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PENNSYLVANIA

SPECIAL EDUCATION HEARING OFFICER

DECISION
DUE PROCESS HEARING

Name of Child: D S

ODR #5993/05-06 LS

Date of Birth:
XX-XX-XXXX

Dates of Hearing:
February 28, 2006

CLOSED HEARING

Parties to the Hearing:
Parents

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Date Record Closed:
Date of Decision:
Hearing Officer:

April 22, 2006
April 22, 2006
William Culleton, Jr., Esquire

INTRODUCTION

Student (Student) is a xx year old eligible child who is currently attending fourth grade at the private Cambridge School. (NT 10-19 to 25.) He is a resident of the Council Rock School District (District). He is identified as having a specific learning disability in reading. In September, 2005, when he was about to begin fourth grade, his Parents withdrew him from the District's Elementary School and enrolled him in a private school, [Redacted] School.

The Parents contend that the District failed in its Child Find obligation to identify the Student in a timely fashion as in need of specially designed instruction. They assert that the District should have identified the Student while he was still in first grade, during the 2002-2003 school year. Instead, the District did not refer the Student for evaluation until May, 2004, the end of his second grade year. The Parents also contend that the District's resulting IEP, as revised in 2005 and 2006, failed to set forth measurable goals and benchmarks, and offered specially designed instruction in vague terms that failed to address the Student's needs adequately, so that the IEP failed to offer FAPE. They seek compensatory education from the beginning of the Student's first grade year until he enrolled in the private school; tuition reimbursement for the Student's fourth grade year at the private school; in the alternative, compensatory education for the Student's fourth grade year; reimbursement for an independent evaluation; and reimbursement for private tutor services that the Parents unilaterally provided from the beginning of the Student's first grade school year to the present date.

The District contends that it provided an appropriate screening and instructional support program for the Student during the Student's first and second grade years, during which he made substantial academic progress. It also contends that its IEPs were appropriate and offered FAPE. Finally it argues that there is no basis for ordering either tuition reimbursement for the private school placement, or reimbursement for the costs of tutoring. In addition to asserting that its programs and services were appropriate, the District contends that the Parents have failed to prove that the private school program provides any services that are appropriate. The District contests reimbursement for the costs of the IEE, on grounds that it did not provide the District with any new information and that the District did not rely upon that IEE. Finally, it argues that the Parents have failed to present any evidence that they paid any tuition or tutoring costs.

PROCEDURAL HISTORY

The Student attended kindergarten through third grade at the District's Elementary School. He received supplemental assistance in reading beginning in November of 2002, when he was in first grade. He received IST services from the end of his first grade year until the end of his second grade year. In May, 2004, the District issued an ER which identified the Student with a specific learning disability. On June 18, 2004, the District provided an IEP, and the IEP was revised on June 9, 2005. In August, 2005, the District received the report of a private evaluator who had been retained by the Parents. In September, 2005, the Parents removed the Student from the Elementary School and enrolled him in the private school. On December 13, 2005, the District revised the Student's IEP.

ISSUES

1. Did the District fail to refer the Student for evaluation in a timely manner while he was receiving Learning Support in first grade and Instructional Support Services in second grade?
2. Did the District's 2004 IEP, as revised in 2005 and 2006, fail to set forth measurable annual goals and therefore fail to offer FAPE?
3. Did the District's 2004 IEP, as revised in 2005 and 2006, fail to set forth clear and adequate specially designed instruction and therefore fail to offer FAPE?
4. Is the Student entitled to an award of compensatory education, and if so, for what period of time?
5. Are the Parents entitled to reimbursement for the tuition costs of the private school for the Student's 2005-2006 school year?
6. Are the Parents entitled to reimbursement for the costs of an Independent Educational Evaluation provided to the District in or about August 2005?
7. Are the Parents entitled to reimbursement of tutoring costs incurred from the beginning of the Student's 2002-2003 school year?

FINDINGS OF FACT

CHILD FIND

1. The District employs a two level program for screening as part of its Child Find obligation, including learning support interventions in the earliest grades, followed by an Instructional Support program if further intervention is needed. (NT 1694-9 to 1695-7.)
2. The District's screening program is based upon a modified response to intervention program. (NT 1259-17 to 24, 1263-21 to 1264-11, 1695-8 to 1696-14.)
3. The Student was screened for possible identification using this model. (NT 1695-8 to 11.)

READING _ FIRST GRADE

4. The Student's first grade teacher referred him for a literacy evaluation in October 2002. The teacher reported inconsistent letter/sound association, poor sight word vocabulary and poor writing ability. He was reading at DRA level 2, below preprimer; the District norm is level 3 for beginning of first grade. His comprehension, although not at grade level, was considered a strength. It is not considered unusual for a student at the beginning of first grade to exhibit deficits in phonemic awareness. (NT 520-16 to 24, 521-25 to 523-25, 541-20 to 542-2, 543-15 to 22; P-33 p. 1, P-36, P-37 p. 2.)

5. Due to his immaturity, it was not appropriate to refer the Student for classification at this time. (NT 1704-5 to 10.)
6. In October and November 2002, the teacher and the District's reading specialist contacted the Parents and informed them that the Student had been identified as needing reading support services in the first grade classroom. (P-35 p. 1, P-36 p. 2.)
7. In November 2002, the Student was considered to need support for reading, but not to be atypical of the 20 to 25 percent of students who need such services; therefore, he was not a candidate for referral to evaluate for special education services. (NT 595-18 to 596-20, 1704-5 to 12.)
8. During his first grade year, 2002-2003, the Student received supplemental reading services from the reading specialist, consisting of small group sessions three times per week for ½ hour per session. The specialist was certified in elementary education, special education, as a reading specialist and as a Reading Recovery teacher. The services began in late October or early November. (NT 518-8 to 521-4, 524-19 to 25; P-33 p. 2, P-35 p. 1.)
9. These services were provided in a small group of three, utilized multisensory techniques and focused upon phonemic awareness and decoding skills. (NT 596-24 to 603-10.)
10. In first grade, the Student also received support services from the District's learning support teacher, in addition to extra attention from the teacher and volunteers. In the classroom, the teacher provided pre-teaching and previewing, small group instruction, peer buddy teaching techniques, and restatement or orally read instructions. (P-33 p. 2, P-35 p. 1.)
11. The services provided to the Student in first grade were research based, consistent, and structured. (NT 538-13 to 19, 540-15 to 541-14.)
12. From November to January, the Student improved from DRA level 2 to level 3, the initial preprimer level. (NT 526-2 to 11, 547-2 to 7, 756-21 to 760-11, 765-6 to 24; P-33 p.1.)
13. The Student's DRA score rose during his first grade year from independent at level 2 to independent at level 6. This was still at a preprimer level. His guided reading level was "E" in April of 2003. (NT 531-2 to 16; P-30, P-33, P-37.)
14. The Student was behind grade level in reading proficiency. The DRA level of 6 and guided reading level of "E" correspond to a grade level of about the middle of first grade. The District's DRA standard baseline for the Fall of Grade 2 calls for a DRA level of 16 to 18 and a guided reading level of "J". (NT 542-18 to 545-14; P-19, P-37 p. 8.)
15. By the end of first grade, the Student's word recognition on the Houghton Mifflin IRI was 63% for first grade level material and 35% for primer material. He still had difficulty segmenting phonemes. His sight word vocabulary, though improved, was not at the level expected for the end of first grade. Fluency was poor. Comprehension,

although considered a strength, was nevertheless 50% for first grade material - below grade level. His reading assessments showed very little progress from January to May, 2003. His regular education teacher felt that he had "plateaued." (NT 541-20 to 542-10, 545-15 to 547-18, 549-20 to 24, 613-5 to 10; P-21 p. 10, P-31 p. 1-2, P-33 p. 1, P-34.)

16. The District attributed this in part to emotional issues of separation anxiety. The literacy specialist decided not to refer for Instructional Support Services in January, but to allow more time to judge the effectiveness of the remedial support services already in place. (NT534-2 to 538-12, 548-15 to 549-1.)
17. In April 2003, the Student was referred for Instructional Support services in reading. An initial IST meeting was held on May 19, 2003. IST services were provided for the remainder of May and June 2003 and the 2003-2004 school year, the Student's second grade year. Goals for this period included improving sight word vocabulary to 80% at levels 1.3 and 1.4, and making appropriate use of reading decoding strategies. In September 2003, goals were added in automaticity, spelling and reading aloud. (NT 545-15 to 547-18; P-21 p. 10, P-28 p.2, P-33 p.4, P-31.)

READING – SECOND GRADE

18. In a September 24, 2003 meeting to revise the Instructional Support Action Plan, a specific decoding goal was added. (NT 1008-19 to 1009-10; P-28 p. 5.)
19. At the September meeting, it was decided that the District's reading specialist would evaluate the Student again and after that another meeting would be convened. (S-18.)
20. At this meeting the team did not discuss or consider referral for special education services. (NT557-2 to 558-17; P-28.)
21. The Student's Mother participated in this meeting. In addition, the Parents were advised in writing that the literacy specialist would provide three sessions per week of reading support to the Student during his second grade year. (P-27.)
22. The District's reading specialist issued a report dated October 6, 2003, in which she recommended phonological awareness activities in his reading program, including segmenting, learning decoding of unfamiliar words, and fluency exercises. (NT 563-6 to 564-9; S-22.)
23. On October 10, 2003, the literacy specialist wrote a Reading Profile for the student which recognized his needs in decoding, sight vocabulary, automaticity, fluency, and word recognition. The Profile contains strategies including "direct, explicit, sequential decoding instruction." (P-26 p.1.)
24. In second grade, the 2003 to 2004 school year, the District provided the following services to the Student: weekly small group reading instruction with the literacy specialist, three times per week for ½ hour per session; weekly guided reading with the instructional support teacher, and special reading activities with the instructional support teacher. He also received daily small group instruction in phonemic awareness,

decoding, fluency and word identification, one half hour per session. These groups varied in size from three to five students during the year. The regular classroom in addition provided whole group instruction in comprehension and vocabulary for approximately 45 minutes per day. In mathematics, the Student was allowed to rework his answers. (NT 556-10 to 557-1, 1011-9 to 24, 1048-14 to 1052-8; P-3 p. 6, P-28 p. 2, S-24, S-28, S-54 p. 185.)

25. The reading decoding instruction was research based, consistent, structured and multisensory. It was provided by the regular education teacher daily and reinforced by the literacy specialist three times per week, and the District's curriculum provides for reinforcement of reading skills throughout the day. It did not rely upon one approach to reading instruction, but combined approaches consistent with best practices. Instruction was differentiated. (NT 538-13 to 19, 540-15 to 541-14771-2 to 13, 798-25 to 12, 801-3 to 19, 809-10 to 813-19, 819-16 to 821-2, 823-5 to 824-23, 850-18 to 851-4, 906-23 to 908-1, 912-8 to 913-4, 1014-5 to 1015-3, 1033-6 to 1023-6, 1032-1 to 1033-20, 1037-20 to 1042-10, 1221-15 to 23.)
26. In addition, the Parents provided once per week from a private tutor who was a former teacher with the District. The District's special education teacher coordinated with the tutor by exchanging notes on an almost weekly basis. The private tutor reinforced much of what was taught by the Special Education teacher in small group sessions pursuant to the IST plan. The tutor used multisensory techniques and games, and she worked directly on letter-sound correspondence, decoding, fluency, sight-words, comprehension, spelling conventions and mathematics. (P-25 p. 1, S-54 p. 175, 181, 183, 185, 187-188, 190, 192, 197, 199, 201, 202, S-57.)
27. The tutoring and coordination between District teacher and tutor continued into the 2004-2005 school year, and continued to utilize games and mutisensory techniques to develop the Student's decoding and fluency skills. (S-57, S-59, S-65, S-124 p. 642, 643, 645, 647, 648, 655, 657, 661, 662, 664, 676, 683.)
28. The tutor noted improvement in the Student, but continued to encounter inconsistency and basic decoding errors. (S-54 p. 187, 195, 202, S-124 p. 650, 656, 669, 670, 672-3, 678, 679, 682.)
29. The Parents provided the Student with weekly reading tutoring over the summer after his second grade year. (P-18.)
30. By November, the Student was making steady progress toward his IST goals. His teachers estimated that he was reading at least at an instructional level at about DRA 10 or 12. He was segmenting and blending sounds with two vowels. His latest tested proficiency level on the DRA was level 8 with adequate comprehension, still at the preprimer level. He was improving also in sight word reading. His teachers did not consider it necessary to refer him for evaluation for special education for a specific learning disability, because the interventions in the IST program were having a positive effect. The Parents' concern with labeling for special education purposes was also a concern of the teachers. (NT 1043-20 to 1045-9, 1052-9 to 12, 1055-10 to 1056-13,

1069-4 to 1070- 5, 1070-20 to 25, 1071-19 to 1072-10, 1263-15 to 1264-18, 1265-19 to 1266-10; S-29; P-37 p. 1.)

31. On November 6, 2003, at an IST progress meeting, District personnel and the Mother agreed to refer the Student for speech and language evaluation in view of his continued difficulty understanding phonemes, decoding words, and distinguishing vowel sounds. (NT 1044-18 to 1047-15; P-25, S-26.)
32. At this meeting, the Mother indicated that the Father would disfavor “any label” that might result from evaluating the Student. (NT 1046-19 to 1047-15; P-25.)
33. The District issued its first Evaluation Report on the Student on January 12, 2004, as the result of the speech and language evaluation, finding him not eligible as a child with a speech or language impairment, and not in need of specially designed instruction. The Mother signed the Evaluation Report and approved the NOREP. (NT 1057-16 to 22; S-35, S-38.)
34. The IST team did not to this point consider referring the Student for special education evaluation or increasing the reading support services that he was receiving. (NT 575-6 to 16, 1960-19 to 25.)
35. On January 27, 2004, the District received the report of their first private evaluator. This was based upon evaluation sessions dated November 28 and 30, 2003, initiated by the Mother. The report found a statistically significant difference between verbal and performance measures, indicating weakness in the Student’s visual-perceptual-motor capacity. (S-36.)
36. The first evaluator’s testing revealed many of the same reading and spelling deficits noted at the end of the Student’s first grade year, including difficulties with consonants and vowels, and reliance upon the first letter of a word in word attack. (S-36.)
37. On January 27, 2004, District personnel referred the Student for evaluation for special education, based upon his reading and writing functioning below grade level, decoding and fluency deficits, and struggles in content areas as a result of his reading and writing deficits. The referral notes receipt of the private evaluation report. (S-39.)
38. The IST team referred the Student for evaluation only because the independent evaluation had been received. (NT 1147-17 to 23, 1224-16 to 20.)
39. On February 2, 2004, District personnel forwarded to Parents a Permission to Evaluate form, citing as the reason for referral the submission by Parents of a private evaluation. The District received the form, signed by the Mother, on February 24, 2004. (S-40.)
40. The IST program continued during the second half of second grade. (NT 1067-18 to 25.)
41. By March 23, 2004, the Special education teacher noted an improvement in the Student’s decoding and phonemic awareness and the tutor noticed improvement in the Student’s use of self-correcting in reading. (S-54 p. 187, 195.)

42. During second grade, the Student made progress in reading comprehension. His teacher considered his progress to be at a high rate. He improved in sight word recognition, fluency and ability to decode words. He was beginning to monitor his own comprehension, stopping to reread when he did not comprehend. His DRA level rose from 6 to 20, the latter measured on May 19, 2004. DRA 20 corresponds to a grade level in the beginning of second grade. The District's Spring benchmark for second grade is 28. His sight word reading also improved to a mid-second grade level. (NT 1070-17 to 1072-10, 1089-7 to 1091-20, 1102-25 to 1103-9, 1140-12 to 22, 1186-25 to 1187-7; P-19, P-21 p. 10, P-22, P-26, S-54 p. 180.)
43. The District's second Evaluation Report was dated May 24, 2004. The report emphasized that the Student had serious decoding, phonics and reading comprehension problems. Achievement in these areas was significantly lower than would be expected based upon the Student's cognitive abilities. (NT 845-9 to 846-10; P-21 p. 6, 11, S-50 p. 139, 140.)
44. The ER found that the Student qualified for special education as a child with a specific learning disability. (P-21 p. 12.)
45. The District's special education teacher assigned to the Student for third grade reported a reading assessment dated October 25, 2004. She found that the Student was functioning in reading at the level of a child seven years and six months old and that age-level reading decoding tasks would be very difficult for the Student. (S-61 p. 229.)
46. The District's initial IEP was dated June 18, 2004, and it offered special education services to begin in the Student's third grade year. (P-20.)
47. As listed in the Present Levels of Educational Performance section of District's June 2004 IEP, the Student's reading level as measured by the DRA was instructional at Level 20, corresponding to the middle of second grade. (P-20 p. 5.)
48. However, regarding reading decoding, the other measures listed in the PLEP indicated that the Student was functioning at a beginning of second grade level. His word recognition on the Brigance instrument was 10% at second grade. On the Houghton Mifflin Word List, he was measured at 77% to 94% at level 2.1, and 47% to 67% at level 2.2. (P-3 p. 7, P-20 p. 5.)
49. The behavioral narrative in the PLEP section describes difficulties with decoding, word recognition and comprehension. (P-20 p. 5.)
50. The IEP needs section listed the need for decoding skills, reading comprehension and word recognition, as well as writing skills. (P-20 p. 5.)
51. The District's initial NOREP was dated June 18, 2004. The NOREP recognized the Student's need for specially designed instruction and specified a placement of itinerant learning support. (P-20.)

52. The June 2004 IEP provided 6.5 hours per week of itinerant learning support and fifteen minutes of “extra reinforcement two to three times per week in reading, writing and/or math.” (P-20 p.13.)
53. The Mother signed the NOREP dated June 18, 2004. (S-53.)
54. The District’s program included some reinforcement of reading comprehension strategies in solving mathematics problems. (S-54 p. 179.)

READING – THIRD GRADE

55. The Student entered third grade scoring below basic or basic in most of the reading and writing tasks recorded on the Grade 3 District Assessment Recording Sheet. (P-15.)
56. The Student’s third grade special education program included two and one quarter hours of direct special education services in addition to four and one quarter hours of regular education reading and writing workshop. His special education teacher worked with him one on one on a pull out basis two to three times per week. (NT 1315-4 to 15; P-20.)
57. The pullout services included decoding, reading comprehension and writing. Fluency instruction was provided twice per week. (NT 1315-21 to 1316- 18.)
58. Instruction was explicit, sequential, systematic and structured. (NT 1323-2 to 4, 1324-12 to 25, 1325-17 to 1326-11, 1357-16 to 1368-7, 1960-22 to 25.)
59. The Student made substantial progress in third grade in reading decoding. (NT 1318-17 to 23, 1319-4 to 1320-4, 1961-1 to 6.)
60. The District’s second IEP was dated June 9, 2005. (P-13.)
61. The June 2005 IEP PLEP section reflected that the Student had progressed in reading proficiency as measured by the DRA from 20 in 2004 to 34 in 2005 with over 95% accuracy. Thus he met and exceeded the first reading goal stated in the June 2004 IEP. He made substantial progress on the other goals as well, exceeding the goal on word recognition. (NT 1396-6 to 1343-17.)
62. Nevertheless, the PLEP and the first goal in the June 2005 IEP indicated that, on several other measurements of reading decoding skill, the Student had not made meaningful progress during his third grade year. He was still functioning at a grade level of middle of second grade. His Woodcock letter/word identification scores were at a 2.4 grade equivalent. His word attack on that instrument was at 2.1. On the QRI word lists, his grade two accuracy was 95%, and his third grade accuracy was 45%. (NT 214-19 to 217-15; P-13 p. 3, 4.)
63. The District’s special education teacher assigned to the Student for third grade reported a reading assessment dated May 12, 2005. She found that the Student was functioning in reading decoding at the level of a child seven years and eleven months old and that age-level reading decoding tasks would be very difficult for the Student. (S-61 p. 229.)

64. The June 2005 IEP provided ten hours of itinerant learning support per week. It also provided books on tape, small group guided reading three times per week, and direct phonics instruction and “making words” activities three times per week. (P-13 p. 10.)
65. The June 2005 IEP provided a level of intervention consistent with that recommended by the private evaluator with regard to the Student’s learning disability in reading and writing, as well as several of the specific interventions recommended by the private evaluator. It also included a goal that specifically addressed word recognition and fluency and would be measured by the DIBELS reading probes, as the private evaluator had recommended. (P-13 p. 7-13.)
66. The District offered, in addition to the services formally offered in the IEP, to provide Wilson tutoring during the school year, or to provide tutoring during the summer. (S-68.)

READING – FOURTH GRADE

67. The Parents obtained an Independent Educational Evaluation dated August 19, 2005, in which the evaluator diagnosed the Student with dyslexia caused by underlying problems in phonological processing and information retrieval. The evaluator also diagnosed Attention-Deficit/Hyperactivity Disorder. (P-10 p. 21.)
68. The Parents requested that the District review the IEE and in September, 2005, the District presented them with a request to evaluate, which the Mother signed. (S-82, S-83.)
69. By letter dated September 29, 2005, the Parents notified the District that they intended to withdraw the Student from and enroll him in a private school specializing in teaching children with dyslexia. (P-4.)
70. On October 3, 2005, the Mother signed the District’s withdrawal form, indicating her disagreement with the prevailing IEP and requesting due process. (S-85.)
71. The District issued an ER dated November 8, 2005, which concluded that the Student remained eligible. An IEP was drafted and forwarded to the Parents, but never signed. The IEP offered additional specificity as to the nature of the phonics instruction being offered, specifying that it would be a “multi-sensory systematic approach” and would include Making Words Activities and decodable texts with controlled vocabulary. These program elements had been provided previously by the Student’s reading teachers, but to an unknown extent. (S-54, S-57, S-87 p. 341, P-25.)

WRITING

72. At the beginning of first grade, the Student’s spelling skill was considered adequate. (NT 586-3 to 592-13; S-2.)

73. By April of 2003, in the Student's first grade year, his writing sample according to the District Rubric showed proficiency in focus and organization, and basic functioning in content, style and conventions. He needed support with spelling of high frequency words. (P-31 p. 1.)
74. On January 27, 2004, District personnel referred the Student for evaluation for special education, based in part upon his writing functioning below grade level. (S-39.)
75. The Student's IEP contains goals for writing because his conventions were weak, and since those are linked to decoding problems, it was felt that this area needed support. (NT 1262 -11 to 21.)
76. In second grade, the Student was provided instruction in writing in a scaffolding program that utilized graphic organizers. (NT 1029-5 to 1031-25.)
77. During second grade, the Student made some progress in writing. He had advanced from Basic to Proficient in focus, content, organization, style, and conventions as measured by the District's grade 1 and 2 primary writing rubric. His teacher considered him to be at an acceptable level for second grade. (NT 1077-17 to 1081-15, 1154-4 to 20; P-19, S-43.)
78. In May 2004, the Student's spelling and writing was poor. He did not yet spell high frequency words correctly with consistency. He did not yet write about a variety of topics. His basic conventions were inconsistent. (P-21 p. 10, S-44.)
79. The May 24, 2004 ER noted that the Student had difficulties with spelling. Achievement in these areas was significantly lower than would be expected based upon the Student's cognitive abilities. (P-21 p. 6, 11.)
80. As listed in the Present Levels of Educational Performance section of District's June 2004 IEP, the Student's writing as measured by the District's writing rubric for second grade was Proficient in organization and content, Basic to Proficient in conventions and Basic in focus and style. (P-20 p. 5.)

ATTENTION ISSUES

81. The Parents' expert diagnosed the Student with Attention Deficit Hyperactivity Disorder, based upon the data showing high comorbidity of ADHD with phonological awareness deficits, references to attention issues in records, and his observations during testing. (NT 185-25 to 188-1; P-10 p. 9, 13, 15, 16, 21.)
82. The Student's teachers did not observe serious attention problems or problems in organization. (NT 799-13 to 15, 1109-15 to 1110-14, 1327-13 to 1328- 6.)

83. Screening instruments received by the District from teachers indicated no concern with hyperactivity or attention problems in school. (NT 1264-19 to 1265-18, 1717-10 to 1721-14.)
84. Minor problems with attention and behavior in school were resolved in second grade. (NT 1010-8 to 24, 1717-13 to 1719-12, 1720-12 to 1721-14.)

ADEQUACY OF THE IEP for 2004 and 2005

85. The May 2004 ER referred to reading fluency as a problem for the Student, but did not list it as a specific need. (P-21 p. 2, 9, 10, 11, 12.)
86. The Present Levels of Educational Performance section of District's June 2004 IEP is clear and intelligible and adequately describes the Student's functioning baseline. (P-20 p. 5.)
87. The Goals and Objectives section of the June 2004 IEP contains at least one goal that addresses each need listed in the Needs section. (P-20 p. 5, 6-10.)
88. Each goal is formulated in measurable terms and specifies measurement with multiple designated instruments, stating how often progress is to be measured and reported. Each list of measurement instruments includes the instrument upon which the baseline was established. (NT 906-18 to 21, 1332-20 to 1339-13; P-20 p. 5, 6-10.)
89. The reading decoding goal in the June 2004 IEP sets forth a baseline for measurement based upon the DRA reading proficiency level set forth in the PLEP section. The DRA can be used to measure decoding skills. (NT 570-8 to 11, 1007-20 to 22; P20 p.5, 6.)
90. The reading comprehension goal in the June 2004 IEP sets forth a baseline for measurement based upon the Brigance reading comprehension score in the PLEP section. The goal is stated numerically in an understandable format. (NT 1336-11 to 1337-3; P-20 p. 5, 7.)
91. The word recognition goal in the June 2004 IEP sets forth a baseline for measurement based upon the Student's highest score at the 2.2 level of the Houghton-Mifflin Word List. The goal is stated numerically in an understandable format. (NT 1338-18 to 1342-6; P-20 p. 5, 8, S-71.)
92. The first writing goal fails to specify the grade level of the rubric being used for measurement. Nevertheless, it is understandable to District personnel; its reference to the District's writing rubric assumes the rubric applicable to the grade in which the Student is presently placed. (NT 867-1 to 868-11, 890-11 to 891-1 to 891-12, 1004-1 to 1005-23; P-20 p. 9, S-120)
93. The second written expression goal does not refer to a measured baseline; however, it is intelligible without reference to a baseline, and is stated in an understandable format. (P-20.)

94. The reading decoding goal of the June 2004 IEP was not measured as stated in the IEP. Rather than using the Brigance and the Houghton Mifflin instruments, the Student's word decoding was tested using the QRI and the Woodcock Johnson measures. (P-20, S-71.)
95. The District directed a change in measurement instruments in reading special education, specifying the use of the Woodcock Diagnostic Reading Battery. It directed that all IEPs be amended to reflect the change in instruments. (NT 1329-11 to 1330-9.)
96. In November 2004 the IEP team met and changed the measurement method on the third goal of the June 2004 IEP to reflect the Woodcock as the measuring instrument. (NT 1331-7 to 25; S-62.)
97. The reading comprehension goal of the June 2004 IEP was not measured as stated in the IEP. Rather than using the comprehension tests in the Brigance and Houghton Mifflin instruments, the District measured comprehension with the Woodcock Johnson Reading Inventory. However, the Woodcock showed equivalent grade levels. (NT 1336-11 to 1337-16; P-20, S-71.)
98. The Specially Designed Instruction section of the June 2004 IEP does not clearly specify what if any percentage of the itinerant learning support services will be devoted to writing. The only mention of writing is in the pull out services where weekly session of 15 minutes each are provided for writing. (P-20 p. 13.)
99. In the June 2005 IEP, the PLEP section stated baseline functioning on the DRA, indicating improvement to level 34 from the previous baseline in the June 2004 IEP. (P-13 p. 3.)
100. The June 2005 IEP utilizes different instruments to list reading functioning than were utilized in the June 2004 IEP. There is no data from the Brigance, nor from the Houghton Mifflin. Instead, data is reported from the Woodcock Diagnostic Reading Battery and the Quantitative Reading Inventory. (P-13 p.3.)
101. The Present Levels of Educational Performance section of District's June 2005 IEP is clear and intelligible and adequately describes the Student's functioning baseline. (P-13 p. 3.)
102. The Goals and Objectives section of the June 2005 IEP contains at least one goal that addresses each need listed in the Needs section. (P-13 p. 3, 4-6.)
103. The goals in the 2005 IEP contain objectives. (P-13 p. 4-6.)
104. Each goal is formulated in measurable terms, specifies a baseline, and specifies measurement with multiple designated instruments, stating how often progress is to be measured and reported. Each list of measurement instruments includes the instrument upon which the baseline was established. (P-13 p. 3, 4-6.)

105. The writing goal fails to specify the grade level of the rubric being used for measurement. Nevertheless, it is understandable to District personnel; its reference to the District's writing rubric assumes the rubric applicable to the grade in which the Student is presently placed. (NT 890-11 to 891-12; P-13 p. 5.)
106. The June IEP provides for 100% inclusion except for an unspecified amount of separate programming for "preteach, reteach, and /or small group instruction/testing as needed." (P-13 p. 10.)
107. The June 2005 IEP increases the amount of itinerant learning support to 10 hours per week from the 6.5 hours per week offered in the June 2004 IEP. (P-13 p. 10, P-20 p.13.)

INDEPENDENT EDUCATIONAL EVALUATION

108. The Parents contacted the independent evaluator in or before January 28, 2005. (S-113.)
109. On August 15, 2005, the District received the Parents' release authorizing the District to provide educational records to the private evaluator who ultimately testified in the due process hearing. (S-79.)
110. The private evaluator recommended that the Student's program include an alternative, systematic, sequential, multi-sensory and cumulative reading program, offered with "sufficient" intensity and frequency, and provided by a special education teacher certified in the Wilson or similar methodologies, and experienced in adapting such methodologies to students' learning needs. The report suggests that "nearly" three hours per week for the Wilson program would be appropriate, though one hour per day would be better. The evaluator recommended progress monitoring with the instrument "Dynamic Indicators of Basic Early Literacy Skills", DIBELS. The evaluator recommended small group intervention, rather than one to one teaching. (P-10 p. 22-23.)
111. In addition, the evaluator recommended use of books on tape, pre-reading and follow-up activities, structured reading exercises and other parent interventions at home. (P-10 p. 23-28.)
112. In writing, the evaluator recommended an additional structured program in a small group setting, training and pre-writing strategies, accommodations in homework completion and grading with regard to spelling, resource room for planning writing assignments, training in word processing and provision of a computer, and selective use of oral retesting and dictation to a "scribe." (P-10 p. 24-25.)
113. In mathematics, the evaluator recommended use of calculator or math tables, selectively reviewing and improving test answers after a rapid first attempt to answer, and special support and training in how to address "word problems." (P-10 p. 27.)

114. Regarding the diagnosis of ADHD, the evaluator recommended special seating, test study guides, back-up notes, close monitoring of homework completion without grade reduction, high structure at home for homework completion, and consideration of a trial on stimulant medication. (P-10 p. 27-29.)
115. The program available at the Elementary School is capable of providing all of the interventions recommended by the private evaluator in his report of August 2005. It is not limited to a single reading approach, such as the Wilson or Orton-Gillingham approach, but it includes many of the elements of these approaches, along with a variety of groupings and literature. (NT 581-9 to 583-13, 585-24 to 586-2.)
116. The private evaluator's report provided no new useful information to the District. (NT1787-12 to 17.)

DISCUSSION AND CONCLUSIONS OF LAW

CREDIBILITY – PARENTS' EXPERT WITNESS

The District challenged the credibility of the Parents' expert witness, who authored the IEE for which the Parents request reimbursement. This expert's curriculum vitae was not in evidence; however, he testified to a very impressive background in educational psychology. He listed a Ph.D. in educational psychology and a Masters degree in school counseling. (NT 37-3, 17.) He indicated that he is a certified school psychologist, (NT 36- 16, 38-15 to 17), and a licensed clinical psychologist, (NT 36-17 to 18, 38-17 to 18.) He estimated that he has performed between 5000 and 7000 educational evaluations, "literally thousands in the public schools", and that he has served in a number of public school districts and intermediate units. (NT 39-2 to 19.) He also indicated that he has supervised and taught school psychology students from the University of Pennsylvania and several other colleges and universities in the region. (NT 40-6 to 13.)

However, credentials are not sufficient to make this expert's testimony credible in this administrative hearing. This hearing officer needs to assess the expert's method and judgment before taking the leap of faith inherent in relying upon the expert's judgments and opinions. In this case, the hearing officer has assessed the expert's method and the judgments he expressed. This hearing officer finds that, in this case, the expert's assessment of the District's program, of the Student himself, and of the private school's appropriateness, lacks that basic credibility that would permit reliance upon the expert's judgments and opinions.

As to the District's program, the expert revealed a paucity of knowledge. The expert relied upon his beliefs about the Student's functioning in school without observing the Student in the school setting, and without speaking to the Student's teachers. (NT 209-24 to 210-4; 322-3 to 324-1, 325-24 to 326-16.) There was credible testimony that at least one teacher called him and left messages several times without receiving a return call. (NT 1370-19 to 1371-4.) He did not see the reading material that the Student was using at, nor did he see work samples. He did not know the classroom strategies employed by the District staff and other services that were

being provided by the District. (NT 450-3 to 455-24.) The expert was unaware of the qualifications of the teachers assigned at. (NT 340-6 to 24.)

The expert was unaware of what specially designed instruction the District was providing to the Student in third grade, specifically one-to-one instruction from the special education teacher in reading decoding and fluency. (NT 380-25 to 381-14.) Similarly, the expert was very unclear as to whether or not he had a copy of the June 2005 IEP at the time – weeks after the IEP was issued – that he met with the Parents to discuss his recommendations. (NT 444-16 to 447-4.)

The expert criticized the June 2004 IEP on grounds that it reduced the amount of time of additional support the Student was to receive as contrasted with the previous support program, the District's IST program. He characterized that program as limited to three sessions per week, one-half hour per session. (NT 131-18 to 25.) However, the District was providing far more than that. (FF15.) He also misread the 2004 IEP's Specially Designed Instruction section, characterizing it as providing itinerant support only two to three times per week for one-half hour sessions. (NT 132-7 to 132-25.) On the contrary, the document itself provides 6.5 hours of itinerant instruction, in addition to "extra reinforcement" on a pullout basis, two to three times per week for fifteen minutes per session for reading writing and/ or math, more than the IST program had provided. (P-20 p. 13.)

The expert's criticism of the writing goal in the June 2005 IEP reveals, not a lack of clarity in the goal, but a lack of knowledge in the expert. He judges that it is not clear how the goal will be implemented. (NT 154-22 to 155-6.) It is clear that his criticism is due to his unfamiliarity with the District's writing rubric. The expert did not know what had been offered in the June 2005 IEP. (NT 447-13 to 450-2.)

There was a discrepancy in the expert's testimony that vitiates its weight with this hearing officer. The expert testified that he could not observe the child in school because it was summer when he evaluated the child; however, on cross examination, it appeared that the expert could have observed the child in school but chose not to do so. (NT 209-24 to 210-4, 316-20 to 322-2.) Thus the only observation was in the clinical setting. (NT 376-25 to 377-5.) There were no notes. (NT 377-6 to 8.)

This hearing officer concludes that the expert's knowledge of the facts of this case was inadequate to support the judgments and opinions he offered about the District's program.

This hearing officer finds that the expert's evaluation of the Student is unreliable for purposes of this proceeding. The expert appears to have deviated from the Administration Manual in administering the Wechsler Intelligence Scales for Children – IV (WISC-IV), without revealing it in his report. The expert made various substitutions, in two separate calculations of the Full Scale Score. (NT 389-3 to 19, S-116, S-117, P-10 p. 4., 1725-14 to 1749-11.) The substitutions permitted reporting of scores that presented greater discrepancies among indicators of ability and indexes associated with phonological processing problems, (NT 407-25 to 408-15), even though the discrepancies were within the average range and thus had little clinical significance, (NT 403-12 to 404-4, 404-22 to 405-1, 410-14 to 412-7).

The WISC-IV Manual requires that the substitution be disclosed by noting it on the Record Form. (P-115 p. 607, 1889-16 to 1905-6.) However, the expert admitted that he failed to disclose this as he should have done. (NT 390-19 to 391-2, 394-17 to 395-7, 406-5 to 407-18.)

An authoritative text was introduced indicating that the practice employed by the expert is discouraged. (NT 389-20 to 390-11; S-115.) In response to the Parents' attorney's questions, the expert adamantly insisted that his substitutions were permitted by the Manual based upon clinical judgment. (NT 180-1 to 185-8.) However, the expert did not report credible reasons for making the substitutions. (NT 396-11 to 15.) The District's November 2005 ER found that these substitutions created an inaccurate interpretation of the Student's cognition and of the discrepancies between his cognition and his academic achievement. (P-3 p. 4.)

The expert ran alternate tests in other instruments, also without informing the District that there were alternate scores. (NT 424-8 to 426-23, 1741-23 to 1749-17 (WIAT-II); 426-24 to 429-10 (Test of Word Reading Efficiency).) Again, with the TWRE, the results reported were those that supported the expert's thesis, in this case the lower of the two choices. (NT 426-24 to 429-10.) The expert was unable to explain why he ran two different sets of results through the computer scoring program of the WISC IV instrument, until he had a chance to think about it over lunch. (NT 402-9 to 403-7, 424-8 to 426-23.)

As to the private school, the expert's report reveals a bias against the District that is simply unfounded based upon the methodology he revealed in testimony and in his reports. He did not recommend private school placement in his original report, but recommended it for the first time in a supplemental report after November 2005. (NT 459-10 to 14.) His report amounts to a trenchant indictment of the District's efforts in this case, essentially blaming them for vastly exacerbating the Student's reading problems, which he summarizes in the somewhat emotionally loaded phrases, "too little, too late" and "crippled reader and crippled writer." (P-40 p. 6.) This is how he dismisses out of hand the District's offer of what he seems to admit is an adequate program for the 2005-2006 year, containing daily, multi-sensory instruction in phonemic awareness and decoding that is offered in the 2005 IEP. In so treating the issue of appropriateness, he reveals a bias against the District that is not based upon sufficient fact finding. Indeed, he states plainly that the Student's present needs "cannot" be provided for in a public school. (P-38 p. 4.)

This expert's methodology does not support such broad judgments. As noted above, he did not visit or observe the Student, nor did he interview any of the Student's teachers assigned there. Thus he was in no position to present a meaningful contrast between the programs. (NT 339-11 to 340-5.) The expert was unaware of the qualifications of the teachers assigned, again precluding meaningful contrast or comparison with the private school program. (NT 340-6 to 24.) The expert appears to draw all of his inferences from two sources: his evaluation of the plight of the Student, and the results of the private school's admissions testing. (P-38 p. 2, 5.)

Yet, his report does not analyze the quality of the latter. There was no independent evidence of any weight to show that the private school admissions testing methodology was sound. Indeed, the only private school witness cast serious doubt on the quality of its testing.

All of this makes the hearing officer reluctant to place any reliance upon the expert's judgment in assessing this case or in his recommendations

CREDIBILITY – PRIVATE SCHOOL EDUCATIONAL ADMINISTRATOR

The Parents also introduced the testimony of the educational administrator at the private school, along with supporting documents, to show that the program there is appropriate to the Student's needs. (NT 637-8 to 15, 648-1 to 4.) This hearing officer accords negligible weight to this testimony for the issue of appropriateness, with the exception of the description of the program in general terms. The witness was simply not qualified to render an opinion on appropriateness. She has only a Bachelor's degree in marketing. (NT 637-22 to 25.) She has only four years of teaching experience, as a home-room teacher at the private school. (NT 637-22 to 25, 650-12 to 15.) For two years, she supervised the faculty at the private school. (NT 638-5 to 9.) Although she is trained in the specialized phonetics programs that the private school provides, (NT 638-12 to 639-12.), she is not trained or educated or certified in the broader field of reading instruction or special education. Nor is she trained as a teacher.

The Administrator's admissions instruments were never validated in this record, and she was simply unqualified to make clinical or educational judgments about the Student. Thus, there is nothing in the record to give the private school testing any weight, and this hearing officer accords it none.

CHILD FIND

The Parents rely upon both the IDEA and Section 504 of the Rehabilitation Act of 1973. This hearing officer's review of the relevant regulations under Section 504 discloses no specific requirements that enlarge the obligations of school districts with regard to child find obligations under Section 504, as contrasted with their obligations under the IDEA. Therefore, the hearing officer will analyze this case under the requirements of the IDEA, whose obligations appear to be coextensive with or greater than those imposed by Section 504.

The IDEA requires the State to ensure the location, identification and evaluation of all children with disabilities who need special education services. 20 U.S.C. §1412(a)(3)(A); 34 C.F.R. §300.125(a)(1)(i). Thus, under the federal law, the District's Child Find procedures are adequate if they result in the evaluation only of children who need special education services. However, this Child Find obligation is not dependent upon the severity of the child's disability, nor is it obviated simply because a child advances from grade to grade. 34 C.F.R. §300.125(a)(1)(ii).

Pennsylvania regulations impose more detailed requirements in conjunction with the federal Child Find obligation, requiring each school district to implement a "screening" system that identifies and screens students "prior to referral for a special education evaluation", provides hearing and vision screening, and identifies students "who may need special education services." 22 Pa. Code §14.122(a)(1) through (4). The screening process must be "comprehensive" and must assess functioning in the curriculum, implement intervention, and assess response to intervention. 22 Pa. Code §14.122(b), (c)(1), (3), (4). The process must also determine "whether the student's needs exceed the functional ability of the regular education program to maintain the student at an appropriate instructional level." 22 Pa. Code §14.22(c)(6). This process may take the form of an Instructional Support program under the guidelines set forth by the Department of Education. 22 Pa. Code §14.22(b).

These regulations make one reference to the time within the district can retain a student in a pre-referral educational support program without referring the student for evaluation for special education. If the screening and support efforts “have produced little or no improvement within 60 school days after initiation, the student shall be referred for evaluation under §14.123...” Presumably, this is to prevent the screening process from becoming a substitute for the evaluation and provision of needed special education services required by the IDEA.

In the instant matter, the District was on notice that the Student was demonstrating a deficit in reading decoding skills as early as September 2002, when his first grade teacher referred him for a literacy evaluation, citing problems with word decoding and writing. (FF 4.) Throughout his first grade year, the Student exhibited these deficits in reading skill. (FF 4 to 15.)

Nevertheless, the District did not refer the Student to evaluation for special education until the middle of his second grade year. (FF 37.) Indeed, he was not even referred for the District’s IST support program until April of his first grade year, after the Student had reached a “plateau” in reading according to his first grade teacher. (FF 15, 17.) These facts in themselves raise a serious concern as to whether or not the District waited too long to refer the Student for evaluation, especially since the Student was found to be substantially below grade level in reading and decoding skills, (FF 15), and because the immediate result of the referral for special education evaluation during second grade was identification. (FF 43,44.)

However, these circumstances do not create a res ipsa loquitur case. Eligibility arises from serious skill deficit, but only where there is a need for special education services, and the regulations plainly authorize a process to assess such need, where a skill deficit manifests itself, as it did early on in this case. Here, the District’s program of educational support and screening was indeed comprehensive. It included two phases of escalating service to the Student: support services in the classroom and IST. (FF 1 to 3.) It also provided for referral for speech and language testing. (FF 31.) Both phases of supportive services provided substantial, research based interventions directed clearly toward the phonemic awareness and decoding issues that were clearly identified as the deficit in the Student’s functioning. (FF 8 to 11, 17, 18, 21 to 25.) Thus there was an opportunity to assess response to intervention, and all of the educational professionals who testified for the District in this case had carefully considered just that. (FF 2, 3, 16, 30.) Their conclusion was that the Student did respond to intervention. (FF 2, 3, 12, 13, 16, 20, 30, 34, 38.) He did demonstrate substantial progress while in supported reading and writing services. (FF 12, 13, 28, 30, 41, 42, 59, 61, 77, 80, 84.) Thus, while the District’s well qualified educators knew the Student’s skill deficit full well, they did not suspect the need for special education services.

Specifically, the evidence addressed the requirement that the screening process assess whether or not the Student has made “little or no improvement within 60 school days after initiation” of screening services. 22 Pa. Code §14.22(b). All of the professionals who testified concluded that this was not the case, because between November 2002 and January 2003, the Student’s reading proficiency increased. (FF 8, 12, 13.) Thus, the District was under no obligation to refer pursuant to the screening regulation.

Another factual circumstance that gave this hearing officer concern is that the test data were plainly in conflict. There were several measures that showed some progress during the

lengthy period before referral. Yet there were substantial data indicating that the Student remained far behind his peers in reading decoding. Although all of the witnesses who worked with the Student were convinced that he had made substantial progress and response to intervention, important data seemed to contradict that conclusion. (FF 14, 15, 43, 48, 62.)

However, this hearing officer took into account the witnesses' varying degree of involvement with the Student. All of the 'district's witnesses were credible. Those closest to him, such as the teachers who worked directly with him, provided an extensive body of factual information about him, and they were in the best position to form subjective impressions of his progress. These witnesses clearly believed that the Student was making substantial, meaningful progress in reading decoding, word recognition, fluency and reading comprehension.

Arguably, there could have been one flaw in this testimony. These teachers might be suspected of having become personally invested in the Student's success, creating an understandable and inadvertent distortion of their judgments about it. However, even this hypothetical argument is invalid on this record. There were two psychologists who did not demonstrate that level of attachment, because they did not work with the Student that closely. (NT 1239-6 to 1242-12, 1244-23 to 1246-13; 1685-16 to 1686-2 .) These witnesses, taking into consideration all of the contradictory test results, concluded that the Student had made substantial progress. This hearing officer gave their testimony great weight. In turn, their testimony bolstered the reliability of the judgments of the teachers who worked most closely with the Student.

The Parents argued that the District's reading instruction was not research based because it is eclectic. It does not subscribe to any specific method of instruction, such as Wilson or Orton – Gillingham, that purports to have been scientifically validated.

However, this hearing officer is not persuaded that an eclectic reading instruction program cannot be research or scientifically based. There was substantial testimony that the District's instructional philosophy and practices are based upon the latest research in the field. It is hard to imagine an instructional service in the public setting that can be, as it were, taken down from the shelf and deployed for all students with a predictable level of success. In any event, the Parents were unable to prove that any such program was available to the District.

Based upon these findings and the hearing officer's findings regarding the credibility of the testimony of the Parents' expert, the Parents have failed to carry their burden of persuasion that the District failed to comply with its Child Find obligations. Indeed, the District has proven the opposite by a clear preponderance of the evidence.

ADEQUACY OF THE 2004 AND 2005 INDIVIDUAL EDUCATION PLANS

The Parents challenge the adequacy of the two IEP documents in this case, arguing that they fail to identify the Student's primary educational need, that they set forth unclear and confusing Present Levels of Educational Functioning, that various Goals are unclear, that there are no objectives in the 2004 IEP, and that the goals and objectives fail to set forth clear methods for measurement. As explained above, the hearing officer cannot rely upon the Parents' expert to reach conclusions on these criticisms. Nevertheless, the hearing officer relies upon his own

reading of these documents to find that they are at least minimally adequate in the above regards. Moreover, even if there were deficiencies in certain particulars discussed below, the hearing officer finds no evidence that any deficiencies caused a denial of meaningful opportunity to benefit from the District's educational programs.

The Parents argued that the District's 2004 IEP was deficient because it failed to clearly specify that reading decoding was the core problem for which the Student needed remediation. (NT 117-5 to 14.) However, the document itself belies this criticism. It clearly specifies that the first identified need is "Reading decoding." (P-20.) In addition, the first goal on the IEP is reading decoding. Moreover, the testimony was overwhelming in this case that the District focused upon and provided substantial educational supports for the Student's decoding, and that the Student's decoding, word recognition, fluency and sight vocabulary improved meaningfully during his third grade year under the 2004 IEP.

The Parents complained that the May 24, 2004 did not list fluency as a need, nor was there a fluency goal. While this is true, fluency is a product of decoding and the underlying ER, while mentioning it, did not emphasize it as a need separate from decoding. (FF 85.) The evidence showed that the Student received substantial services with regard to fluency and improved meaningfully in that skill.

The parents argued that the 2004 IEP failed to present a "baseline level of intervention." (NT 118-15 to 22.) However, the IEP's Present Levels of Educational Achievement section clearly sets forth a number of baseline performance ratings in reading, expressed in grade level of functioning, percentage scores, and descriptive behavioral observations. (FF 86.) These are the base lines and selected data from this section of the IEP are incorporated as appropriate into the goals section. This hearing officer finds that the 2004 and 2005 IEP documents set forth adequate baseline data. (FF 86, 99, 101.)

The Parents argued that the Goals in the 2004 IEP were defective because they did not set forth objectives. The District argued that its goals incorporated benchmarks because they were stated numerically, and produced substantial information that the practice of omitting objectives is acceptable in practice in Pennsylvania as long as the goals are written in measurable statistical terms. (FF 88.) This hearing officer finds that there was a continuing provision of services to the Student, which changed in response to his needs during the year, and that the Student made meaningful progress toward the goals stated in the IEP. Therefore, even if this is a deficiency, it does not result in a denial of FAPE.

The Parents argued that the goals in the 2004 and 2005 IEP documents failed to set forth clearly how they would be measured. However, the District's witnesses were able to explain the measurement methods, and the hearing officer is satisfied that every goal in each IEP was accompanied by an appropriate measurement method, and was measured according to that method. (FF 88 to 97, 104.)

The 2004 IEP creates substantial confusion because it sets forth more than one instrument as the measuring instrument for many of the goals. In most cases, the baseline data are derived from only one of the measuring instruments. Referring back to the PLEP section's list of present level data, a reader had to comb through the data to find the same figure set forth in the relevant goal. From this it was possible to infer that the instrument from which the baseline was derived

would be the instrument used to measure progress during the IEP period. The additional measuring instruments obviously were not to be used for this purpose, but to corroborate the data in the instrument used to measure progress from the baseline.

Compounding the confusion, the District – after the 2004 IEP was signed - mandated a change in instruments used to measure progress for IEP purposes, and directed that the new instruments be used retroactively in all IEPs. Thus, the 2005 IEP set forth baseline data in the PLEP section from instruments that were completely different from those used to set the 2004 baseline and designated to measure progress toward the 2004 goals. However, the District showed that it had amended the 2004 IEP to change the instrument used to measure progress in the word recognition goal, and had established a new baseline for that goal using the new instrument. The other goals were measured by the DRA, an instrument that still permitted by District policy. One other goal's measurements were taken using the discarded instrument that had been designated in the 2004 IEP. Thus, progress on all the goals was measured by appropriate instruments for the 2004 IEP. (FF 94 to 97.) Although this situation created confusion, it did not lead to a denial of FAPE.

The Parents argue that the June 2004 IEP did not have short term objectives. Before 2004, the IDEA required either short term objectives or benchmarks. 20 U.S.C. § 1414(d)(1)(A)(i)(ii) (as amended 1997); P-41 p. 7. The 2004 IEP goals were expressed in measurable terms that satisfied the purpose of this requirement: to allow the interim measurement of progress toward the goals. (FF 91; NT 1309-17 to 1311-22.) At any rate, the omission of benchmarks did not contribute to a failure to offer FAPE in this IEP. While the same argument was raised with regard to the June 2005 IEP, the same answer pertains.

FAPE – WRITING

The Parents also complained that the District failed to provide an adequate program in writing for the Student. The evidence showed that the Student's troubles in writing were evident at an early age, especially in spelling. (FF 72.) Early reports indicated that the Student also exhibited problems in organizing and presenting his thoughts, but these problems were not evidenced as seriously as he progressed from grade to grade. (FF 77.) By first grade, the Student's writing showed proficiency in focus and organization. (FF 73.) In the middle of second grade, the Student's testing suggested that his writing had improved from Basic to Proficient in focus, content, organization, style, and conventions as measured by the District's grade 1 and 2 primary writing rubric. (FF 77.) However, the June 2005 IEP, the PLEP section, indicated that the Student was still functioning at the Basic level in focus, style and conventions, indicating no progress and even possible regression during the 2004-2005 school year. (FF 80.)

The early IEPs all noted the problem but presented varying degrees of intervention. The June 2004 IEP set forth two writing goals, but did not provide clear specially designed instruction to address them. (P-20.) The June 2005 IEP similarly states a goal for writing, but does not clearly describe the program of SDI that will be provided to address it. (P-13.)

Although the IEPs were not as clear and explicit as might be desired, these concerns did not lead to the denial of FAPE. The evidence showed that the District provided an adequate program of writing instruction to the Student, supplemented by learning support services. (FF

76, 77, 80.) The Student made meaningful progress in writing, reaching a grade level of performance. Thus, there was not a denial of FAPE.

FAPE – ATTENTION ISSUES

The Parents allege that the Student suffers from Attention Deficit Hyperactivity Disorder. Their expert diagnosed it and argued that this disorder seriously complicates any effort to remediate the reading decoding issue. (P-10 p. 21.) He argued that the combination of serious decoding deficits and ADHD makes the Student's learning disability so entrenched that a public school setting simply cannot undo the damage. (P-10 p. 21, P-38 p. 4.)

The record does not support this argument. The Parents' expert is not relied upon as stated above. While the Parents clearly did note serious attentional issues at home, the Student did not display them at school to the same degree. (FF 81 to 84.) The expert himself admitted that he did not observe serious symptoms during his extensive testing of the student over eight sessions, although he did observe some behaviors which he interpreted as attention problems. (NT 185-22 to 188-1.) The Parents have not shown a denial of FAPE.

As there is no finding that the District denied the Student FAPE, the Parents' claim for compensatory education services is denied.

APPROPRIATENESS OF PRIVATE SCHOOL PLACEMENT

The Parents presented two witnesses. The first was their expert, who observed the Student for two hours in his classes at the private school, interviewed one of his teachers and reviewed records at the school. (NT 284-23 to 286-17.) The expert also had had professional contact with the school from its beginning, including providing teacher in-service training. (NT 263-12 to 264-14.) From this data, the expert reported that he was "confident" that the Student was provided with a language-oriented program which taught and reinforced reading decoding and writing skills that the Student needs. (NT 286-15.) The school also offers a relatively small class size. (NT 273-3.)

As noted above, this hearing officer accords no weight to the testimony of the expert on the issue of appropriateness of the private school placement for the Student. The expert showed too little knowledge of the District's programming. His evaluation of the Student was unreliable because of his lack of crucial knowledge of the underlying facts of the case, as well as due to methodological flaws in his evaluation. This hearing officer is not convinced that the expert evaluated the private school program objectively or with a critical eye. For example, he accepted at face value the admission screenings of an unqualified tester without examining the background documentation, or assessing the thoroughness of the screens administered. As a whole, his testimony is simply not reliable enough for this hearing officer to rely upon.

Likewise, the testimony of the educational administrator at the private school is unreliable with regard to appropriateness of the private school program for the Student. She is simply unqualified to provide an opinion on that issue. Moreover, her testimony casts serious doubt upon the appropriateness of the program. She testified that with a bachelor's degree in

marketing and no teaching or special education certification, she taught reading, writing, social studies, science and language for four years as a home room teacher. (NT 637-19 to 638-46, 650-122 to 15, 702-18 to 704-8.) For four years she was the staff supervisor. (NT 638-5 to 9.) This witness testified that she implements the curriculum, assures quality, does admissions screening, oversees all testing at the school, performs all training, and spends much time with parent education and parent relations. (NT 647-24 to 650-6.) She also edits the teachers' report cards. (NT 701-20 to 702-1.) This hearing officer questions the quality of a program that places such great responsibility in the hands of an individual with such limited educational background and professional certification. Indeed, she displayed limited knowledge of the most fundamental concepts in reading assessment, (NT 741-8 to 15), including the fact that instruments the school uses were normed in 1939 and 1985 (NT 729-7 to 15, 743-11 to 744-2.)

The record raises further questions about the private school program. The witness was unable to say whether or not any of the Student's teachers at the private school were certified in New Jersey or Pennsylvania. (NT 706-6 to 712-22.) The witness could not say whether or not the School's director is a certified school psychologist. (NT 737-22 to 738-4.)

The school's admission screening instruments did not yield reliable standard scores. (NT 729-7 to 730-3.) The only documents reporting this testing are minimal contrasted with the extensive testing of the District. (P-39.)¹ Sources of the scores are not even named. Similarly, the private school report card appears to grade students in such highly technical areas as fluency and use of phonemic strategies to decode; however, no actual testing scores are given, but the grades reported to the parents appear to be purely subjective. (P-43 p. 3.) Thus, on the evidence presented here, the school does not provide any objective, accountable way to assure that its progress reports are reliable or valid. Nor did the Parents offer any proof that the private school utilizes standardized data to support the assessments of progress in its report cards. Similarly, these reports, as well as the admission test results, cannot be compared or contrasted with those provided by the District; thus, there is no reliable way to determine whether or not the private school provides a better program than the District in reading.

There is no documentary or other reliable corroboration of the testimony of the private school admissions staff and the Parents' expert to the effect that reading and writing skills are reinforced throughout the curriculum. Moreover, there is no reference to the reinforcement of reading skills in the reports on science, social science, music, art, art therapy, "idiom of the week", or the history of Pennington project. (P-43.) In fact, there appears to be an emphasis of oral and graphic presentation of materials in these non-reading classes. (P-43.) The Parents have failed to carry their burden of persuasion that their private placement is appropriate, and their claim for tuition reimbursement is denied.

REIMBURSEMENT FOR IEE

The Parents presented little evidence to support their claim that the IEE should be reimbursed. They did not introduce sufficient evidence to challenge the District's prevailing ER,

¹ This document, though excluded when first offered by the Parent on the basis of vigorous objection by the District, (NT 275-4 to 281-23), was nonetheless admitted by stipulation later in the proceeding. (NT 1232-13.)

and on this ground alone their claim must fail. Moreover, the District maintained that it did not rely upon the report, and indeed, the record bears them out. They had identified the Student long before receipt of the IEE. They had offered the 2005 IEP before they received it. They had provided what this hearing officer has found to be adequate educational supports long before receiving it, and they had instituted many of the supports specifically recommended by the IEE. (FF 108 to 116.) Therefore, there is no equitable basis for such an award and it is denied.

REIMBURSEMENT FOR TUTOR

Similarly, the Parents presented little evidence that the tutoring which they unilaterally provided privately to the Student substantially contributed to the Student's success in decoding. It was provided once per week, as contrasted with the daily decoding instruction that the District provided. It was mostly supportive of the District's program. (FF 26 to 29.) There is nothing to show that it contributed anything unique to the supports available to the Student. The Parents failed to show that the District's program was inappropriate. Therefore, there is no basis for an award of tuition reimbursement for the tutor.

ORDER

1. The District did not fail to refer the Student for evaluation in a timely manner while he was receiving Learning Support in first grade and Instructional Support Services in second grade.
2. The 2004 and 2005 IEPs did not fail to offer FAPE.
3. Is the Student is not entitled to an award of compensatory education.
4. The Parents are not entitled to reimbursement for the tuition costs of the private school for the Student's 2005-2006 school year.
5. The Parents are not entitled to reimbursement for the costs of the Independent Educational Evaluation provided to the District in or about August 2005.
6. The Parents are not entitled to reimbursement for the costs of tutoring costs incurred from the beginning of the Student's 2002-2003 school year.

WILLIAM F. CULLETON, JR., ESQ.
HEARING OFFICER

May 12, 2006