

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

<b>OCTAVIA B. [REDACTED]</b>	)	
Student,	)	
	)	
and	)	Case no. 4990
	)	Stacey L. Stutzman
<b>CHICAGO SCHOOL DIST. 299</b>	)	Impartial Hearing Officer
	)	
District	)	

**DECISION AND ORDER**

Stacey L. Stutzman, Hearing Officer:

This matter is before the undersigned for a due process hearing concerning Parent's request for Orders placing Student in a private therapeutic day school at District expense, provision of related services, and compensatory educational services due to District's alleged failures to meet its child find obligations and to evaluate and identify Student in a timely and adequate manner, and otherwise failing to provide Student with a free appropriate public education, including, inter alia, failure to prepare and implement an IEP designed to meet Student's unique individual needs with appropriate goals, instruction, and related services, and failure to provide extended school year services. The hearing officer has jurisdiction to hear and decide this matter under 105 Ill. Comp. Stat. 5/14-8.02a(2004) and 23 Ill. Admin. Code 226 Subpart G(2003). The parties were informed of their rights under 105 Ill. Comp. Stat. 5/14-8.02a(g), 34 C.F.R. 509, and 23 Ill. Admin. Code 226 Subpart G. They were also advised of the procedural requirements under IDEA 2004 by the Illinois State Board of Education upon the submission of the hearing request to ISBE. Hearing Officer has no conflicts which prevent her from conducting a fair and impartial hearing and rendering a fair and impartial decision in this matter.

**Procedural History**

Parent was represented by attorney Michael O'Connor. District was represented by attorney Christopher Guidry.

Parent's attorney submitted Parent's request for due process hearing, dated April 20, 2006, to District, which received same on April 21, 2006 and forwarded same to the Illinois State Board of Education on April 21, 2006. ISBE received the request on April 26, 2006 and issued its appointment of the undersigned hearing officer on April 26, 2006. Hearing Officer received said appointment via U.P.S. delivery on April 27, 2006. Hearing Officer telephoned both counsel regarding the scheduling of a Pre-Hearing Conference date on April 28, 2006, but counsel for District did not return Hearing Officer's phone call and counsel for Parent stated that

Present Level of Academic Achievement	Measurable Annual Goal	Quarterly Benchmark
<u>Language Arts/English/Reading</u>		
Adds: <i>(Student) identifies dolch Words at 20% accuracy.</i>	(same goal)	Changes: <i>to 80% accuracy.</i> Changes: <i>to 80% accuracy</i> Changes: <i>to 80% accuracy</i>
<u>Math</u>		
Removes: <i>She has difficulty Understanding the concept of subtraction.</i> Adds: <i>(Student) can understand Concepts with 20% accuracy</i>	(same goal)	Adds: <i>with 75% accuracy</i> Adds: <i>with 75% accuracy</i> Adds: <i>with 75% accuracy</i>
<u>Science</u>		
Adds: <i>and is now at 20% Accuracy</i>	(same goal)	Changes to: <i>75% accuracy</i> Changes to: <i>75% accuracy</i> Changes to: <i>75% accuracy</i>
<u>Social Science</u>		
Changes/Adds: <i>...causes her social science skills to be below level and 20% accuracy</i>	(same goal)	Changes to: <i>75% accuracy</i> Changes to: <i>75% accuracy</i> Changes to: <i>75% accuracy</i>
<u>Speech and Language</u>		
2 goals to be implemented in self-contained group speech therapy 30 minutes each per week.		
Per Outside evaluation dated 7/31/06 by J.S.M-J, PhD, CCC, SLP	<i>(Student) will answer differential "wh" questions related to</i>	<i>...will appropriately answer "wh" questions in the context of language based</i>

*It appears that Octavia may "know" things she has been Specifically taught, but has Trouble learning things that Many children learn in a More incidental way.*

*sentence and paragraph level materials (with) 80% acc.*

*activities (with) 65% acc (with model) 11/06*

*...will appropriately answer "wh" questions in the context of language based activities (with) 70% accuracy (with model) 1/07*

*...will appropriately answer "wh" questions in the context of language based activities (with) 75% accuracy (w/o model) 4/07*

*Per outside evaluation dated 7/31/06 by J.S.M.-J., PhD, CCC,SLP (Student's) present level of functioning for Receptive Vocabulary is at AE 5 yrs. 8mos. And Expressive Vocabulary is at AE 3 yrs 8mos.*

*In the context of curriculum activities, Student will demonstrate comprehension and use of the following language concepts to develop vocabulary skills: labeling, attributes, associations and categorizations with 80% accuracy.*

*...will complete written and verbal tasks demonstrating ability to label, give attributes, association and categorizations with 65% acc. 11/06*

*...will complete written and verbal tasks demonstrating ability to label, give attributes, Association and categorizations with 70% acc. 1/07*

*...will complete written and verbal tasks demonstrating ability to label, give attributes, association and categorizations with 75% acc. 4/07*

Social/Emotional to be implemented by the social worker 30 minutes per month

*(Student) is a kind Helpful young lady; she Is experiencing difficulties Academically. Mother Is concerned that her*

*By the end of the IEP Student will express personal strengths and concerns. She will seek out assistance when*

*Student will identify 2 (new) strengths (personal) each month. She will discuss how her strengths assist her in her daily activities.*

*self-esteem, and her  
Ability to cope with change  
And lack of success.  
Also see social assessment  
Dated 7/26/2006*

*in need.*

*ongoing*

*Student will discuss events/  
situations that cause her  
anxiety. She will learn a  
Relaxation method and  
Practice said method one out  
of four times when anxiety  
hit. 2/2007*

*Student will discuss issues  
with sw that concern her.  
Ongoing*

(P85-91) The language arts goal addresses skills that would be covered in Kindergarten and First Grade. It does not address written expression. There is no goal addressing vocabulary in the I.E.P. Goals for Student should cover reading comprehension, vocabulary, and written expression. Student will not be able to learn to read and write to her potential, age, or grade level with this goal. (K.F.)

The math goal indicates that Student is at a beginning level. The skills delineated in the annual goal jump way beyond the quarterly benchmarks. (K.F.)

In making the placement decision, according to the IEP document, the team considered regular education with supplementary aides and services, which was rejected on the basis that "Student was performing academically below her cognitive ability." Special ed services for less than 50% of the day was offered and rejected because Student "needs a more restrictive environment for her academic progress." Acacia Academy was the third placement listed as considered and rejected for the reason that Student's "academic is not severe enough. She is performing 1 year behind at this time." After rejecting Acacia, the team considered and accepted "special education services for more than 50% of the day in an educational setting with special ed students and regular ed students" for the reason that "it meets Student's academic needs and socialization skills at this time." This is the self-contained classroom of V.B., described above, for more than 60% of the school day, with library and lunch with nondisabled peers. Although the IEP says Phys. Ed. is also to be with non-disabled peers, physical education is listed as an area requiring both specialized instruction and accommodation/modification elsewhere in the same IEP. (P93-93; 82)

The June 6, 2006 IEP made no provision for Student to receive any compensatory services for the delay in evaluating her in kindergarten or first grade.(P48-69) The June 14, 2006 IEP addresses compensatory services due to a delay in testing during the 2005-06 school year by offering 15 weeks of tutoring 2 times per week for 1 hour sessions and 60 additional minutes of speech per week for 4 weeks. C.M. cannot recall how those figures were arrived at. She believes they counted from the day Student got into the program up to September 14, 2006. She understands the delay in evaluation of Student was due to the District office. (C.M. P97) Parent disagreed with District that she had to find a tutor for the compensatory services and also with District's refusal to pay the full cost of the tutoring. (P80, 106-107)

Student began receiving speech/language services on September 18, 2006, and had been

seen 5 times at the time of the hearing. She is showing "some understanding" of the concepts being presented to her. All of her services are in a group twice a week, one day with students who have articulation problems and one day with students who don't. (L.D.; P456-457)

The classroom teacher, speech/language therapist, and case manager/counselor do not consult or communicate in any regular way regarding Student's education. The speech/language pathologist sees no reason to consult with the teacher regarding Student's language deficits in the classroom. The case manager assumes the teacher will find her if she needs her (C.M.; L.D.)

Literacy is key to Student's progress and success. 1:1 intensive instruction which is scientific, sequential, multi-sensory and research based is needed for Student's instruction throughout the school day because of the nature and severity of her language based learning disability. Her education and educational goals should not be haphazard. *Hooked on Phonics* is not specific to students with learning disabilities and is not an appropriate program for Student. It has had only limited research and although it might improve rote skills, it won't teach Student to read properly long term. It is a "bottom up" program, requiring understanding of the concept, while Student requires a "top down" program (e.g. Wilson or Orton-Gillingham) to teach her the strategies. It is not multi-sensory, and it has no vocabulary and no imagery. There needs to be a strong emphasis on auditory processing through use of Wilson or Lingua Systems. Speech/language services need to be integrated into Student's instructional program throughout the entire school day. (K.F.; J.F.; J.M.)

Student will continue to fall further behind without appropriate intervention. She needs to be completely immersed in a literacy based program. Her poor linguistics skills affect her auditory processing, since she is unable to understand much of what she hears. These poor linguistic and processing skills impact reading and writing abilities, since she lacks both vocabulary and adequate phonological processing to help her learn to read and write. Student will benefit from the assistive technology described in J.M.'s report in learning to read and write. For example, she was unable to write down even a word other than "I" in trying to put a thought on paper, but with the help of *Write:Out Loud and Co:Writer* software, she generated a 2-sentence thought. Other programs that would benefit Student's vocabulary development and reading include *Lindemud -Bell*, *Earobics*, *Fast Foreword*, and *Lingua System* programs. A computer and computer training is a necessity for Student to work with the programs recommended by the evaluating speech/language pathologist. Speech and language services need to be individual and direct for 60 to 90 minutes per week. J.M. states that "*Hooked on Phonics* is a terrible program that would be a waste of Student's time." It is J.M.'s opinion that the services set forth in the September 14, 2004 IEP are not sufficient and are not consistent. They are too haphazard, whereas Student needs a consistent proven approach to reading instruction. Otherwise, the prognosis for her is not good. (J.M.; P126-136)

Acacia Academy is a private therapeutic day school designed for the education of students with learning disabilities. It provides individually designed programs based on research-based instruction, as described above in this statement of facts, intensive individual instruction, and computer programs tailored to the needs of the student. K.F. has been the Director of Acacia for 35 years. In addition to her degrees and certifications, she is a member of the board of the Learning Disabilities Association and the International Dyslexia Association. (K.F.)

## Conclusions of Law

At a due process hearing convened pursuant to the Illinois School Code, the school district has the obligation to present evidence that the special education needs of the student in question have been appropriately identified and that the special education program and related services proposed to meet the needs of the student are adequate, appropriate, and available. If at issue, the school district shall present evidence that it has properly identified and evaluated the nature and severity of the student's suspected or identified disability and that, if the student has been or should have been determined eligible for special education and related services, that it is providing or has offered a free appropriate public education to the student in the least restrictive environment, consistent with procedural safeguards and in accordance with an individualized educational program. *105 ILCS 5/14-8.02a(g)(2004)*

The procedural safeguards to which the above statute refers include generally the school district's obligation to send parents timely written notices in the language they understand, including a full explanation of their rights under Illinois' special education regulations at certain junctures in the evaluation and IEP process, and to assure that parents are given the opportunity to participate as team members in the development of their child's IEP. *23 ILAC s. 226.500-.570(2003)* A written notification including a full explanation of all of the rights available to parents as delineated by the regulations shall be given to parents upon the child's initial referral for evaluation, along with the notification of each IEP meeting, and upon receipt of a request for due process, among others. *23 ILAC s. 226.510(2003)* If the school district fails to follow these procedures and its failure to follow the procedures is found to have prevented parents from participating in the development of their child's IEP, it is in violation of Student's right to a free, appropriate public education, or an education that is reasonably calculated to provide the student with meaningful educational benefit. *Hendrick Hudson Dist. Bd. Of Ed. V. Rowley, 458 U.S. 176 (1982)*

Each school district in the state of Illinois must actively seek out and identify children between the ages of birth to 21 within the district, even those not enrolled in public schools, who may be eligible for special education and related services. The responsibilities include an annual screening of children under the age of five to help identify those with special education needs. For children already attending school, teachers and other professional personnel must conduct an ongoing review of each child's performance and progress so that they can refer children who exhibit problems which interfere with their educational progress for evaluation. *23 ILAC s. 226.100(2003)* When there is reason to believe that a child may have a disability requiring special education and related services, the child shall be referred for a special education evaluation by any concerned person, including, but not limited to, the child's parent, school district personnel, or a professional having knowledge of the child's problems.<sup>5</sup> The district must provide any needed assistance to the person making the referral to meet its referral requirements. The district must process the referral and if it decides not to conduct an evaluation it must provide written notice to both the referring party and the parent, which includes the date of the referral, the reasons for the request for evaluation, and the reason the district decided not to

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<sup>5</sup> The new federal regulations effective October 13, 2006, require the request to be initiated by a representative of a public agency or a parent, but at the times relevant to the issues in this matter and presently, Illinois regulations are less restrictive. *34 C.F.R. s 300.301 (2006)*

conduct a case study evaluation. The parents, who should also receive notice of their rights at this juncture, may then request a due process hearing on the issue if they so choose. If the district decides that it will perform the evaluation, upon obtaining Parents' consent for evaluation in writing, it must complete the evaluation and hold an IEP meeting to discuss the results within 60 days of the referral (written consent). In the event that there are less than 60 days of pupil attendance left in the school year at the time of referral, the eligibility determination must be made and an IEP in place for the student before the beginning of the next school year. *23 ILAC s. 226.110(2003)*

A full and individual evaluation must cover all domains, which include health, vision, hearing, social and emotional status, general intelligence, academic performance, communication status, and motor abilities, that are relevant to the child in question. The IEP team members, who make this determination by reviewing existing information about the child, must also have the knowledge and skills to interpret the resulting data and make a determination as to the child's special education and related service needs. The school district must also administer or arrange for such tests and other evaluation procedures as may be needed to produce any additional information that is needed. The team's evaluation decisions and the basis for each must be provided to Parents in the form of a written notice, as described in the regulations, including an explanation of Parents' rights. *23 ILAC s. 226.75 and 226.120 (2003)*

Illinois' evaluation requirements are set forth at *23ILAC s. 226.130(2003)*. Care must be taken to assure that tests are selected and administered by qualified individuals so as to present an accurate picture of the child, taking into account the child's potential sensory, motor, or communication impairments. Testing is to take into account the child's receptive/expressive communication skills and potential hearing/language deficits. Among the other requirements set forth therein, tests and evaluations must be designed and administered to assess the child's areas of need, to be comprehensive and relevant to the child, and no single procedure or single individual is to be the sole criterion or evaluator in determining a child's eligibility or the appropriateness of his program. *23ILAC s. 226.130, 226.150(e)(2003)*.

A due process hearing officer has the authority to order independent evaluations at the expense of the school district in order to obtain further information regarding the student's special education service needs. *105 ILCS 5/14-8.02a(g)(2004), 23 ILAC s. 226.625(c)(2)(2003)* Upon receipt of an IEE, the District shall convene an IEP meeting to consider the results of the IEE. The IEE may be presented as evidence at a due process hearing. *23 ILAC s. 226.180(k)(2003)*

Once the full and individual evaluation is completed, the IEP team must meet to interpret the data and determine whether the child is eligible for special education and related services. It must draw upon information from a variety of sources in making this determination. *23ILAC s. 226.160(2003)*

A specific learning disability is defined as "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....It does not include "learning problems that are primarily the result of visual, hearing, or motor disabilities, ...or of environmental, cultural, or economic disadvantage." *105 ILCS 5/14-1.03a(2004), 23 ILAC s 226.75(2003)* Current Illinois regulations state that determination of the existence of a specific learning disability is to be conducted according to the requirements in the federal regulations attendant to the IDEA at 34 CFR

300.541-543.<sup>6</sup> Those regulations, which were in effect at all times relevant to the issues in this case, require the IEP team to issue a written report of its determination of eligibility, which determination requires a classroom observation of the student by a team member other than the child's regular teacher and permit's a determination of eligibility if achievement is not commensurate with ability in one or more areas, which include oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, math calculation, or math reasoning, which cannot be attributed to visual, hearing, or motor impairments, mental retardation, emotional disturbance, or environmental, cultural, or economic disadvantage. 34 CFR 300.541-.543(2000)

A Speech or Language Impairment is a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance. 23 ILAC s 226.75(2003)

Other Health Impairment refers to limited strength, vitality or alertness, including a heightened sensitivity to environmental stimuli, that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder,...that adversely affects a child's educational performance. *Id.*

An individual educational program (IEP) must be developed for the child who is found eligible for special education and related services in accordance with the regulations set forth at 23 ILAC s 226.200- .240(2003). The centerpiece of the IEP is the statement of measurable annual goals which are designed to **meet each of the educational needs that result from the child's disability**. To that end, the IEP must contain the child's present levels of performance, to which the annual goals and benchmarks are linked in such a way that they can be measured to show the actual progress that the child is making from the beginning performance level to the end of the IEP year. 23 ILAC s 226.230(2)(2003).

An IEP that does not allow Student to make adequate progress on measurable goals does not provide her with meaningful educational benefit. See *Florence County School District Four v. Shannon Carter*, 510 U.S. 7(1993), affirming *Carter v. Florence County School District 4*, 950F2d 156(1991), wherein the school district's proposed educational program for a student with a learning disability and ADHD and the achievement of goals of the IEP "were wholly inadequate" in that they were designed to allow only 4 months of reading progress and 4 months of math progress at levels of 5<sup>th</sup> and 6<sup>th</sup> grade respectively for a 10<sup>th</sup> grade student and failed to satisfy the requirements of the act, while the private school into which parents had placed the Student provided the intensive instruction needed to raise her reading comprehension three grade levels in her three years at the school. In determining whether a child's IEP offers FAPE, under the Rowley reasonableness standard, one must compare the child's capability and

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<sup>6</sup> IDEA 2004, which went into effect on July 1, 2005, now has new regulations that did not go into effect until October 13, 2006. Under the new law, a state may prohibit the use of the "discrepancy model" (a severe discrepancy between cognitive ability and achievement) in identifying a specific learning disability and must allow a district to use "response to intervention" (RTI), wherein a child's response to scientific research-based instruction is measured in determining the existence of a learning disability. States may also allow the use of alternative research based procedures in identifying an specific learning disability. Illinois has not barred the use of the discrepancy model to date. It will, however, be requiring the use of research based procedures in addition to the discrepancy model. The new federal regulations also allow for the use of previously conducted observations. 34 U.S.C. s 300.310(2006)



intellectual potential with the academic progress she is expected to make according to her proposed goals. *See Kevin T v. Elmhurst Community School Dist. No. 205, 2002 U.S. Dist. LEXIS 4645(N.D. Ill. 2002)*

The IEP team must also determine the related services, including inter alia, speech/language, health, social work, assistive technology, and transportation services that the child will need in order to benefit from special education instruction and record those related services in the IEP. *23 ILAC 226.230, 226.310 (2003)*

A school district may establish its own curriculum and instructional techniques to use with students so long as they successfully meet students' needs and thereby provide FAPE. However, a school district must sufficiently individualize its proposed IEP for a disabled student. This means that it must adequately tailor its methodology, select the right setting, and allow sufficient resources to allow a disabled student to benefit from its methodology. It must ensure that the placement it proposes will not be regressive for the student. *T.H. v. Board of Education 55 F. Supp.2d 830(N.D.Ill. 1999)*

The essential components of reading instruction are incorporated into IDEA 2004 as defined in the Elementary Secondary Education Act as: phonemic awareness; phonics; vocabulary development, reading fluency, including oral reading skills; and reading comprehension strategies. *20 U.S.C. 1400 et seq, Elementary and Secondary Education Act, s 1208(3)*

Scientifically based reading research, as incorporated into IDEA 2004, per the ESEA, is research that *applies rigorous systematic and objective procedures to obtain valid knowledge relevant to reading development, reading instruction, and reading difficulties....20 U.S.C. 1400 et seq; Elementary and Secondary Education Act s 1208(6)*

The IEP is to be implemented in the placement that constitutes the least restrictive environment for that particular student. To the maximum extent appropriate, a disabled child is to be educated with non-disabled children. In selecting the least restrictive environment in which to educate a disabled child, consideration must be given to any potential harmful effect on the child or on the quality of services that he or she needs. The district must ensure that a continuum of placements is available to meet the needs of disabled children. The continuum is to include Home/Hospital Services for children who have a condition that will cause an absence for two or more consecutive weeks or ongoing intermittent absences. It is also to include special schools where a child can receive specially designed instruction. *105 ILCS 5/14-8.02(d)(2004), 23 ILAC 226.240, 226.300(2003)*

If a school district fails to offer a student FAPE and parents offer a placement and services that can provide FAPE, parents may request that the district pay for private instruction and related services. Parents may also request that compensatory education be provided to the student by the district to make up for the lack of the past provision of FAPE. *Florence County School Dist. V. Carter, 510 U.S. 374(1993); Burlington School Committee v. Massachusetts Dept. of Educ., 471 U.S. 374 (1985)*

Applying the aforesaid law to the material facts in evidence, insofar as relevant to the stated issues in this case:

*1. As to whether District failed, under IDEA's child find obligation, to timely locate and identify the student, despite reports of teacher and parent concerns about severe academic delays:*

The preponderance of the evidence supports Parent's position that the District failed to identify and evaluate student in a timely manner in compliance with state child find regulations. The attorney for the District referenced "School Based Problem Solving" as the district's child find mechanism in his closing argument, although the District witnesses never described it in their testimony. The first grade teacher testified that she has never heard of school based problem solving, and she has worked at the school in question for 20 years. The case manager responsible for special education referral, A.P., said she didn't do anything when the teacher asked to have Student evaluated because she had never been trained in School Based Problem Solving but that it had to be done before an evaluation could be conducted. Indeed, A.P. was the least credible of all the witnesses to testify in this matter. Prior to first grade, the kindergarten teacher, who was not a certified teacher, did nothing in the face of Student's "struggling" except pass her on to first grade without talking to the first grade teacher and just asked Mother to help the Student read. The failure to produce any kindergarten records for Student also raises questions as to what other flags were raised in kindergarten. Student was already over 5 years old when she was placed in the State Pre-Kindergarten program for at-risk students. The Pre-Kindergarten teacher was on both parties' witness lists, but she did not testify, and only brief testimony was provided by the former aide in that class who referenced the Pre-K report card. All in all, it is clear from the evidence that was provided that Student should have been evaluated and identified at least prior to the beginning of first grade so that appropriate interventions could have been provided.

*2. As to whether District did not provide a free and appropriate education during the period from April 17, 2004 through the present time based on:*

- A. Failure to conduct adequate, timely 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, her learning impediments,*
- B. Failure to provide essential related services in areas of social work, speech-language therapy and assistive technology, which are necessary for student to access educational opportunity;*
- C. Failure to identify and utilize effective teaching methodologies at a sufficiently intensive level that would enable the student to make progress commensurate with her cognitive skills;*
- D. Failure to offer an adequate curricula in areas of reading, language arts, math, social studies and science, with the result that student did not make academic progress?*

A. The preponderance of evidence supports Parent's position that District failed to provide FAPE to Student by not evaluating her in the domains of health, hearing, vision, social/emotional status, general intelligence, academic performance, and communication status, prior to the beginning of first grade during the 2004-05 kindergarten school year. The Student's difficulties in her brief placement in the at risk State Pre-K program at age 5, her high absentee and tardiness rates, and her "struggle with reading" in Kindergarten should have caused the Kindergarten teacher to investigate further and/or to refer her to the appropriate person to initiate an evaluation. It is unclear if the Kindergarten teacher, who was neither formally educated as a

teacher nor certified as a teacher, did not understand how to initiate an evaluation or if she simply made it her policy not to refer her students for special education evaluation.

The first grade teacher recognized that Student was in trouble from the beginning of the 2005-06 school year, but she felt she needed to take a wait-and-see-approach, and waited nearly 2 months into the year to submit a referral form to the case manager. In the meantime, however, no interventions were put in place for Student, other than to seat her next to other students who might help her get organized. Although the teacher testified that she had Student "targeted" for a pull-out, it never happened.

When a Domain meeting was finally convened on May 16, 2006, at the end of Student's first grade school year, no doubt in response to Parent's attorney's request for due process hearing, the personnel assembled to determine what assessments were needed seemingly ignored the classroom teacher's referral form concerning language issues, poor attention, poor listening skills, poor self-esteem, confusion, and reluctance to raise her hand. The social worker apparently didn't feel that social/emotional status pertained to academics unless a child had a behavioral problem or was talkative. Because Student was shy and quiet in class didn't misbehave, she mistakenly deemed her social/emotional status irrelevant to her academic performance. The fact that Student was homeless and had missed well over 2 months of school cumulatively in the 2004-05 and 2005-06 school years should also have indicated the need to assess social/emotional status, since school personnel were clearly concerned about the impact of absenteeism and tardiness on academic performance, per their hearing testimony.

Most egregious was the failure of the District to assess Student's communication status. The speech/language therapist failed to recognize that failures to speak, read, listen, spell, and write can stem from language related deficits. She seems to have forgotten that she is not just a speech pathologist, but also a **language** pathologist, as her only concern was that Student didn't stutter at school. As we learned from the IEEs performed per hearing officer order in this matter, an assessment of one's ability to receive, process, and express information via language, is absolutely crucial to the ability to understand instruction and the ability to show and tell the instructor what you know. The failure of the school psychologist to administer the Oral Language Test and several pertinent reading related subtests of the KTEA-II further hindered the IEP team from understanding the nature and extent of Student's disability.

B. The preponderance of the evidence supports Parent's position that District failed to provide FAPE to Student by failing to provide the related services of speech/language therapy, assistive technology, and social work services beginning with the 2005-06 school year. Based on the first grade teacher's testimony and the results of the evaluations that have now been performed, Student should have had intensive specially designed instruction that integrated speech/language services into her instructional day and provided 1:1 programming with recommended software to address her language based learning difficulties. To the extent that those services have not been provided to Student during the current school year, District has also violated Student's right to FAPE in its failure to provide same.

C.-D. The preponderance of the evidence supports Parent's position that District failed to provide FAPE to Student in the 2005-06 school year by failing to develop and implement an IEP tailored to her unique needs. Thus the instruction she received from the first grade teacher in language arts and math from the general curriculum without modifications and via

methodologies that failed to take her learning disability and language deficits into account, failed to allow her to make progress in those areas. This lack of progress was evidenced by failing grades and the scores on tests administered by the school psychologist and independent evaluators. However, the evidence does not sufficiently indicate that Student did not make progress in Social Science and Science, since the only information presented at the hearing was Student's grades in those subjects in first grade, which consisted of Cs and a B. The teacher testified that she did not teach Student Science, but that in Social Studies, the Student was able learn. It is unclear where the present levels of performance in Science and Social Studies on the June and September 2006 IEPs came from, since there is no evidence that any assessments of Student's skills in those areas was considered by the IEP team or even administered.

The preponderance of the evidence also supports the Parent's position that the IEPs of June 6, 2006 (to be specifically addressed under Parent's issue number 3 below) and September 14, 2006 do not provide FAPE for Student, and that Student is not currently receiving FAPE from the District. The September 14, 2006 IEP is not reasonably calculated to enable Student to receive meaningful educational benefit. Student has at least average cognitive abilities and is capable of learning to read, write, and spell at her grade and age level with the proper intervention. It is absolutely crucial to her academic present and future that she learn to do so now, since she was already delayed by one year or more at the end of last school year.

The flaws in the IEP are numerous. It is disjointed and haphazard. It is a lengthy document, but it has little meaning for the actual education of this Student. The language arts and mathematics goals, so crucial to Student's education, are insufficient to permit Student to make the type and amount of progress she needs to make and is capable of making in the next year. The present levels of performance are not tied to any type of objective or standardized assessment that was administered to Student and are not conducive to any type of accurate measurement of her progress. Further, it is unknown where the information for the Science and Social Studies performance levels came from. Student received Cs and a B in those subjects in first grade, although the stated levels say she is below grade level, providing no objective or standardized assessment information or any other source for the stated levels. Again, her actual progress on the stated goals, from point A to point B, is not measurable as set forth in this IEP. Speech and language services are being provided in a group away from the instructional setting. The teacher and the speech/language therapist--who saw no reason to evaluate Student to begin with-- do not collaborate or even communicate in regard to Student's programming. Student is not being provided with the available computer software technology that would enable her progress, as was recommended by J.M., who exhibited the greatest knowledge of any of the witnesses as to Student's needs and how to properly address them.

Finally, the September 14, 2006 IEP fails to place Student in an environment in which she can receive a satisfactory education, one appropriate to her unique needs. Under certain circumstances with properly trained teachers and therapists and the necessary resources, a student with Student's like disabilities can be educated in a regular classroom with resource services and support and assistance within the regular classroom or in a self-contained classroom within a regular school. It does not appear that placement in the regular classroom was given any serious consideration by the IEP team in this case, and, based on the past performance of Student's school and the testimony provided by those currently working with her at the school, it would not serve Student's immediate needs to order the District to put such a program together for her. As J.M. pointed out, a lot would have to be put in place in order for Student to benefit. It would

only delay the delivery of appropriate services to Student, who cannot afford any further delays. In this case, delivery of appropriate instruction and services is tantamount to the presumed benefits of educating a disabled student with her non disabled peers.

The evidence here indicates that the only placement given any consideration at the September 14, 2006 IEP meeting was the placement that had already been selected at the June IEP meeting and begun on the first day of the 2006-07 school year, V.B.'s self-contained cross-categorical classroom. Although that class is 1/3 of the size of Student's last regular education classroom, the testimony in this case evidences its inappropriateness for Student because she is not and will not be receiving the type and intensity of programming and services which the experts in this case have testified is needed in order for her to make meaningful progress, especially in reading, which is the key to Student's education at this point. Although, that programming could be ordered in this case, the delay in delivery of services would be detrimental to Student, and it is unlikely that it would be done appropriately even if ordered, again, based on past performance and testimony by school personnel at hearing. Parent should not be put in the position of having to hire a lawyer every time she wants Student appropriately educated. Additionally, compensatory education is going to be required for the Student in this case, and District has already indicated at the September 14 IEP meeting that it is resistant to procuring and paying for the services needed by Student by outside providers, which would then have to be coordinated with in school programming in order to provide Student with a consistent education.

The Parent's requested placement at Acacia Academy was rejected as too restrictive. The school psychologist testified that she would not consider placement at Acacia unless Student showed further regression, as she does not consider Student's current delays severe enough for private placement. However, Acacia is the only placement presented among the 3 options offered that will allow Student to receive a satisfactory education. Because Student has little positive interaction with non-disabled peers in her current self-contained placement and because, according to the evidence, she cannot receiving a satisfactory education in that placement, with the current IEP and attendant circumstances, the placement at Acacia is the least restrictive environment in which Student can receive a satisfactory education.

3. *As to whether District developed an inappropriate initial IEP for student on June 6, 2006 in that*

- A. District failed to identify student's needs for social work, speech language and assistive technology services;*
- B. District failed to offer compensatory education services for the two year delay in providing special services to student;*
- C. Goals and objectives listed in the IEP fail to address student needs for remediation in areas of phonological awareness, basic reading, writing and math skills;*
- D. IEP team failed to adopt specific recommendations of school psychologist including need to review skills from pre-k through first grade that require remediation; and need to break lessons into smaller increments?*

A.-D. The preponderance of the evidence in this case supports Parent's position that the IEP developed on June 6, 2006 violated Student's right to FAPE for a number of reasons. Procedurally, under *Rowley*, the failure to provide Mother with timely notice of the IEP meeting prevented her from participating in the meeting in any meaningful way. She originally received

an 8 day notice, not 10 as required, to attend the meeting on June 13. However, the meeting was then held on June 6 with no written notice whatsoever. She was never provided with a copy of her rights prior to this meeting. She attended the meeting without her attorneys. She was not in a position to question the evaluation that was used as the sole criterion for identifying Student's disability or to ask for further evaluations that were clearly needed or to question why Student would not be receiving important related services.

Substantively, the IEP was based on an incomplete evaluation and identification of the Student's disabilities. The psychologist failed to do tests that would have provided information relating to Student's disability. And her recommendations for remediation and breaking down lessons into smaller increments were not included in the IEP document. The District did not conduct a speech/language evaluation, although the teacher's referral makes clear reference to communication concerns, and language deficits are at the core this Student's disability, including her inability to learn to read. Social/emotional status was not assessed although it was indeed relevant to this Student's education and was flagged by high absenteeism, her transient home situation, and her tendency to withdraw and avoid tasks in the classroom.

The present levels of performance and the goals, in addition to being based on incomplete information about the student, are inadequate to allow measurement of progress in math and language arts. It is unknown where the data came from for the present levels in Science and Social Studies. Most importantly, they would not allow Student to progress adequately and therefore are not reasonably calculated to enable her to derive any meaningful educational benefit.

The IEP fails to provide for speech/language therapy, social work services, or assistive technology, since the District did not evaluate in any of those areas, which, as the evidence has shown, should have been provided to allow Student to benefit from her special education instruction.

From the evidence presented in this case, the only purpose of the June 6, 2006 IEP document was to get an IEP done in order to avoid a due process hearing and unfavorable judgment therein, not to provide Student with an appropriate education.

*4. As to whether (District violated student's right to FAPE) because although the 6/6/06 initial IEP authorizes 4 weeks ESY, District failed to provide ESY services for student during the Summer of 2006?*

As stated above in regard to issue 3, the June 6, 2006 IEP did not provide FAPE and should not have been implemented at all in its present form. However, the preponderance of the evidence does support the Parent's position that Student should have received ESY services and also that she would have been entitled to even more than the 4 weeks of ESY services proscribed by the June 6, 2006 IEP had Student received a timely and appropriate evaluation and been properly identified during or before the beginning of the 2005-06 school year. Tutoring and speech/language services for at least 8 weeks to remediate the educational losses due to the District's failure to properly evaluate, identify, and service Student would have been appropriate.

District's argument is that it complied with the law when it conducted an evaluation of Student and held an IEP meeting within 60 days of Parent's signing consent for evaluation. It further argues that it complied with both the procedural and the substantive requirements of

*Rowley* by adhering to procedures and by developing an IEP reasonably calculated to enable Student to receive reasonable educational benefit. The school psychologist did conduct an evaluation of cognitive ability and did limited achievement testing, upon which she identified Student as eligible for special education due to a learning disability based on the discrepancy between cognitive ability and achievement. And an IEP meeting was held on June 6, 2006, after giving Mother a consent form to sign at the May 16, 2006 Domain meeting. But that's where any semblance of compliance with special education laws ended in this matter.

District personnel did not exhibit knowledge in the area of Student's learning and language disabilities nor interest in enabling her to make meaningful progress. This is evident in the IEP document itself. Furthermore, the lack of attention to the first grade teacher's cry for help and the serious delay in doing even a cursory and incomplete evaluation is indicative of what can be expected from school personnel in the future. District proposes instruction using *Hooked on Phonics*, which all of the independent witnesses denounced. The teacher admitted using no scientific research-based reading programs, and Student is being accommodated by a reduction in her workload and modification of the grading scale for her.

Deference is therefore given to the independent witnesses who were knowledgeable about Student's disability and about the instruction required in order for her to make meaningful progress. They identified the flaws in the current IEP and stressed the need for intensive 1:1 instruction and a program which integrates language therapy and assistive technology into the instructional day. Their recommendations are consistent with the findings by the National Reading Panel and with the provisions of *NCLB* which are recognized by and incorporated into IDEA 2004 and the latest federal regulations. The independent witnesses stressed the need for scientific, research-based, sequential, multi-sensory programming and the use of relevant assistive technology to enable Student to make up for what she has lost and to progress toward achievement commensurate with her age and grade.

Because of the need for consistency in Student's educational programming, compensatory education should be coordinated to the greatest extent possible with her ordered educational placement.


**IT IS THEREFORE ORDERED:**

1. That Student shall be placed at Acacia Academy at District expense immediately upon receipt of this Order for the remainder of the 2006-07 school year, including any extended school year services called for by the IEP to be developed at Acacia Academy per paragraph 4 below;
2. That Student shall be placed at Acacia Academy at District expense for the 2007-08 school year as compensation for past denial of a free appropriate education, including any related services and extended school year services required by her 2007-08 IEP;
3. That safe and reliable transportation shall be provided to and from Student's place of residence and Acacia Academy each school day at District expense;
4. That an IEP meeting shall be convened with staff at Acacia Academy for the purpose of developing an IEP appropriate to Student's identified needs, including related services in the areas of social work, speech/language, and assistive technology;

5. That District shall pay the fee of J.M., independent speech/language pathologist and evaluator, to attend the aforesaid IEP meeting; and

6. That District shall provide proof of compliance with the aforesaid orders to the Illinois State Board of Education, program Compliance Division, 100 N. First Street, Springfield, IL, 62777-0001 on or before November 17, 2006.

DATED: October 24, 2006

  
Stacey L. Stutzman  
Impartial Hearing Officer

P.O. Box 876  
Libertyville, IL 60048  
(847) 362-1606



## **RIGHT TO REQUEST CLARIFICATION**

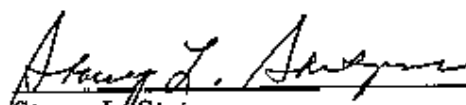
Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought,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

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

This decision shall be binding upon the parties unless a civil action is 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)(2004), 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.

## **CERTIFICATE OF SERVICE**

The undersigned hearing officer certifies that she served copies of the aforesaid Decision and Order upon Parent (via her counsel as requested), Parent's counsel, District's counsel, and the Illinois State Board of Education at their respective addresses by depositing same with the United States Postal Service at Libertyville, IL with postage prepaid before 5:00 p.m. on October 24, 2006.

  
Stacey L. Stutzman

Stacey L. Stutzman  
Impartial Hearing Officer  
P.O. Box 876  
Libertyville, IL 60048

he lacked sufficient information to schedule a Pre-Hearing. On May 8, 2006, Hearing Officer proceeded to select a Pre-Hearing Conference date of May 22, 2006 and send the requisite ten day notice. As documented in the record, the Pre-Hearing Conference was continued to June 20, 2006 upon the joint request of the parties, then to August 10, 2006 upon Parent's request in order to complete certain IEEs, which were ordered by the hearing officer pursuant to Parent's motion on June 29, 2006, then to August 29, 2006 upon joint request of the parties. (see Pre-Hearing Conference Report dated August 29, 2006, incorporated into the record as H.O. Ex. A)

District submitted a response to Parent's April 17, 2006 hearing request dated May 10, 2006, while District acknowledged receipt of Parent's hearing request on April 21, 2006. With leave of hearing officer, Parent's counsel submitted an amended hearing request dated August 10, 2006. District responded to the amended request on August 18, 2006. A resolution session was scheduled to be held in this matter on August 30, 2006 by report of counsel at the Pre-Hearing Conference on August 29.

Hearing was initially scheduled for September 13 and September 14, 2006 at the parties' request, to allow for completion of all IEEs, submission of Parent's amended due process hearing request, and District's response thereto. On September 5, 2006, counsel jointly requested and were granted a continuance of the due process hearing from September 13 and 14, 2006 to October 9, 2006 in order to conduct an IEP meeting to review the results of the IEEs and to attempt to resolve this matter. Hearing was continued to October 10 and 11, 2006

This Decision is not being issued within 45 days of District's receipt of Parent's request for due process hearing due to the postponements requested by the parties as noted above. It is being not being issued within 10 days of the conclusion of the due process hearing because hearing officer asked for and was granted a one day extension to complete it.

Hearing in this matter was held on October 10 and October 11, 2006 at 226 W. 104<sup>th</sup> Street, Chicago, Illinois beginning at 9:00 a.m. Present were Parent and her counsel, District counsel, hearing officer, and court reporter. The Student was also present for her own testimony and closing arguments. The hearing was reported by Karen Holman on October 10 and Etta K. Jones on October 11 for Toomey Reporting (312-853-0648). Parent submitted 460 pages of documents and District submitted 199 pages of documents, although not all of same were used at hearing and those not used and referenced in the hearing transcript were not reviewed by Hearing Officer in the Decision of this matter. In this Decision, reference to Parent documents are preceded by a "P" and District documents by a "D".

All 17 witnesses who testified at hearing were included on both parties' witness lists and testified at the request of both parties. Witnesses were as follows: J.F., independent audiologist; R.H., school nurse; K.F., Director of Acacia Academy; L.D., school speech pathologist; B.C., District teacher aide; S.B., school psychologist; A.P., school counselor, case manager; C.V., school social worker; V.B., special education teacher; L.T., independent clinical social worker; M.W., teacher's assistant; C.M., school counselor/case manager; P.C., first grade teacher; B.R., school audiologist; O.B., Student; C.B., Mother; J.M., independent speech/language pathologist.

### **Issues Presented**

*Parent requests resolution of the following issues, per counsel's Amended Request for Due Process Hearing dated August 10, 2006:*

1. Whether District failed, under IDEA's child find obligation, to timely locate and identify the student, despite reports of teacher and parent concerns about severe academic delays?
2. Whether District did not provide a free and appropriate education during the period from April 17, 2004 through the present time based on:
  - A. Failure to conduct adequate, timely 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, her learning impediments;
  - B. Failure to provide essential related services in areas of social work, speech-language therapy and assistive technology, which are necessary for student to access educational opportunity;
  - C. Failure to identify and utilize effective teaching methodologies at a sufficiently intensive level that would enable the student to make progress commensurate with her cognitive skills;
  - D. Failure to offer an adequate curricula in areas of reading, language arts, math, social studies and science, with the result that student did not make academic progress?
3. Whether District developed an inappropriate initial IEP for student on June 6, 2006 in that
  - A. District failed to identify student's needs for social work, speech language and assistive technology services;
  - B. District failed to offer compensatory education services for the two year delay in providing special services to student;
  - C. Goals and objectives listed in the IEP fail to address student needs for remediation in areas of phonological awareness, basic reading, writing and math skills;
  - D. IEP team failed to adopt specific recommendations of school psychologist including need to review skills from pre-k through first grade that require remediation; and need to break lessons into smaller increments?
4. Whether (*District violated student's right to FAPE*) because although the 6/6/06 initial IEP authorizes 4 weeks ESY, District failed to provide ESY services for student during the Summer of 2006?

### **Findings of Fact**

The material facts relevant to the aforesaid issues based on the evidence presented at hearing are as follows: At the time of hearing, Student is a 7 year 10 month old female who has begun her second grade year at L-H School. She has attended L-H School since March 22, 2004, when she was enrolled in the State Pre-Kindergarten Program at age 5 years 2 months. She attended kindergarten in school year 2004-05 and first grade in school year 2005-06.(D58)

Student resides with her mother, brother, and sister. Both siblings are disabled and have

asthma. Mother is employed by Walmart in a suburb outside of the District. She transports Student to school by car. Since November, 2005, the family has lived in Student's Great Grandmother's basement with access to bathroom, refrigerator, and stove. In the past three years or so the family has had 6 different residences. On April 18, 2006, Mother was provided with and signed for Notice of the District's *Policy on Education of Homeless Children and Youth*. (L.T.; Mother; P1-7, 21)

Student has a medical history of asthma, allergies, and eczema. She is permitted to use her inhaler at school. She had high levels of lead in her blood when tested in 2000 before she was a year old. Student missed 36 days of school in kindergarten and 39 days of school in first grade. She was tardy 20 days in Kindergarten and 26 days in First Grade. At the time of the hearing, Student had missed 2 days of school so far this school year. Mother submitted notes for those absences and reported that the absences were largely due to the asthma, but states that medical appointments for Student and other children have also caused tardiness and absenteeism at times. (Mother; R.H.; M.W.; V.B; P.M.; D59; P18-21)

On or about June 5, 2006, Student's pediatrician diagnosed Student with ADHD based upon forms filled out by Mother and Student's teachers. Student began taking Concerta for the ADHD in mid-June, 2006. She quit taking it upon doctor's orders in the third or fourth week of September 2006 because it was making her dizzy and she was "toppling over." The pediatrician determined that it would not have to be restarted unless Student was placed in a large classroom. (Mother) Student failed the vision screening administered by the school in the Fall of 2005. She applied for free eyeglasses through a program at school, but had not yet received them as of May 16, 2006. (R.H.; P20)

Through a basic skills test, Student qualified for the State Pre-Kindergarten program for students at risk of academic difficulty on March 22, 2004, at age five. The *Report of Progress for Preschool-Age Cycle 4* for the second reporting period indicates that Student could identify six colors, perform a three-step action in sequence, count to ten, demonstrate number concepts to five, classify by two categories of color, shape, size, name and compare five shapes, name numerals to ten, use language to describe relationships, recognize and obey traffic signals/stop signs, dial 911, skip, use scissors with control to cut on lines, perform precise actions with opposing hand movements, such as buttoning and zipping, create music with musical instruments, and investigate visual arts using a variety of media *regularly*. Further, all categories of social/emotional development were noted to be performed *regularly*. Student enjoyed assigning tasks to other students for play in the dramatic play area. (B.C.: P8-12)

The aforesaid progress report notes that Student *did not yet* recite nursery rhymes or predict rhyming words and that she *sometimes* shared ideas and experiences, retold parts or all of a story, described objects, predicted the outcomes of stories, named ten letters, wrote identifiable word-like groups of letters, began to make sound/symbol relationships, compared sets as more, less, or same, began to understand measurement, showed ability to find solutions to math and science problems, investigated and participated in science activities, described cause and effect relationships, held writing tools with thumb and fingers, drew a circle, a cross and a rectangle, and drew a person with 8 to 10 body parts. The progress report is not signed as having been received and reviewed by a parent or guardian. No conferences with the parent or guardian are noted to have been held. Student was sent on to kindergarten from the pre-K program. (B.C.; P8-12)

Student's kindergarten teacher in 2004-05 did not have a teaching certificate or a degree

in any area of education. She had a bachelors degree in psychology and was hired because District could not find a certified teacher. It was a full day program with 29-30 children and 1 aide. The teacher knew that Student had been in the Pre-Kindergarten program, but she did not talk to the Pre-K teacher about Student. She did issue report cards.<sup>1</sup> She recalls that Student was struggling with reading. She knew the alphabet. Spelling was not done in kindergarten. They practiced word recognition every day over and over. Student could recognize some three letter words. Student did her homework receiving help from home. Student had very poor attendance, as noted above, and Mom sent notes saying she was sick. Although the teacher had heard of the Home/Hospital Program, she didn't tell Mother about it. Student was very active and friendly and had no problems participating. The teacher felt Student was ready for first grade "based on her Mother helping her." She did not recommend Student or any other kindergarten student for special education screening. She advised Mother that she had some concerns and asked Mother to work harder with Student on reading. She did not discuss her concerns with the first grade teacher because she felt the first grade teacher wanted to make her own judgments about her students. Three fourths of the class could read easy books when they left kindergarten. (M.W.; Mother)

Student attended first grade in the 2005-06 school year at age six, turning seven in January of 2006. Her first grade teacher taught her all subjects except Science. She has been teaching at L-H School for 20 years, 5 years as a first grade teacher, 15 years in junior high. Before that she taught for the archdiocese for 12 years. She had 32 students and no aide in the classroom. She describes Student as "a pleasant little girl who was often out of focus and who got lost in the shuffle." Student always tried and she always did her homework. When she was absent, her Mother or siblings picked up her work, and it was always done and returned the next day. The teacher tried to help Student by seating her next to kids who could help her find the right book and the right page because Student had trouble. Although it did not take the first grade teacher long to see that Student was in trouble, she felt that she was supposed to give it time before making a referral for special education testing. Even when she sometimes worked with clusters of 4-5 students using flashcards, it was hard for Student to focus even in small groups. She stared into space and played with her fingers. Comprehension of material was hard for her. She did better if she could look at a picture and try to answer a question, as in Social Studies. On the DIBELS assessment which teacher administered to all students 3 times during the year, Student scored below even the minimum score. Different skills were tested in each of the batteries. Student was borderline between deficit and emerging on the third battery. She was struggling with reading, blending, phonemic awareness. The teacher had her earmarked for a pull-out, but it never happened. (P.M.; Mother)

Student's first grade report card reflects the following: She received Fs in most areas of Literacy, including reading, writing, listening, and spelling, Ds and Fs in math, Cs in Science, and a B and 2 Cs in Social Science. In the first reporting period, the teacher noted that Student was "struggling in all aspects of the curriculum" and that "paperwork has been presented for testing." In the second period, she stated "I strongly believe (Student) is in need of special services. Please talk to Ms. P \_\_\_\_\_ (the case manager at L-H School) regarding testing (failed

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<sup>1</sup> Student's kindergarten records are missing from the school records and no explanation was provided as to what has or might have happened to them.

vision test).” And in the third reporting period, she wrote “In all good conscience, I can not recommend (Student’s) promotion to second grade.” (P.M.; P13-14)

The first grade teacher talked to Mother before the end of the first quarter about Student’s failure to achieve any meaningful success in the classroom and advised her that she wanted to refer Student for a special education evaluation. Mother agreed that she should proceed to refer Student for a staffing. On November 2, 2005, the teacher submitted a completed referral form to A.P., who was then the case manager in charge of handling referrals for special education evaluations. The Student Referral form submitted by the teacher stated the reason for referral as follows: *(Student) is struggling in all aspects of 1<sup>st</sup> grade curriculum--unable to work independently--demonstrates a very poor attention span, often unable to focus on task--poor listener, even one-on-one/unable to blend letter sounds independently--difficulty on grasping /remembering basic math concepts (+ - )* (P.M.; Mother; P71-73)

In the aforesaid referral, the teacher questioned whether Student might have vision or hearing disabilities. She noted that on the Dipples (sic) assessment, referring to the DIBELS battery discussed above, administered in September 2005, Student’s score/grade equivalent was “high risk.” She noted grades of F in Reading, Spelling, Mathematics, and Written Language. She noted that Student had missed 36 days of kindergarten and had missed 5 days during the first quarter of first grade. (P.M.; P72)

In describing Student’s academic Performance in said referral, the teacher stated as follows:

*(Student) is a non-reader, often unable to locate a word on the page with her finger--cannot read or illustrate simple math sentence without prompting (2 + 3 = 5) / confuses signs--will not attempt to write simple dictation sentences. (The cat is on the mat) / Very limited sight vocabulary, phonemic awareness limited as well.*

She described Student’s behavior as follows:

*(Student) is a sweet, well-mannered, very quiet student who often appears lost in the classroom. Plays/stares @ her fingers constantly--needs to be called to task often--I don't think she listens--she copies work of other students instead of trying o her own--rarely does (Student) raise her hand to participate--poor self-esteem?--displays poor l istening skills even in small group setting/ will use picture and make up a sentence rather than looking @ words.*

She noted that Mother supported Student’s work at home and her homework and that she had spoken to her a few times during the first quarter and recommended testing to her.(P72-73)

At the bottom of page 3 of the Student Referral form described above is a section below a perforation line entitled *Disposition*, which was left blank. It allows the Principal to approve a Case Study Evaluation when the IAT/SBPS has not been used. It also has boxes to check when the request for evaluation is denied and when follow up is needed. (P73) SBPS stands for “School Based Problem Solving”, which A.P., the case manager at the time, understood to be required before a Student could be referred for an evaluation. However, the first grade teacher has never heard about School Bascd Problem Solving, and the case manager had never received any training in it, so nothing was done. When nothing happened after the teacher submitted the referral, the first grade teacher encouraged Mother to go talk to the case manager to find out what was going on. Mother went to talk to the case manager three times. She was told on those

occasions that there were children ahead of Student and that she would try to get to her by the end of the year. The case manager, A.P., claims that she signed a form entitled *Notification of Referral Decision*, which is included in the records with her signature and dated November 29, 2005, 27 days after the teacher submitted her referral form, wherein A.P. acknowledges the referral and Student's "difficulties with the first grade curriculum" and yet states that "a review of the referral has determined that an evaluation is not appropriate at this time because "Student has not undergone School based problem solving." This form was not given to the first grade teacher or to the Mother, nor were they ever told that the request for evaluation was being denied. Mother was not given an explanation of rights. She was never told that she could ask for an evaluation in writing. Student continued to fail and nothing was done. (A.P.; P.M.; Mother; P74)

Mother retained an attorney who submitted a request for due process hearing to District dated April 20, 2006. A.P. found an evaluative measure called the *Slosson Oral Reading Test* in another student's file and tried to use it to test Student. However Student couldn't read the story in order to answer the questions, so the test was not properly administered. A.P. decided to read the story to her and let her answer the questions. She could only read 2 words on the word list correctly, so A.P. went no further, and was unable to score it. She tried to administer an arithmetic computation test. Student could only add  $2 + 3$ . A.P. dated her informal testing 4/17/06. A.P. knew that Student had difficulties and needed to be evaluated. (A.P.; P180; 181; 194)

On May 10, 2006 in response to the Parent's April 20, 2006 request for due process hearing, the District's lawyer from its Due Process and Mediation department sent Parent's attorney a letter saying that the District was "interested in assessing (Student) in the areas of Health, Vision, Hearing, Social/Emotional Status, General Intelligence, Academic Performance, Communication Status and motor abilities if needed." (See *Due Process Response for (Student)*, 5/10/06)

On May 16, 2006 a Domain Meeting was held. In attendance were A.P., the case manager, who also signed in as the special education teacher and the district representative; S.B., the school psychologist; Mother; R.H., the school nurse; a district occupational therapist; C.V., the school social worker; and L.D., the school speech/language pathologist. (P15) At that meeting, District agreed to do assessments of Health, General Intelligence, and Academic Performance, but declined to assess-- as not relevant-- the areas of vision, hearing, social/emotional status, communication status, and motor abilities. The speech/language pathologist didn't feel that it was necessary to evaluate Student's communication status because the teacher said Student didn't stutter in school. The social worker didn't feel she should evaluate Student's social/emotional status because Student was reportedly mild mannered, had no behavior problems, and got along with her peers. Hearing was deemed non-relevant because Student had passed the hearing screening in November, 2005.(L.D.; C.V.; P17)

On May 31, two weeks before the end of Student's first grade year, S.B., school psychologist, evaluated Student. She administered the Stanford Binet Intelligence Scales, Fifth Edition, to assess Student's cognitive development. However, because Student was not wearing glasses and struggled with squinting and visual performance, she deemed the results of that test invalid and did not report them. She then proceeded to administer the Reynolds Intelligence Assessment Scale (RIAS) to assess Student's cognitive development. Student's scores on the RIAS were provided in the Psychological Evaluation Report as follows:

**REYNOLDS INTELLIGENCE APTITUDE SCALE (RIAS)**

<b>Ability</b>	<b>RIAS Index</b>	<b>% ile</b>	<b>95<sup>th</sup> Confidence Interval</b>
<b>Verbal Intelligence Index</b>	<b>93</b>	<b>32</b>	<b>(87-100)</b>
<b>Non-Verbal Intelligence Index</b>	<b>88</b>	<b>21</b>	<b>(82-95)</b>
<b>Composite Intelligence Index</b>	<b>89</b>	<b>23</b>	<b>(84-95)</b>
<b>Composite Memory Index</b>	<b>107</b>	<b>68</b>	<b>(100-113)</b>

<b>Subtests</b>	<b>T-Score</b>
<b>Guess What</b>	<b>44</b>
<b>Odd-Item</b>	<b>46</b>
<b>Verbal Reasoning</b>	<b>48</b>
<b>What's Missing</b>	<b>38</b>
<b>Verbal Memory</b>	<b>59</b>
<b>Non-Verbal Memory</b>	<b>48</b>

From the above test scores, the school psychologist concluded that Student's overall reasoning abilities are within the average range of cognitive functioning, per her Composite Intelligence Index (CI) of 89; and that her ability to reason with words is comparable to her ability to reason without the use of words, per her Non-Verbal Intelligence Index (NIX) of 88 and her Verbal Intelligence Index (VIX) of 93.

She further concluded as follows in regard to the aforesaid cognitive test scores: Student demonstrated average skills in expressive language development (defining words with clues), below average skills in the non-verbal domain in visual-spatial conceptualization and visual imagery and in nonverbal fluid reasoning (visually manipulating patterns from part to whole); a Composite Memory Index within average range, and average skills in the ability to encode, briefly store, and recall verbal and pictorial material in a meaningful context.

The psychologist also administered the Kaufman Test of Educational Achievement (KTEA-II) to assess Student's academic achievement. Although the KTEA covers four broad areas of achievement, including Reading, Mathematics, Written Language and Oral Language, the psychologist administered only the tests for Reading, Math, and Written Language, omitting the Oral Language test, which would have tested Listening Comprehension and Oral Expression. She further omitted the reading-related subtests assessing phonological awareness, nonsense word decoding, word recognition fluency, decoding fluency, associational fluency, and naming facility (RAN). (P29) In her report, she did not include Student's scores or grade/age equivalents. However, the KTEA-II Comprehensive Form A provided in both parties records<sup>2</sup> lists them as follows:

<sup>2</sup> The D34 and P29 document identified as the KTEA-II Comprehensive Form A produced by District and provided to Parent was not a complete copy of the full page. The form in its entirety was produced by the psychologist at the request of Parent's counsel at hearing and is included as P29 in Parent's documents. There are thus 2 P29s in Parent's documents, the one that was produced with the bottom section blocked out and the complete page produced at hearing.



	Raw Score	Subtest	Composite	Confidence Interval	Grade/Age Equivalent
<b>Letter &amp; Word Recognition</b>	19	76		68-76	<b>K.8</b>
<b>Reading Comprehension</b>	4	74		72-80	<b>&lt;1.0</b>
<b>READING</b>		148	72	67-77	
<b>Math Concepts &amp; Applications</b>	19	70			<b>K.4</b>
<b>Math Computation</b>	8	86			<b>1.2</b>
<b>MATH</b>		153	75	66-80	
<b>Written Expression</b>	135	73		62-78	<b>K.7</b>
<b>Spelling</b>	4	69		74-92	<b>&lt;1.0</b>
<b>WRITTEN LANGUAGE</b>		142	70		

The Psychological Evaluation Report summarizes the above scores as the borderline range of functioning for Reading, Math and Written Language. Student is noted to have had difficulty with phonetics, word sequence, capitalization, punctuation, and spelling. The aforesaid report describes grade equivalents as being "between pre-kindergarten for reading, math applications and written language and first grade in reading comprehension and math computation." (S.B.; P24-29)

The psychologist did not do the oral language assessment because she had no concerns in that area. She didn't do the additional reading subtests because they wouldn't be needed for placement although they would be helpful in providing information about Student's disability. (S.B.)

The Psychological Evaluation Report "encourages the concerned reader to review the School Social Worker's report for historical information" and notes that Student's family "is currently seeking permanent housing.(P24) However, as discussed above, the school social worker decided at the Domain Meeting on May 16, 2006 that there would be no social/emotional assessment because they were just meeting about academic concerns, and there is therefore no school social worker's report on Student. (C.V.)

The Psychological Evaluation Report, dated June 1, 2006, also notes Student's ADHD, although Mother states that ADHD was not diagnosed by Student's pediatrician until after the evaluation and subsequent IEP meeting. It further references the school nurse's report, which is dated June 6, 2006 and is based on a review of records and interviews with Mother and Student. ADHD is not mentioned by the nurse however. Student's asthma and medications for same are noted. The nurse indicates that she does not believe that the asthma is severe enough to cause 30 days of absences. (P18-21, 24) Finally, although the Psychological Evaluation Report indicates that the instruments/techniques used for the evaluation included "Observations", there is no indication in the report that the psychologist did a classroom observation of the Student as part of her evaluation or that anyone other than the classroom teacher ever observed Student in the classroom at any time before the psychological evaluation report was done. (P24-28)

On June 5, 2006, the case manager, A.P., issued a *Conference Notification* informing Mother of a meeting to be held on June 13, 2006 to review Student's recent evaluation and determine eligibility for special education. It does not indicate that Parent had agreed to waive the ten day notice requirement. The invited individuals are listed as P.M., the general education teacher, S.B., the psychologist, and A.P. as the case manager and special education teacher. (P47) However, when Mother was at the school on June 6, 2006, she was asked to stay and have said meeting then and there, rather than on June 13. (A.P., Mother) In addition to Mother and the above listed invitees, the school nurse, R.H., also attended that meeting, the purpose of which was designated as "Initial Eligibility." Student was designated as eligible for special education due to a Learning Disability on the basis of a discrepancy between cognitive ability and achievement, and a 21 page document was generated. Mother was not advised that she could submit a written dissent. At the conclusion of that meeting, Mother signed a consent for initial provision of special education services. (Mother; S.B.; A.P.; P49-70)

The June 6, 2006 IEP document summarizes the nurse's health and vision screening. The handwritten notes under the Health Domain are too small to read. It is noted that Student failed the vision screening on 11/3/05 and that she "recently received glasses." Under relevant domains, there are very brief summaries of the psychologist's findings per the RIAS cognitive testing and the KTEA-II academic testing. The entry for Academic Performance states as follows: "(Student) was given the (KTEA-II) to assess her academic performance. (Student) scored within the borderline range of functioning she achieved a standard score of 72 for reading, 75 for Math and 70 for written language. (Student) is performing on the kindergarten level."(P50)

The June 6, 2006 IEP document summarizes the relevant domain of General Intelligence as follows: "(Student) was given the (RIAS) to assess her cognitive development. She scored within the average range of development. Her VIX of 92; NIX of 88 and CIX of 91 are commensurate with her average range scores."(P51) As noted above, however, the Psychological Evaluation Report states those scores as a VIX of 93, an NIX of 88, and a CIX of 89. (P25)

Further, regarding the *Eligibility Determination* portion of the June 6, 2006 IEP, the Domains of Hearing, Social/Emotional, Communication, and Motor Abilities are noted as Not Relevant to the eligibility determination.(P50-51)

The *General Considerations in the Development of the IEP* identify Student's strengths as trying to do the chores expected to be done by older children; and putting forth effort in most things. Under the section requesting information on curriculum based assessments done within the last 12 months, responses to intervention used in the general education program, state and citywide tests or alternate assessments within the last 12 months, transition relevant information such as interest inventories, the only entry is "Average Reading Grade F/ Average Math Grade F." The final 2 brief notes in this section relate Parent's desire to have the Student "catch up to her expected class level in all subject areas" and Parent's request for tutoring, summer school, and more social activities with other children."(P54)

The areas noted in the June 6, 2006 IEP as requisite of specialized instruction and related services and to which Student's IEP goals are keyed are cited as *Language Arts/English/Reading, Mathematics, Biological & Physical Sciences, Social Sciences, and Health/Medical*. (P56) The IEP includes 4 typewritten goals, 1 for each of these stated areas, and each with 3 quarterly benchmarks for periods ending 11/2006, 2/2007, and 4/2007. They are as follows:

Present Level of Academic Achievement	Measurable Annual Goal	Quarterly Benchmark
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Language Arts/English/Reading

(Student) is a non reader. (Another Student's name) demonstrates difficulty with sounding out letters of the Alphabet and unable to recognize dolch words.

(Student) will use a variety of word analysis strategies to read and comprehend unfamiliar words and material

...match sounds to letter letter symbols with 80% accuracy. 11/2006

...identify and use beginning consonants in single syllable words with 80% accuracy. 02/2007

...identify rhyming words with 80% accuracy. 04/2007

Mathematics

(Student) is able does comprehend some numbers, however She does not always understand the operation needed to complete a problem. She has difficulty understanding the concept of subtraction.

(Student) will demonstrate and apply a knowledge and sense of numbers, including basic arithmetic operations, number patterns, ratios, and proportions with 75% accuracy.

...count, read and write to 50 in and out of isolation. 11/2006

...compare numbers accurately using words more than, less than and the same with 75% accuracy 02/2007

...represent numbers using physical models with 75% accuracy 04/2007

Biological & Physical Sciences

(Student) is a non reader. (Student's) lack of reading And comprehension skills causes her science mastery to be below grade level.

(Student) will understand the processes of scientific inquiry and technological design to investigate questions, conduct experiments, and solve problems.

...orally describe event with 70% accuracy 11/2006

...orally identify and describe the component parts of living things and their

major functions with 70%  
accuracy 02/2007

...orally describe and  
compare characteristics  
of living things in re-  
lationship to their en-  
Vironment with 70%  
accuracy. 04/2007

### Social Sciences

(Student) is a non reader.  
(Student's) lack of reading  
and comprehension skills  
causes her social science  
mastery to be below  
grade level.

(Student) will be avlet (sic)  
to understand economic  
systems with an emphasis  
on the United States

...orally identify advan-  
tages and disadvantages  
of different ways to distribute  
goods and services with  
70% accuracy. 11/2006

...orally explain why con-  
sumers must make choices  
with 70% accuracy.  
02/2007

...orally describe how human  
natural, and capital resources  
are used to produce goods  
and services with 70%  
accuracy. 04/2007

All of the above goals list the special education teacher as the service provider. (P59-62) The only related service provided for is 15 minutes per month of nursing services to be provided by the nurse. (P63) The School Nurse Service Eligibility Worksheet notes that Student does have a health condition that requires consultative services, but it doesn't indicate what the condition is. (P22) However, ADHD is not mentioned anywhere in the IEP document or nurses report, while asthma is. (P18-21, 49-69)

Assistive Technology is marked as not required for Student to access any part of the curriculum. (P57) Modifications and Accommodations to be provided are listed as follows:

*Explain directions in clear concise steps and have concrete examples or models*

*Reduce workload by at least 30%*

*Allow use of calculator or computer when possible*

*Test with Special Ed Teacher*

*Provide verbal rewards and motivation daily*

*Make sure (Student) is wearing her glasses at all time (sic)*

*Have Student repeat directions/instructions to the teacher to ensure understanding  
Model for the student the expected task or behavior  
Seat (Student) in an area free from distractions (P58)*

The June 6 IEP does not mention ADHD or the psychologists recommendations that Student receive support services to address same. Although the psychologist's report had also recommended that Student review skills that may have missed in pre-K to the beginning of first grade and that lessons be broken down into smaller increments for conceptualization, those recommendations are not included in the IEP. (P27)

The IEP summary sheet describes Student's learning style as "visual" and "tactile." Her learning characteristics are checked off to include slow processing of information, short auditory attention span, easily distracted, difficulty understanding concepts and following multiple verbal instructions, and slow to switch from one task to another. However, the items not checked in poor spelling and trouble putting ideas on paper, distracted by extraneous noises, disorganization, and difficulty copying from the board.(P68)

In making a decision regarding placement, the regular classroom--grade level was not mentioned--with aides and services--which weren't described--was rejected for the reason that it "would not provide enough support and repetition of material". A resource program was rejected for the reason that Student "needs a smaller class size fore all subjects as she is a non reader." The third and final placement considered, and accepted, was an instructional program, which, the IEP states "was deemed most appropriate as it would best meet (Student's) needs." It is stated that Student "needs more assistance in all subject areas to meet her academic needs," and therefore needs to be removed from the regular classroom environment for more than 60% of the time. ESY is stated to be a transition strategy to get Student acclimated to her new more restrictive setting. The IEP indicates further that there are no potentially harmful effects known by the IEP team in placing Student in an instructional classroom (P64) Her grading scale is to be modified and her workload is to be reduced per this IEP. (P66) Transportation is not to be provided for Student as a related service. (P67)

The June 6, 2006 IEP team determined that extended school year services needed to be provided in the amount of 4 weeks in order to promote or to maintain current levels of information, skills, and behavior in areas necessary for self-sufficiency. This section of the IEP states that the decision for ESY needs to be made before April 1 of each year. (P56) This IEP is to take effect on June 16, 2006.(P68) Student was to receive ESY in the summer of 2006, following this IEP However, the assistant principal told Mother that Student couldn't have ESY because Student "had just been staffed." Student received no ESY services in the summer of 2006.( C.M.; A.P.; Mother)

Because District did not include a speech/language, occupational therapy, assistive technology, or a social/emotional assessment in its evaluation of Student, but rather only a nurse's report and intelligence and some achievement testing, Parent's attorney asked the hearing officer to order further assessment of Student prior to this due process hearing. Based on the information submitted in support of Parent's motion, and the District's failure to provide any response to same, though time was allowed, assessments were ordered to be performed by independent evaluators at District expense in the areas of central auditory processing, speech/language, and social/emotional status. (See Parent's Motion dated June 20, 2006 and Interim Order dated June 29, 2006)

The aforesaid evaluations were performed during the summer of 2006. J.F., PhD, licensed audiologist, respected in her field, tested Student's hearing and her auditory processing skills, including evaluation for a central auditory processing disorder, on July 14, 2006. Scores were within normal limits with the exception of scores below normal limits for three of four conditions in the Staggered Spondaic Word (SSW) Test. The results of her testing, per J.F., tended to rule out a central auditory system nerve disorder as the cause of Student's learning difficulties but the error pattern was indicative of a receptive/expressive language and/or a language processing deficit as contributive to Student's academic difficulties. J.F. included her recommendations for further testing and accommodations in her report. (J.F., B.R.; P108-120)

A speech and language evaluation of Student was performed by J.M., PhD., a licensed speech and language pathologist, who also holds a Type 10 Special Education Certificate, on July 31, 2006. As part of her evaluation, J.M. assesses whether assistive technology can be of benefit to her test subjects, and an assistive technology evaluation was therefore incorporated into her evaluation of Student insofar as Student's speech and language based learning needs were concerned. The following tests were administered with the following results:

Peabody Picture Vocabulary Test IIIA (PPVT-IIIA) A test of single word receptive vocabulary.

Standard Score: 77 (score of 100 is average or 50<sup>th</sup> percentile)  
 Percentile Rank: 6 (percentiles of 16 to 84 within average range)  
 Stanine: 2  
**Age Equivalent: 5 years 8 months**

Expressive One Word Picture Vocabulary Test (EOWPVT) A test of single words expressive vocabulary.

Standard Score: 64 (score of 100 is average or 50<sup>th</sup> percentile)  
 Percentile Rank: 1 (percentiles of 16 to 84 within average range)  
**Age Equivalent: 3 years 8 months**

Language Processing Test-3 (LPT-3) Tests ability to process and use language in a Variety of ways.

<u>Subtest</u>	<u>Percentile</u>	<u>Standard Score</u>
Association	71	108
Categorization	11	81
Similarities	2	70
Differences	10	81
Multiple Meanings	(unable to complete any items on this subtest)	
<u>Attributes</u>	12	78
Total Test	7	78

Differential Screening Test for Processing (DSTP) tests auditory processing skills

<u>Subtest</u>	<u>Raw Score</u>	<u>Pass/Fail</u>
<i>Level One</i>		
Dichotic Digits	5	pass
Temporal Processing	6	pass
Auditory Discrimination	12	pass
<i>Level Two</i>		
Phonemic Manipulation	8	fail
Phonemic Evaluation	3	fail
<i>Level Three</i>		
Antonyms	0	fail
Prosodic interpretation	8	pass
Language organization	9	fail

Comprehensive Test of Phonological Processing (CTOPP) tests phonological processing skills.

<u>Subtest</u>	<u>%ile</u>	<u>Standard Score</u>
Elision	2	4
Blending words	9	6
Memory for digits	37	9
Rapid digit naming	2	4
Nonword repetition	50	10
Rapid letter naming	5	5
Rapid color naming	<1	2
Phoneme reversal	5	5
Rapid object naming	2	4
Blending nonwords	25	8
Segmenting words	5	5
Segmenting nonwords	5	5

From the above testing, J.M. concluded that Student has significant deficits in all areas of language development. She scored in the moderately low range on the PPVT-III, in the profoundly delayed range on the EOWPVT, was mostly below average on the LPT-3, and showed significant difficulty with level two and three processing per the DSTP. Findings on the CTOPP indicate that processing involving sounds and words is very impaired. (J.M.; 126-131)

Student's social/emotional status was evaluated by L.T., a licensed social worker, on July 26, 2006. L.T. conducted personal interviews with Mother and Student. She confirmed that Student's family has moved 6 times in 3 years and has been living with Mother's grandmother. Student feels unsuccessful at school because she has failed to learn for so long. Therefore she is anxious and withdrawn. When she asks for help, she doesn't understand or comprehend what she is told to do. She cannot identify her own personal strengths. She feels that she will fail if she tries, noting that she fails tests when they are given to her. Therefore, she gives up or avoids academic tasks altogether. She needs to work with a social worker to address her withdrawal and

avoidance of school work, identify her strengths, and learn to persevere through challenging academic and social situations. Communication between home and school with a coordinated behavioral system of positive rewards needs to be established. L.T. recommends 60 to 90 minutes per week of social work services to address these needs. (L.T.; 121-125)

C.M., the current case manager at L-H School reviewed the aforesaid independent evaluations on August 28, 2006. She met Mother at the resolution session in this matter, which she believes was held on August 28<sup>3</sup>, at which time Mother was requesting placement of Student at Acacia Academy. (C.M.)

Student began the 2006-07 school year on September 5, 2006 in the self-contained cross-categorical instructional classroom taught by V.H. and currently remains in that placement awaiting the decision and order in this cause. The 11 students in that class include 1 first grader, 4 second graders, 5 third graders, and 1 fourth grader. 8 students have a primary disability of L.D. and 3 have a primary disability of E.M.H. The teacher did not know that Student had a diagnosed ADHD until September 14, when she attended an IEP meeting. She has no aide in the classroom. It is a little difficult for her to help all 11 students. She uses a 1996 version of *Hooked on Phonics* two to three times a week. It's an old 1996 version which she picked up and used before at another school, where "it seemed to help." There is one computer in Student's classroom, which is running only a program called *Accelerated Reader*, which Student doesn't use very often. It tests comprehension. The teacher does not use any type of scientific, sequential, multi-sensory, research-based program to teach Student to read. She is teaching the class encoding and decoding of words by writing a word on the board and asking "What's the sound?" Student "reads" by practicing over and over again. Student was only able to spell 2 words out of 6 on a spelling test, including *mat* and *bad*. She was then allowed to practice the words for 2 weeks, after which she spelled 4 words out of the same 6 correctly. <sup>4</sup>(V.B.; 458)

Student's first progress report for this school year was provided to Mother on October 10, 2006, following the first day of this hearing. Checkmarks indicate that Student "Needs Improvement" in all areas, including Reading, English, Spelling, Mathematics, Science, and Social Studies. The teacher has also denoted her concern with Student's lack of pride in her written work, her listening skills, organization of her work area, distractibility, excessive talking and tardiness. Mother sees very little but some progress so far this school year. (Mother; P460) V.B. feels that Student is having a very slow start in reading but that she is "progressing very well", although she did not describe what progress is being made other than memorization of words in her hearing testimony. (V.B.)

An IEP meeting was convened on September 14, 2006 to consider the IEEs that were conducted in July, as delineated above. Attendees were as follows: Mother, Mother's attorneys, District's attorney, C.M., case manager, who also attended as the District Representative, V.B., Student's instructional classroom special education teacher, P.M., Student's first grade teacher from the 2005-06 school year, S.B., the school psychologist, R.H., school nurse, T.D., occupational therapist, C.V., school social worker, L.D., school speech pathologist, B.R., a District audiologist, and C.K. of the District's Due Process Department. (P75)

<sup>3</sup> Counsel previously advised hearing officer on August 29 that it had not been held and that they were trying to schedule it for August 30.

<sup>4</sup> Page 458 is identical to page 459 because the copy of the first test was provided to the hearing officer twice by mistake and the second test was not provided.



To the notes regarding *Eligibility Determination* that were recorded at the June 6, 2006 IEP meeting were added notes under the category of *Hearing* referring to J.F.'s audiology evaluation report, noting "a possible receptive/expressive language processing deficit." (P77) The school social worker, C.V., added a note under *Social/Emotional* referring to L.T.'s social/emotional status evaluation and stating that "Student and SW will discuss personal strengths and coping methods to help with anxiety." (P78) And the school speech pathologist, L.D, added a note under *Communication* referencing J.M.'s speech/language evaluation, specifically some of her scores on the PPVT-III, EOWPVT, and the LPT-3. The evaluator's finding of delays in phonemic awareness and auditory processing are not included. J.M. has concerns that they are not addressed by the IEP document. (J.M.) She notes that Student "is eligible for SPL services to address vocabulary and language deficits." (P78) Student's eligibilities are listed as Learning Disability, Other Health Impaired, and Speech/Language Impairment. (P79)

This IEP fails to provide curriculum based assessment results of any kind, but includes a note that "Diebels (sic) data should be place (sic) here: on 1<sup>st</sup> grade teacher's Palm Pilot." (P80)

The school nurse discussed home/hospital services with Mother at the September 14, 2006 IEP for the first time. Mother returned the referral provided her to the nurse. It was passed on to another District employee, who will tell Mother what to do to use the service if needed when Student is out. (R.H.)

The Parent and her attorneys expressed numerous concerns during the development of the September 14, 2006 IEP relating, inter alia, to Student's needs for an Orton-Gillingham based Reading Program and the inappropriateness of the *Hooked on Phonics* program for Student, lack of a working computer in the classroom, the modified grading scale, compensatory services, tutoring, assistive technology needs, Parent's desire for placement at Acacia Academy, determination of ESY services, which concerns are recorded on the *General Considerations in the Development of the IEP* page.(P80) Parent's attorneys also submitted a detailed Dissent to this IEP. (P104-107)

New areas of specialized instruction were added to the September 14 IEP, including Physical Education, Social/Emotional and Speech/Language. Although it is noted that specialized instruction/related service is needed for speech/language, it is not noted as an area for modifications or accommodation. ESY services are to be provided "to prevent the loss of academic skills." (P82) A tape recorder is the only assistive technology required. The case manager also referred the Student for an assistive technology evaluation by the District's A.T. team on September 14, 2006, but that had not been done as of the date of this hearing. (C.M.; P83)

The September 14, 2006 IEP includes 7 goals for the period beginning 9/14/06 and ending 9/14/07. However, the quarterly benchmark dates remain as 11/2006, 02/2007, and 04/2007, concluding 5 months before the end of the IEP ends. Changes from the June 6, 2006 IEP are as follows: