

Indiana Board of Special Education Appeals

Room 229, State House - Indianapolis, IN 46204-2798
Telephone: 317/232-6676



Before the Indiana
Board of Special Education Appeals

Art. 7 Hearing No. 1598.07
Article 7 Hearing No. HR 117-2007

Student:	B.B.
Student's Representative	Dorene Jackson Philpot, Esq.
School Corporation:	MSD of Perry Township
Special Education Entity:	RISE Special Services
Representative:	David R. Day, Esq.
Board's Counsel:	Dana L. Long, Legal Counsel
Independent Hearing Officer:	Dennis D. Graft, Esq.
Date of Appeal:	April 30, 2007

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BEFORE THE INDIANA BOARD OF SPECIAL EDUCATION APPEALS

<i>In the Matter of B.B.,</i>)	
<i>MSD Perry Township, and</i>)	
<i>RISE Special Services</i>)	Article 7 Hearing No. 117-2007
)	Article 7 Hearing No. 1598.07
Appeal from the Decision of)	
Dennis D. Graft, Esq.)	Status: Open to Public
Independent Hearing Officer)	

Procedural History and Background

The request for this due process hearing was filed by the Student¹ on July 21, 2006, to resolve disputes with the MSD Perry Township and RISE Special Services (hereinafter, "School") about the appropriateness and implementation of the Student's IEPs, certification and training of staff, and reimbursement for transportation. The hearing request was received by the Indiana Department of Education on July 21, 2006. On July 24, 2006, Dennis D. Graft, Esq., was appointed by the State Superintendent of Public Instruction as the Independent Hearing Officer (IHO). On July 21, 2006, the Student also filed a complaint, which was also referred to the IHO. The School responded to the hearing request on August 3, 2006.

A telephonic pre-hearing conference was conducted on August 29, 2006. Pursuant to I.C. 4-21.5-3-19, the IHO issued a Pre-Hearing Order on August 29, 2006. The order identified the following issues for hearing.

- (1) Since July 18, 2004, did the school fail to devise appropriate IEPs for the student in the following ways, resulting in denial of FAPE to the student?
 - a. Did the school fail to appropriately and timely evaluate the student, such that the school conducted an evaluation in 2000 but did not reevaluate until 2005?
 - b. Did the school fail to educate the student in his least-restrictive environment, including having the student in a classroom of 26 students?
 - c. Did the school fail to devise programming based on the student's individual learning style, as he is a visual learner, has an auditory processing problem, attention problems, organizational problems and sensory integration problems that were not addressed?
 - d. Did the school fail to provide appropriate ESY services for the student?
 - e. Did the school timely and appropriately respond to the parents' request for an independent educational evaluation of their son?
 - f. Did the school fail to provide appropriate and timely occupational therapy and speech therapy services and social skills training?

¹ Any references to the "Student" include the Student and the Student's parent, unless otherwise indicated.

- g. Does the school owe the student compensatory educational services for failure to devise an appropriate IEP and failure to implement the IEPs devised, including any of the proposed remedies lined in this request?
- h. Did the school misinform the family of their rights, specifically whether the school misinformed the family that the student wouldn't be eligible for services if he wasn't classified under the eligibility area of autism spectrum disorder?
- i. Did the school fail to use scientifically based, peer-reviewed methods of instruction with the student?
- j. Did the school fail to conduct an appropriate and timely functional behavior assessment and fail to devise an appropriate behavior intervention plan with positive re-inforcers and strategies for the student?
- k. Did the school fail to devise IEPs containing appropriate and measurable goals and objectives in all the student's areas of need and based on present levels of performance?
- l. Did the IEPs contain needed accommodations and modifications individualized for the student's needs?

(2) Since July 18, 2004, did the school fail to implement the student's IEP, as written, for example, failing to provide OT services to the student pursuant to his IEP and fail to provide progress reports on the student's IEP goals and objectives at least as frequently as regular education peers received report cards?

(3) Since July 18, 2004, did the school fail to ensure that its staff was certified, licensed and trained in all the areas of the student's disabilities?

(4) Since July 18, 2004, did the school fail to reimburse the family for mileage for transporting the student from school every day, which was done because an inappropriately lengthy bus ride was the only transportation offered by the school?

(5) Since July 18, 2004, did the school provide to the family the required prior written notice when denying or ignoring their requests for services sufficient to provide FAPE to the student?

The Pre-Hearing Order also established timelines for the Student to submit any pleadings as to the exceptions to the two-year statute of limitations, and for the School's response. Dates were also established for the School to submit pleadings as to the additional issues it wished to raise concerning the classification of the Student's impairment and conflict in the Student's IEP and the methodology of his present school, and the Student's response.

The parties agreed to an extension of the due date of the hearing and written decision, with the IHO's written decision to be due by November 28, 2006. The hearing, to be open to the public, was scheduled for November 6, 7, 8, 9, and 10, 2006. A separation of witnesses was ordered.

On September 14, 2006, the IHO issued an Order denying the Student's request to consider matters beyond the two-year statute of limitations. In another September 14, 2006, Order, the IHO found that the Student did not object to the addition of two issues proposed by the School. The following additional issues were added:

- (1) Should the student's area of eligibility for special education and related services be autism spectrum disorder; and
- (2) Are the Respondents exempt from the requirements under IDEA and Article 7 as to the student's IEP accommodations and related services based upon the parents' decision to enroll the student in a choice school (which is not the student's home school) if the programming and methodology at the choice school conflicts with the student's IEP?

On October 25, 2006, the parties, by counsel, orally requested a continuance of the hearing dates to obtain the written report of an evaluation of the Student. The hearing dates were vacated and the matter rescheduled for hearing on January 8, 9, 10, and 11, 2007. The date of the IHO's written decision was extended to February 5, 2007.

The hearing was conducted on January 8, 9, and 10, 2007. On January 9, 2007, the Student requested that an additional issue be added. The School had no objection. The following issue was added:

- (6) Did the Respondents supply to Petitioners copies of all of the student's educational records?

The IHO's Written Decision

The hearing was convened on January 8, 2007, and began with a pre-hearing conference wherein exhibits and witness lists, and issues for hearing were discussed. The School objected to the Student's exhibits pages 402 through 405. The Student withdrew those pages after the School's second issue was clarified to refer to "choice" school rather than "charter" school. The Student's exhibits pages 1 through 401 and 406 through 469 were admitted without objection. The School's exhibits 1 through 26 were admitted without objection. An audio recording of the March 17 and May 18, 2005, Case Conference Committee meetings was substituted for the uncertified transcript.

The IHO's written decision was issued on February 5, 2007. The IHO's written decision is reproduced, in part, as follows:

Based on the evidence and testimony of the record, the IHO determined forty-eight (48) relevant Findings of Fact.²

1. The student is a nine (9) year old who is a general education 3rd grade student at the local educational agency (LEA hereafter) for the 2006-2007 school year. There are presently 27 students in his class, with 2 additional students coming in for inclusion reading and math.
2. The school the student attends is an Edison School, which is named after inventor Thomas Edison. There are Edison schools internationally with certain criteria and requirements to

² The restatement of the IHO's Findings of Fact, Conclusions of Law, and Orders have been edited for format purposes.

throughout. The LEA's building is for all students, including special education students. The principal stated that the caliber of the teachers was higher than other schools, with the teachers being hand picked. The special education program is called Special Edison, which education teachers work collaboratively and cooperatively, with the teachers co-teaching and co-planning for special education students. There is not a separate resource room, with pull asides of the special education students in the back of classrooms, lobby area or sensory break room (office area of the five special education teachers). The Edison school has a longer school day (approximately one hour longer) than the student's home school. The Edison school is a choice school, i.e., parents choose to have their children attend this school. The student was part of a class of students from another elementary class who all physically moved to the Edison school in August, 2002, when the Edison school opened with the student's parents agreeing to this placement, and they have continued to choose this school for the student, as opposed to another special education placement. All students are extensively tested and assessed. Students at the school receive Dynamic Indicators of Basic Early Literacy Series (hereinafter DIBELS) testing three times per year and SRI testing four times per year to determine the student's Lexile levels, which is a method to determine the difficulty levels of books and students' ability to read certain levels of books based upon a student's answers to computer generated random questions which are progressively more difficult with students' Lexile levels based on the number of questions answered correctly. Also, the LEA has school wide monthly assessments called Bench Mark Reports. The bench mark test is a monthly complete assessment of all students in the school based upon the Indiana state standards and delivers them over a two or three month course. Based upon a student's assessments, the LEA then puts interventions in place to give the student more support to pass the ISTEP. All students at the LEA have student learning contracts (SLC) and quarterly SLC conferences. At this conference the information from the monthly assessments are provided to the parents. Grades for the student are then discussed and a new individual student contract is prepared. A student receives grades of E, M, or B (exceeds, meets or below). Exceeds was 93 or greater; Meets was 75 to 92; and below was 74 or less. The LEA's reading curriculum coordinator is a national trainer in Open Court (the reading series the school uses), a DIBELS trainer, and serves as a coach and support person for the reading teachers. The reading curriculum coordinator meets with the students' teachers to look at effective interventions to use with each student and students are then grouped based upon their needs. This coordinator is also in charge of all tutors in the school and assigns tutoring based upon the review of recent data, the students' grades and teacher input. She also stated that the information from all testing was shared with the student's parents at every SLC conference.

3. The student's first case conference was on October 19, 2000. The student was then transitioning from early intervention to early childhood, turning three years of age on October 22, 2000. Prior to this case conference a school psychologist administered an initial evaluation of the student on October 11, 2000. The results of this evaluation indicated that the student's intelligence fell within the low/average range, with expressive language communication skills moderately delayed. The student's readiness skills were in the borderline range and weak but commensurate with the student's ability. Adaptive skills were within the mildly deficient range and not commensurate with the student's general

functioning. It was noted that the student had some characteristics present which are significant for autism. The case conference committee (hereinafter CCC) determined the student was eligible for special education services with a communication disorder (hereinafter CD). The student's individualized education program (hereinafter IEP) provided for an early childhood special education program, designed primarily for students with disabilities. This program was located in a general education building, which included a special preschool class for 2 ½ hours per day for five days per week and for speech therapy for two sessions of 20 minutes each per week. This IEP had five goals for the student: two in receptive and expressive language and one each in readiness, fine motor and personal/social skills. It was noted that the parents, by their choice, were transporting the student. The student's mother acknowledged receipt of a copy of parents' procedural rights. She agreed, in writing, to the IEP on October 23, 2000. This placement was not at the student's home school (where he would have attended if not a special education student).

4. A school speech clinician performed a speech/language evaluation of the student on October 1, 2001. Based upon this evaluation, the student's IEP goals were changed on October 8, 2001, with the student's mother agreeing to this addendum. The change was for additional pragmatic and expressive language goals.
5. The student's next IEP was written on January 26, 2001. The student had the same exceptionality and same placement with very similar goals and services as those agreed upon on October 19, 2000 and as amended on October 1, 2001. It was noted that the parents would transport the student by choice. Further, the student's triennial re-evaluation due date was stated to be October 11, 2003 (it was noted previously as October 18, 2003), with the student's communication disorder re-evaluation due date being October 18, 2004. The student's father signed this IEP on January 26, 2001 and acknowledged receipt of procedural safeguards.
6. The student's next case conference was held on January 31, 2002. Prior to the case conference, the student was administered a pre-school screening, with the student obtaining a readiness age of approximately 48 months; his chronological age was then 4 years 3 months. The student continued to be eligible for special education services under Communication Disorder. The IEP for the student had three goals: expressive language, cognitive readiness and social/following rules. Each goal had short-term objectives. The student continued to be placed at the same pre-school. The student's special education services remained the same, as did his speech language therapy since October 23, 2000. The parents continued to transport by choice. The student's triennial re-evaluation due date remained October 11, 2003, although it was struck on Pet. P. 210, but not on p. 211. The communication disorder re-evaluation due date was indicated to be October 18, 2003. The student's mother acknowledged receipt of procedural safeguards and signed the IEP on January 31, 2002. However, she failed to mark whether she agreed or disagreed, but since it appears everyone believed this was an agreed IEP.
7. A school speech clinician performed a speech/language assessment of the student on January 8, 2003.

8. The student's next annual case conference was held on January 24, 2003. The student had been attending a new pre-school (Edison school) since August, 2002, as noted in Finding No. 2 hereinabove. The CCC determined the student continued to be eligible for special education services under the Communication Disorder exceptionality. For the Spring, 2003, the student's least restrictive environment (LRE) continued to be the Early Special education program but for the Fall, 2003, with the student to be starting kindergarten, his LRE was determined to be the regular classroom with special education and related services for less than 21% of his school day. The student's speech/language services, based upon the January 8, 2003 evaluation, were changed from direct services to consultation by the speech/language pathologist with the student's teachers for two times per month for ten minutes in the classroom. The student had two goals for the balance of pre-school: readiness skills and social communication, but only the communication goal for the first semester of kindergarten. The parents continued to transport the student by choice. The student was determined to not need extended school year (ESY) services. The student's triennial re-evaluation date on one page (Pet. P. 227) indicated a date of October 11, 2003, but on the next page (Pet. P. 228) it was blank. Further, on both it was marked that a current triennial re-evaluation plan was not needed. Further, the student's communication disorder re-evaluation was noted on one as October 11, 2003 but as October 18, 2003 on the other. Both parents acknowledged receipt of a copy of procedural safeguards. Further, both parents agreed with this IEP and for it to be implemented.
9. On February 18, 2003, the student's mother agreed to an addendum to the student's IEP. Based upon the January 8, 2003 speech evaluation of the student, this addendum changed the student's speech communication evaluation date to January 8, 2003, with the student's CD triennial date changed to January 8, 2006. No mention was made of the student's psychological triennial re-evaluation. The father, during his testimony at the due process hearing, acknowledged that he had agreed to dispense with a comprehensive evaluation in 2003, when the student's psychological triennial date was October, 2003.
10. The student's next annual case conference was held on January 9, 2004. The student was again determined eligible for special education under the Communication Disorder exceptionality. The student continued to have one goal: social communication. The student's LRE was the regular classroom, with the parents to continue to choose the Edison school. The student continued with a general education curriculum with no accommodations. Further, as in the prior IEP, it was noted that the student's behavior did not impede his learning. Related services were speech/language therapy (consult) once per month for 10 minutes/as needed in the classroom/speech room. No special transportation was indicated and it was not indicated that the parents were transporting the student as in the past. The current communication disorder re-evaluation date remained at January 8, 2006, and there was no triennial re-evaluation date indicated. The student's father acknowledged receipt of a copy of the procedural safeguards and both parents signed and agreed to the IEP and gave permission to implement it.

11. The student began first grade in August, 2004. The student had a lot of trouble with paying attention and learning new social things. The special education teacher for inclusion math and writing, which the student's IEP did not include, did a lot of adaptations for the student when she was in the classroom and provided direct educational services to the student. She also worked with the student's school speech therapist on social stories and sensory needs. She also took the student on breaks and sometimes pulled him out of class for tests. She opined that the student did well in class but she was concerned that if the student's inattention and other problems continued into later years, he may miss areas of learning. This teacher consulted with the student's teachers as to how to help the student pay attention (redirection), work on social stories, and sensory things and to address his licking and biting his shirt. This teacher had recommended that the student use Tower of Power Behavior Chart (a general behavior intervention plan used by the LEA), but the parents had concerns about using this behavior intervention plan. The school's Family and Student Support Team (FAAST) discussed the student's needs and worked on ways to assist the student informally. This teacher met with the mother on September 16, 2004 and shared her observations of the student with the student's mother specifically that the student was fidgety, talked and hummed to himself, displayed inappropriate conduct at times, did not raise his hand when appropriate, licked and bit his shirt, had trouble with loud sounds, (but would cover his ears and once sound was gone the student acted appropriate) and would be drawing or writing when he was supposed to be working on other things.
12. On December 1, 2004 the student took the Otis-Lennon School Ability Test. He scored below average in verbal comprehension and verbal reasoning. He also scored below average in non-verbal pictorial reasoning but scored above average in no-verbal figural reasoning.
13. A school speech/language pathologist who worked with the student for 2 ½ years (preschool through December, 2004) did not see the need for a functional behavior analysis (hereinafter FBA) of the student. She did believe the student's behaviors were impeding his learning. Further, during this 2 ½ years the student improved in processing, WH questions, following routines, developed some social communication with eye contact, responded more appropriately and reciprocated in communications. She opined that the student's need for direct services diminished over the 2 ½ years and he only needed consult services over much of the time she provided services.
14. On February 4, 2005 the student's annual case conference was held. The parents expressed concerns about the student's auditory processing problems. The LEA's concerns/information indicated the student was inattentive to task and unusual behaviors in class. The CCC determined the student continued to be eligible for special education under Communication Disorder with his IEP to be for the remainder of first grade and the first semester of 2nd grade. The student's LRE continued to be the regular class with special education and related services less than 21% of the time with no accommodations. The parents continued to choose the Edison school for implementation of the student's IEP. The IEP included one goal with three objectives in the area of social language and social behavior skills. It was noted that the student's behavior did not impede his learning.

Related services continued to be speech/language therapy (consult) for one time per month for 10 minutes/as needed in the classroom/speech room. Special transportation was not indicated. Further, ESY was not needed. It was noted that a triennial re-evaluation plan was not currently needed. The communication disorder re-evaluation date continued to be January 8, 2006. On this date the student's father requested testing in auditory processing, with the LEA agreeing to pay for private audiological testing of the student. Further, it was agreed that the LEA would do additional comprehensive testing of the student to include cognitive, social, and academics. The student's father acknowledged receipt of a copy of procedural safeguards and agreed to the IEP and its implementation.

15. The private auditory processing evaluation of the student occurred on February 22, 2005. This evaluator determined that the student has a poorly developed auditory system with difficulties in processing distorted speech or speech compromised by a poor acoustic environment. Further, she opined that the student may have sensory integration challenges that compound his learning and recommended a complete sensory integration evaluation by a qualified occupational therapist. The evaluator recommended remediation of the student's auditory skills through: (1) stimulating programs such as Samonas Sound Therapy, Fast For Word and Earobics; and (2) language therapy focusing on developing better verbal expression skills, drawing inferences from information presented and organizing and recalling auditory/verbal data for future use; on social skills and to discriminate primary auditory signals when compiling with other verbal stimuli. She proposes the following accommodations to help facilitate the student's learning in the classroom:
 - Be sure that the primary auditory signal in the learning environment (teacher's voice) is loud enough for the student to maintain focus on and comprehend it. This may go beyond preferential seating to the use of a sound field device.
 - Analyze the listening environment. The student has great difficulty discriminating target speech when there are other competing speech stimuli in the environment. During times of important auditory learning, present in a quiet setting.
 - Throughout the learning day, check with the student frequently to make sure he understands information and instructions. Rephrase sentences as needed.
 - Team the student up with a "peer buddy" who will check to see that the student has what he needs to take home for the evening (homework list, books, etc.). Have the student be the model in other arenas.
 - Use alternative teaching methods daily. The student is a strong visual/tactile learner. Play to his strong suit.
 - Pre-teach new vocabulary and subjects. The student has better comprehension when he knows what is coming. Make available to his parents other books, videos, or computer programs that expand on new materials so they can go over them with him before the new topic is presented in the classroom.
 - Give the student frequent "Brain Breaks", facilitated by the OT to provide sensory calming and help him focus.
 - Give the student extended time for test-taking. He may even need to go to another room where it is quieter to perform to his true capabilities.

16. On February 24, 2005, the LEA's autism lead teacher did an observation of the student in his classroom. She noted some stereotypical behaviors, such as constantly rocking in his chair and constantly talking to himself. She also noted some communication problems such as not asking for help but wandering around the room. Also, when re-directed by a peer, he would put his arms straight to his side, squeeze his eyes shut and make a growl. The student would not verbally ask for help but pull teacher's arm towards what he wanted and had difficulty in answering verbal questions. The student was constantly picking at his fingers. She also noted that there were many classroom accommodations in place to help the student, other students helped redirect the student to tasks and the teacher and aide made sure the student was on task.
17. On March 4, 2005, a speech clinician with the LEA did a speech/language evaluation of the student. She noted that the student was very distracted and made inappropriate comments. The student was viewed to have weaknesses in auditory number memory-backwards, sentence initiation, phonetic analysis, auditory interpretation of direction, auditory processing for thinking and reasoning, social or pragmatic language, initiating conversation, topic maintenance, joint attention for any topic but trains, scripting response to social issues, which were sometimes inappropriate to the situation, and understanding the complexities, innuendoes or general subtleties in language.
18. On March 24 and 25, 2005 and on April 6, 2005, one of the LEA's school psychologists did an educational evaluation of the student. The evaluator noted that the student had difficulties staying on tasks, even with frequent reminders. Further, the student was physically active throughout the testing: standing up, rocking, moving about in his chair, sitting on his knees and lying on the table. She also noted that according to the student's kindergarten Student Skills Inventory he began kindergarten with 42% of necessary skills, by the middle of the kindergarten year he had obtained 85% of necessary skills and by the end of the year his skills were 97%. Further, his end of the year for kindergarten student learning contract indicated he had proficient skills in math, reading, science, social science, and writing. On the Woodcock-Johnson Tests of Cognitive Ability the student achieved a general intellectual ability score of 90, which is in the average range. Non-verbal skills were slightly more developed than his expressive communication, but there was not a significant discrepancy between non-verbal problem solving and ability to reason with language. On the academic achievement testing, the student performed in the average to low average range. Behaviors rating scales had been completed by the parents and the student's 1st grade general education teacher. The school psychologist also did an Autism Diagnostic Observation Schedule based upon the mention of autism in the student's October 11, 2000 evaluation, referral being for a comprehensive evaluation and the concerns in prior case conferences about the student's social issues. The evaluator reviewed the student's adaptive behavior as significantly delayed, especially in social skills and in communicating and completing daily living skills (believed due to a pervasive developmental disorder such as an autism spectrum disorder). She noted that the student exhibits many behaviors within the autism disorder spectrum. She noted that the student struggles with appropriate social interaction, emotional reciprocity in the ability to communicate in a socially appropriate way. Further, he has a difficult time with being flexible when handling changes or dealing

with instructions. She proposed various recommendations for the CCC to consider in the development of the student's social skills: (1) assess the static intervention that the student has acquired and work on the sequence of acquired social behaviors [looking at and approaching another person, initiating an opening comment and greeting, how extend interaction and when to end conversation]; (2) use of social stories to track exactly what to do in certain situations; (3) after a task skill is learned, use in a group [use modeling, coaching, role playing and direct instruction] and have a plan to generalize the new skill; (4) teach the student what he is to do, not what he is not to do; (5) the student tunes in more to visual information rather than auditory presented information and can be easily over stimulated by too much language input; (6) present small amounts of information at a time. The student has a short attention span and will do better with several short tasks rather than longer ones; (7) the student will benefit from adaptations, modifications and multi-sensory prompts in order to improve his work completion and class participation. Use a variety of techniques to improve his ability to stay on tasks in the classroom. He responds well to visual timers and very clearly set and segmented expectations. Use a closely monitored behavior plan that breaks down his schedule. He may need external sources of motivation [positive reinforcement, time to do preferred activities]; (8) seat the student close to the teacher and away from distractions, establish eye contact with the student before giving oral directions, ask the student to repeat directions to check for understanding. Use strategies to cue the student on a regular basis to self-monitor his attention with teacher feedback and a charting system with desirable reinforcers; (9) have the student keep unnecessary items out of his desk, seat near model students, break tasks into segments with feedback and reinforcement after completion of a task, use a timer, use color to highlight things he has overlooked and use pictures and graphs during instruction; and (10) work on strategies to address activity level. Redirect with a visual cue.

19. On April 20, 2005 the LEA did an occupational therapy evaluation of the student. The student demonstrated several sensory seeking behaviors, such as not staying seated, and putting things in his mouth (pencil). The student was distracted with visual stimuli and auditory stimuli with constant redirection needed to stay on task. However, the evaluator was unable to tell the cause of the student's sensory seeking behaviors. The student's mother and his first grade teacher completed the Sensory Profile, which is a tool to measure a student's sensory processing abilities and profile the effect of sensory processing on functional performance in the student's daily life. The student's mother noted a definite difference in the student's auditory processing from typical sensory performance of a child without disabilities and a probable difference in the student's multi-sensory processing. The teacher noted definite differences in movement sensitivity factors. The evaluator noted that the student is over stimulated in the school setting, gets stuck in thought perseveration (trains) and requires redirection and other support to engage in school activities. Due to the student's difficulties in the classroom setting related to his ability to filter and use information from his senses, particularly with auditory processing, the evaluator proposed thirty minutes per month of OT consult services with the student's teachers and staff to implement strategies and tools to help with sensory processing difficulties. Further, the visual presentation of information and instruction to the student (picture schedules, picture cues) was recommended

20. Prior to the case conference held on April 22, 2005, the school psychologist went over with the student's parents the results of her educational evaluation of the student. Her written evaluation was not then yet completed. At the case conference, the written evaluation was provided to the parents. The various evaluations were discussed. The LEA's members of the CCC believed the student was eligible for services under the autism spectrum disorder (ASD). The parents did not agree that the student was autistic. The parents requested the case conference be recessed and be reconvened after they had time to read the educational evaluation. There were discussions concerning that the student would be entitled to more services if he were determined to be eligible under ASD rather than a CD. LEA staff testified at the due process hearing that a student with only a communication disorder usually has merely speech related goals and does not receive a broad range of services, such as a student identified as ASD would receive.
21. The case conference reconvened on May 24, 2005. The parents did not agree that the student was eligible under ASD. The parents did not agree with the proposed IEP, which did include draft goals and objectives in various areas beyond speech. The parents agreed to "continue with the CD IEP only", which was apparently the prior IEP of February 4, 2005.
22. The student completed the first grade and progressed to the second grade with the parents choosing for the student to continue at the Edison school.
23. For second grade reading, the student was in a class of 15 or 16 2nd grade students, who were grouped in the class according to their respective reading levels. The second grade education reading teacher opined that the student generally was on track academically, was socially comparable to other 2nd grade students, and the student mingled with other students (did not isolate himself). This teacher noted that the student did have attention problems, especially when a subject did not interest him. If the subject did not interest him the student would need to be constantly redirected. However, the teacher viewed the student did maintain attention if he enjoyed the task. This teacher noted that the student did chew on items, such as his pencils and his chair pad. Such chewing occurred on an average of once per month. There were sensory items in the room, with the student occasionally using them. The teacher did not review the student's IEP prior to the beginning of the school year, but at that time the student only had goals in speech therapy. The school's speech/language pathologist who worked with the student for the 2nd grade, initially provided only speech consult. However, over the first few months of the Fall, 2005, she noted that the student had significant attention problems, had off topic comments, and had difficulty interacting with other students. These problems interfered with the student's learning, with the student only able to attend for one to two minutes.
24. Another case conference was held on November 11, 2005. The parents desired that the student receive additional speech therapy services and occupational therapy, due to his diagnosis of an auditory processing disorder. Discussions took place concerning the student's distractibility, impulsivity, poor attention, task completion and need for re-direction to attend. The CCC agreed the student was eligible for special education services

under CD. Further, the CCC agreed that the student would benefit from an increased frequency of speech/language therapy (40 minutes per week of direct services) and consult occupational therapy (30 minutes per month) to address the student's sensory integration needs. Further the occupational therapist and speech/language therapist were to consult with the classroom teacher and staff as needed. It was agreed that the LEA's occupational therapist would draft proposed goals and objectives to address the student's sensory integration needs. The case conference recessed for these goals to be drafted and then be provided to the parents for their review and comments. It was noted that there were no special transportation needs for the student, there would be accommodations for district-wide assessments, and the student did not need ESY. As of this date, the parents had started privately using SAMONAS therapy for the student's auditory processing needs. The parents did not sign the proposed IEP.

25. Based upon the speech/language pathologist's observations and the CCC's recommendations, after the November 11, 2005 case conference, she initiated changes in his services from consult to direct services twice per week for forty minutes total per week. Although this was the recommendation of the CCC the parents did not agree to the student's IEP.
26. On November 15, 2005, the LEA's speech/language pathologist spoke to the LEA's occupational therapist about possible OT services for the student. The occupational therapist subsequently observed the student in the classroom and consulted with the student's general education teachers periodically thereafter, even though there was not an agreed upon IEP requiring such services. On November 24, 2005 the LEA's occupational therapist drafted the goals, which were provided to the parents shortly thereafter. The speech/language pathologist prepared various speech goals for the student after the case conference, which she believed were done by November 29, 2005 and subsequently provided to the parents in December, 2005. The student's mother requested various changes to various proposed goals and objectives. The speech/language pathologist provided the mother's written changes to the school principal. The specific speech and occupational therapist goals were not finalized until the March 2, 2006 case conference. Speech therapy was usually done in the speech room in a group of one to two other students who had similar needs as those of the student. The student also received some one-to-one direct speech services in his classroom. The speech/language therapist acknowledged that she did not prepare a progress report for the first quarter but did prepare the other three progress reports and provided them to the parents. She opined that the student made progress after she increased speech services to the student after November 11, 2005.
27. One of the LEA's special education coordinator observed the student in the classroom on March 1, 2006. She also had observed the student on March 1, 2005 as part of the student's evaluations in the Spring, 2005. On the latter date she believed that the student's behaviors were interfering with his learning. At that time she did not believe a functional behavior assessment was needed, but the LEA's general instruction Tower Of Power Behavior Chart was needed.

28. On March 2, 2006, the prior case conference was reconvened. The special education director was in attendance. The CCC determined the student was eligible for special education services with a primary disability of Other Health Impairment and a secondary disability of Communication Disorder. The least restrictive environment (LRE) was determined to be the regular classroom with special education and related services for less than 21% of the school day. Specialized instruction included daily inclusion in written language and math, each for a minimum of 30 minutes per day. Further, related services were direct speech services weekly for 40 minutes and occupational therapy services of 60 minutes per month of consult, both in the speech resource room or general education classroom. Further, the special education staff was to support and consult with the general education staff. The goals and objectives were in the areas of math, reading, writing, social behavior and speech language. Support and accommodations included developing a sensory diet for the student, incorporate sensory breaks into his day, give the student additional time to process information, use a behavior chart, use of visuals (charts and timer), preferential seating, and tests could be read to the student. The mother acknowledged receipt of procedural safeguards. The parents requested time to review the IEP's goals and objectives.
29. On March 17, 2006, the case conference was reconvened, with the special education director again in attendance. There were discussions concerning the phrase "meets the goal or objective" to be defined or stated in the goals and objectives as 75% to 92% as defined in the student's SLC. The father wanted to get services started immediately upon the term "meets" being defined in each goal and objective as 75-92%. The LEA's special education coordinator agreed to make the changes to the IEP that day and have it available for the mother to pick up later that day, with the parents to then return the signed, agreed upon IEP on the following Monday (March 20, 2006). The student's father, on March 19, 2006, signed the IEP but struck that he agreed to the IEP but gave permission for the IEP to be implemented "to provide services to our child".
30. Shortly after the parents agreed to commence special education services pursuant to the student's March 2, 2006 IEP, the special education teacher assigned to provide inclusion math and writing, begin working with the student. This teacher was the student's teacher of service (TOS) for the remainder of second grade and has so continued for the student's third grade (2007-2007). Prior to providing special education services to the student, this teacher read his education file, the March 2, 2006 IEP and a two page document on auditory processing provided by the private auditory processing evaluation (See Finding No. 15 hereinabove). She had not received any specialized in-service training in OHI or specific training related to the student's needs. She did speak to the school's occupational therapist about sensory integration. She had prior training in attention deficit problems. The student has had a sensory diet during third grade, which document has various strategies to use with the student and it provided for sensory breaks for the student and various ways to use the breaks. The student can take breaks whenever he feels he needs to or whenever his teachers feel he needs to take a break. When the student displayed attention problems his teachers would redirect him, used the 1,2,3 Magic from the Tower of Power Behavior chart. The behavior plan provides that during a class period if the student is given three redirections and fails to stay on task, the student then gets an "X" for that period but if he stays on task,

then he gets a “%”. If the student gets 5 % out of his eight classes then he gets to choose a reward. Currently, the student does not need to use this behavior chart as much as he did at the beginning of 3rd grade. When the student continued to be unable to complete a task, his teacher would tell him to take a sensory break. The student would then go to the back of the room and either pick out something from the sensory crate (various sensory type items) or use a rocking chair. After a period of time, his teachers would then tell the student to come back to the class. The student was usually then able to continue on the lesson. In the special education teacher’s office there was a similar sensory which had an IEP. During inclusion math and writing, two other students with IEPs came into the class for services. The student’s TOS opined that the student needs less academic help than the other three special education students she services, but he needs to be redirected much more than the other three. The TOS spends an approximately equal amount of her time with each of the three students. The TOS does not believe the student needs an aide. The student chews on items less in the 3rd grade than in the 2nd grade, with him now biting his fingernails and his pencil. His TOS and a general education teacher opined that the student is doing well in the 3rd grade, although he continues to struggle with being focused, especially during group instruction, with him needing redirection or other assistance. His TOS and a general education teacher opined that the student is on target advance to the 4th grade in the 2007-2008 school year. Although not part of his IEP, during the later part of April, 2006 (2nd grade) and during the 3rd grade the student has participated in a social group at school. This is a small group of 3 to 4 students who need extra support TOS, general education teachers and TOR all stated that the student’s progress reports on his goals and objectives were given to the parents at his SLC conferences. The student’s regular general education teacher for the current 3rd grade met with the school’s principal and the student’s other teachers to review his IEP and needs. She had professional development on a nearly daily basis but had no specialized in-service training on OHI or specialized in-service training as to the student, except as noted above. She noted that the student does have some attention problems in staying on task, but that the student does great at following directions. This teacher opined that the student’s attention problems are more pronounced than that of other students. The student has been placed in the front of the classroom. This is done to make redirection and repeating instructions easier and to insure that the student understands a task prior to starting on it. This teacher believes many of the various recommendations of the private speech/language pathologist, occupational therapist and psychologist are all ready in place for the student (as they are for most students) and that many are not really modifications/accommodations but actually strategies or methodologies. She visually gears instruction to the student, such as instructions are written on the black board in steps. The teacher did not believe the student should go to a separate room for sensory breaks. The general teacher opined that the student was improved in his conversation skills and now he raises his hand in class. Although the student continues to struggle with attention problems, the student has improved his sustained time on tasks, finishes more tasks and is paying attention more. She has not seen the student chewing on items as a problem. She saw him chew on his shirt sleeve a few times and on his pencil, but simply redirected him. Academically, per his SLC, the student is at the meets level for 3rd graders and was at the exceeds level for math. When the student is focused, his academic performance is markedly improved. The student’s TOR opined that based upon the SLC records, the student is

making progress in the 3rd grade. The LEA's occupational therapist opined that the student has done well for the 3rd grade and is not exhibiting the behaviors or difficulties he was displaying in April, 2006.

31. The occupational therapist was not notified until April 12, 2006 that the IEP had been signed on March 19, 2006. Therefore, she did not provide any OT services until April 15, 2006, when she observed the student in his art class and consulted with the special education teacher of service concerning use of a ball chair, visual timer and seating concerns.
32. In April, 2006 the occupational therapist developed a sensory diet for the student. This is a blueprint for staff to use in recognizing the student's sensory needs and includes various strategies to try with the student. This was apparently not used during the balance of the 2005-2006 school year but has been used during the current school year (2006-2007).
33. On May 18, 2006 a case conference was held to review the student's progress since March 19, 2006. The reading curriculum coordinator discussed his oral reading fluency, his DIBELS report, and his prospects for passing the ISTEP test in the Fall, 2006. The parents' advocate raised requests for compensatory education services in OT, having a private occupational therapist visit the school to observe the student and then make recommendations and train staff. The parents' advocate also requested a sensory diet be implemented during the first few weeks of the next school year, increase the student's speech/language therapy, and there be an independent evaluation of the student. The special education director agreed to pay for the costs of the independent evaluation, provided the evaluator met the LEA's criteria for an evaluator. He further stated the LEA would look at speech and occupational compensatory hours for any times established that the student had not received such services and the student had been determined to need such services. The case conference ended with the special education director to contact the school's local special education coordinator and building principal to obtain additional information on the student's entitlement to compensatory services and contact the parents within two weeks. Shortly thereafter, the special education director had some personal matters develop. The special education coordinator took over communication with the parents. The LEA requested the independent evaluation include speech and occupational therapy evaluations. The special education coordinator agreed that it was recommended the student receive 30 minutes of OT per month beginning in November, 2005, but services were not provided until April, 2006, with entitlement then to be five hours of compensatory OT services. As to any other compensated hours, the coordinator stated any request of any services would need to be determined through a case conference.
34. Based upon the student's score on the LEA's various assessments of the student in the late Spring, 2006, the LEA believed the student would not pass the ISTEP test in early Fall, 2006. He was in the bubble range. The LEA proposed the student attend a week long remediation during the Summer, 2006. However, the parents did not have the student attend this remediation since it was a general education setting.

35. On July 20, 2006 the parents filed a complaint with the Indiana Department of Education against the LEA for failing to evaluate the student at least every three years. On December 13, 2006 the Indiana Department of Education found that “In October of 2000, the School conducted an educational evaluation of this Student, wherein he was found eligible for special education and related services as a Student with a communication disorder. On October 1, 2001 and January 8, 2003. The School conducted additional speech-only evaluations of the Student. In March of 2005 the School conducted another educational evaluation of the Student that included a speech evaluation.”. The Indiana Department of Education concluded that “Finding of Fact #2 indicates the Student was found eligible for special education and related services as a student with a communication disorder. This Finding also indicates that the School conducted another speech evaluation for the Student in 2001 and another in 2003. Therefore, a violation of 511 IAC 7-25-6(a) is not found.”
36. The parents’ counsel filed for due process hearing on July 21, 2006, with this Hearing Officer being duly appointed on July 24, 2006.
37. On August 10, 12 and 14, 2006 the independent psychoeducation evaluation of the student was done. The evaluator’s behavioral observations included: that the student required three days to finish a psychoeducational assessment that can usually be done in one full day; the student’s speech was notable for odd phrasings, dysprosody and mixing words in his statements; his insight and judgment were poor for his age; and his thought processes were odd. The evaluator further noted that the student was inflexible and very particular about how he needed to do things throughout the assessment. The student had a difficult time keeping his hands off test materials and interesting objects, even despite redirection. The student was constantly fidgeting and biting his fingernails and became very preoccupied with some objects such as necklaces, toys, and stopwatches throughout the assessment. The student needed constant redirection to divert attention to the task at hand. Further, the evaluator noted that the student demonstrated OCD type behavior, such as positioning the examiner’s book a certain way and making sure pens and pencils were equidistant on the table. The student was highly fidgety and restless and had a very short attention span. The student’s intelligence was in the average range. The student’s scores on the Gray Oral Reading Test were lower than anticipated based upon the student’s I.Q. The student had a slow rate in reading, accuracy and fluency. The student had a slow writing speed. Based upon the results from various instruments administered, behavioral observations, rating scales and background information, the evaluator determined a diagnostic impression of: (1) Cognitive Disorder NOS (deficits in speech production/expressive language development secondarily, impacting current academic, social and communication skills; (2) Attention-Deficit/Hyperactivity Disorder, combined type; and (3) Disorder of Written Expression (Impaired handwriting speed). The evaluator believed that the student did not fit the diagnostic criteria for ASD, given his spontaneous seeking of social interaction, social/emotional reciprocity and the pattern of his neurocognitive profile. The evaluator noted that the student has developed several odd mannerisms and behaviors that mimic autism and Asperger’s, but such behaviors are not at the level that would be considered impaired as seen classic autism or other pervasive developmental disorders. Further, he noted that the student’s neuropsychological and behavioral rating scales were consistent

with ADHD. The evaluator made thirty (30) recommendations for the student in the school setting and at home. (See Pet. p. 394-397; Respondent Exhibit 6, p. 12-15). During the due process hearing, when questioned, although preferring small class in general, he did not view a class of 27-29 as an inappropriate placement for the student.

38. On September 14, 2006 the speech/language pathologist, who was involved in the private audiologic evaluation of the student on February 22, 2005, again evaluated the student for auditory processing problems. This evaluation was consistent with the prior evaluation with the evaluator opining that the student has significant difficulty processing, discriminating and interpreting information received through hearing. The student has trouble learning auditory-verbal information where the signal is compromised (background noise present, poor acoustic quality or other verbal stimulus competing in the environment). Complicating the diagnostic process was the student's great difficulty focusing on listening tasks and staying engaged in an activity until it is completed; the student has a very short attention span. The evaluator made various recommendations, many which were the same as those in the prior evaluation of February 22, 2005. (See Pet. P. 32-34; Resp. Ex. 8, p. 4-6. This evaluator recommended the student receive in-school speech/language therapy of two thirty-minute sessions per week and auditory therapy of two to three thirty-minute sessions per week. She also recommended private speech/language therapy. However, she did not believe this private therapy was needed for the student to educationally benefit. She also recommended a computer auditory program (such as Fast ForWord) for the student during the summer.
39. The student had a private occupational therapy evaluation on September 21, 2006 and was observed in the classroom on September 27 and 29 and October 5, 2006. Based upon the evaluation of the student and a sensory profile completed by the mother, the evaluator opined that the student has significant difficulties with sensory processing. She recommended skilled occupational therapy once per week for sixty minutes to increase independence with functional and educational services. This evaluator made many school recommendations, which included increasing the student's school OT services from 60 minutes per month to 30 minutes per week, individual or integrated into the classroom. Other recommendations can be found at Pet. P. 90-92; Rep. Ex. 25, p. 5-7. She also opined that the student needs more than the school's OT for his sensory integration problems and needs private therapy.
40. Prior to the September, 2006 ISTEP, the general education teacher, by her weekly newsletter, advised all of her students' parents of the approaching ISTEP and advised parents to not schedule other appointments for the students; however, it appears that during the time of ISTEP the student was involved in the private OT evaluation. The student did have various accommodations for the ISTEP. The student did participate in the after school, week long ISTEP tutoring. In September, 2006 the student took the ISTEP+, which measures a student's achievement of the Indiana Academic Standards. The student did have some accommodations per his IEP for this assessment. The student scored 401 on English/language arts, which was not a passing score. A score of 404 was required to pass this part of the test. Further, the student scored 388 on the math portion, which was also not

a passing score. A score of 393 was required to pass this portion of the test. The student's failure to pass the ISTEP+ was consistent with the data and various assessments the LEA had done at the end of the student 's second grade year.

41. Prior to August, 2006 there is no written documentation of the parents requesting or wanting reimbursed for transporting the student to or from school. The parents made complaints about the student's transportation since kindergarten (time spent on the bus), but rather than seeking an agreement with the LEA regarding the student's transportation, decided to transport the student. The mother had discussions with the student's bus driver about her concerns, but apparently had no discussion with anyone in authority in the LEA's transportation department. On August 10, 2006 the mother had a discussion with a person in authority in the LEA's transportation department. (See Resp. Ex. 15)
42. During the due process hearing or in the LEA's exhibits there were various educational records the LEA did not provide to the parents within 45 days of the parents' request of July 21, 2006. These educational records were:
 - (a) Respondents' Ex. 15 [letter of 8/10 /06 from an employee with the LEA's transportation department;
 - (b) Part of Respondents' Ex. 26;
 - (c) Respondents' Ex. 27;
 - (d) Progress Reports 3/2/06 [Hearing Officer (H.O.) Ex. 1];
 - (e) Progress Reports 10/16/06 [H.O. Ex. 2];
 - (f) Student Learning Contract Report for 2nd Quarter 2006-2007 [H.O. Ex. 3];
 - (g) Sample Tower of Power Behavior Chart [H.O. Ex. 4];
 - (h) DIBELS Individual Student Performance Profile [Pet. P. 484]
43. The student had a Lexile level of 288 for the first quarter in 3rd grade and 593 for the 2nd quarter. A typical third grader has a Lexile level of 500 at the start of the year, at mid year 550 and 600 at the end of third grade. The school asks children to read books from 100 points below their Lexile level to 50 points above their Lexile level. The LEA's reading curriculum coordinator stated that a student would not be able to read every book at his Lexile level depending upon the content of the book. The student's father stated the student could not read any of 20,000 Leagues Under The Sea, even though it had a Lexile level of 590.
44. Although the student had a reading tutor for the 2nd semester of the second grade, the student was not assigned a tutor for the third grade, since he no longer fell in the range indicating a need for a tutor.
45. The student's various general and special education teachers who testified at the due process hearing, had not received specialized in-service training related to the student's acknowledged needs (inattention, sensory issues, auditory processing). The various teachers did receive professional development on a regular and frequent basis in various areas. As to the student's other teachers who did not testify at the due process hearing, it is

unknown what, if any, specialized in-service training they may have received. However, until March 2, 2006, the student's exceptionality was only CD and no specialized in-service training was required. The student's 2nd and 3rd grade general and special education teachers did not receive specialized in-service training in OHI nor specific training in how the student's exceptionality area adversely affects his educational performance.

46. The student's special education teacher of record, testified that after March 2, 2006 records were kept by the special education department concerning staff training but no records were submitted into evidence prior to or during the due process hearing.
47. The various speech therapy progress reports indicated that the student was making progress on his goals and objectives. The student's progress reports for his various goals and objectives from the case conference of 3/2/06 indicated in many areas that the student was making progress. The student's Student Learning Contract reports for the 1st grade, 2nd grade and the first one-half of 3rd grade indicated the student was progressing in his various academic classes and specials. (See Pet. P. 93-102 and H.E. Ex. 3). The student has timely progressed from grade to grade.
48. During his testimony, the school's special education director agreed that some of the student's objectives were not measurable.

From these forty-eight (48) Findings of Fact, the IHO determined following Conclusions of Law addressing each of the issues. The issues have been renumbered for the purpose of clarity, with the various sub parts of Issue 1 addressed.

Issue 1 (Formerly Issue 6)

Did the Respondents supply to Petitioners copies of all of the student's educational records? This issue was raised during the hearing and was added without objection by the Respondents.

No. The school did fail to provide the Petitioners with all of the student's educational records. However, this procedural error of a few pages out of hundreds of pages of documents was minimal, a harmless error and was of no consequence with no damages established, especially since the parents testified that similar information in some of the documents had been disclosed to them in the past. Further, part of Respondents' Exhibit 26, Respondents' 27, and H. O. Exhibits 2 and 3 and Pet. P. 484 were documents generated after the Respondents had provided to the parents copies of the student's educational records. Further, H.O. Exhibit 4 was a sample Tower Of Power Behavior Chart, which chart the student had been using for a period of time, so it certainly was not a surprise or unknown to the parents.

Issue 2 (Formerly Issue 5)

Since July 18, 2004, did the school provide to the family the required prior written

notice when denying or ignoring their requests for services sufficient to provide FAPE to the student?

Yes. The preponderance of the evidence established that the LEA did give prior written notice, primarily through the CCC and their notes. Further, even if the LEA did not fully comply with all of the requirements of 511 IAC 7-22-2, the parents clearly knew what, if any, of their requests were denied by the LEA. The intent and spirit of prior written notice were complied with by the LEA. Also, receipt of procedural safeguards were acknowledged by one or both of the parents at each case conference. Finally, the parents failed to substantiate any harm from this purported procedural violation.

Issue 3 (Formerly Issue 4)

Since July 18, 2004, did the school fail to reimburse the family for mileage for transporting the student from school every day, which was done because an inappropriately lengthy bus ride was the only transportation offered by the school?

No. The preponderance of the evidence established that the parents are not entitled to transportation mileage reimbursement. There was no request by the parents for mileage reimbursement until at least August, 2006. Further, in various IEPs of the student it was indicated that the student did not need any special transportation. On some IEPs it was indicated that the parents chose to transport the student themselves to shorten his daily commute to or from school. Transportation was never determined to be a related service necessary for the student to receive special education services. Further, there was no evidence presented that the transit time for the student exceeded the transit time of non-disabled students of comparable age within the school corporation. The parents chose this Edison school, which is not the student's home school. Any lengthy bus ride, due to the parents' choice, provided there is compliance with 511 IAC 7-21-7, does not require the LEA to reimburse the parents. As a final point, the parents were not required to transport the student. It was their decision. There was no written agreement between the parents and the LEA in which both agreed that the parents would transport the student and be reimbursed by the school.

Issue 4 (Formerly Issue 3)

Since July 18, 2004, did the school fail to ensure that its staff was certified, licensed and trained in all the areas of the student's disabilities?

No and Yes. The preponderance of the evidence established that the student's teachers were properly certified and licensed. As to being properly trained, the preponderance of the evidence established that the LEA's staff were not adequately trained in OHI nor specifically as to the student's needs after March 19, 2006, as required in 511 IAC 7-26-12(c). There is some question as to whether or not all of the student's general education teachers had read the student's IEPs. Although the LEA staff had professional development on a regular and frequent basis, it is unknown what this frequent and regular professional development entailed. There

was no written evidence presented as to what was included in this professional development. (Did it deal with OHI?)

Issue 5 (Formerly Issue 2)

Since July 18, 2004, did the school fail to implement the student's IEP, as written, for example, failing to provide OT services to the student pursuant to his IEP and fail to provide progress reports on the student's IEP goals and objectives at least as frequently as regular education peers received report cards?

Yes and No. The preponderance of the evidence established that although it was agreed in April, 2005 that the student needed OT services, the LEA did fail to provide such consult services until November, 2005 and also after March 19, 2006 until after April 12, 2006. Further, although not part of any of the student's IEPs, the LEA did agree to develop and implement a sensory diet for the student in May, 2006, but did not implement it until the 2006-2007 school year. As to the progress reports being provided, clearly there was conflicting testimony. However, it seems incomprehensible that the parents would not have raised concerns about this failure at any case conferences or by letter to the LEA, and only raised this issue when this due process was initiated. The parents did not meet their burden. Based upon the preponderance of the evidence, the parents did receive the required written progress reports, except for one progress report from the student's speech therapist in the Fall, 2006. However, this procedural violation concerning this one progress report is minimal with no harm established by the parents.

Issue 6 (Formerly Issue 1)

Since July 18, 2004, did the school fail to devise appropriate IEPs for the student in the following ways, resulting in denial of FAPE to the student?

a. Did the school fail to appropriately and timely evaluate the student, such that the school conducted an evaluation in 2000 but did not reevaluate until 2005?

No. Based upon the preponderance of the evidence, the school did appropriately and timely evaluate the student. The student's initial comprehensive evaluation was on October 11, 2000. The student was found eligible for special education services as a student with communication disorder. Subsequently, the school conducted speech only evaluations of the student on October 1, 2001 and on January 8, 2003. In March and April, 2005 the school conducted an educational evaluation, a speech/language evaluation, an occupational therapy evaluation, and had its autism lead teacher observe the student in the classroom. Further, an independent auditory processing evaluation, at the school's expense, was done on February 22, 2005. On February 18, 2003 the mother, by written addendum to the student's IEP, agreed to change the student's communication disorder triennial date to January 8, 2006. Finally, the Indiana Department of Education (IDOE), in response to the parents' complaint that the school had failed to re-evaluate the student every thirty-six months, found that the school had timely evaluated the student. IDOE concluded there was not a violation of 511 IAC 7-25-6(a). This Hearing Officer hereby incorporates and concurs with the IDOE's findings and conclusions herein.

b. Did the school fail to educate the student in his least-restrictive environment, including having the student in a classroom of 26 students?

No. The preponderance of the evidence established that the school did educate the student in the least restrictive environment. The parents' chosen Edison school is a responsible inclusion school. The parents knew the school used such responsible inclusion and still elected for the student's education services to be provided there. Further, the parents agreed to various IEPs, with the student's LRE being the general education classroom with less than 21% special education services. The number of other students was clearly known to the parents, since the mother frequently visited the classroom. The various recommendations of the private OT evaluator are points for consideration for a CCC as to possible modifications of the classroom setting but do not render the present classroom to not be the student's LRE. Further, the private psychologist did not view a classroom of 27 to 29 students as an inappropriate placement for the student.

c. Did the school fail to devise programming based on the student's individual learning style, as he is a visual learner, has an auditory processing problem, attention problems, organizational problems and sensory integration problems that were not addressed?

No. The preponderance of the evidence established that the school did not fail to devise appropriate programming for the student. Through various techniques and methodologies, the various teachers of the student addressed the student's needs as a visual learner, attention problems, auditory processing problems, organizational problems, and sensory integration problems. Further, the student, as documented by the school's various regular assessments, did make progress.

d. Did the school fail to provide appropriate ESY services for the student?

No. Based upon the preponderance of the evidence the school did not fail to provide appropriate extended school year (ESY) services for the student. There was no evidence submitted establishing the student's need for ESY services, such as regression over the summer, lost opportunity to address a developing skill, or for any other reason. The parents even acknowledged in their testimony and Closing Argument, that there was no objective data to substantiate the need for ESY. It was their burden to establish in this hearing such a need for ESY services, not for the school to establish there wasn't a need. For this Hearing Officer to find, based upon the evidence presented, that the student needs ESY services would be pure speculation. Further, the need for ESY services on the student's various agreed upon IEPs always indicated "no". Finally, when ISTEP remediation classes were offered to the student for one week during the 2006 summer, based upon the school's various assessments, the parents declined this offer. Although this remediation was not ESY services, the failure of the student to pass both parts of the September, 2006 ISTEP by a few points does not establish the need for ESY services.

e. Did the school timely and appropriately respond to the parents' request for an independent educational evaluation of their son?

Yes. The preponderance of the evidence established that the school did timely and appropriately respond to the parents' requests for an independent evaluation of the student. Although the father requested an evaluation of the student on February 4, 2005, neither his testimony at the due process hearing nor the referral for an evaluation indicates that the request was for an independent evaluation. After the request was made the school paid for an outside auditory processing evaluation, which took place on February 22, 2005, and school personnel performed an educational evaluation, OT evaluation and speech evaluation in March and April, 2005. When the parents requested an independent evaluation at the May 18, 2006 case conference the special education director agreed to pay for the costs of the independent evaluation. Although the school may not have complied with 511 IAC 7-25-5(c) by not responding in writing that the independent educational evaluation would be at public expense, the various independent evaluations, as noted in Findings No. 37, 38 and 39, and were completed and have, or will be, paid for by the LEA. If there was a violation of 511 IAC 7-25-5(c) this is a minor procedural violation with no harm established to the parents or the student.

f. Did the school fail to provide appropriate and timely occupational therapy and speech therapy services and social skills training?

Yes and No. The preponderance of the evidence established that the school did fail to provide appropriate and timely occupational therapy. The school's occupational therapist, in her evaluation of April 20, 2005, proposed thirty minutes per month of OT consult services with the student's teachers and staff. The parents did not agree to the proposed IEPs on April 22, 2005 and May 24, 2005, which included such OT consult services. This refusal was due to a disagreement over the student's eligibility as being a student with an ASD. However, the school should have started then to provide the OT consult services, but it failed to do so until November 15, 2005, after the November 11, 2005 case conference. Further, there were no OT goals developed at the November 11, 2005 case conference. OT goals were subsequently drafted and provided to the parents in December, 2005. On January 12, 2006 the parents met with the school's OT and provided her with comments to the OT goals. Although the parents agreed on March 19, 2006 to OT services, the LEA did not begin providing the services until after April 12, 2006. The preponderance of the evidence established that the school has regularly evaluated the student's speech/language. Initially, direct services were provided, but based upon the only evaluations done and the comments of the student's teachers and staff, the services were changed to consult in January, 2003, with consult services until November, 2005, when direct services were again provided. Further, the parents agreed to the various IEPs, in which the student's speech services went from direct services to consult services. As to social skills training, based upon the preponderance of the evidence, while the student had been determined to have a communication disorder, the school's general education teacher addressed the student's social needs in the classroom. Since March 19, 2006, the LEA has been addressing social skills training in the student's goals and objectives and in a weekly social group.

- g. Does the school owe the student compensatory educational services for failure to devise an appropriate IEP and failure to implement the IEPs devised, including any of the proposed remedies outlined in this request?**

This is not an issue but a request for remedies. It is hereby struck as an issue.

- h. Did the school misinform the family of their rights, specifically whether the school misinformed the family that the student wouldn't be eligible for services if he wasn't classified under the eligibility area of autism spectrum disorder?**

No. The preponderance of the evidence established that the school did not misinform the parents of their rights. At each case conference the parents acknowledged receipt of their procedural rights. Further, after the extensive evaluations of the student in the Spring of 2005, at the April 22, 2005 case conference, various school employees, as members of the CCC, stated their beliefs that the student was eligible for special education services as a student with an autism spectrum disorder. However, the parents disagreed. The school's staff, as CCC members, stated that the student would be entitled to additional services if the student was so determined, since an ASD is clearly a broader exceptionality than CD. However, it is clear that at this point in time, based upon the evaluations, the student did need services beyond merely speech services. The better response by the school would have been to have looked at Other Health Impairment as the student's primary exceptionality, as was subsequently done at the March 2, 2006 case conference. However, with the parents only agreeing to eligibility for the student with a communication disorder, the CCC was limited in the direct services it could provide.

- i. Did the school fail to use scientifically based, peer-reviewed methods of instruction with the student?**

No. The preponderance of the evidence established that the school used scientifically based, peer-reviewed methods of instruction with the student. The school's principal testified to the school using a research-based curriculum. Although there were no documents establishing her statements, there was no evidence to the contrary presented by the parents. It was the parents' burden to establish that the school did not use such scientifically based, peer-reviewed methods of instruction, which they failed to do. Further, IDEIA requires the "use of scientifically-based, peer-reviewed methods of instruction to the extent practicable". This standard was met by the school, based upon the evidence presented.

- j. Did the school fail to conduct an appropriate and timely functional behavior assessment and fail to devise an appropriate behavior intervention plan with positive re-inforcers and strategies for the student?**

No. Based upon the preponderance of the evidence, the school, based upon the information it had, did not fail to conduct a functional behavior assessment (FBA) of the student or fail to prepare a needed behavior intervention plan (BIP). 511 IAC 7-29-5(a) and (b) states:

Sec. 5. (a) Either before but not later than ten (10) business days after either first suspending the student for more than ten (10) cumulative instructional days in a school year, placing the student in an interim alternative educational setting, expelling the student, or otherwise commencing a removal that constitutes a change of placement, the public agency shall convene a case conference committee meeting for one (1) of the following purposes:

- (1) To develop a plan for assessing the student's functional behavior if no functional behavioral assessment was conducted or behavioral intervention plan was implemented prior to the occurrence of the behavior that resulted in the removal.
- (2) To review a student's existing behavioral intervention plan and its implementation and to modify the plan and its implementation as necessary to address the behavior.

Sec. 5. (b) After an assessment plan has been developed as described in subsection (a)(1) and the assessments required by the plan are completed, the public agency shall convene a case conference committee meeting within ten (10) instructional days of the completion of the assessments to develop a behavioral intervention plan and provide for its implementation.

There was no evidence presented that any of these four situations, which require a FBA, took place with the student. Although the student did exhibit various behaviors which impeded his learning, as noted in some but not all of the student's IEPs, such behaviors were to be addressed by the goals in his IEPs. Also, the student was using the Tower of Power Behavior chart as a general intervention tool, as were other students at the school. Although the school had information that would have permitted it to consider doing a FBA, the failure to do one, based upon all of the evidence, was not a procedural violation. Perhaps the safer recourse would have been to have done a FBA, but that is 20/20 hindsight. Further, based upon the various private evaluations completed after the due process request was made, a case conference committee should consider the present need to do a FBA and if deemed appropriate, then develop a BIP.

k. Did the school fail to devise IEPs containing appropriate and measurable goals and objectives in all the student's areas of need and based on present levels of performance?

No. Although the special education director acknowledged that some of the student's objectives may not be measurable, the preponderance of the evidence established that the goals and objectives in the student's IEPs were appropriate and the vast majority were measurable in the then needed areas, considering the student's applicable present levels of performance. Prior to April, 2005, the student was eligible for special education services based upon a communication disorder. The goals and objectives in speech, based upon his communication disorder, were appropriate and measurable. Subsequent to the various evaluations in the Spring of 2005 and the disagreement over the student's eligibility under the ASD exceptionality, the parents refused any services but for the student's communication disorder. Therefore, goals and objectives in speech were developed, which appear appropriate and measurable. Although the school believed the student had other areas of needed goals and objectives, the parents refused the ASD exceptionality. At the March 2, 2006 case conference, the parties agreed to the student being determined for special education services under OHI. Subsequently, goals and objectives were

developed. The parents disagreed with various goals and objectives, deeming them inadequate and vague. However, an IEP is not a daily case plan. 511 IAC 7-27-6(a)(2) states:

(2) “A statement of measurable annual goals that describe what the student can be expected to accomplish within a twelve (12) month period, including benchmarks or short term objectives, related to:

- (A) meeting the student’s needs that result from the student’s disability to enable the student to be involved in and progress in the general education curriculum;
- (B) for early childhood education students, as appropriate, to participate in appropriate activities; and
- (C) meeting each of the student’s other educational needs that result from the student’s disability.

Although the various goals and objectives could have been more detailed, more specific and more measurable, that is not the test. 511 IAC 7-27-6(a)(2) sets forth the standard and the school met this standard. Further, the case conference committee should consider the recent private evaluations for any additions or deletions from the March 2, 2006 goals and objectives to meet the student’s present needs.

1. Did the IEPs contain needed accommodations and modifications individualized for the student’s needs?

Yes. The preponderance of the evidence established that the student’s IEPs contained needed accommodations and modifications based upon the student’s needs. Many of the various recommendations of the private evaluators are not actual modifications or accommodations to the student’s IEP but teaching techniques or methodologies, which are for the student’s teachers to determine. As noted by the Respondents, to include all of the various recommendations, (many not being true modifications or accommodations) as modifications or accommodations for the student would make it impossible for the student’s teachers to teach the student. Teachers would be impossibly burdened if they had to follow all these recommendations. Further, many of these recommendations were merely recommendations. The student’s teachers must have some discretion to use various techniques or methodologies that work with the student. Some of the recommendations may work, others may not. Finally, a case conference committee should review the various recommendations from the private evaluators and determine first of all, which of the recommendations are truly accommodations or modifications, which are really more teaching techniques or methodologies, which are not already being provided by the student’s teachers and which are the most important to initially implement to meet the student’s needs.

Further, as to Issue 6 (Formerly Issue 1), “Since July 18, 2004, did the school fail to devise appropriate IEPs for the student...resulting in denial of FAPE to the student?” based upon the preponderance of the evidence and the various conclusions hereinabove, the school did provide the student with a free, appropriate, public education. Based upon the various periodic school assessments of the student, the student did make academic progress.

The criteria to determine if a student’s IEP has complied with IDEIA and Article 7 and provides a FAPE entails two considerations:

- (1) Has the local education agency complied with the procedures set forth in IDEA (now IDEIA) and Article 7; and
- (2) Is the IEP developed through the IDEA's and Article 7's procedures reasonably calculated to enable the child to receive educational benefits? Board of Education v. Rowley, 458 U.S. 176, 206, 207.

As to the first consideration, although there were some procedural violations, none of such violations, alone or in combination, resulted in any adverse educational harm to the student. As to the second component of FAPE, the various IEPs, when written, were reasonably calculated to enable the student to receive educational benefits. The student's progress from grade to grade is clearly evidence of such educational benefit. .

School Issue I

Should the student's area of eligibility for special education and related services be autism spectrum disorder?

No. The preponderance of the evidence established that the student's area of eligibility for special education and related services is Other Health Impairment. The March 2, 2006 CCC made this determination based upon its review of various evaluations, documents, and input from committee members. The school is merely requesting this Hearing Officer to second guess the CCC. No matter, as raised by the Petitioners, the 7th Circuit Court of Appeals noted that "the IDEA concerns itself not with labels but with whether a student is receiving FAPE.... The IDEA charges the school with developing an appropriate education, not with coming up with a proper label with which to describe [a student's] disabilities." Heather S. v. Wisconsin, 125 F.3d 1045 (7th Cir. 1997). Further, the most recent private evaluations make questionable an eligibility determination for ASD of the student. As ordered hereinafter, the parties will be convening for a case conference to develop an IEP for the student. There the CCC can review all evaluations, documents and records to determine the student's eligibility exceptionality. This Hearing Officer believes the proper exceptionality determination is OHI. If the exceptionality remains OHI, it is hoped the CCC can then move forward in the spirit of compromise to formulate an IEP to meet the student's needs. The CCC should not be concerned with a label as was so clearly stated by the 7th Circuit Court of Appeals in Heather S. v. Wisconsin.

School Issue II

Are the Respondents exempt from the requirements under IDEIA and Article 7 as to the student's IEP accommodations and related services based upon the parents' decision to enroll the student in a choice school (which is not the student's home school) if the programming and methodology at the choice school conflicts with the student's IEP?

No. The preponderance of the evidence established that the Respondent school is not exempt from the requirements under IDEIA and Article 7. Although not actually withdrawing this as an issue, the Respondents' Final Argument essentially acknowledged the concerns for raising this as an issue never materialized during the hearing. There was no evidence presented as to why

the requirements of IDEIA and Article 7 should not apply to the school, even as a choice school. Therefore, the school has not met its burden on this issue.

Based on the foregoing, the IHO issued the following Orders:

1. The parties shall immediately convene a case conference. The parties shall agree on a case conference facilitator. If the parties are unable to agree on a facilitator, this Hearing Officer proposes Claire Thorsen as the facilitator, who has served as a case conference facilitator in the past and has an intensive background in special education, behavior, FBAs and BIPs.
2. This case conference committee shall include, at a minimum, the student's current special education teacher, at least one of the student's general education teachers, the LEA's occupational therapist and speech/language therapist serving the student, the parents, the special education director, the private occupational therapist, speech/language pathologist, and neuropsychologist, who all recently evaluated the student.
3. The student's goals and objectives shall be precise, specific, and measurable in all areas this CCC deems appropriate to meet the student's needs.
4. The CCC shall determine the student's area of eligibility for special education, with the specific label not to be the concern, but rather the specific special education services the student needs. Other Health Impairment does appear appropriate, based on all evaluations and records.
5. It appears the student needs school SLT and OT as related services to meet his educational needs and the same shall be addressed in his IEP, with the recommendations of the private occupational therapist and speech/language pathologist to be strongly considered, since these recommendations as to in-school therapy appear appropriate.
6. The student's need for private SLT and OT and for a behavioral psychologist shall be the responsibility of the parents. However, these private providers should meet periodically, perhaps monthly, with the student's LEA providers, including a general education teacher, special education teacher, occupational therapist and speech/language pathologist. The Petitioners' proposal for a case manager and part time para-professional for the student should be considered by the CCC.
7. An additional case conference shall be held in late April to early May, 2007 to consider the student's need for extended school year for the Summer, 2007, with consideration for using a summer computer program such as Fast ForWord with the student, if the student's need for ESY has been demonstrated and determined by the CCC.
8. The student's IEP shall include necessary in-service training of the student's general education and special education teachers, his occupational therapist and speech/language pathologist in his exceptionality, provided this is OHI or ASD, and specific in-service training addressing how the student's exceptionality, as manifested, adversely affects his educational performance. The LEA should contact the private occupational therapist and speech/language pathologist and ask

them to participate in the presentation of this in-service training. This in-service training shall include training on use of a sensory diet, which shall be drafted by the LEA's occupational therapist and the student's private occupational therapist. The private occupational therapist and LEA's occupational therapist shall periodically oversee the general education and special education teachers to assure that they are using the sensory diet appropriately.

9. The parents' request for reimbursement of mileage and other expenditures is denied.
10. The parents' request for compensatory private OT services, private SLT services, and for a private behavioral psychologist's services are also denied. These services are needed for the student but not for him to benefit from special education services.
11. The parents' request for compensatory OT through the LEA's occupational therapist is hereby granted, with the student to receive 10 hours of OT, with the CCC to determine the specific frequency and duration of OT to make up these hours.

The IHO notified the parties of their appeal rights.

APPEAL TO THE BOARD OF SPECIAL EDUCATION APPEALS

The School, pursuant to 511 IAC 7-30-4(i), timely requested an extension of time to file a Petition for Review on March 1, 2007. On March 2, 2007, the Board of Special Education Appeals (BSEA) granted the request for extension, giving the School until the close of business March 30, 2007, to file its Petition for Review. Timelines for review and issuance of the BSEA's written decision were also extended to and including April 30, 2007. The Student timely requested an extension of time to file a Petition for Review on March 8, 2007. On March 8, 2007, the BSEA granted the request for extension, giving the Student until the close of business April 11, 2007, to file its Petition for Review. Timelines for review and issuance of the BSEA's written decision were also extended to and including May 11, 2007. On March 30, 2007, the School filed its Petition for Review. The Student timely submitted his Response on April 9, 2007. The Student did not file a Petition for Review.

The complete record from the hearing was photocopied and provided to the BSEA members on April 17, 2007.

The BSEA, on April 25, 2007, notified the parties that it would review this matter with oral argument. Review was set for April 30, 2007, at 10:00 a.m. at RISE Learning Center.

School's Petition for Review

The School does not challenge any of the IHO's findings of fact, and accepts all of the IHO's conclusions of law except for (a) a portion of the conclusion of law on Issue 4; (b) portions of the conclusion of law on Issue 5 and Issue 6(f); and (c) the conclusion of law on the School's Issue I. In addition, the School objects to the IHO's Orders 1-8 and 11. In support of its Petition, the School argues that it provided appropriate in-service training. The School argues

there was no agreed-upon IEP identifying the Student as a student with an Other Health Impairment (OHI), therefore it couldn't be required to provide training for OHI. The School did not fail to provide occupational therapy (OT) services or to implement the IEP regarding OT services. The School also argues it cannot identify the Student as OHI as there is no diagnostic statement of a physician.

The School argues the IHO had no basis for some of his orders. Although the School notes the IHO's orders are far less than the Student requested and in many cases only restate the requirements of Article 7, the School argues they may be misinterpreted as some evidence of the parent prevailing in some fashion. Order #2 sets forth an attendance list for the case conference that includes the private occupational therapist, speech/language pathologist and neuropsychologist who recently evaluated the Student. The School argues that while they are required to consider the results of these evaluations, they have no obligation to pay the parents' invitees to attend the conference. The IHO found no deficiencies in the case conferences. Order #3 requires the Student's goals to be written in a certain way although the IHO rejected the Student's claims that the goals did not comply with Article 7.

The School claims that Order #4 discounts the importance of establishing the Student's area of disability, and argues that it is inconsistent with Article 7. Order #5 concerns speech and OT services. The School argues that all of the IEPs to date have provided for such services and the order is just a restatement of the requirements of Article 7 and should be reversed as unnecessary. Order #7 identifies the parents as being responsible for private speech, OT and behavioral services. But by ordering consultations with the private providers, is the IHO requiring the School to pay for the evaluators time? There is no basis for imposing this cost on the School.

The School argues Order #8 should be deleted as redundant. Further, portions of Order #8 seem to try and dictate the choice of personnel to provide training and deliver services, matters which are not within the province of the IHO. Suggesting that the private occupational therapist supervise or oversee services is an unwarranted attempt to dictate personnel decisions. The School objects to Order #11 as the IHO repeatedly found the School provided a free appropriate public education (FAPE) to the Student. Therefore, the IHO had no jurisdiction to order compensatory services and Order #11 should be reversed.

Student's Response to the Petition for Review

The Student argues that the IHO's orders are supported by the evidence and should be upheld. The Student points out that although the father noted he disagreed with some provisions of the IEP, he signed the IEP in order that services could be provided. The School provided an IEP identifying the area of disability as OHI, and now claims that the IHO's determination of such is contrary to Article 7. During the course of the hearing, and in the pleadings, the School acknowledged that it hadn't provided the OT services specified in the IEPs, but now argues that it provided all required services such that the IHO's order of compensatory services is not supported by the evidence.

The Student notes that the School does not object to any of the IHO's findings of fact. The IHO's orders are supported by the findings. The IHO's orders should be upheld.

REVIEW BY THE BOARD OF SPECIAL EDUCATION APPEALS

On April 30, 2007, the BSEA convened in Indianapolis for the purpose of conducting oral argument and its review in this matter. All three members of the BSEA³ participated. Each had received and reviewed the record from the due process hearing below, including the Petition for Review and the Student's Response to the Petition for Review. Based upon the record as a whole, the requirements of state and federal law, the Petition for Review, and the Response thereto, and oral arguments, the BSEA now decides as follows.

COMBINED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The BSEA is a three-member administrative appellate body appointed by the State Superintendent of Public Instruction pursuant to 511 IAC 7-30-4(a). In the conduct of its review, the BSEA is to review the entire record to ensure due process hearing procedures were consistent with the requirements of 511 IAC 7-30-3. The BSEA will not disturb the Findings of Fact, Conclusions of Law, or Orders of an IHO except where the BSEA determines either a Finding of Fact, Conclusion of Law, or Order determined or reached by the IHO is arbitrary or capricious; an abuse of discretion; contrary to law, contrary to a constitutional right, power, privilege, or immunity; in excess of the IHO's jurisdiction; reached in violation of established procedure; or unsupported by substantial evidence. 511 IAC 7-30-4(j). The School timely filed a Petition for Review. The BSEA has jurisdiction to determine this matter. 511 IAC 7-30-4(h).
2. Article 7⁴ hearings are conducted pursuant to the Indiana Administrative Orders and Procedures Act⁵ and 511 IAC 7-30-3.
3. The IHO's decision must contain separately stated findings of fact, conclusions of law,⁶ and, if applicable, orders. The conclusions of law must be based upon the findings of fact and the orders must be derived from the conclusions of law.
4. No objections were raised to any of the IHO's findings of fact. The findings of fact are supported by substantial evidence and should be upheld in their entirety.
5. The IHO's conclusions of law pertaining to Issue No. 4, Issue No. 5, Issue No. 6(f), and the School's Issue No. 1 are all supported by the evidence and the IHO's findings of fact.

³Thomas J. Huberty, Ph.D., was appointed to serve on the BSEA in the place of Raymond W. Quist, Ph.D., who was ill.

⁴511 IAC 7.

⁵I.C. 4-21.5-3.

⁶The Administrative Orders and Procedures Act uses the terminology "findings of ultimate fact."

6. Although the School indicated in its Petition for Review that it was objecting to Orders Nos. 1 through 8 and Order No. 11, the School also indicated in a footnote in the Petition that it was not objecting to Order No. 1. No objection to Order No. 1 was raised during oral argument. Order No. 1 is upheld as written.
7. To the extent that Order No. 2 requires the participation of private providers or other individuals not required by 511 IAC 7-27-3(a), it is unsupported by the findings of fact and conclusions of law.
8. Order No. 3 is not supported by the conclusions of law . The IHO properly concluded that the School did not fail to devise IEPs containing appropriate and measureable goals and objectives in all the Student's areas of need and based on present levels of performance.
9. Because the IHO has already concluded that the student's area of eligibility for special education and related services is Other Health Impairment (OHI), the requirement in Order No. 4 for the case conference committee to determine the student's area of eligibility is not supported by the IHO's findings of fact and conclusions.
10. Order No. 5 is not supported by the conclusions of law. The School and the parents did agree on goals and objectives for occupational therapy and speech therapy services. The need for an order to provide such is not supported by the findings of fact and the conclusions. The failure of the School to provide the occupational therapy agreed upon is addressed in the IHO's Order No. 11.
11. The findings of fact and conclusions of law do not support an order for the School to require the private providers to meet periodically, perhaps monthly, with the School's providers. Although this might be ideal, such is not required by Article 7.
12. There was no determination that the School failed to appropriately address extended school year services (ESY). The findings of fact and conclusions of law do not support Order No. 7.
13. To the extent that Order No. 8 requires the School to utilize specific private therapists or other providers to provide training to school personnel it is unsupported by the findings of fact and conclusions of law.
14. The findings of fact and conclusions of law support Order No. 11.

ORDERS

In consideration of the foregoing, the Board of Special Education Appeals rules as follows:

1. The IHO's Findings of Fact and Conclusions of Law are upheld in their entirety.

2. Orders No. 3, 5, and 7 are stricken as not supported by the findings of fact and conclusions of law.
3. Order No. 2 is revised to read as follows:
The case conference committee shall include the student's current special education teacher, at least one of the student's general education teachers, the LEA's occupational therapist and speech/language therapist serving the student, the parents, and the special education director. The parents may invite, at their own expense, the private occupational therapist, speech/language pathologist, and neuropsychologist, who all recently evaluated the student.
4. Order No. 4 is revised to read as follows:
The CCC shall be concerned not so much with the specific label, but rather the specific special education services the student needs. Other Health Impairment does appear to be the appropriate area of eligibility based on all evaluations and records.
5. Order No. 6 is revised to read as follows:
The student's need for private SLT and OT and for a behavioral psychologist shall be the responsibility of the parents.
6. Order No. 8 is revised to read as follows:
The student's IEP shall include necessary in-service training of the student's general education and special education teachers, his occupational therapist and speech/language pathologist in his exceptionality area of OHI, and specific in-service training addressing how the student's exceptionality, as manifested, adversely affects his educational performance.
7. Order No. 11 is upheld as written.
8. Any allegation of error in the Petition for Review not specifically addressed above is deemed denied.

DATE: May 11, 2007

/s/Rolf W. Daniel
Rolf W. Daniel, Ph.D., chair
Board of Special Education Appeals

APPEAL RIGHT

Any party aggrieved by the decision of the Board of Special Education Appeals has the right to seek judicial review in a civil court with jurisdiction within thirty (30) calendar days from receipt of this written decision, as provided by I.C. 4- 21.5-5-5 and 511 IAC 7-30-4(n).