

6. The district is to provide compensatory education in the form of:

- a. 1:1 tutoring at home by a certified special education teacher for two hours/week for two years; and,
- b. additional speech/language from a licensed speech/language pathologist for 60 mpw for two years.

4. The district is to reimburse the parent for the cost of the independent educational evaluations conducted by Dr. Marsden-Johnson, Ms. Weid-Lenardi, and Ms. Fouks. The parent's request for reimbursement for the evaluators' time testifying at the hearing and participating in IEP meetings is denied. Arlington Central, 126 S. Ct. 2455 (2006).

5. The parent's request for a graduate student mentor is denied.

Within forty-five (45) days of receipt of this Order, City of Chicago School District 299 shall submit proof of compliance to:

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

### **Right to Request Clarification**

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the 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 File Civil Action**

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 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.

ISSUED: October 26, 2006

Mary Schwartz  
Due Process Hearing Officer

### **CERTIFICATE OF DELIVERY BY MAIL**

The undersigned hereby certifies that a copy of the Decision and Order was sent by certified mail from the U.S. Post Office at Olympia Fields, Illinois, and directed to:

Mr. Michael O'Connor, Esq.  
Mauk & O'Connor, LLP  
1427 West Howard Street  
Chicago, Illinois 60626

Ms. Tracy Hamm, Esq.  
Due Process & Mediation

Chicago Public Schools  
125 South Clark Street, 8<sup>th</sup> Floor  
Chicago, Illinois 60603

Mr. Andrew Eulass  
Due Process Coordinator  
Illinois State Board of Education  
100 North First Street  
Springfield, Illinois 62777-0001

Before 5:00 p.m. on October 26, 2006.

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Mary Schwartz  
Due Process Hearing Officer  
P.O. Box 53  
Olympia Fields, Illinois 60461-0053  
708.747.7667 (voice) 708.747.8599 (facsimile)  
708.912.0755 (cellular)  
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