

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

Pennsylvania

Special Education Hearing Officer

DECISION

ODR No. 01025-0910KE

Child's Name: N.D.

Date of Birth: [redacted]

Dates of Hearing: 10/22/10, 12/3/10

CLOSED HEARING

Parties to the Hearing:

Parents
Parent[s]

School District
Tunkhannock Area
41 Philadelphia Avenue
Tunkhannock, PA 18657

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

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January 7, 2011

January 22, 2011

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INTRODUCTION AND PROCEDURAL HISTORY

In June [redacted], [Student] received a regular high school diploma from Tunkhannock Area School District [District], where [Student] had been identified as IDEA eligible at the beginning of 12th grade. During 11th grade [redacted], Student's completion of school work and quarterly grades dropped dramatically between the first and third quarters, prompting Parents to seek an evaluation in the spring of [11th grade]. After Parents obtained an independent evaluation report, which they promptly provided to the District, the District completed a records review evaluation during the summer between Student's 11th and 12th grade school years and concluded that Student was IDEA eligible due to a specific learning disability in math.

Student began receiving special education services at the beginning of 12th grade, which Parents contend were inadequate to prepare Student for college. Parents filed a due process complaint in April [of Student's 12th grade year], alleging that the District violated its child find obligations by failing to identify Student earlier, and that even after Student was determined to be IDEA eligible, the District failed to provide sufficient and appropriate IDEA services. The hearing was conducted in 2 sessions after a prolonged period of unsuccessful settlement negotiations. For the reasons that follow, the District will be ordered to reimburse Student's Parents for the independent evaluation and Student will be awarded limited compensatory education.

ISSUES

1. Did School District fail to timely evaluate and identify [Student] as an IDEA eligible student during the [11th grade] school year?

2. Is the School District required to reimburse [Student]'s Parents for an independent evaluation they obtained in May [of Student's 11th grade school year]?
3. Did the School District fail to provide [Student] with appropriate special education services during the [11th and 12th grade] school years, and if so, in what respect(s)?
4. Is [Student] entitled to compensatory education and, if so, for what period, in what amount and in what form?

FINDINGS OF FACT

1. (Student) is [a teenaged] child, born [redacted]. At all times relevant to the matters in dispute in this case, [Student] was a resident of the School District. (P-9, p. 2)
2. From September [of 12th grade] until graduation from high school, the School District considered Student eligible for special education services under the IDEA category of Specific Learning Disability (SLD). 34 C.F.R. §300.8(a)(1), (c)(10); 22 Pa. Code §14.102 (2)(ii); (P-9, p. 7)
3. During the first two years of high school, Student's quarterly and final grades were primarily in the average range, except for a final grade of 70 ("D"), one point above failing, in Plane Geometry in 10th grade. (S-19, p. 2)
4. Student's guidance counselor was aware that Parents had obtained a math tutor for Student in 9th, 10th and 11th grades. (N.T. pp. 184, 186, 187, 254)
5. In 11th grade, Student passed all classes during the first marking period, which Parents attributed to Student's desire to remain eligible for [an athletic] team. (N.T. pp. 178, 183; S-19, p. 3)
6. Student had increasing difficulty completing school work and performing satisfactorily after the first marking period. At parent/teacher conferences Parents were informed by all teachers that Student was refusing to participate in class, to complete class work and to do homework assignments. Student's guidance counselor was also aware of consistent problems with completing school work. (N.T. pp. 183, 249, 255, 256, 284; S-21, pp. 108, 117, 127, 142,)
7. By the end of the 3rd marking period, Student was failing all academic classes except American Government, which [Student] was passing with a low "D." Student was doing well only in a Wood Tech class. (N.T. pp. 28, 30; S-19, p. 3)
8. Very early in the school year, due to extreme difficulty with the course material, Student was transferred from Academic Algebra II to an easier class, Basic Algebra II, which generally covered the same curriculum as Algebra II. (N.T. pp. 117, 124, 135, 137, 221; P-3, P-15, p.3)

9. The teacher for Basic Algebra II attributed Student's poor performance in both that class and the first Algebra II class to failure to complete homework assignments and poor test grades. The teacher also noted difficulties with organization and focus. (N.T. pp. 120, 135, 137, 138; S-21, pp. 51—61)
10. Student was also enrolled in a Math Enrichment class, taken by most 11th grade students in the District, to prepare students for the PSSA exam at the end of 11th grade. (N.T. pp. 27, 177, 222; P-15, p. 3)
11. Since Student was failing both math classes despite the efforts of the private tutor to re-teach and reinforce the material covered in the math classes, Student's Parents agreed with the District's suggestion to remove Student from those classes for the 4th marking period. (N.T. pp. 28, 29, 118, 121—123, 143, 146, 180, 222—224; P-3, P-15, p. 3, S-19, p. 3, S-21, p. 62)
12. During the last marking period of the 11th grade school year, Student earned a math credit for 11th grade by passing the Math Essentials class in the Blendedschools program, which permitted Student to complete a math curriculum by working individually on a computerized program with the assistance of a certified math instructor. (N.T. pp. 105, 106, 181, 225, 226; S-19, p. 3, S-21, pp. 103—158)
13. By the end of the 11th grade school year, Student also passed all other classes and advanced to 12th grade. Student received final grades of "D" in all classes except Wood Tech 2, in which [Student] received a "B" for the first 2 marking periods and a "C" for the 3rd and 4th marking periods. (N.T. pp. 33; S-19, p. 3)
14. On the PSSA test administered in the spring of 11th grade, Student's scores placed [Student] in the "Proficient" range in reading and writing and "Below Basic" in math. (N.T. pp. 112; S-17, p. 2)
15. On March 31 of Student's 11th grade, after Parents notified Student's guidance counselor that an evaluation had been recommended for Student, and inquired whether the District provided evaluations, the guidance counselor submitted a request for evaluation to the school psychologist. A Permission to Evaluate-Evaluation Request Form dated April 1 was prepared by the District. That form provides space for Parents to explain the reason for requesting a District evaluation and a place to request an evaluation consent form. The District sent Parents a Permission to Evaluate-Consent Form (PTE) dated April 23, proposing to assess Student's cognitive ability and academic achievement. (N.T. pp. 188, 273; P-5, P-6, S-3)
16. Student's Parents did not return a signed PTE agreeing to the District's proposed evaluation at that time because they had already scheduled a private evaluation. (N.T. p. 205; S-3)
17. The evaluation conducted by the private provider resulted in a report dated June 12. Student's overall cognitive ability as measured by the WAIS-IV (Wechsler Adult

Intelligence Scale, Fourth Edition) and the WJ-III-COG (Woodcock-Johnson Tests of Cognitive Ability-Third Edition) is in the average range, with strengths in the areas of verbal ability, particularly verbal abstract reasoning, expressive vocabulary and general information. Student's processing speed, as measured by the WAIS-IV was significantly lower than all other components of cognitive abilities (P-7, pp. 4—9)

18. A standardized achievement test, WJ-III-ACH (Woodcock-Johnson Tests of Achievement-Third Edition) indicated significant weaknesses the areas of math calculation and math fluency. The evaluator's comments noted that Student struggled with multi-step calculations and was accurate but slow in solving simple problems. (P-7, p. 12)
19. Although the achievement test results indicated a discrepancy between Student's ability and achievement in written expression as well as math, the evaluator identified a math disorder/ specific learning disability in math calculation but did not diagnose a learning disability in writing, characterizing those results as a "relative weakness with written expression." (P-7, pp. 13, 14, 21)
20. Assessments based on Parents' ratings of Student's behaviors, which were designed to diagnose attention disorders, resulted in a diagnosis of Attention Deficit/Hyperactivity Disorder (ADHD). (P-7, pp. 15—19, 21)
21. Rating scales completed by Parents to assess social/emotional functioning resulted in diagnoses of adjustment and behavior disorders. (P-7, pp. 19—21)
22. After Parents provided the private neuropsychological evaluation report to the District, the District issued a PTE in mid-August, proposing an evaluation limited to a review of records, including the private evaluation report. (N.T. p. 190; P-8)
23. Parents signed and returned the PTE granting permission for the District evaluation on the same day the District issued its evaluation report (ER). (N.T. pp. 41, 42; P-8, P-9)
24. The District adopted the conclusions of the private evaluation report with respect to math, concluding that Student required specially designed instruction to address a specific learning disability in math. The District acknowledged the private evaluator's ADHD diagnosis and noted the need for accommodations, but did not consider it a basis for an additional IDEA eligibility category. (N.T. pp. 41, 45, 46; P-9, p. 7)
25. At a meeting in early September of 12th grade, with Parents participating, the District proposed an IEP with goals to address homework and class work completion, transition, success in Student's regular education math class, remaining on task and decreasing disruptive classroom behaviors. (N.T. p. 206; P-11, pp. 12—14)
26. Parents, with the assistance of an advocate, subsequently requested and the District agreed to changes to the IEP that resulted in 1) more specific criteria for the homework goal, and a more specific description of the assistance to be provided to

- Student and how progress toward that goal would be monitored; 2) more specific criteria for the class work completion goal and how it would be measured and monitored; 3) a requirement for adapted tests and specific limitations on the number of problems Student needed to complete for each skill set with respect to the math goal, as well and how progress toward that goal would be tracked; 4) several modifications to the proposed SDI to make them consistent with the modifications to the goals and to reduce Student's opportunities to reject assistance. (S-11, pp. 15—19, S-15, pp. 15—19)
27. One of Student's post-secondary transition goals was to apply to at least two colleges or vocational-technical schools, but Student ultimately applied only to the two year technical college Student is currently attending. (N.T. pp. 196, 197; P-11, p. 12, S-15, p. 15)
28. In 12th grade, Student first enrolled in Academic Algebra II and was again transferred to Basic Algebra II within a short time. With the IEP modifications to reduce the amount of work Student was required to complete, additional time for tests, and Parents' involvement in checking assignments and assuring completion of homework, Student surpassed the IEP goal of earning 80% in the course, finishing the year with a high "B" average. (N.T. pp. 148, 149, 151, 152, 156; S-18, p. 2)
29. Student finished 12th grade with a final grade of "B" in all academic classes. Parents spent considerable time and effort to assure that Student successfully completed 12th grade by checking Student's grades online, maintaining close contact with teachers and assuring that Student completed homework assignments. (N.T. pp. 102, 202, 203, 213, 214; S-17, p. 2, S-18, p. 2)
30. Student is pursuing a long-standing interest in [redacted] at the technical college in which [Student] enrolled for the current school year, and takes two academic classes each term. At the time of the hearing, Student was struggling to maintain a "C" average in an introduction to business and an English class, with significant help from Parents, who continue to monitor Student's grades and assignments to assure completion of course requirements and to help Student with the academic course work. Student is also maintaining a "C" average in a [vocational] class. (N.T. pp. 53, 197, 198, 214, 233)

DISCUSSION AND CONCLUSIONS OF LAW

A. Generally Applicable Legal Standards/Claims

1. Due Process Hearings/Burden of Proof

The IDEA statute and regulations provide procedural safeguards to parents and school districts, including the opportunity to present a complaint and request a due process hearing in the event special education disputes between parents and school districts cannot be resolved by

other means. 20 U.S.C. §1415 (b)(6), (f); 34 C.F.R. §§300.507, 300.511; *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3rd Cir. 2009).

In *Schaffer v. Weast*, 546 U.S. 49; 126 S. Ct. 528; 163 L. Ed. 2d 387 (2005), the Supreme Court established the principle that in IDEA due process hearings, as in other civil cases, the party seeking relief bears the burden of persuasion. Consequently, because Parents have challenged the District's actions during the [11th and 12th grade] school years, Parents must establish the violations they identified at the beginning of the due process hearing in this case.

The Supreme Court limited its holding in *Schaffer* to allocating the burden of persuasion, explicitly not specifying which party should bear the burden of production or going forward with the evidence at various points in the proceeding. Allocating the burden of persuasion affects the outcome of a due process hearing only in that rare situation where the evidence is in "equipoise," *i.e.*, completely in balance, with neither party having produced sufficient evidence to establish its position.

2. Parents' Claims

At the due process hearing, Parents sought to establish that the School District violated IDEA requirements in the following respects: a) The District failed to properly fulfill its child find obligations by not proposing and conducting an evaluation of Student for IDEA eligibility prior to August following 11th grade; b) The District failed to propose an IEP that included adequate and appropriate transition services and failed to assure that one of the IEP transition goals was met; c) The District proposed an inadequate IEP that did not include any goals or services directed toward remediating Student's specific learning disability in math; d) The District's progress monitoring of IEP goals was inadequate. (N.T. pp. 13—15, 21)

As a remedy for those alleged violations, Parents requested compensatory education, and also sought reimbursement for the independent neuropsychological learning evaluation they obtained in May of 11th grade. (N.T. pp. 14, 21) There is, of course, no request for current or prospective programming since Student graduated in June. (FF 2)

The record compiled at the hearing establishes that there were IDEA violations by the District, including a delay in identifying Student as IDEA eligible. Most of the violations identified by Parents with respect to the special education services provided to Student, however, were procedural in nature and Parents failed to produce evidence of a substantive denial of FAPE arising from such violations sufficient to support an award of compensatory education. Moreover, Parents produced no evidence concerning the type or amount of compensatory services that would serve as an appropriate remedy for the violations that do support a limited award of compensatory education. Consequently, such award is derived from the nature of the substantive violation and services logically required to provide Student with the remedial instruction the District should have provided to address Student's specific learning disability in math. The record also provides an equitable basis for ordering the District to pay for the independent evaluation that the District used to determine Student's IDEA eligibility.

B. Child Find

The IDEA statute and regulations require school districts to have in place procedures for locating all children with disabilities, including those suspected of having a disability and needing special education services although they may be "advancing from grade to grade." 34 U.S.C. §300.311(a), (c)(1).

The District argues that it cannot be charged with a child find violation for not suggesting an evaluation to determine Student's IDEA eligibility prior to April of 11th grade because there

had been no earlier indications of a potential disability. From the evidence of Student's academic history in 9th and 10th grades produced at the due process hearing that appears to be accurate, for the most part, with respect to Student's first two years in high school. (FF 3; S-19, pp. 1, 2) The record, however, does not support the District's position beginning, at the latest, in mid-January of 11th grade. By the end of the 2nd quarter of the 11th grade school year, this Student, who had completed two years of high school with a final grade point average solidly in the "C" range, stopped finishing work either in class or at home, and was failing all but two courses. (FF 7) At the beginning of the 3rd marking period, Student had a "D" average in the one academic course [Student] was passing, and had received only 1 grade higher than "D," in [redacted], during the first quarter. (S-19, p. 3) Student's attitude and effort during 11th grade, particularly after [the athletic] season ended, was a significant change compared to the first 2 years of high school. Student's refusal to participate in class, complete in-class assignments and homework (FF 6, 9) should have suggested to the District that an investigation was warranted to determine whether an underlying disability may have been affecting Student's educational progress.

There were, in addition, two specific indications of potential disability. First, Student was having particular difficulty with math, having barely maintained a "D" average during the first marking period in the 2 math classes in which [Student] was enrolled, despite needing to maintain a passing average to play [on the athletic team]. (FF 5) In the second marking period, Student's grades in both math classes were well below failing. (FF 11; P-3) Moreover, the District, through Student's guidance counselor, was aware that Parents had provided a math tutor for Student throughout high school, including 11th grade. (FF 4) The guidance counselor was, or

should have been, aware from Student's record that [Student] had barely achieved a passing final grade in math in 10th grade, despite working with a math tutor. (FF 3, 4)

In addition, there was evidence from the District that Student was exhibiting ADHD symptoms during 11th grade. Student's 11th grade Basic Algebra teacher testified that difficulties with focus and organization interfered with Student's progress in that class. (FF 9) In the ER produced by the District in September of 12th grade, it acknowledged that there were underlying personal issues that negatively impacted academic success, generally, noting, that "[Student] has struggled to achieve high scores in multiple classes. This is affected by difficulties with motivation, study skills and organization skills." P-9, p. 2. Consequently, the information known to the District by the end of the 2nd marking period of Student's 11th grade year, should also have reasonably suggested that the District, at least, alert Parents to the possibility that Student should be screened for ADHD.¹

In short, by the middle of the 11th grade school year, there were sufficient indications of the specific learning disability in math and of the possibility of ADHD, conditions that were ultimately diagnosed by Parents' independent evaluator, to suggest to the District that an evaluation would have been warranted. Under the IDEA and Pennsylvania special education regulations, however, the District would have had 60 calendar days to complete the evaluation. *See*, 34 U.S.C. §300.301(c)(1)(i); 22 Pa. Code §14.123(b). The District, therefore, would have had until the middle to end of March of 11th grade, virtually the entire 3rd quarter, to complete the evaluation, consider the results, determine eligibility, and propose an IEP. The District could not

¹ Although the District ultimately did not conclude that Student's ADHD supported IDEA eligibility in the Other Health Impaired (OHI) category, that does not mean that indications of that condition should not have been a basis for suggesting an evaluation for IDEA eligibility. The point of the child find requirement is to assure that a student who is reasonably suspected of having a disability is evaluated. Had a suspicion of ADHD prompted a District request for permission to evaluate in the spring of 11th grade, the District would have been required to conduct a variety assessments in accordance with 34 C.F.R. §§300.304—300.306, which would certainly have identified the specific learning disability in math which supported the determination that Student was IDEA eligible.

reasonably have been expected to have special education services in place for Student before the beginning of the 4th marking period in the 11th grade school year. Any award of compensatory education for the child find violation, therefore, will be limited to the 4th quarter of Student's 11th grade year. Whether Student is entitled to compensatory education for that period and the nature and extent of such remedy will be considered in Section E, below.

C. IEE Reimbursement

Although Parents did not address this claim in their closing argument, it was identified after opening statements as an active claim (N.T. pp. 21, 22), and, therefore, will be fully considered.

The District argues that Parents' request for reimbursement of the costs of the independent educational evaluation (IEE) they obtained as the initial evaluation in the spring of 11th grade must be denied because the claim does not conform to IDEA standards, in that Parents did not permit the District to conduct its own evaluation when first proposed in April of 11th grade and instead pursued a private, independent evaluation. Parents, therefore, expressed no disagreement with a District evaluation, a necessary first step in obtaining an IEE under the explicit provisions of the IDEA regulations. 34 C.F.R. §502(b)(1).

Although the District's argument is correct, and the record in this case establishes that Parents have no statutory/regulatory right to an IEE, that is not the only basis on which reimbursement for the IEE can be ordered. The Court of Appeals has recently noted that the remedies available to eligible students and their parents under IDEA are not limited to enforcing explicit statutory rights, or to familiar and traditional awards, such as compensatory education or tuition reimbursement. Rather, the IDEA statute confers upon the courts broad equitable powers to fashion appropriate relief to remedy IDEA violations and further IDEA purposes. *Ferren C. v.*

School District of Philadelphia, 612 F.3d 712, 717, 718 (3rd Cir. 2010). By extension, hearing officers who initially consider whether an eligible student has been denied FAPE and related IDEA claims are similarly free to determine an appropriate remedy that meets the appellate court standard.

The Court of Appeals specifically identified two IDEA purposes: 1) ensuring a FAPE which provides special education and related services designed to meet the unique needs of all children with disabilities; 2) protecting the rights of eligible children and their parents. *Id.*

In this case, there is certainly an equitable basis for ordering the District to reimburse Parents for the IEE they obtained in May of the 11th grade school year. It is difficult to identify anything more important to furthering the purposes of the IDEA than a thorough evaluation designed to provide sufficient information concerning Student's needs and how to meet them, as well as to determine eligibility. An appropriate evaluation is the absolutely essential foundation upon which FAPE rests. The IDEA regulations define "child with a disability" as one who has been "evaluated in accordance with §§ 300.304 through 300.311." 34 U.S.C. § 300.8(1). Further, the IDEA requires an evaluation conducted in accordance with accordance with §§300.505 and 300.506 before special education services can be provided to a child with a disability. 34 U.S.C. §300.301(a).

In this case, the School District considered and relied upon the thorough and comprehensive private evaluation report provided by Parents rather than administer its own assessments. (FF 17—21, 24) The District saved considerable time and resources by using that means to fulfill its evaluation responsibility. It is, however, inequitable to make such significant use of the report for which Parents paid and refuse to reimburse them for the cost of the evaluation. Parents' refusal of the District's initial request for permission to evaluate Student

does not alter the balance of equities under the circumstances presented by this case. First, as noted in Section B, above, the District should have suggested an evaluation to Parents more than 2 months before Parent inquired about an evaluation in late March, of 11th grade. (FF 15) Had that occurred, there is no reason to believe that Parents would not have consented to a District evaluation. Instead, however, the District issued an Evaluation Request Form PTE only after Student's guidance counselor was notified by Parents that Student's doctor had suggested an evaluation and identified an evaluator. (FF 15) By the time the District issued a Consent Form PTE three weeks later, Parents had already arranged for the private neuropsychological learning evaluation. (FF 15, 16) Denying Parents reimbursement for the IEE would, if effect, reward the District for its child find violation, as well as permit it to benefit from Parents' payment for a service the District is obligated to provide to all children suspected of having a disability.

Moreover, in the March 23 PTE, the District proposed only cognitive and academic achievement testing. (FF 15) There was no request for assessments of social/emotional functioning. The District, therefore, would not have included in the proposed evaluation measures that would have identified Student's ADHD. Although the District did not use that diagnosis, or the conduct and behavior disorder diagnoses from the private evaluation as an additional basis for IDEA eligibility under the OHI or ED disability categories, the IEP proposed for Student included behavior and focus goals arising from the needs associated with the behavior issues and ADHD diagnosis identified in the IEE. (FF 24, 25) Given Student's behaviors that accompanied greatly diminished academic functioning during 11th grade, the PTE issued by the District did not propose a sufficiently comprehensive evaluation that would have assessed all areas of suspected need for Student.

For all of the foregoing reasons, ordering the District to reimburse Parents for the private evaluation is an appropriate equitable remedy that furthers the essential IDEA purpose of assuring a comprehensive evaluation designed to assess a potentially eligible Student to identify all areas of suspected need in order to determine both IDEA eligibility and to propose appropriate special education services if eligibility is established. The District, therefore, will be required to reimburse Parents for the costs of the IEE they obtained in May of the 11th grade school year.

D. FAPE/Adequacy of Special Education Services

The IDEA statute provides that a school-age child with a disability is entitled to receive a free appropriate public education (FAPE) from his/her school district of residence. 20 U.S.C. §1400, *et seq.*; 34 C.F.R. §300.300; 22 Pa. Code §14. The required services must be provided in accordance with an appropriate IEP, *i.e.*, one that is “reasonably calculated to yield meaningful educational or early intervention benefit and student or child progress.” *Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982); *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d at 249. “Meaningful benefit” means that an eligible child’s program affords him or her the opportunity for “significant learning.” *Ridgewood Board of Education v. N.E.*, 172 F.3d 238 (3RD Cir. 1999). Consequently, in order to properly provide FAPE, the child’s IEP must specify educational instruction designed to meet his/her unique needs and must be accompanied by such services as are necessary to permit the child to benefit from the instruction. *Rowley*; *Oberti v. Board of Education*, 995 F.2d 1204 (3rd Cir. 1993). An eligible student is denied FAPE if his program is not likely to produce progress, or if the program affords the child only a “trivial” or “*de minimis*” educational benefit. *M.C. v. Central Regional School*

District, 81 F.3d 389, 396 (3rd Cir. 1996); *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F. 2d 171 (3rd Cir. 1988).

In identifying the issues at the hearing and in their closing argument, Parents relied heavily on procedural violations to establish that the District failed to provide Student with sufficient and appropriate special education services. The IDEA statute and regulations, however, explicitly provide that “the determination of whether a child received FAPE must be based on substantive grounds,” and that procedural violations can support a decision against a school district,

- only if the procedural inadequacies —
- (i) Impeded the child’s right to a FAPE;
- (ii) Significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or
- (iii) Caused a deprivation of educational benefit.

§300.513(a) (1), (2)

Regardless whether Parents are correct in arguing that the District’s IEP was procedurally deficient with respect to whether present educational levels were adequately explained, whether all goals were sufficiently measurable and whether progress monitoring on all goals was adequate, Parents are required to identify how Student was denied educational benefits as a result of such alleged violations. In that regard, Parents suggested a specific failure to meet IEP goals in one respect, transition services, and identified only one substantive deprivation of educational benefits, the District’s failure to provide special education services designed to remediate Student’s specific learning disability in math, specifically math calculation and math fluency.

1. Transition Services

Although Parents expressed general dissatisfaction with the transition services provided in the IEP, Parents did not provide any evidence or argument describing how Student was

disadvantaged by a lack of adequate transition services. Parents' arguments with respect to transition focused primarily on the District's failure to assure fulfillment of the goal of applying to more than 1 school for post-secondary education. (FF 27) Assuming that the District wrongfully permitted Student to alter that IEP transition goal by applying to only the technical college in which Student decided to enroll, that lapse was at most a procedural violation. (FF 30) Parent provided no evidence of denial of an educational benefit or other detrimental substantive effect on Student because of applying to only one school instead of two. Consequently, there is no basis for a compensatory education remedy for that claim.

2. IEP Math Goal

Parents contend that the IEP did not provide any goals or services directed toward remediating Student's skill deficits in math. It is true that several IEP goals and much of the SDI included in the IEP were directed toward assuring that Student would pass 12th grade classes, particularly Basic Algebra II class, since Student's IDEA eligibility was based upon a specific learning disability in math. The explicit goal of completing Basic Algebra II with an 80% average was actually exceeded. (FF 28)

Nevertheless, the District made no real attempt to remediate Student's extensive skill deficits in math that were detailed in the IEE that the District used to determine Student's IDEA eligibility and needs. The IEE had several suggestions for addressing Student's deficits in completing multi-step calculations that were identified as a particular weakness, and will likely cause ongoing problems. *See*, P-7, p. 23.

During the last quarter of the 11th grade school year, Student was provided with a computer program and the assistance of a math instructor to assure that Student would successfully complete the program and earn a math credit for 11th grade. (FF 12) In light of

Students' serious math deficits and continued struggles with math, the District should have provided similar services based upon a research-based curriculum to appropriately address Student's significant needs in math.

E. Compensatory Education

An eligible student who has received no more than a *de minimis* educational benefit is entitled to correction of that situation through an award of compensatory education, an equitable “remedy ... designed to require school districts to belatedly pay expenses that [they] should have paid all along.” *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d at 249 (internal quotation marks and citation omitted). Compensatory education is intended to assure that an eligible child is restored to the position s/he would have occupied had a violation not occurred. *Ferren C. v. School District of Philadelphia*, 612 F.3d at 718, citing *Reid v. District of Columbia*, 401 F3d 516, 518 (D.C. Cir. 2005).

Compensatory education is awarded for a period equal to the deprivation and measured from the time that the school district knew or should have known of its failure to provide FAPE. *Mary Courtney T. v. School District of Philadelphia* at 249; *M.C. v. Central Regional School District*, 81 F.3d at 395; *Carlisle Area School District v. Scott P.*, 62 F.3d 520, 536 (3d Cir.1995). The school district, however, is permitted a reasonable amount of time to rectify the problem once it is known. *M.C. v. Central Regional School District* at 396.

In this case, compensatory education that meets the standards set forth above can be awarded for the 4th quarter of the 11th grade school year and the entire 12th grade school year. Such award, however, must be designed to provide services that Student should have received from the District during the relevant periods. As discussed in detail above, the only substantive

deprivation Parents established was the District's failure to provide sufficient services to address Student's deficits in math, particularly calculation and fluency. Consequently, compensatory education for the District's child find violation and for the deficiency in Student's IEP will be directed toward remediation of Student's skill deficits in math.

Although Parents repeatedly requested compensatory education, they provided no evidence to establish a measure for such an award, either in terms of specific services or a monetary value for compensatory services. Consequently, the award must be based upon the general evidence of Student's deficits in basic math skills and an appropriate means to address that need. As noted above, during the last quarter of the 11th grade school year, Student successfully completed the computerized Math Essentials program supervised by a math instructor. (FF 11) A similar program specifically designed to address math calculation and fluency, including the services of an instructor to guide Student through the program and provide additional help, would be a reasonable means to provide remediation services to Student, if available. In the alternative, compensatory services may be provided by a math instructor to work on remediating Student's deficits in basic math skills and teaching computation strategies as recommended in the IEE. (P-7, p. 23)

In the absence of evidence concerning the amount of time for which such services should be provided, it will be measured by the number of instructional hours Student needed to complete the Math Essentials program during the fourth quarter of the 11th grade school year,.

Compensatory services will be awarded for the fourth quarter of the 11th grade school year, since the District should have evaluated and identified Student as IDEA eligible by that time. Compensatory education services will also be awarded for the entire 12th grade school year.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, the School District is hereby **ORDERED** to take the following actions:

1. Reimburse [Student]'s Parents for the Neuropsychological Learning Evaluation obtained from [redacted provider] in 2009.
2. Provide [Student] with compensatory education services to remediate identified deficits in basic math skills, particularly calculation and fluency,
 - a. By providing a specific, research-based computerized program to provide practice in basic calculation skills and increase math fluency if available, along with the assistance of a math instructor, or in the alternative,
 - b. By providing the services of a math instructor to provide the same number of hours of instruction and practice in math calculation and fluency that [Student] spent in completing the Math Essentials program during the fourth quarter of the [11th grade] school year;
 - c. The instructional hours for compensatory math instruction services shall be provided for the fourth quarter of the [11th grade] school year and for each quarter of the [12th grade] school year. The total number of instructional hours, therefore, shall be the number of hours [Student] needed to complete the Math Essentials program multiplied by 5.
 - d. The hours of compensatory education may be used at any time from the present to Student's 21st birthday.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are denied and dismissed.

Anne L. Carroll

Anne L. Carroll, Esq.
HEARING OFFICER

January 22, 2011