

**50 IDELR 300
108 LRP 43073
City of Chicago School District 299
Illinois State Educational Agency
2008-0018
February 19, 2008**

Case Summary

An Illinois district made a costly mistake when it afforded more concern to a student's placement on the LRE continuum than the student's educational needs. Noting that the student required intensive special education services to overcome his learning disability, an IHO ordered the district to fund the student's placement in a private school for children with learning disabilities. The IHO acknowledged that the IDEA expresses a preference for mainstreaming. However, the IHO explained, a general education placement is not appropriate when the student is unable to obtain an educational benefit with the use of supplementary aids and services. The IHO noted that the modifications and accommodations supplied by the district, which included a significantly reduced workload, the use of reading materials far below grade level, and oral administration of spelling and reading tests, merely masked the student's academic struggles. "Both the district's evidence and the parents' evidence support that the student is in need of intensive services, and that his level of academic performance has been maintained through significant modifications and accommodations," the IHO wrote. The IHO observed that the student, despite his above-average intelligence, was unable to work independently on tasks involving reading, writing or spelling. Because the private school offered the intensive services the student required, the IHO concluded that the school was the student's LRE.

Judge / Administrative Officer

Sheana Hermann, Hearing Officer

Full Text

Hearing Decision and Order

This matter comes before this hearing officer on the Impartial Due Process Hearing Request of [] ("Parents") on behalf on their son ("Student") against City of Chicago School District 299 ("District"). The Parents are represented by their attorney Charles Fox. The District is represented by Kristine Shrode and Cynthia Hansen of the Due Process and Mediation Department. This Hearing Officer has jurisdiction to hear and decide this matter under 105 ILCS 5/14-8.02(a) et seq., 23 Illinois Administrative Code 226.600 et seq., The Individuals with Disabilities' Improvement Act (IDEIA) 20 U.S.C. 1415, and 300 C.F.R. 507 et seq. The parties were informed of their rights according to 105 ILCS 5/14-8.02(a), 23 Ill. Admin. Code 226, subpart G, 300 C.F.R. 300.512.

Procedural History

The Parents made their initial Due Process Hearing request dated July 12, 2007. It was received by the Illinois State Board of Education (ISBE) on July 24, 2007. This hearing officer received the assignment on July 27, 2007 and immediately contacted the parties. At the time of initial contact with the Mother, she informed this hearing officer that she may be retaining an attorney. On September 11, 2007, the Parents through their attorney filed an amended request. On September 13, 2007 this hearing officer received the District's Notice of Insufficiency, which was subsequently denied in a letter dated September 17, 2007 (SD. 406-408). The parties engaged in a "resolution" session on October 12, 2007. This date was beyond the 30 day resolution period. The parties were unable to resolve their differences. A pre-hearing conference was conducted on November 19, 2007 by telephone conference. The District by email transmission brought a motion to exclude the certain

evaluations conducted after the pre-hearing conference by Lisa Hannum and Eric Rovin and Jenna Kant and to bar Lisa Hannum as a witness and to bar Eric Rovin and Jenna Kant from testifying to their January 10, 2008 assessment. (IHO. Group 1). This hearing officer denied the District's motion (IHO. Group 2). It should be noted for the record that Dr. Kant did not testify and this hearing officer's decision would have remained unchanged without Ms. Hannum's evaluation and testimony and Mr. Rovin's January 10, 2008 evaluation and testimony of that addendum. The Hearing was conducted on February 4, 5, 7 and 8, 2008 at Edgebrook Elementary School located at 6525 North Hiawatha, Chicago, Illinois. The Parents' and District's documents were admitted into evidence. The parties received their rights and verbally acknowledged on the record receiving them. The parties also acknowledged that this hearing officer previously worked for the District in its Due Process and Mediation Department and agreed to allow the hearing officer to remain (SD. 430). The following witnesses testified on behalf of the Parent: Lisa Hannum, independent reading expert; Mary Ann C., Student's grandmother; Walter Krinich, Associate Director of Hyde Park Day School and Principal of its Northfield campus; Nanda Munshi, District's school psychologist; Anthony Adamowski, District's school psychologist; Student; Kevin C., father of Student; Julie Levin, private speech and language pathologist; Andre Metzl, District case worker and special education teacher; Eric Rovin, private school psychologist; and Anne Marie C., mother of Student. On behalf of the District the following individual's testified: Faith Reimer, District's speech and language pathologist; Susan Kane, District's special education teacher; Jane O'Mahoney, District's multisensory itinerant teacher; Lauren Kunicki, District's assistive technology evaluator; Mary Ann Vena, District's regular education teacher; Gail Sherwood, District's regular education teacher; Erica Clark, District's regular education teacher; and Janice Kepka, principal of Edgebrook Elementary School.

Issues Presented

The Parents have presented the following as issues in their due process hearing request as amended on September 11, 2007 and made more specific on November 19, 2007:

1. Failure of the district to instruct the child using peer-reviewed research-based methods (e.g. multisensory, phonetically-based, structured systematic instruction) with sufficiently trained staff to allow the child to acquire appropriate skills in the areas of spelling, reading and writing during the 2005-2006 and 2006-2007 and 2007-2008 school years;
2. Failure of the district to account for and adjust its programming to address the child's lack of progress in the areas of spelling, reading and writing during the 2005-2006 and 2006-2007 and 2007-2008 school years;
3. Failure of the district to design an IEP that included needed goals in the area of word finding during the 2005-2006 and 2006-2007 school years;
4. Failure of the district to design an IEP that included needed goals to address phonological and orthographic (e.g. decoding and encoding) deficits during the 2005-2006 and 2006-2007 and 2007-2008 school years;
5. Failure of the district to implement the DIBELS fluency assessment protocols as designed, resulting in an inability to effectively monitor the student's progress during the 2005-2006 and 2006-2007 and 2007-2008 school years.

Relief Sought

The Parents seek the following remedies:

1. Compensatory education for all periods of time and in all areas that the district has failed to carry out the child's IEP and/or provide a Free Appropriate Education;

2. To have the child placed at the Hyde Park Day School that will provide for the child's needs appropriately in an LRE;
3. Reimbursement for all costs and expenses related to the parents' expenditure of funds for tuition, private evaluations [evaluations conducted in February of 2006 and April of 2006, requesting reimbursement for Wee Speech and North Shore Psychological evaluations conducted in the Fall of 2007] and other services and equipment;
4. Remedial and compensatory instruction to address word finding deficits;
5. All other additional appropriate and necessary relief as the hearing officer deems necessary to properly educate and to service the child.

Finding of Fact

The Student is a male 10+ year old with a birth date of August 26, 1997 and is presently in the 4th grade. He qualifies for services under the Individuals with Disability Act as Amended in 2004 (IDEIA) as having a learning disability and a speech and language disability.

Through the course of this four, full, days of hearing, the evidence presented and the testimony derived supports that the Student's disabilities affect his ability to process sounds and thus affects his speech and his reading. He has a severe deficit which requires intensive remediation. He does not recognize short vowels. He does not have any phonological skills. His reading is inaccurate. He is not able to read, write or spell independently. The evidence also supports that from a very early stage the District was aware of the Student's deficits, yet failed to provide him with the intensive instruction which he needed.

The Student has received speech and language services through the District since July 11, 2000. (P. 309-322).

It was noted in his November 27, 2002 individualized education plan ("IEP"), that the Student had a severe phonological disorder (P. 288). He received occupational therapy for 15 minutes per week in addition to his speech and language therapy. (P. 290).

In his November 25, 2003 IEP, it was noted in his goals that he had a moderate phonological delay with substitutions and distortions interfering with his ability to clearly communicate his thoughts and ideas. (P. 271). The Student repeated Kindergarten and was now attending Edgebrook Elementary School (P. 266).

In a November 18, 2004 IEP, the Mother expressed concern that the Student did not have reading or word retrieval skill, and poor spelling skills (P. 250). His IEP goals noted that the Student was having difficulty reproducing lower and upper case letters (P. 255). The Student still received services only for speech and language and occupational therapy. (P. 256).

The Student was determined to have a learning disability at a January 10, 2005 IEP meeting (SD. 47). He was given 40 minutes of direct reading instruction in a separate class room in addition to 40 minutes each of reading and writing in the regular classroom, 20 minutes of spelling, continued speech and consultative in math. (P. 239). He was given a goal to produce a three sentence paragraph with correct punctuation, capitalization and spelling to 75% accuracy; his area of need was lack of phonemic awareness and inability to use grade appropriate sight words which affect his ability to express himself. This goal was not achieved (P. 235). It was noted that the Student's speech was impacting his reading and writing words and he had a "lot" of reversals (P. 231). In his language arts goal, his area of need stated that his "phonemic awareness is well below average,

even after three years of instruction; he is making limited progress with sight words. His lack of fluency is affecting his reading." He was reading 34/39 Dolch Preprimer words. The goal was to increase sight word fluency to 75% grade level appropriate word lists. His first bench mark was to read 39/39 preprimer words, his next benchmark was to read 17/51 primer words and his third benchmark was to read 34/51 primer words. (P. 238). He was also to be given accommodations and modifications (P. 241-242). At this time the District did not implement any sort of intensive reading services which were met by any sort of scope or sequence.

In a meeting on October 5, 2005, it was noted that the Student had an auditory processing disorder and was unable to process phonemes and differentiate sounds in words. (P. 221). The meeting was to held to add visual learning to his program.

In a January 9, 2006 IEP, the Student was in the middle of second grade. In his reading goal, it stated that he knew 82/96 pre-primer and primer words. His yearly goal was to have him master 30/40 first grade Dolch words (he would be halfway through third grade) and use strategies such as rhyming, chunking, explore other words that use those words that are contained within them 20/40 words orally; each benchmark had him learning 8/10 first grade Dolch words and orally using five out often in a compound word or complex (P. 207). To address his lack of mastery of phonemes and spelling rules, the Student was given a spelling goal of spelling 70% correct out of a visual choice test (P. 208). A meeting was conducted on January 27, 2006 to increase the spelling mastery from 70% to 90%. (P. 195-196).

In his April 25, 2006 IEP, after the District's psychiatrist provided an evaluation (see below), the IEP called for Dibel benchmark reading below grade level to be monitored monthly, (SD. 107); it acknowledged that the Student was unable to decode short vowel sounds consistently, and stated he would master by the end of the year ten word families, without stating what those words families were (SD. 109). His word recognition was based on sight words below grade level (SD. 110). His speech and language goal again addressed articulation issues only (SD. 111).

In his January 13, 2007 IEP, the Student's goals were again below grade level for spelling and reading. (SD. 138, 139). He was to be monitored in his reading fluency and writing every ten weeks (SD 139, 140).

The current November 13, 2007 IEP notes that the Student is at 47 wpm at the beginning of the 4th grade year (less than 71 is considered at risk P. 497-498). His year end goal, which would bring him into his 5th grade year would be reading at 50 wpm at a mid fourth grade level. The monitoring of progress is to be recorded quarterly. (P. 83).

The Father testified that he observed that the Student can not spell or read as well as his 8 year old son. He has observed that the Student does not recognize words and makes incorrect substitutions for words in his reading. He has not observed him attempting to use strategies in breaking down words.

The Mother testified that she has constantly made the District aware of her concerns and has been very active in trying to advocate for services for her child. She never has seen the Dibels tests administered to him in 3rd grade, he has not been receiving books on tape which were to be supplied for home. In the third grade it came to her attention that the Student was unable to spell "has." She has written numerous letters to the District (P. 544, 545, 548-552, 555, 557-561). The Parents have tried to work in good faith with the District.

In a January 6, 2006 IEP meeting it was determined that the speech/language pathologist will consult with the classroom teacher regarding phonetic awareness activities (SD. 60). However, this happened infrequently.

The experts of the District's and the Parents' agreed that the Student's disability is significant and required intensive services.

As early as 2001, the District's school psychologist Ms. Munshi found that the Student was underachieving in decoding, spelling and blending (P. 394) and he had weak phonetic and word attack skills (P. 394), yet the District failed to address these issues.

Of particular interest was the testimony of Mr. Adamowski, the District's school psychologist who performed an evaluation on the Student in February 21 and 28, 2006 (SD. 80-87). He performed the Woodcock-Johnson Test of Achievement (WJ-III) (P. 382, 385) and the Weshler Intelligence Scale for Children-Fourth Edition (WISC-IV) (P. 383, 385) when the Student was in the 2.6 grade. He also conducted the Developmental Test of Visual Motor Integration (VMI) in which the Student scored in the 37th percentile. Mr. Adamowski testified that the Student has significant deficits. He stated that the retention of the Student did not work as the Student is still struggling relative to his grade level peers. This is further evident in Mr. Adamowski's report where he stated that the Student exhibits significant academic weakness relative to his grade level peers, in several areas tapping basic skills, especially overall phonological/graphological knowledge. Despite repeating kindergarten, the Student continues to struggle with basic reading, decoding, word attack skills, and sight word vocabulary. As such, his reading fluency and independent reading comprehension skills are below expected levels. His basic spelling skills and math fluency skills also emerge as below expected levels. (SD. 84). The Student needs significant remediation in terms of basic phonemic and phonological awareness (SD. 85). He stated he recalls being at the IEP meeting on April 25, 2006. Following his evaluation he was concerned more with getting the Student to read and not necessarily what the team was to provide as far as minutes. He stated a concern to start from the beginning to gain basic skills and build from those. He needed direct instruction in "phonemic and phonological awareness (P. 389). He agreed that the Student would benefit from a structured, systematic approach to reading that follows a scope and sequence. He also testified that up to 3rd grade, students are gaining functioning mastery of reading, after third grade students, students learn to read. He needs significant remediation, direct special education services, not just modifications and accommodations (P. 389). He also confirmed that Dibels should be given with a frequency of weekly to bi-weekly to see small changes and to determine whether the student is benefiting from the intervention.

On behalf of the Student, Lisa Hannum, a reading specialist, testified. She conducted an evaluation on phonetic awareness upon the Student. She stated that his phonological processing deficit is at the core of his disabilities. Her testimony corroborated the other evaluations of the District's and Parents' educational professionals. She found that the student was not aware of his short vowel sounds (P. 399). She determined that the Student did not know short vowel sounds or diphthongs, two vowels which make a unique sound. He also did not know his consonant sounds which is a skill that is mastered in much lower grades. He is not fluent, he does not recognize punctuation, he does not show any decoding strategies, and he reads slowly and inaccurately (P. 401). He does not utilize decoding strategies; instead he tries to remember his sight words. He becomes visibly frustrated and visibly fatigued (P. 397, 390, 394, 400). She also testified that the Student's deficit require an intensive reading program that provides a scope and sequence. If he does not receive such a program, his deficit will become wider and it will be difficult for him to read text books. She also stated that she does not believe the District's results that he has excellent reading comprehension. She testified to the spelling goals are inappropriate as prescribed (P. 86, ? 113, 114). His reading goals do not state what is normed and that the monitoring is not done enough (P. 115). He also is given a low benchmark which calls for him to read below grade level. He is not given the Dibels at grade level. He is in need of a language based curriculum such Wilson or Slant. If he does not develop these abilities the gap will widen. He will be expected to read text books which will be much more difficult.

Ms. Metzl testified that the Student reads out loud with her, and that she does not have him read in front of his peers due to his difficulty. Ms. Metzl gave the Student a reading test which was not based

on any normative, she was not aware of how many times in the past the Student read the books and on the list of books were picture books such as "If You Give a Mouse a Cookie." These books were meant to be at the 3.5 grade level (SD. 370). She stated that the District does not use any program or any one program that would stress his central auditory process. She can not point to research behind the methods used other than to state that they do not use one particular program but engage in best practices. She stated that the District's justification for the Student's placement was least restrictive environment. She stated that the Student's modifications and accommodations were appropriate in that it allowed the student to access the general curriculum (SD. 60, 105, 136). She was not sure if the Student met his benchmark to address word attack skills (SD. 61-63). He is not currently able to write an essay, although this is one of his goals (SD. 234). He has taken an accelerated reader test in which he is allowed modifications such as having the questions read to him and has scored in 77% in the mid-third grade level. It should be noted that some of the books on this test are large picture books such as "If Give a Mouse a Cookie." (SD. 370). She stated he struggles with reading but reads; he does not always decode but comprehends what he is reading. She also testified that he is an active participant in class.

Susan Kane testified that it is apparent that the Student does not hear sounds in words. She testified that the Student's grades in spelling and reading were modified (SD. 115). The program provided to the Student was not systematic. She is not trained in Orton-Gullingham. She used a "typical" approach. The District has no record of his monitoring for the 2006-2007 school year. Spelling dictated words are over the Student's ability. He did not meet his final writing goal (SD. 37). He could not independently produce a three sentence paragraph.

The District's witnesses testified to using "Open Court," however it is the program the entire school uses and is not a special education program.

The Parents' private speech and language pathologist, Julie Levin, found that in her evaluation the Student made numerous phonemic, semantic and syntactic errors (P. 375). She stated that many children with word retrieval problems have a language impairment. Word retrieval would be provided by the SLP. She stated that the Student exhibited overt errors related to his deficit and that these were significant (P. 326). She did not find that he had significant intervention for his word retrieving difficulty. She testified that his goals were inappropriate some were not appropriate for his deficit (P. 91) or did not address his word retrieval deficit (P. 157). She also testified that the assistive technology devices used with the Student did not address his deficits, such as Micro Soft Word.

The Parents' evaluator Eric Rovin found that the Student's word reading and decoding and processing speed were all very low with below average standard scores (P. 360, 264). He administered the WIAT. He found the Student to be reading in the 2nd grade level (P. 370). In comparing his tests scores to the test administered by the District, he observed a statistically significant decline in the Student's performance. He testified that it is important for the Student to receive a program such as Orton-Gullingham which follows a scope and sequence to help the student learn how to decode. He needs intense instruction (P. 367). The SLP and classroom teacher need to work in conjunction (P. 367). However this never happened. The Student does not have the underlying skills or use of strategies. He has no phonological awareness. He has a severe written expression deficit. (P. 372). He needs more explicit instruction (P. 374). Goals are inappropriate. They do not measure phonemic awareness (P. 226); some are just accommodations not goals (P. 206) or not appropriate (SD. 108). He is missing the skills in decoding vowel sounds thus suffix learning would be inappropriate. He needs to be monitored at shorter intervals than every 10 weeks (SD. 66).

Faith Reimer testified she mainly worked with the Student on articulation and that the Student's goals were meant to improve his articulation (SD. 38). She formally introduced word finding at the November 16, 2007 IEP (SD. 276). In the January 9, 2006 it was specifically stated that the SLP would provide consult with phonemic awareness, however, the witness does not recall providing the

consult (SD. 60). The Student exhibited difficulty in knowing what sound went with what letter (SD. 39).

It is also clear from the evidence and testimony that the Student has not mastered sound-symbol association (P. 143, 389, 394, 398-399). He is unable to process sounds. This is basic in his inability to comprehend phonemes and should have been worked at in conjunction with the speech and language pathologist and the special and regular education teacher. Ms. Levin, the parents' SLP, noted that the Student had semantic, syntactic and phonemic errors along with vowel and phonemic distortions (P. 326) that he struggled to use words (P. 327) and his word retrieval was affecting his reading decoding, written expression (P. 327). The District's own witness Ms. Reimer and SLP noted that the Student's phonemic awareness was reduced (P. 332). However, he never had a SLP goal to address this.

Gail Sherwood, the Student's regular education third grade teacher stated that the Student read on level with modifications; however, if the support is taken away, he has a lot of trouble. His accommodations allow him to have success. She also testified that he did not have a structured approach in reading, although she had structure in her class.

His current teacher Erica Clark testified that the Student uses both spell check and a scribe for his writing, his work load was cut down, he was given visual spelling tests and the tests which were dictated, he was only expected to learn 8 of 10 which was one half as many as his regular education peers.

Ms. O'Mahoney, the District's multisensory itinerant teacher testified that the District's intensive reading program utilizes a structures sequential program such as the Wilson Program which is designed for students with severe language based disabilities with little to no phonological sounds. She stated that student suspected of those disabilities would need to be tested. Such a test was never administered to the Student by the District not was the Student referred for testing by the District. She also stated that the program was restrictive and required a multi-year commitment.

The Student has received mainly "A's" and "B's" and scored 79% on the ISATs (SD. 288-289, 290). He has reached most of the benchmarks set for him. However, after listening to testimony it is quite clear that the Student has been given extreme modifications and accommodations which have masked the Student's struggling and that the benchmarks set for him are too low. He has not been given an appropriate program in the necessary intensity to address his learning deficits.

Conclusions of Law

Under *Schaffer v. Weast*, [44 IDELR 150](#) (U.S. 2005), the party challenging an IEP bears the burden of persuasion in a due process hearing. The Parents in this matter have clearly met their burden. Upon review of all the documentation and testimony, it is clear that there is not a dispute as to the Student's learning needs and the significance of his disability. Both the District's evidence and Parents' evidence support that the Student is in need of intensive services and that his level of academic performance has been maintained through significant modifications and accommodations.

The District has failed at IDEIA's basic tenant to provide the Student with an appropriate education. During the entire hearing, the District argued that every time the Parents raised a concern with the District the District responded, however the problem lies in that the District did not initiate any action in providing the Student with more services without the Parents' persistence. The District failed on many levels from failing to provide the Student with the intensive services that he needs, to failing to implement proper goals, failing to monitor his progress appropriately, failure to recognize that the Student needed more services.

Appropriate Education

While the landmark case of *Board of Education of the Hendrick Hudson Central School District, Westchester County v. Rowley*, [458 U.S. 176](#) (1981), outlines a two part analysis to determine whether FAPE was provided: first, has the District complied with the procedures set forth in IDEIA and second: is the IEP reasonably calculated to enable the child to receive educational benefit? In this matter the Parents' issues stem from whether the District provided the Student with IEPs which enabled the Student to receive educational benefit. In this case the Student has average to above average intelligence, and as stated by his teachers has benefited from his educational program. However, the evidence supports that he is not at all independent in his school work, requiring significant modifications and accommodations. He can not read, write or spell and is still having significant issues with his speech. The District has failed to provide him with a program which addresses his deficits with the necessary intensity. The court in *J.L. and M.L. v. Mercer Island School District*, [46 IDELR 273](#) (Dist. Ct. Western District Wash. 2006) found that "employing accommodations and other compensatory strategies without increasing a student's skill level does not represent compliance with the IDEA. It is not sufficient to simply 'escort' an educationally challenged student through the school system." The District has failed to provide for his disability.

It is true that a District does not have to maximize educational benefit, however it still needs to provide a program that is appropriate and meets the student's identified needs. The evidence supports that the Student needs a program which meets a certain scope and sequence. The District's own specialist stated that the District has a Wilson reading program which is very intensive, structured and requires a multi-year commitment from the students. She also stated that she never tested the Student nor was the Student referred to her prior to the hearing request. Wilson has a specific scope and sequence and is meant for students with severe language based disability with little phonological sounds, such as the Student in this case.

The District contends that the Student has benefited and is progressing, however with still having significant reading, spelling and writing deficits, and achieving low goals, any benefit from his program has been de minimus. A de minimus benefit is not enough to confer a FAPE. The court in *Polk v. Central Susquehanna Intermediate Unit 16*, [441 IDELR 130](#) (3d Cir. 1988) interpreting *Rowley's* "some educational benefit" determined that IDEA "calls for more than trivial educational benefit" and requires an IEP to provide "significant learning" and confer "meaningful benefit." (*Polk*, 853 F.2d at 182). "[w]hen students display considerable intellectual potential, IDEA requires 'a great deal more than a negligible benefit.'" *Id.* In the case at hand it is undisputed that the Student has average intelligence, yet the District has provided very low goals for him.

The District contends that the Student is achieving high grades and scored high on his ISATs, however achievement of passing grades and advancing from grade to grade in a regular classroom environment is not necessarily an indication that the student is receiving FAPE under the IDEA. According to the Supreme Court, an evaluation of the student's circumstances as a whole is still required. See, e.g., *Hall v. Vance County Board of Education*, [557 IDELR 155](#) (4th Cir. 1985). In the Student's case, he was receiving many modifications and accommodations. The District admitted that the student has many issues and that without these modifications and accommodations would not be functioning.

This important concept was codified in the 2006 IDEA Part B regulations: "Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade." 34 C.F.R. 300.101(c).

Furthermore IDEIA requires that the IEP meet certain requirements:

Sec. 300.320 Definition of individualized education program.

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with Sec. 300.320 through 300.324, and that must include --

(1) A statement of the child's present levels of academic achievement and functional performance, including --

(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(2)(i) A statement of measurable annual goals, including academic and functional goals designed to --

(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(B) Meet each of the child's other educational needs that result from the child's disability;

(ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(3) A description of --

(i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and

(ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child --

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;

(6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments consistent with section 612(a)(16) of the Act; and

(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or district wide assessment of student achievement, a statement of why --

(A) The child cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the child; and

(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

(b) Transition services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include --

(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) The transition services (including courses of study) needed to assist the child in reaching those goals.

(c) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under Sec. 300.520.

(d) Construction. Nothing in this section shall be construed to require --

(1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or

(2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

The evidence and testimony indicate that the Student's IEP's have been inappropriate, they have failed to address his deficits, failed to provide appropriate goals, and his services have not been based on peer related research.

Least Restrictive Environment

IDEIA through its regulations 34 C.F.R. Section 300.114 (2006) provides:

(2) Each public agency must ensure that --

(i) To the maximum extent appropriate, children with disabilities including children in public or private institutions or other care facilities are educated with children who are nondisabled; and

(ii) Special classes, separate schooling, or other removal of children with disabilities from regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The District states that it is required to provide the Student services to meet the least restrictive requirement (LRE) of the law. However courts have ruled that an appropriate placement overrides the requirements of the least restrictive environment.

The Seventh Circuit has not established a legal standard regarding LRE but has stated "[w]e find it unnecessary at this point in time to adopt a formal test for district courts uniformly to apply when deciding LRE cases. The Act itself provides enough of a framework for our discussion." *Beth B.*, 282 F.3d at 499. The IDEIA requires mainstreaming to the maximum extent appropriate not the maximum extent possible. See *Heather S. ex rel. Mark S. v. Niles Tp. High School Dist. No. 219*, 1999 WL 1100931 (N.D. Ill. 1999), *aff'd Heather S. v. State of Wis.*, [125 F.3d 1045](#) (7th Cir. 1997). Appropriate placement overrides the least restrictive environment where the student will require so much modification in the curriculum that the regular program has to be altered beyond recognition, resulting in limited education value to the student *Id.* See also *Lachman ex rel. Lachman v. Illinois State Bd of Educ.*, [441 IDELR 156](#), 852 F.2d 290 (7th Cir. 1988).

In this case, the Student has received significant modifications and accommodations, he has less of a case load, lower goals, books on tape, scribes, etc. ... He needs an intensive program to address his needs; the least restrictive environment is the day program such as Hyde Park Day school.

Conclusion

From the evidence and testimony, it is clear that the Student's disability is severe and requires significant remediation. The District has failed to provide the Student with appropriate services to service his needs as required by law. They have not provided him the intensive remediation he needs to become an independent reader and writer. Therefore, the Parents' request for placement at Hyde Park Day School is be granted. The Parents' requests for reimbursement for the evaluations conducted by Dr. Kant and Mr. Rovin, and Ms. Levin are denied as the Parents did not make a prior request to the District to provide independent evaluations or stated that they were not satisfied with the District's evaluations. The reimbursement for services to Dr. Getzell and Ms. Levin are denied as the Parents have failed to prove up their charges.

IT IS HEREBY ORDERED:

1. The District's placement at Edgebrook School is inappropriate;
2. The District failed to provide the Student an appropriate education for the two years prior to the Parents July 12, 2007 filing of a Request for Due Process Hearing;
3. The Student is in need of intensive remediation;
4. The District shall provide a placement and transportation for the Student at Hyde Park Day School;
5. The Placement at Hyde Park Day School shall commence on or before March 3, 2008;
6. The District shall provide compensatory services to the Parents in the form of extended school year at Hyde Park Day school for the summer of 2008 and one hour of educational tutoring per week to be conducted by Hyde Park Day School and one hour of speech and language services to be conducted by Wee Speech while the Student is in attendance at Hyde Park Day School;

7. In the event that Hyde Park Day School is unable to enroll the Student, the District shall provide the Parents with a list of three other programs such as Hyde Park Day School; and

8. The District shall provide a compliance report to ISBE no later than March 10, 2008.

Regulations Cited

34 CFR 300.101(c)

34 CFR 300.320

34 CFR 300.114

Cases Cited

[44 IDELR 150](#)

[458 U.S. 176](#)

[46 IDELR 273](#)

[441 IDELR 130](#)

[557 IDELR 155](#)

[125 F.3d 1045](#)

[441 IDELR 156](#)