

This is a redacted version of the original hearing officer decision. Select details may have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Student

Child's Name

[]

Date of Birth

5952/05-06 AS

ODR File Number

January 5, 2006, February 6, 2006, February 7, 2006, March 9, 2006, March 10, 2006

Dates of Hearing

Open Hearing

Parties to Hearing

Parents

Mr. and Mrs. Parent

[]

[]

Dates Transcripts Received:

January 18, 2006, February 21, 2006,

February 22, 2006, March 16, 2006

School District Contact

Judith Petruzzi

Special Education Director

Keystone Central School District

95 West Fourth Street

Lock Haven, PA 17745

Date of Decision:

March 28, 2006

School District Representative

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Kenneth Rose

Hearing Officer

Background

The student is a xx year-old student residing in the Keystone Central School District. He is an eligible student identified as severely learning disabled. Student has hearing loss in both ears, does not wear hearing aides. Student has received special education since first grade. Student has been identified with Attention Deficit Hyperactivity Disorder (ADHD and Central Auditory Processing Disorder (CAP). The parents have been having the student tutored at [a learning center].

Findings of Fact

1. The student's dyslexia severely impacts student's reading. (NT 572, 573)
2. The case manager meets regularly with the student, but not on a scheduled basis. The case manager monitors the student's progress. (NT 86)

[Learning Center]

3. At [the learning center] tutoring starts at the student's level and progresses based on assessments. (NT 36, 37)
4. The learning center] examined the evaluation done by the school district that the parents provided, but could reach no conclusions. [The learning center] uses different assessment tools. (NT 31, 32)
5. Diagnostic evaluations on February 3, 2005 by [the learning center] found the student to be: at 27 percentile (average) in Comprehensive Receptive and Expressive Language; Vision screening was "adequate"; Auditory Screening was adequate; Learning Channel Preference was balanced; Oral Reading Test-GORT 3 reading rate was 1.9 GE, Accuracy 2.3 GE, Passage 1.9 GE, Comprehension 5.2 GE, ORQ 61; California Achievement Test (CAT) showed vocabulary 2.1 GE, Comprehension 2.1 GE and Total Reading 2.1.

[The learning center] based its program on the February 3, 2005 evaluation. (NT 21, 22, 24; P-1)

6. [The learning center] administered the CAT level 20 reading test October 21, 2005. This was after one hundred and forty-eight hours of tutoring. The results were Vocabulary 6.1 GE (a positive change of 3.9 GE); Comprehension 7.5 GE (a positive change of 5.4 GE; Total 6.6 GE (a positive change of 4.5 GE).

During this second testing the student was given additional time on the test. The initial evaluation did not provide extra testing time. The CAT manual does not allow for extra testing time.

The final CAT administered by [the learning center] can't be compared to school district data since it was administered in a non-standard manner. (NT 24-27, 33, 34, 37, 42, 427; S-7; P-1)

7. [The learning center] measured math progress on December 23, 2005 using CAT:Form A-level 20 math test. His Computation was 6.7 GE (a positive change of 2.5 GE); Concepts and Application was 7.7 GE (a positive change of 1.5 GE); Total Math was 7.3 GE (a positive change of 2.2 GE). The student was having problems with fractions, decimals and computational fluency. (NT 26-28; P-1)

8. On December 23, 2005 [the learning center] retested the student's oral reading. The results were: Rate 2.8 GE; Accuracy 6.7 GE; Passage 4.7 GE; Comprehension 8.9; ORQ 76. This showed reading staying low and comprehension increasing. (NT 22, 23; P-1)

9. [The learning center] communicates with the school district by sending progress reports and questionnaires. Not all of the student's teachers have responded to the questionnaires. (NT 39-41, 51, 52)

10. [The learning center] used a token motivation program with the student. His attitude and self-esteem improved in that setting. (NT 27)

11. [The learning center] opines that working with grade ten level materials would frustrate the student. (NT 32)

12. The student's tenth grade reading teacher visited [the learning center] and corresponded with them on the student's program there. (NT 473, 475)

FAPE

Grade 8

13. The parents approved the eighth grade Individualized Education Program (IEP). His reading level was 2.5 GE with 52 WPM fluency. Math test scores were listed. The reading goal was to advance to 3.0 GE. The math goal was to achieve PSSA level 2.1. (NT 626, 627; S-63)

Grade 9

14. The parents approved the ninth grade IEP. (NT 628, 629; S-59)

15. A Notice of Recommended Educational Placement (NOREP) for the 2004-2005 school year was issued, but not returned. (NT 800)

16. Goals on April 22, 2004 IEP were based on PSSA standard levels. (NT 321; S-59)

17. At the start of grade nine all of the student's teachers were informed of student's levels, Specially Designed Instructions (SDI's) and had access to the IEP. (NT 256, 257)

18. The student's reading level was grade 3 instructional level at start of ninth grade. (NT 363, 364; S-52)

19. The reading program for the student in grade nine is "Reading Milestones." It is research based and is designed for students with hearing impairments and learning disabilities. (NT 351; S-68)

20. In ninth grade, when it was seen that the student was not going to reach student's words per minute reading goal, teaching strategies were changed, rather than changing the goals. Three of the four reading objectives of the 2004-2005 IEP goals were met. The fourth showed "sufficient" progress. The algebra goal was met. (NT 98, 100, 104, 126, 127; S-52, S-58)

21. At the meeting of the IEP team on January 18, 2005 it was decided the IEP team would meet again in mid-February. The team did not see a need to revise the IEP. (NT 123, 124; S-45)

22. In grade nine the student met student's reading goal. The fluency objective was not fully met and was carried over to next year. (NT 269, 272, 459, 460, 464, 465; S-52, S-58, S-75)

23. From October 4, 2004 to April 4, 2005, the student's lexile level went from 500 to 900 and ended at 600 in the last measurement. Student's fluency went from about 51 wpm to about 62 wpm. (S-52)

24. The student started grade 9 at 500 lexiles and ended at 660 lexiles. (NT 481; S-35)

25. The student's Terra Nova scores near the end of grade nine were: reading – first percentile; language – seventeenth percentile; math – tenth percentile. (NT 161, 432 433; P-4)

Grade 10

26. A series of communications occurred trying to set up a meeting of the IEP team for September 20, 2005. (NT 290; S-18, S-19, S-20, S-21)

27. On September 20, 2005, a meeting of the IEP team took place at which the student's academic program was discussed. Kurzweil usage, [the learning center] tutoring, a laptop computer and assistive technology were also discussed.

The only regular education teacher at the meetings of August 23, 2005 or September 20, 2005 where inclusion in regular education was discussed was the

vocational teacher. The student's science teacher was not at the September 20, 2005 meeting due to illness.

At the IEP team meeting on September 20, 2005 it was decided the student would not be given the option not to use Kurzweil. (NT 81, 292, 343, 352; S-17)

28. The tenth grade reading program is "Read 180." It uses a lexile system to measure reading levels. Lexiles are viewed as a better system of measuring reading levels. They are not directly equivalent to grade levels, but estimates can be made. (NT 355; S-67, HO-1)

29. Wildlife and driver's education are two regular education classes taken by the student in 2005-2006 school year. (NT 296, 297)

30. The reading class is at the student's level. (NT 461)

31. The mathematics teacher tested and charted the student's mathematics progress in May 2005, August 2005 and October/November 2005. The results were: addition/subtraction – highest possible scores on all three; multiplication/division – started and ended three correct out of eight; operations with fractions – improved from one to two correct out of five; operations with decimals – declined from three to one out of seven; algebra – improved from two to three out of five; word problems – fluctuation from two to seven out of thirteen; and in concepts and communications – declined from six to five out of thirteen.

The student's math skills were lower at the start of tenth grade than the end of ninth grade. Charts tracking progress in math skills show mixed results from May 2005 to the end of the second marking period of the 2005-2006 school year. (NT 72-78, 105, 106, 308; S-66)

32. Reports to the parents on November 9, 2005 indicate progress was being made on Written Expression, Reading, Decoding, Fluency and Math goals. Some of the progress was noted as slow. Parents were kept aware of progress. (NT 55-67; S-24; P-3)

33. On October 5, 2004 the school district issued a Permission to Reevaluate the student. The parents wanted the evaluation. The parents consented and wanted to talk to the district before the testing. (NT 242, 243; S-51)

34. A reevaluation of the student was done in eighth grade. On January 25, 2005 another reevaluation was completed. This one was a "complete evaluation" meaning a more comprehensive evaluation since a "complete" evaluation hadn't been done since fifth grade. (NT 116; S-44, S-62)

35. The Evaluation Report (ER) of January 25, 2005 does not give a full scale IQ due to diversity of individual scores by the student on the WISC-IV. Student's verbal ability is 89 (average). Student needs repetition. Student's ER indicates Student's

achievement potential is limited by slow processing and working memory deficiencies. Student's learning disabilities impede acquisition of reading, writing and math skills. The ER indicates the student's reading to be at beginning third grade. (NT 550, 565-571; S-44)

36. On January 18, 2005 the IEP team met to review the Reevaluation Report. The school psychologist, Ms. S., who prepared the report was present. The student's progress was discussed. Both Write Out Loud and Kurzweil were discussed as was transition. (NT 176-178, 254; S-45)

37. Ms. S opines the student's disabilities limit student's potential to acquire reading skill and that student will have to rely on other skills such as listening, to acquire knowledge. She feels a reading goal of a functional reading level (Grade 5) is realistic. (NT 551, 559)

38. The parents signed their agreement with the reevaluation report of January 25, 2005. (NT 256, S-44)

39. An attempt to have a meeting of the IEP team failed when the student did not deliver the notice to the parents. An attempt for a March 29, 2005 meeting failed due to parental scheduling conflicts. The meeting was finally agreed to for May 6, 2005. (NT 263, 266, 318-320, 345-357)

40. On May 6, 2005 the IEP team met to revise the IEP and discuss the Assistive Technology Report by Mr. B, transition coordinator and special education teacher. The report concludes the student will have screen reading software program at multiple locations. This is intended for use in which reading above the student's level is required.

The IEP team reconvened the following week. (NT 265-267; S-36)

41. The AGS math data were brought to the May 6 and 13, 2005 IEP meetings. (NT 198)

42. On May 13, 2005 an IEP was developed for the 2005-2006 school year. By way of a NOREP, the parents approved the IEP and placement. (S-35)

43. Information from the January 25, 2005 ER is in the May 13, 2005 IEP. (NT 192, 194; S-35, S-44)

44. May 13, 2005 IEP reading level is 3.5. (NT 480; S-35)

45. The IEP has a transition plan. (NT 765, 766, 768, 811; S-35)

46. For the 2005-2006 IEP the school district went to measuring progress using PSSA rubrics. This was explained to the parents. (NT 271; S-35)

47. On August 23, 2005 the IEP team met to discuss concerns of the parents including IEP goals, progress reporting, tutoring, Terra Nova scores, scanning books, laptops, inclusion, Sylvan, Sustained Silent Reading (SSR) and Project 720. The IEP was not revised, rather, issues were discussed. The vocational representatives did not attend. (NT 95, 279, 282; S-25)

48. In grade ten student has progressed in reading from 480 lexiles to 900 lexiles in instructional level. (NT 476)

49. The student was at 750 lexiles by January 2006. (NT 486)

Reporting to Parents

50. Reports showing progress on IEP goals were issued quarterly in grades eight, nine and ten. Rubrics, based on state standards, were used to measure math and writing. Quarterly reports show progress toward meeting goals. The quarterly IEP progress reports are usually filled out by the case manager, but teachers sometimes do this. (NT 234, 334, 788; S-58)

51. The Inclusion Progress Reports were sent home every two weeks separate for each subject. They reported completing homework, completing class work, following directions, participating in class, test/quiz scores and overall behavior. There was an area for comments and assignments needed. Adaptations used were checked off.

The form of the progress reports evolved over time to address parents' concerns. Attachments with more data were included with the progress reports as time passed and parents requested more information. (NT 236, 237, 251, 252, 256, 290, 304, 367-427, 465-474, 728, 729; S-1, S-5, S-9, S-16, S-24, S-34, S-39, S-40, S-41, S-43, S-46, S-47, S-49, S-56)

52. The IEP Meeting Documentation form is used to document a meeting about IEP issues. It is not used for meetings when the IEP is being revised. (NT 728, 729)

53. The sending home of progress reports changed from the student delivering them to mailing them based on the student not always taking things home. Progress reports were finally sent certified mail. (NT 235, 249, 354; S-48, S-49)

54. The school district, from September 30, 2004 on, had monthly meetings with the parents to answer questions and concerns. These were memorialized on an "IEP Meeting Documentation" form. (NT 244-246; S-50)

Assistive Technology

55. Write Out Loud is a talking word processing program. (NT 652, 653)

56. Kurzweil is assistive software that will audibly read text from a page to the student. The student can type in text and have it read back audibly. Kurzweil replaced

the Write Out Loud program for the student. Kurzweil has a writing component. (NT 50, 164, 653)

57. Kurzweil utilizes an information storage “stick” to take from computer to computer. There have been problems inputting information on the “stick.” The “stick” is easily transportable and can be inserted into the classroom computers and at home. The “stick” was first used at the end of grade 9. Prior to the “stick” a floppy disc was used to record information. (NT 274, 311, 313, 316)

58. Kurzweil was in use in grade nine. (NT 174)

59. Every classroom the student is in has a computer where Kurzweil and the “stick” can be used. There are four or five computers in the high school with Kurzweil 3000 loaded. (NT 350, 710)

60. As problems with the “stick” or Kurzweil were discovered, they were corrected. (NT 329-331)

61. Texts are scanned into Kurzweil during the summer. Staff is hired to do the scanning. They are trained in using the equipment. Articles and other materials are scanned by staff or a student as the year goes on. (NT 771, 774, 775, 789, 790)

62. The student used the Kurzweil system “a handful” of times in ninth grade. The case manager was concerned about Student’s lack of use of the system. (NT 113)

63. There are sometimes problems scanning things into the Kurzweil system. (NT 93)

64. The student had some training on Kurzweil at the middle school. (NT 316)

65. On September 20, 2005 a meeting was held to plan for assistive technology use and training for the 2005-2006 school year. The use of a laptop was discussed. A Students, Environments, Tasks, Tools (SETT) format was used to assess assistive technology needs. (NT 661, 662, 680-683; S-17)

66. Ms. B, Educational Consultant for CIU #10, did Kurzweil training for the student in 2005. A four part training was set up for February and March 2005. Session one (February 14, 2005) was cancelled due to inclement weather. Session two (February 18, 2005) took place with the parents and a sibling; the student chose to go home. The third session (February 28, 2005) did not occur due to inclement weather. Session four (March 14, 2005) was held with parents, the student and staff. Prior to the session a self-study packet was distributed to make up for cancelled sessions.

Six follow-up trainings were scheduled later in the school year. Some were cancelled when the student refused to attend. (NT 113, 121, 669, 673, 674, 677, 678; S-33, S-42)

67. The student received training in Kurzweil 3000 on November 1, 2005, November 9, 2005 and November 18, 2005. During training the student showed an understanding of using Kurzweil. (NT 849, 850, 858, 864; S-6)

68. The student has the option to use or not use his assistive technology devices. (NT 647)

69. At the start of grade nine the student had a FM hearing enhancer device provided by the school district. Its use “fizzled out” due to student’s frequent failures to pick it up or return it for battery charging. The stopping of the use of the classroom hearing amplification system was by mutual consent of the parents and teacher. The classroom settings were small and the device was not needed. (NT 238, 239, 643)

70. A program called Write Out Loud was also available in ninth grade, but not used. (NT 115)

71. The parents consulted with the school district on Kurzweil’s compatibility with their home computer. The school district installed a compatible computer for home use. The school district was willing to send staff to the parents’ home to help with computer problems. (NT 658, 677, 849)

72. At the September 20, 2005 meeting of the IEP team, the parents’ request for a laptop computer was discussed. Ms. B, the assistive technology consultant from CIU, and the staff did not see a need for one.

The Kurzweil software can be used on computers throughout the school. (NT 88-92; S-17)

73. The student uses a graphic organizer in reading class. (NT 484)

74. The school district opines that, based on the experience with the student’s reluctance to use the FM system and Kurzweil the student would not be comfortable using a laptop computer. They do not see a laptop computer as necessary for the student. (NT 349)

75. The student refused to use Kurzweil even though parents wanted it. The school attempted to enlist the parents in getting the student to utilize Kurzweil. (NT 279, 377; S-27)

76. The student needs to wear eyeglasses, but he does not wear them. (NT 287)

LRE

77. The district views the student’s current placement as the least restrictive environment. They feel he could not be successful in regular education academic classes with supplemental supports and services. This is based on reading level, grades, supports in place and the student’s use of supports.

The reading teacher opines inclusion in regular education history and science would not be appropriate due to reading difficulty level on concepts. This is so even if Kurzweil was used. Further, Student won't use the auditory trainer or Kurzweil. (NT 130, 131, 132, 471, 490, 491)

78. The principal has concerns that reading requirements, writing requirements and pace of instruction would make placement in a regular education history or math class difficult for the student. (NT 714, 715)

79. In deciding the LRE for grades 8 and 9 a list of current modification/SDI's and a list of guided study teachers are sent to regular education teachers. The teachers respond on whether the student can be accommodated in his/her class. (NT 647, 648)

80. The April 22, 2004 and May 6/13, 2005 IEP's have modification/SDI's for the student's two regular education classes. (NT 834; S-35, S-59)

81. Ms. S opines that participation in some regular education classes would be good for the student. She feels accommodations for writing and reading would be needed. (NT 577)

History Class Trial/Change of Placement

82. The student visited a regular education history class December 13 to December 15, 2005 at the parents' request. No evaluation of the trial visit was made. Information needed was placed on the "stick." (The "stick" is a memory device for storing information to be used by the student on a computer.) (NT 43, 44, 45, 46, 110, 111, 112; P-2)

83. Trial in regular education history used modifications and SDI's in student's current IEP. (NT 718, 727, 729)

84. The trial placement in history in December 2005 was not intended as a change in placement. (NT 310)

Following Curriculum

85. All curriculum in the school district is Pennsylvania Academic Standards based. Delivery of the curriculum is based on needs. Each course has a course of study. This includes special education. The general curriculum for a subject is taught across the grade. It is adjusted for special education. The general curriculum is based on state standards. (NT 104, 105, 285, 499, 500, 525, 748, 749, 751; S-22)

86. The student's math program follows the regular education curriculum as a guideline. Algebra and geometry concepts are taught. The instruction is individualized. The math teacher assessed the student's math skills at the start of the school year. (NT 70; S-2, S-24)

87. The student's classroom materials are at student's instructional level, but on grade level curricular content. The student's current history and science books are at the fourth grade reading level. (NT 108, 796, 797)

Tutoring

88. The case manager offered to tutor the student after school. (NT 137, 310)

89. The parents approached the school district at the beginning of ninth grade for tutoring through Classroom Plus. The school district was not an approved Classroom Plus provider for ninth graders. (NT 136, 247, 519-521)

90. Classroom Plus is a state program that gives five hundred dollar vouchers to eligible students to get tutoring from tutoring services on an approved list. This is available up to grade 9. The eligibility is based on PSSA scores. Early in ninth grade the school district referred the parents to sources to find Classroom Plus providers since they were not providers. (NT 509, 510, 517, 528, 529, 530)

91. The Educational Assistance Program (EAP) is a tutoring program through the State Department of Education administered by the school district. Eligibility is by way of PSSA scores, basic or below basic test scores, course problems and teacher recommendations. Economically impoverished school districts are also eligible. It is limited to math and language arts. Each building selects eligible students. Letters of eligibility are sent to the parents to sign up their students. The EAP currently is four hours of tutoring for each subject. EAP was not available in the 2004-2005 school year. (NT 503-510, 521, 525, 526, 698, 699, 728)

92. EAP existed for the student in grade ten. The parents did not avail themselves of this. Classroom Plus does not include tenth graders. At the October 19, 2005 resolution meeting the parents rejected EAP and in-school tutoring. (NT 521, 525, 527, 528, 529; S-10)

93. Every student who has requested a tutor under EAP has gotten one. (NT 515, 519)

94. The high school has prescribed days when teachers are available for tutoring or extra help. (NT 694, 697)

Other

95. The parents have trouble understanding the lexile system. It was explained to them. (NT 471, 475, 476; S-2, S-17)

96. Lexiles can be roughly translated into grade level ranges. (NT 746, 747)

97. The student's PSSA test scores were below basic in reading and mathematics. (S-162; P-5)

98. The student's reading and writing disabilities negatively affect student's math performance. (NT 591)

Issues

1. Do the student's IEP's for 2003-2004, 2004-2005 and 2005-2006 document completion or progress of the IEP goals?

2. Was the January 2005 reevaluation completed in a timely manner?

3. Should the student's IEP have been revised after the January 2005 reevaluation?

4. Was the IEP team for 2005 IEP properly constituted?

5. Has the Kurzweil portion of the IEP been implemented in a timely manner?

6. Is the student entitled to a laptop computer at school district expense?

7. Is the student entitled to a school district funded tutoring program?

8. Is the student's academic program at an appropriate level to permit student to progress in the general curriculum?

9. Have the parents received progress reports as stated in the past and current IEP's?

10. Is the student being taught in the general curriculum for all subjects?

11. Did the school district mislead the parents into believing that the student was not capable of learning in a regular classroom?

12. Was the temporary placement an inappropriate change of placement?

Resolutions Sought

1. Reimbursement of all fees, including transportation and tutoring costs minus \$500 from Classroom Plus and the funds that were directed by the school district, defined as \$1,960.

2. Parents seek reimbursement and/or compensatory education for tutoring and transportation done and to be done by [the learning center] until the student reaches student's 12th grade level.

3. The student's IEP is to be revised with assistance by the Department of Education. The IEP should contain placement in regular education with helpful adaptations, a laptop computer, training for the student in using the computer, progress reports on reading, math and writing skills every nine weeks, and instruction at grade level.

Stipulations

1. The student's date of birth is [].
2. The student is an eligible student identified as learning disabled.
3. The student is a resident of the School District.

Discussion and Conclusions of Law

Under Schaffer v. Weast, 546 U.S.—(November 14, 2005), the party that request the due process hearing, the parents in this instance, bears the burden of proof on the provision of FAPE or the lack thereof.

The issues listed above are the pro se parents' description of their accusations against the school district. For the sake of organizing the discussion, they are arranged by the statutory requirement of the school district's responsibility to deliver FAPE. Decisions are being made on substantive grounds and a preponderance of the evidence.

The IDEA (20 U.S.C. §1412) requires the state to provide a "free appropriate public education" to all students who qualify for special education services. In Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982), the U.S. Supreme Court held that this requirement is met by providing personalized instruction and support services to permit the child to benefit educationally from the instruction, providing the procedures set forth in the Act are followed. The Rowley standard is only met when a child's program provides him or her with more than a trivial or de minimis educational benefit. "Free appropriate public education" is defined as special education or related services that: (1) are provided at public expense; (2) meet the standards of the state; (3) include preschool, elementary school, or secondary school; and (4) are provided in conformity with an IEP, meeting the requirements of 34 CFR §300.340-350.

Before dealing with the issues individually, it is important to note that the parents agreed with the three IEP's in question, the ER's that drove the IEP's and the resulting placements.

Issue 1. Do the student's IEP's for 2003-2004, 2004-2005 and 2005-2006 document completion or progress of the IEP goals?

Each IEP has present levels listed and goals that are measurable. The eighth grade IEP set the student's reading level at 2.5 GE, the ninth grade IEP had a goal for increasing reading from 3.0 GE to 3.5 GE and the tenth grade IEP had student at 3.5 GE with a goal of 4.5 GE. The student's lexile in reading was 750 in January 2006. For math goals measurement varied in terminology from year to year, but testing by the math teacher showed progress. The reading and math progress were met, even though slow, and at a rate approved by the parents by agreeing to the IEP's. Certainly the progress meets the Rowley standard of being more than trivial especially when the student's severity of disability is considered. If results of testing by [the learning center] are used, learning growth is even greater.

Issue 2. Was the January 2005 reevaluation completed in a timely manner?

The parents signed permission for the reevaluation on October 11, 2004. A meeting on January 18, 2005 with the parents discussed the ER. The ER was completed January 25, 2005 and sent to the parents January 28, 2005. This is about sixty-two school days with other events occurring earlier. 34 CFR §300.531, 535 says the ER will be completed within sixty school days. This is not out of the timeline severely enough to violate FAPE.

Issue 3. Should the student's IEP have been revised after the January 2005 reevaluation?

The IEP was revised after the January 25, 2005 ER. The delays in completing the IEP were due to delays caused by the student's failing to deliver the invitation to the IEP meeting and accommodating the parents' schedule. The IEP meeting did occur and an agreed upon IEP was developed.

Issue 4. Was the IEP team for 2005 IEP properly constituted?

The composition of an IEP team is established in 34 CFR §300.344(A):

§300.344 IEP team

(a) General. The public agency shall ensure that the IEP team for each child with a disability includes--

- (1) The parents of the child;*
- (2) At least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);*
- (3) At least one special education teacher of the child, or if appropriate, at least one special education provider of the child;*
- (4) A representative of the public agency who – (i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (ii) is knowledgeable about the general curriculum; and (iii) is knowledgeable about the availability of resources of the public agency;*

- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (6) of this section;*
- (6) At the discretion of the parent or the agency, other individuals have knowledge or special expertise regarding the child, including related services personnel as appropriate; and*
- (7) If appropriate, the child.*

The IEP team had the parents, special education teacher, LEA (chair) and a vocational education teacher. Vocational education is part of regular education, therefore, a regular education teacher was present. If the parents wanted a specific teacher or subject area teacher present, they knew they had the right to request it. Further, the parents approved the IEP and placement.

Issue 5. Has the Kurzweil portion of the IEP been implemented in a timely manner?

Much time at the hearing was devoted to the issue of Kurzweil 3000, its use and training. Kurzweil is a software system that reads back printed material. It also has a writing component. The school district chose this system to replace an earlier system. The student was trained in its use both formally and informally. The trainer indicated the student understood the system. As noted under the findings of facts, the student resisted some of the training. In fact, the student has a history of not utilizing assistive technology provided for student.

The Kurzweil program is available on computers in student's classrooms as well as at other locations. The parents have been instructed on its use. The school district has given technical assistance in the home. They even provided a computer for the parents when there were difficulties using Kurzweil on their home computer.

Issue 6. Is the student entitled to a laptop computer at school district expense?

From Rowley, cited above through Ridgewood, 172 F. 3d at 247, it is established that a school district does not have to provide optimal services. The student has the portability of information and needed texts on a portable memory device, the "stick," that can be used on all the computers at school and home that are loaded with Kurzweil. The lack of a laptop computer is not a hindrance to student achieving student's IEP goals or a denial of FAPE.

Issue 7. Is the student entitled to a school district funded tutoring program?

This issue is arguably outside of the jurisdiction of the Hearing Officer since the programs sought by the parents are in regular education (EAP, Project 720, Classroom Plus). The parents expanded their argument to an accusation that they were not informed of available programs. Also, the question of school-based tutoring is appropriate to be addressed.

First of all programs available to students through the school district were known to the parents through mailings and discussions at meetings. The school district has offered tutoring to the student. There are in-house programs that provide tutoring. No tutoring is listed on any of the IEP's.

Issue 8. Is the student's academic program at an appropriate level to permit him to progress in the general curriculum?

It is clear that special education students are to have programs designed for making progress in the general curriculum. 20 U.S.C. §1414(d)(1)(A)(II) states:

*(II) a statement of measurable annual goals, including academic and functional goals, designed to--
(aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum.*

The school district's general curriculum is based on state standards. At each grade level and subject the program for special education students is an adaptation of the general curriculum to meet the level and needs of the student as developed in the IEP. In fact, some expected levels of achievement in the student's IEP are stated in meeting PSSA levels.

The progress of the student is painfully slow. Student has met the progress goals stated on student's grade eight, grade nine and grade ten (to date) IEP's. The parents approved these IEP goals. Student is progressing in the general curriculum as it is modified to meet Student's needs and levels.

Issue 9. Have the parents received progress reports as stated in the past and current IEP's?

20 U.S.C. §1414(d)(1)(III) states:

(III) a description of how the child's progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.

Quarterly reports were issued at each grade level. Additional reports on progress were issued regularly and increased to every two weeks at parents' request. There were many meetings called to discuss concerns. These were documented on forms called "IEP Meeting Documentation."

Issue 10. Is the student being taught in the general curriculum for all subjects?

This was discussed in issue 8.

Issue 11. Did the school district mislead the parents into believing that the student was not capable of learning in a regular classroom?

There is no evidence to suggest that the school district sought to mislead the parents on the student's capability to participate in the regular classroom. *Oberti v. Board of Education of the Borough of Clementon*, 995 F. 2d 1204 (3d Cir., 1993), stated a preference, within the context of an appropriate program, for regular education in public school classes unless certain criteria are satisfied, which the Court there summarized as follows: "In sum, in determining whether a child with disabilities can be educated satisfactorily in a regular class with supplemental aids and services (the first prong of the two-prong mainstreaming test we adopt today), the court should consider several factors, including: (1) whether the school district has made reasonable efforts to accommodate the child in a regular classroom; (2) the educational benefits available to the child in a regular class, with appropriate supplementary aids and services, as compared to the benefits provided in a special education class; and (3) the possible negative effects of the inclusion of the child on the education of the other students in the class."

Discussions of LRE are documented in each IEP. The IEP's for grades nine and ten place the student in two regular education classes each year. These are supported by specific Program Modifications and SDI's. The school district strongly holds that more inclusion in regular education is not appropriate. Further, *T.W. v. Unified Sch. Dist. No. 259*, 43 IDELR 187, 2005 WL 1324969 (10th Cir. 2005) (unpublished disposition) states that in determining whether a school district has complied with the LRE mandate, the "so-called Daniel R.R. test" is followed. The Daniel R.R. test contains a two-part analysis. First, the court "determines whether education in a regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily." If so, the regular classroom is the child's LRE. If not, the court next "determines if the school district has mainstreamed the child to the maximum extent appropriate." In applying the Daniel R.R. test, the court considers the following non-exhaustive factors: (1) steps the school district has taken to accommodate the child in the regular classroom, including the consideration of a continuum of placement and support services; (2) comparison of the academic benefits the child will receive in the regular classroom with those he will receive in the special education classroom; (3) the child's overall educational experience in regular education, including non-academic benefits; and (4) the effect on the regular classroom of the disabled child's presence in that classroom. As stated below, a trial placement occurred to evaluate additional placements in regular education.

Issue 12. Was the temporary placement an inappropriate change of placement?

The trial placement in a regular education history class was not a change in placement. The IEP and placement remained in effect. A trial in a regular education class was requested by the parents. There was no intention that this be more than a chance to see what success the student would have with student's current supplementary services and a chance to see what might be needed for future inclusion in regular education.

The parents failed to meet their burden of proof that FAPE was denied. Any procedural errors committed by the school district were harmless and do not rise to a denial or hindering of FAPE.

There exists in this case a deep mistrust by the parents toward the school district. The parents' request that an outside source help with the development of the next IEP has merit. I will not order this since I have not found a denial of FAPE, but I offer it as a suggestion. The Office of Dispute Resolution offers the service of facilitated IEP development.

With the parents not prevailing, no discussion of compensatory education or reimbursements is needed.

The LEA is ordered to take the following action

None

Date_____

Kenneth Rose
Hearing Officer