

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. 01321-0910AS

Child's Name: D.S.

Date of Birth: [redacted]

Dates of Hearing: 10/8/10, 11/18/10, 10/10/10,
2/14/11, 2/23/11, 2/28/11, 4/13/11

CLOSED HEARING

Parties to the Hearing:

Representative:

Parents

Parent[s]

Parent Attorney

Ilene Young, Esquire
50 East Court Street
Doylestown, PA 18901

School District

Central Bucks
16 Weldon Drive
Doylestown, PA 18901-2359

School District Attorney

Grace Deon, Esquire
Joanne Sommer, Esquire
Eastburn and Gray
60 East Court Street
Doylestown, PA 18901

Date Record Closed:

May 6, 2011

Date of Decision:

May 21, 2011

Hearing Officer:

Anne L. Carroll, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

This case involves claims for compensatory services based upon Parent's contention that the District failed to provide sufficient, appropriate special education, including academic instruction and transition services/activities, to assure that Student could successfully meet post secondary transition goals for living independently, obtaining further technical/trade school training and/or engaging in competitive employment.

Student was eligible for IDEA special education services from the District beginning in first grade and continuing until the District graduated Student at the end of [Student's second 12th grade school] approximately two months before reaching age 21.

The hearing began in early October [following the graduation] and concluded in mid-April [of the following year] after seven sessions. For the reasons that follow, Parent's claims in this case will be denied for lack of sufficient persuasive evidence that the District did not appropriately meet its IDEA obligations to Student.

ISSUES

1. Did the School District provide Student with a free, appropriate public education (FAPE) during the [first and second 12th grade] school years, including
 - a. appropriate transition services;
 - b. appropriate assistive technology;
 - c. appropriate academic and vocational/technical instruction?
2. Did the School District appropriately graduate and exit Student from special education services at the end of the [second 12th grade] school year?
3. Should Student's IDEA eligibility be extended in order for the School District to provide Student with additional special education services, in particular, transition services?
4. Is Student entitled to an award of compensatory education for the [first and second 12th grade] school years, and if so, for what period, in what amount and in what form?

FINDINGS OF FACT

Background/History

1. Student, now [beyond teenaged], was born [redacted].¹ At all times relevant to the matters in dispute in this case, Student resided within the School District and was eligible for special education services. (Stipulation, N.T. p. 13)
2. At all times relevant to the matters in dispute, Student was IDEA eligible in the disability categories of Other Health Impairment (OHI), due to Attention Deficit/Hyperactivity Disorder (ADHD) and Specific Learning Disability (SLD). 34 C.F.R. §300.8(a)(1), (c)(9), (10); 22 Pa. Code §14.102 (2)(ii); (Stipulation, N.T. p. 13)
3. Student had a difficult and complicated early medical history resulting from premature birth. Academic and behavior issues arose in kindergarten, which Student repeated, and continued through the early elementary years. Student was first identified as IDEA eligible due to specific learning disabilities and ADHD in 1st grade. The initial ER in February [of first grade] recommended special education services in a learning support classroom. Student was, however, quickly moved to an emotional support (ES) classroom due to behavior concerns. (S-2, pp. 1, 2, 6, S-3, pp. 1, 2, S-8, p. 3)
4. Standardized, individually administered tests of intellectual capacity and language development conducted as part of the District's initial evaluation resulted in a full-scale IQ (FSIQ) in the borderline range of functioning, with considerable scatter among subtests, and identified both receptive and expressive language difficulties. A reevaluation the following year noted slow academic progress and inconsistent retention. (P-4, p.2, S-2, pp. 2, 5, S-3, pp. 2, 5)

¹ By letter dated September 30, 2010 the District raised an affirmative defense challenging Parent's standing to represent Student's interests at the due process hearing, since Student had reached [redacted age before] the due process hearing began. As noted in an e-mail message to counsel prior to the first hearing session, the District provided no citation to legal authority to support that defense.

As further noted, the District was presumably relying upon the federal IDEA regulation found at 34 C.F.R. §300.520, which permits a state to provide for the transfer of the special education rights of a child with a disability from parent to child at the age of majority.

Despite independent research encompassing several sources of Pennsylvania law, the question whether Pennsylvania has made such provision could not be answered definitively. A federal district court case, *Jonathan T. v. Lackawanna Trail School Dist.*, 2004 WL 384906 at *3, Ftnt. 4 (M.D.Pa. 2004), references a statement in the 2002 PDE (Pennsylvania Department of Education) Policies and Procedures Manual indicating that there is no transfer provision in Pennsylvania. The 2009 version of the manual states only that the age of majority in Pennsylvania is 21, so educational rights do not transfer at age 18, other than rights regarding educational records. No Pennsylvania statute, regulation or policy explicitly transferring IDEA educational rights at age 21 was located.

The District was invited to present legal authority to establish a transfer of IDEA educational rights from parent to a formerly eligible student at age 21 to meet its burden of proof with respect to the affirmative defense. No authority was presented, and the District did not assert the affirmative defense on the record. Parent, therefore, was permitted to represent Student's interests at the due process hearing.

5. During the elementary and middle school years, Student received most academic instruction in a special education classroom. Behavior issues persisted into at least 4th grade and Student repeated 5th grade. By the end of 8th grade, however, Student was described by teachers as hard working, enthusiastic and making satisfactory progress. (P-4, p. 2, P-6, p. 2, S-8, p. 2)

High School Years/Period in Dispute

6. During high school, teachers described Student as exhibiting appropriate social behaviors with peer and adults. Student interacted well with peers and built classroom relationships with them. Teacher comments also noted that Student was polite, cooperative, interested in learning, with a strong desire to do well in school, followed school rules and asked for help when needed. There were no disciplinary referrals. (N.T. pp. 769, 889, 898—902, 989, 998, 1105, 1110, 1115, 1166, 1173, 1214, 1269; P-8, p. 4, P-11, pp. 4, 19, P-12, p. 7, P-13, p. 5, S-15, pp. 5, 37, S-18, pp. 1, 2)
7. Beginning in 10th grade, Student spent part of each school day at a vocational technical school where Student was initially enrolled in the [redacted career] program. Student's interest in that particular program was based upon exposure to Student's step[parent]'s work. (N.T. pp. 505, 507; P-7, p. 1)
8. During 11th grade, Student received instruction in reading, English, math, science and social studies in a learning support (LS) classroom at Student's home high school. (N.T. pp. 1149; P-7, p. 5)
9. At the end of 11th grade, Student appeared to be "on track to graduate" with a regular high school diploma at the end of the following school year, and did complete sufficient credits to graduate at that time. (N.T. p. 958; P-7, p. 1)
10. Student took the PSSA test at the end of 11th grade, scoring "Below Basic" in reading, math and science, but "Proficient" in writing. Parent waived a re-test in the fall of 12th grade. In the spring of Student's 12th grade year, the District notified Parent that the Student's Academic Standards Portfolio could be used as an alternative assessment for state standards, and that based upon the portfolio, the District certified Student as meeting state standards for proficiency in reading, math and writing. (N.T. pp. 723, 724, 732; P-15, pp. 1, 5, 6, 8; P-16, *P-38, *S-23² S-37)

² Student's entire portfolio was produced at the hearing, marked as P-30 for identification. Various witnesses, as well as the hearing officer, reviewed and at times referenced the full portfolio. Student was, however, reluctant to part with the portfolio for an unspecified and undoubtedly lengthy period, as would have been necessary had the full portfolio been made part of the administrative record in this case. In order to permit Student to retain the portfolio during the pendency of this case and whatever review may follow, selected pages were copied and admitted into evidence as P-38 and as S-23. In reviewing the admission of evidence, however, it was noted that P-30 was admitted, although it was not retained for the record along with all other admitted or offered exhibits. In light of the absence of the document, admission of the full portfolio into the record is hereby rescinded. Should use of the entire document become necessary as part of a subsequent civil action, Parent and Student will need to produce the document for the court at such time as it may be needed for full review in accordance with whatever arrangements may be made among the parties and the court.

11. Student's IEP team subsequently concluded that Student's graduation should be postponed to provide another year of reading and math instruction, as well as another year of vo-tech. During the first year in 12th grade, Student transferred from the [redacted career] program to the [redacted career] program. (N.T. pp. 754, 755, 937, 1150; P-8, p. 1)
12. In addition to participating in the [redacted second choice of career] program and physical education at the vo-tech school during the first year of 12th grade, Student was instructed in math, reading/English and science in the learning support classroom and social studies in a co-taught regular education class at the home high school during the remainder of the school day. Student performed best in a smaller setting a slower pace of instruction. (N.T. pp. 893, 894, 902, 1105—1107; P-8, p. 1)
13. During both years in 12th grade, Student was instructed in the Read 180 Program, a peer-reviewed, research-based program for students with reading difficulties. Student participated in large group, small group and individualized instruction. Independent reading passages are selected based upon individualized lexile levels. The program includes components to address comprehension, fluency and functional reading skills. Mid-way through the first year in 12th grade, Student was working in Level 2 of the Read 180 program. By the end of the second 12th grade year, Student had reached 91% at Level 2 on computer probes, with class probes ranging from 56—92%. At Level 3, computer comprehension probes improved from 77% in April (class probes at 50%) to 80% in June. (N.T. pp. 913—915, 918—929, 932—935; S-20, S-36)
14. At the beginning of the second year in 12th grade, Student's instructional reading level was at 5th/6th grade, with a lexile level of 981 for independent reading, at an upper middle school level. Student's reading level remained at that level through the end of high school. (N.T. p. 968; S-15, pp. 5, 6, S-26-B, p. 1)
15. During the second year in 12th grade, Student participated in the vo-tech [career redacted] program in the morning and returned to the high school for instruction in reading/English and math in the afternoon. (N.T. pp. 543—553, 959, 960)
16. Student's math instructor used an algebra book during the first year in 12th grade and the Saxon Math program during the second year in 12th grade. Saxon Math incorporates various math concepts, including algebra and geometry, presented in small increments. Instruction in the program is individualized, with independent practice on the skills taught. Student was permitted to use a calculator on tasks not designed to assess ability to do calculations. Student was working at approximately a 6th grade level. (N.T. pp.1111—1113, 1117, 1118, 1145, 1146; P-12, p. 13, P-13, p. 14, S-15, p. 17)
17. The [career] program included completing assignments from a textbook, weekly chapter tests, drawings and projects that Student was required to complete alone or as part of a work group. There were also industry presentations followed by tests on written materials to earn a competency certificate. Student was part of a group that used the textbook for textbook chapter tests, and all students were permitted to use the written

- materials provided by the industry presenters when completing post-presentation assessments. The instructor printed study guides for the class to complete together before chapter tests, and Student also received assistance with reading test questions if needed. (N.T. pp. 515—518, 531, 532, 590—592, 1276—1279; P-38, S-23)
18. Parent requested that Student use a device to read the textbook aloud, but Student resisted, believing it was not necessary. (N.T. pp. 1154—1156)
 19. Student earned good grades in the [career] program during both years of enrollment. Student's grades improved from the first to the second year. (N.T. pp. 776, 777, 1235, 1236; S-18, pp. 1, 2)
 20. During the first year in the [career] program Student had difficulty with [redacted] and received help to determine [redacted] but could [then proceed] without assistance. According to Student, there were no longer problems with [redacted] during the second year. A log kept to track Student's progress, however, indicated continued need for some assistance with [redacted]. (N.T. pp. 521, 522, 592; S-26-A)
 21. Student received specific additional, instruction in math, including algebra, when needed for the [redacted] program, as well as assistance with reading materials. Student used a calculator for math problems associated with [redacted]. (N.T. pp. 535—538, 1105—1109, 1145)
 22. Student completed project assignments and labs, often with assistance. One project required Student to produce [redacted]. Labs required similar output in accordance with [redacted]. Student could also complete most homework assignments independently. Student was well able to use a computer for [redacted] and in general, regularly does computer research. (N.T. pp. 524—529, 589, 790, 1160, 1165, 1166, 1262, 1263; P-38, pp. 1, 9—11, S-26-C)
 23. Student was required to produce a graduation project in order to successfully complete the vo-tech [career] course. With some support and guidance from the vo-tech special education teacher, Student developed and presented a [multi-step] power point project on [redacted]. Student' project was well done and well-received by Student's teachers and Parent. (N.T. pp. 805, 806, 1160, 1161, 1247)
 24. In the textbook used during both years of the competency-based [career] course, Student progressed from the entry Level 100 into Level 200, based upon meeting the cumulative course standards, objectives and skill development necessary to advance in the program. (N.T. pp. 1223, 1225, 1227—1229, 1238, 1239; S-25)
 25. At the end of Student's second year in 12th grade, Student was nominated for, and received, a \$1,000 Grainger Foundation Award. To qualify for the award, a student must have completed the highest vo-tech program level in his/her field, exemplify excellence in the field, including knowledge and ability, have a good attitude, be a hard worker and pursue post-secondary education or training. (N.T. pp. 764, 765, 1171; S-32)

26. Student did not take the National Occupational Competency Testing Assessment (NOCTI) required by PDE of secondary and adult “concentrators” completing a technical education program. Although Student had insufficient skills to succeed on the test after completing two years in the [career] program, Student should have taken the test. (N.T. pp. 1176—1179; P-24, p. 5)
27. In May 2010, at the end of Student’s second year in 12th grade [redacted], the District issued a graduation NOREP. Parent disapproved the NOREP and checked the box requesting a due process hearing, but did not file a due process complaint until June 25, 2010. The District proceeded with Student’s graduation. (N.T. pp. 723; P-31, p. 1, S-16, pp. 3, 4)

Transition Planning/ Services

28. Transition planning for Student began with the IEP developed at the end of 9th grade, to be implemented primarily during 10th grade. The initial services and activities were directed toward exploring post-secondary options including additional training/education, employment and independent living. Training and employment transition activities included computer exploration of post-secondary institutions and a vocational assessment. (P-10, pp. 1, 14—17)
29. Activities listed under “Community Living Outcome” and “Community Participation Services,” which proposed to provide Student with information concerning responsibilities and activities of living independently and navigating public transportation were crossed out. “Information on obtaining a driver’s permit” and information for taking the driver’s test on the computer were handwritten additions to that section of the IEP. (P-10, pp. 15, 16)
30. Academic services to support post-secondary outcomes were listed, including intensive instruction in reading, writing, math and study skills, as well as participation in a program to identify personal and career interests. (P-10, p. 17)
31. In the next IEP, developed for 10th/11th grade, additional transition activities were listed, directed toward continuing to explore both post-secondary education/training and employment by means of computer-based programs and an 11th grade job studies course. Student’s enrollment in the vo-tech [career] program was also included among the transition activities. (P-11, p. 16)
32. The IEP developed at the end of 11th grade listed post-secondary education, specifically technical/trade school, and competitive employment, both without support, as desired transition outcomes. Transition services/activities focused on improving Student’s reading skills, as well as the course of study in [redacted initial career choice]. Independent living and independent access to community resources without support were listed as part of the transition plan with the notation “No services needed at this time.” (P-12, p. 9)

33. Student's IEP team met again after a reevaluation report was issued in the middle of the first 12th grade year. The IEP listed present levels of performance related to transition goals, noting that Student had participated in a career cluster inventory the previous fall that revealed high interest in criminal justice careers. Student expressed an interest in attending a technical and trade school and in pursuing a career in [second career choice], the vo-tech course of study that had replaced [the initial career choice] at the beginning of the school year. (N.T. pp. 511, 979, 988; P-13, p. 8, S-31)
34. Student was one of three students invited by the special education teacher to attend a career expo to practice job interviewing skills and gather information concerning post-secondary services. (N.T. pp. 980, 981)
35. Part of the instruction Student received in the vo-tech program involved professional development activities, including searching for a job in the [career] field. (N.T. pp. 533, 1233, 1234, 1270—1272)
36. For a time during high school, Student had a part-time job at a local [redacted], obtained through an acquaintance. (N.T. p. 556)
37. Between the end of 11th grade and the middle of the first 12th grade year, Student had registered to vote, voted in the fall elections and obtained a driver's license after driving instruction from Student's [parent] and step[parent]. Student drove to school during the second 12th grade year. (N.T. pp. 563, 565—567, 822, 823; P-13, p. 8)
38. The training/employment transition outcome goals in the mid-year IEP for Student's first 12th grade school year continued to be technical/trade school and competitive employment without support. Services and activities centered on instruction in a special education setting to improve reading and math skills, as well as participation in the vo-tech [redacted career] course of study. Receiving information about services available to adults with disabilities was added to the transition plan, along with participation in a self-empowerment unit in the special education classroom. Independent living and accessing community resources without support were also repeated as transition outcome goals, and services/activities directed toward developing independent living skills and access community resources were again listed as not necessary. (N.T. pp. 983, 984P-13, pp. 8—12)
39. Parent signed a NOREP approving the IEP, which included a reading comprehension goal and a math goal. (P-13, pp. 13, 14, 25)
40. Student's last IEP before IDEA eligibility ended was drafted in the middle of Student's second 12th grade year. Due to Parent concerns, the post-secondary training and employment goals were changed to "with support." Special education reading and math instruction and participation in the vo-tech [career] program continued. (N.T. pp. ; S-15, pp. 1, 10—15)

41. The independent living goal was altered to read “[Student] has the goal of living independently at some point.” Parent and Student were provided with information concerning reasonable employment accommodations and advocacy, resources and services available to college students/young adults with disabilities, specifically including the Office for Vocational Rehabilitation (OVR), and information concerning post secondary events. (S-15. pp. 10, 11, 13—15)
42. Student missed the deadline for applying to the desired technical school training program for the fall term following Student’s graduation. Student’s learning support teachers and vo-tech instructors saw no reason why Student could not be employed. Student’s instructors in both the [initial career choice] program and the [second career choice] program commented that Student would be an asset to any employer seeking a dependable, trustworthy, hard working employee with a good work ethic, including a willingness to take direction. (N.T. pp. 757, 999, 1167, 1173—1175, 1236, 1237, 1273, 1275, 1304, 1311; P-11, p. 19)
43. Student was prepared to seek entry-level employment in the [career] field, having prepared a portfolio and resumé. Student also had the Grainger Award scholarship funds, which Student could and did use to purchase [redacted]. The [career] teacher offered to serve as a reference for Student. (N.T. pp. 765, 1245, 1246)
44. Since leaving high school Student has made some effort to pursue additional training or employment, but at the time of the hearing was neither employed nor enrolled in a post-secondary educational institution or training school. (N.T. pp. 533, 534, 540, 541, 765, 766)
45. While Student was still in high school, the special education teacher at the vo-tech school assisted Student in completing an application for OVR services, but the process was not completed by Parent at that time. (N.T. pp. 766, 767, 1168, 1169)

Private Evaluations/2008, 2010

46. Parent obtained a private neuropsychological evaluation of Student, during the summer before the first 12th grade year [redacted]. (N.T. pp. ; P-8, p. 1, S-8, p. 1)
47. The neuropsychologist interviewed Student and Parent, reviewed information provided by Parent and administered a number of assessments, including Draw-A-Figure, The Rorschach, WRAT4 (Wide Range Achievement Test, Fourth Edition) and WISC-IV (Wechsler Intelligence Scale for Children-Fourth Edition). (N.T. pp. ; P-, S-8, p. 3)
48. Based upon Student’s medical history and the WISC-IV results, the evaluator placed Student’s intellectual ability in the low average to borderline range. She concluded that Student exhibits a cognitive impairment resulting from a brain injury associated with premature birth. The evaluator also concluded that Student’s academic achievement was below expected levels based upon the WISC-IV results and Student’s low average

receptive language ability as measured by the PPVT (Peabody Picture Vocabulary Test, Fourth Edition. (N.T. pp. ; P-8, pp. 1, S-8, pp. 7, 8)

49. In May 2010, Parent obtained a second private neuropsychological examination of Student from a different evaluator, a certified school psychologist who recently began a private practice after retiring from a public school career. The evaluation reported stated that the purpose of the evaluation was “to determine current academic levels and clarify if any memory impairment is impacting [Student’s] ability to function in a vocational setting.” (N.T. pp. ; P-1, p. 2)
50. The evaluator further noted as part of the referral question that Parent “does not feel that [Student] received sufficient academic programming during...school age years to function successfully in post-secondary settings or on a job. She wants to insure that adequate supports and services are in place as [Student] makes the transition to adult life.” (N.T. pp. ; P-1, p. 2)
51. The evaluator reviewed health, medical and educational files, and noted the importance of considering that information. (N.T. pp. 51, 52, 54)
52. The evaluation report did not include an observation of Student in any setting, including during the assessments and clinical interview. The evaluator did not ask Student or any teacher to complete the behavior rating scales used to assess behavioral/emotional functioning (BASC-II –Behavior Assessment System for Children-Second Edition) and adaptive skills/functioning (ABAS II—Adaptive Behavior Assessment System Second Edition), relying entirely upon Parent as informant. (N.T. pp. 94—96, 489—492; P-1, pp. 4, 13)
53. The evaluation report noted Student’s medical/ developmental history, including a recent EEG report which identified altered brain structures consistent with an old cerebral infarct. (N.T. pp. 75, 76; P-1, p. 3)
54. With respect to Student’s educational history/records, the report specifically considered the independent neuropsychological report completed approximately a year before, as well as the results of a subsequent District evaluation. The report referred to Student’s early childhood and elementary school behavior difficulties, as well as Student’s early elementary school placement in a full-time emotional support program. Student’s high school years, including Student’s second year of 12th grade educational program/placement and transition services were described in a single sentence: “Currently, [Student] is enrolled in a vocational-technical program and continues to receive some degree of learning support services in [Student’s] home school.” The report makes no reference to Student’s educational history or functioning between 3rd grade and the brief mention of Student’s then current services. (N.T. pp. ; P-1, pp. 2—4, 1—17)
55. The 2010 neuropsychological report includes a description of the areas of Student’s functioning that were assessed, the assessment methods used and a narrative description of the results:

a. Sensory Perceptual/Auditory Perception:

Scan-A—Questionable range on tasks associated with auditory closure and dichotic speech tasks, indicating possible receptive language/and/or auditory processing disorder;³

b. Attention:

(i) Sustaining Attention: D-KEFS⁴ Trailmaking Test: Visual Scanning— significant strength in maintaining visual attention (more than 1 standard deviation above the mean); (auditory sustaining attention not assessed);

(ii) Inhibiting Attention: D-KEFS Color-Word Interference-lower end of average range;

(iii) Shifting Attention: D-KEFS Color Word Interference: Inhibition/Switching—area of significant difficulty (2 standard deviations below the mean);

c. Executive Functioning:

(i) planning, organizing, self-monitoring; retrieval fluency—average range on all D-KEFS tests administered;

(ii) interest, motivation, initiative, drive, emotional/behavioral stability, internal emotional states—BASC-2, Parent Rating Scales only (PRS-A)—At Risk or Clinically Significant in all areas;

d. Memory:

(i) Auditory-Verbal Memory (explicit acquisition)—WRAML2⁵ Story Memory Subtest; Verbal Learning Subtest—good ability to recall meaningful verbal information (Story recall); extreme difficulty learning unrelated verbal material (Word list recall—2 standard deviations below the mean);

(ii) Auditory-Verbal Memory (retrieval)-- WRAML2 Story Memory Recall; Verbal Learning Recall—Recall stories and word list after 15 minute delay—average range for retrieval of meaningful auditory verbal information; difficulty recalling non-meaningful verbal information (1 standard deviation below the mean);

(iii) Visual-Spatial Memory (acquisition)—WRAML2 Design Memory Subtest, Picture Memory Subtest—average or above-average range on both measures;

(iv) Visual-Spatial Memory (retrieval)—WRAML2 Design Recognition Subtest (Scaled Score 10), Picture Memory Recognition Subtest (Scaled Score 7), indicating more difficulty with visual/non-verbal memory for spatial locations of a pictured object and possible visual working memory deficits;

(v) Motor Memory (Writing and typing)—Average range, measured by WJ-III NU⁶ Handwriting Subtest;

³ The full test results, attached to P-1 at p. 21, place Student in the “normal” range on two subtests: Auditory Figure-Ground (Standard Score 12/75th %ile); and Competing Word (Standard Score 10/50th %ile). The remaining two subtest scores, Filtered Words (Standard Score 06/9th %ile) and Competing Sentences (Standard Score 06/9th %ile) fell into the “questionable” range. Student’s Total Test Standard score was 88 (21st %ile), in the “normal” range. The results the evaluator reported in the narrative were apparently based only upon one or both of the low subtest scores, but the conclusion was not further explained in the evaluation report

⁴ Delis Kaplan Executive Function System

⁵ Wide Range Assessment of Memory and Learning, 2nd Edition

⁶ Woodcock-Johnson Tests of Achievement-Third Edition Normative Update

e. Language:

- (i) Expressive Semantics—Stanford Binet Intelligence Scales, Fifth Edition, Verbal Knowledge Subtest—more than 1 standard deviation below the mean;
- (ii) Reading (grammar/syntax)—WJ-III NU Reading Fluency Subtest—very low to low range;
- (iii) Reading (decoding)—WJ-III NU Letter-Word Identification Subtest—low average range;
- (iv) Reading (comprehension/fluency)—WJ-III NU Passage Comprehension Subtest—low average range; *Read Naturally* Level 3.5 Probe: 87 wcpm (words correct per minute)—instructional level for oral reading fluency;
- (v) Written Expression (grammar/syntax)—WJ-III NU Writing Fluency Subtest—very low to low range;
- (vi) Written Expression (decoding/ability to spell, use lexical representations)—WJ-III NU Writing Fluency Subtest—very low to low range;
- (vii) Written Expression (comprehension/ability to demonstrate knowledge through writing)—WJ-III NU Writing Sample Subtest—low average range;

f. Motor:

Motor Speed—D-KEFS Trailmaking Test: Motor Speed Subtest—average range

g. Mathematics:

- (i) Verbal Math (computation/problem solving)—WJ-III NU Applied Problems Subtest—average range;
- (ii) Nonverbal Math (computation)—WJ-III NU Calculation Subtest—low average range;

h. Learning Processes/Intelligence:

- (i) Stanford Binet Intelligence Scales, Fifth Edition—Borderline cognitive functioning (Full-scale IQ = 76), complicated by relative weaknesses in language, attention difficulties, and problems with emotional regulation (based upon Parent’s BASC-2 ratings);
- (ii) Adaptive Functioning—ABAS II (using only Parent as informant)—extremely low range (1st %ile);

i. Social-Emotional:

- (i) Personality Characteristics (social attention/executive functioning)—BASC-2 PRS-A (Parent Reporting Scale)—Anger Control—At Risk;
- (ii) Personality Characteristics (language)—BASC-2 PRS-A—Functional Communication—Adequate;
- (iii) Personality Characteristics (higher level social cognition)—BASC-2 PRS-A Social Skills Scale—At Risk;
- (iv) Temperament (disposition/emotional reactivity)—BASC-2-PRS-A—Clinically Significant. (P-1, pp. 5—14)

56. The evaluator concluded that Student’s borderline IQ score, combined with the very low adaptive functioning reported by Parent via the BASC-2 and ABAS II rating scales, makes intellectual disability/mental retardation a more accurate diagnosis of Student’s disability category than learning disability. The evaluator further concluded that Student’s “competencies are so limited currently that it is doubtful that [Student] would

be able to function independently in a post-secondary setting or job without the presence of additional supports and services.” (N.T. pp. 55—62; P-1, pp. 13, 15)

57. The evaluator stated in her report that the District failed to meet Student’s educational, adaptive behavior and transition needs due to a lack of intensive basic skills instruction, failure to provide linkages to other services, such as OVR and services to address mental health needs, and especially, failure to identify adaptive behavior deficits and provide effective interventions. (P-1, pp. 15, 17)
58. The evaluator recommended intensive instruction in reading, writing and math, as well as services by the District to address Student’s job skills and independent living skills, development of an individualized plan for employment, and individualized post secondary training with an emphasis on basic skills remediation and adaptive behavior. (N.T. pp. 97—104; P-1, pp. 16, 17)

DISCUSSION AND CONCLUSIONS OF LAW

A. Legal Standards

Before considering the facts in light of the parties’ contentions, it is helpful to set out the familiar legal framework that governs consideration of the issues in dispute.

1. FAPE/Meaningful Benefit

Under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, *et seq.*, and in accordance with 22 Pa. Code §14 and 34 C.F.R. §300.300, a child with a disability is entitled to receive a free appropriate public education (FAPE) from the responsible local educational agency (LEA) 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 235, 249 (3rd Cir. 2009). “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, an eligible student’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).

Under the interpretation of the IDEA statute established by the *Rowley* case and other relevant cases, however, an LEA is not required to provide an eligible student with services designed to provide the “absolute best” education or to maximize the child’s potential. *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d at 251; *Carlisle Area School District v. Scott P.*, 62 F.3d 520 (3rd Cir. 1995).

2. Compensatory Education

An eligible student who has not received more than a *de minimis* educational benefit is entitled to correction of that situation through an award of compensatory education, an equitable “remedy is 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 249 (internal quotation marks and citation omitted). 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 395 (3rd Cir. 1996); *Carlisle Area School District v. Scott P.*, at 536. 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.

3. Due Process Hearings/Burden of Proof

The substantive protections of the IDEA statute and regulations are enforced via procedural safeguards available 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 at 240.

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 proof. The burden of proof has two elements, production and persuasion, but in the context of an IDEA hearing, the Court addressed only the burden of persuasion. 126 S. Ct. at 537. Pennsylvania federal courts have generally required preponderant evidence to meet that burden. *See Jaffess v. Council Rock School District*, 2006 WL 3097939 (E.D. Pa. October 26, 2006). Only when the parties' evidence is in evenly balanced "equipoise" does the *Schaffer* rule defeat the party seeking relief for failure to persuade the finder of fact. In this case, Parent's evidence was not preponderant, and the District's countervailing evidence removed this case from the "equipoise" situation, and, therefore, the District prevails without relying on the *Schaffer* rule.

B. Basis for Parent's Claims

Parent's claims in this case center on her belief that Student lacks virtually all functional skills necessary for succeeding in adult life, including living independently, pursuing additional technical education/training and obtaining/maintaining employment, particularly in the [redacted career] field. Parent contends that Student's alleged lack of competency resulted from the

District's failure to provide sufficient effective instruction in basic academic skills, reading, writing and math, and a comprehensive, appropriate transition plan, which should be remedied by two years of compensatory education, services, to remain available for Student's use until age 25.

The evidentiary record indicates that Parent's fears concerning Student's ability to function adequately as an adult grew as the inevitable end of Student's high school years approached, which first occurred at the end of 11th grade. (FF 9) During the summer between 11th and 12 grades, Student had been evaluated by a private neuropsychologist who diagnosed a cognitive impairment and raised behavioral/emotional/mental health concerns. (FF 46, 47, 48; S-8, pp 5, 6) At the beginning of 12th grade, however, Student was not approaching the statutory end of IDEA eligibility. Despite Student's having completed graduation requirements, the District provided Student with an additional year of IDEA eligibility, permitting Student to return to high school for another 12th grade year. (FF 11) During that year, Student's program included continuing in the regular education vocational-technical program in [redacted career], with special education support, and additional academic instruction in reading/English and math by special education teachers. (FF 12, 13, 15) All of those educational services also served as part of Student's continuing transition plan, as had been the case for the two prior school years. (FF 30, 31, 38)

Clearly, however, Parent's, and perhaps Student's, fears for the future increased during Student's second 12th grade year. At an IEP meeting in the middle of that school year, Parent, for the first time, requested that postsecondary education/training and employment outcomes be changed from "without support" to "with support". (FF 32, 38, 40, 41) Parent also sought an independent evaluation, no doubt to support her belief that Student was not ready to exit high

school and school age IDEA services. (FF 49, 50) As discussed in more detail below, Parent's second evaluator confirmed Parent's worst fears, as well as her belief that Student's extremely limited academic and functional skills identified by the evaluator should be attributed to the District's failure to fulfill its IDEA responsibilities to Student. (FF 56, 57, 58)

Regardless of origin or label, there is no doubt that Student has a significant disability that so adversely affects learning that Student will likely require some degree of lifelong support and accommodation. Parent's fears and her apparent dismay that the effects of Student's disability persists after so many years of public education are understandable. Also understandable is the difficulty of leaving behind a familiar School District support system to navigate the uncharted waters of adult disability services. Notwithstanding the legitimacy of Parent's feelings, however, the record in this case amply supports the District's position that it provided Student with appropriate academic instruction and transition services and has no further obligation to Student or Parent. In essence, Parent's claims in this case are based upon disappointment that Student's educational and transition outcomes were not as good as expected or desired. The IDEA statute, however, does not create an outcomes based entitlement to services. As noted in court decisions cited above, and more recently in *High v. Exeter Twp. School District*, 2010 WL 36832 at *4 (E.D. Pa. 2010),

Congress did not intend the IDEA to guarantee a specific outcome, but to provide a basic level of educational opportunity. *Rowley*, 458 U.S. at 192 (quoting S.Rep. No. 94-168, at 11 (1975)); *Polk v. Centr. Susquehanna Intermediate Unit 16*, 853 F.2d 171,178 (3d Cir.1988).

Moreover, the Court of Appeals held in two prior IDEA decisions that the appropriateness of a School District's program and placement must be determined as of the time it was offered, and not at a later date. *Fuhrmann v. East Hanover Bd. of Education*, 993 F.2d 1031, 1040 (3rd Cir.1993), *Susan N. v. Wilson School District*, 70 F.3d 751, 762 (3rd Cir. 1995).

The focus of the decision in this case, therefore must be on determining whether the academic program and transition services provided by the District during Student's final two school years of IDEA eligibility were reasonably calculated to result in meaningful progress and whether Student made meaningful progress during the last two high school years.

1. Inappropriate Graduation

Parent contends that the District's graduation NOREP, dated May 3, 2010 should not have been issued, and further, that the District should not have implemented it after Parent disapproved. Parent's position, however, ignores a fundamental and unalterable fact: Student's IDEA statutory eligibility ended [time period redacted] after the NOREP was implemented by issuing a high school diploma and thereby exiting Student from special education despite Parent's disagreement. (FF 1, 27) Even if Parent's "stay put" argument were credited, therefore, and even if Parent prevailed on her denial of FAPE claims, Student's IDEA eligibility would have ended on Student's 21st birthday. In *Ferren C. v. School District of Philadelphia*, 595 F.Supp.2d 566, 574-5 (E.D. Pa. 2009), *aff'd*. 612 F.3d 712 (3rd Cir. 2010) the court held that there is no statutory basis for extending IDEA eligibility beyond age 21, and that conclusion was accepted by the Court of Appeals in the affirming decision.⁷

Moreover, even if the District's conclusion that Student had fulfilled all requirements for graduation were not justified by the record in this case, Student would not have been entitled to an additional several weeks of compensatory based upon "stay put," *i.e.*, a school district's obligation to maintain an eligible student's "current educational placement" because that

⁷ The district court further concluded, and the Court of Appeals agreed, that in rare and unusual cases, the school district legally responsible for providing FAPE to a formerly eligible student can be directed to maintain its involvement in the student's educational programming to assure that a compensatory education award is used effectively to fulfill the purposes for which it was provided, *i.e.*, full compensation "for a school district's past violations of [a student's] rights under the IDEA and develop an appropriate equitable award." *Ferren C. v. School District of Philadelphia*, 612 F.3d 712, 720 (3rd Cir. 2010).

provision applies only after a due process complaint is filed. 34 C.F.R. §300.518(a). In this case, the due process complaint was not filed until after the NOREP was implemented. (FF 27) Consequently, at the time the due process complaint was filed, there was no educational placement to maintain.

2. Private Evaluator's Results/Opinions

Much of the evidence that Parent contended supported her claims in this case is found in the report and extensive testimony of Parent's expert witness, the neuropsychologist/certified school psychologist who conducted a private evaluation of Student just before the last school year ended.⁸ (FF 49) The witness's method of obtaining the information on which the major findings of the evaluation rest was so flawed and the attempt to "cherry pick" even the results of objective standardized tests to reach the conclusion that the District is liable for IDEA violations so blatant that the evaluation results, and especially the opinions expressed by Parent's expert witness concerning the District's failure to provide Student with appropriate services, are entitled to no weight in this case.

Although the evaluator stressed the importance of examining Student's functional skills, noting that she "spent a good deal of [the] evaluation in trying to look at ...adaptive behaviors." (N.T. p. 80) Despite that critical piece of the evaluation, indeed, the fulcrum on which the evaluator's conclusion that Student's proper diagnosis is intellectual disability/mental retardation turns, the evaluator relied only on Parent's ratings to make the determination of extremely poor development of functional adaptive skills. (FF 52) Further, most unusually, and contrary to the vast majority of evaluation reports, including the 2008 independent neuropsychological

⁸ It must be noted that the testimony of Parent's expert neuropsychologist was considerably more detailed and lengthy than generally permitted, primarily because the complaint was filed and the evaluation completed just before new procedures to streamline expert testimony were adopted. Parent's expert, therefore, was given the opportunity to explain and elaborate upon the evaluation report, as was apparently expected when the evaluation report was prepared.

evaluation, (FF 47) there was no report of a first hand observation by the evaluator, even during the evaluation, to document that the standardized assessments she conducted represent valid measures of Student's performance.

The absence of any observation of Student is a critical flaw in the evaluation. A well recognized text on assessments states that with respect to diagnosing mental retardation, the evaluator

will want to observe the child in more than one setting, (e.g., at home and at school) and obtain information from different informants about how the child behaves in various settings. You should not rely exclusively on parents or teachers because they may fail to observe important behaviors or environmental contingencies. Observations in multiple settings are important because the contextual variables that affect behavior differ in different environments. (Moore, Feist-Price, and Alston (2002)

Assessment of Children, Behavioral, Social, and Clinical Foundations, Fifth Edition, (Jerome M. Sattler, Robert D. Hoge, 2006), p. 439. Those principles also comport with common sense, particularly in this case. It is difficult to understand why an evaluator specifically examining how Student is able to function in a work or post secondary educational setting would base her conclusions only upon a Parent's completion of rating scales, when Parent 's usual, if not only opportunity to observe Student is in home and community settings. Teachers had the opportunity to observe Student in an environment more consistent with post secondary school and employment settings.

In addition to relying upon only one informant and making no personal observations, the evaluator failed to note and apparently to consider objective, extrinsic indications of higher functional abilities than reported by Parent, such as Student having obtained a Pennsylvania driver's license. (FF 37) With no reasonable explanation for doing so, the evaluator also entirely disregarded teacher comments and other information concerning Student's functional

skills in the school environment contained in District evaluation reports and IEPs. (FF 6)

Finally, the evaluator failed to note inconsistencies between the standardized assessments she administered to Student and the results obtained from Parent's ratings. In measuring executive functioning, it is telling that according to the evaluator's narrative, Student fell into the average range on all D-KEFS subtests administered, but in the AT-Risk or Clinically Significant range on all characteristics assessed only by means of Parent's ratings. (FF 55c) There may be good reasons for the apparent discrepancy in results that do not undermine the evaluator's determination that Student has virtually no adaptive skills, and, therefore, that a change of diagnosis from learning disabled to intellectual disability/mental retardation is still warranted, but the failure to even acknowledge, much less explain the potential reasons for the discrepancy, along with all the other questions concerning her conclusion that Student's adaptive behaviors are virtually nonexistent undermines the evaluator's evaluation results and opinions based upon the results.

The evaluator was questioned by Parent's counsel about the absence of informants other than Parent for the BASC-2 and ABAS II and stated, basically, that she couldn't spend additional time on the evaluation due to Parent's limited financial resources to fund a more extensive evaluation. (N.T. pp. 94, 95) Regardless of the legitimacy of electing to set aside proper practices for diagnosing an intellectual disability on that basis, it does not explain why other indicators that Student has a higher functional capacity than reported by Parent, such as indications of more than minimally adequate ability to function socially and behaviorally in the school setting and Student's ability to obtain and maintain a driver's license were disregarded and not acknowledged in any way in the evaluation report. (FF 6, 37)

The evaluator also appeared to ignore, or discounted without a good explanation or reasonable basis, the results of individually administered standardized tests by the evaluator herself that indicated that Student's memory, executive functioning and a number of academic skills either fell within the average range or were commensurate with intellectual ability. (FF 55)

In addition, although the evaluation report was completely silent as to the evaluator's impressions of Student based upon her interactions with Student over several testing sessions and in a clinical interview—as to which the evaluation report is likewise silent, the evaluator expressed the opinion that it would be very difficult for Student to testify at the due process hearing due to extreme dependence on Parent and other adults. (N.T. pp. 119, 120) That prediction provides additional support for rejecting the evaluator's conclusions concerning Student's adaptive functioning. I had the opportunity to observe Student over several hearing sessions that Student attended, including the session at which Student testified, and formed impressions of Student based upon direct observation rather than the ratings of a single informant with a vested interest in demonstrating that Student did not develop competency in any area during the course of public education to age 21. At the hearing, Student was unfailingly courteous and maintained an appropriate demeanor at all times in the hearing room before, during and after hearing sessions. Student did not make inappropriate comments, or exhibit the inability to understand questions and answers directed to Student or to other witnesses. Student was observed consulting with Parent's counsel, presumably to assist in cross-examining District witnesses. When Student testified, precautions were taken to assure that Student would not be unduly stressed by the need to testify, such as taking Student's testimony in a smaller, more informal setting and limiting the number of District staff members in the room during Student's testimony, but Student exhibited few, if any, signs of discomfort. Many of Student's answers

were brief, especially in response to questions from Parent's counsel, which were admittedly prepared and presented to Student in advance of the hearing date, as would be expected, to a greater or lesser degree, with any witness presented by a party. (*See* N.T. pp. 559—561) Student also, however, gave numerous lengthy answers in response to questions from both attorneys, and appeared to understand all the questions asked, based upon Student's ability to respond appropriately. Informal observation of Student at several hearing sessions, as well as both hearing and re-reading Student's testimony, did not support the evaluator's conclusion of such extremely limited competencies that Student is unable to function adequately and independently in virtually any setting.

Perhaps the evaluator's most stunning conclusion based only upon Parent's completion of rating scales was that Student could not possibly function better in a different setting, and, indeed, likely functions better in the home setting than in school. (N.T. pp. 107, 108, 110, 116) Again, the evaluator makes no attempt to reconcile that conclusion with consistent teacher comments throughout Student's high school years of good adaptive functioning in school. *See* FF 6.

The evaluator recommended intensive reading, writing and math instruction to remedy Student's deficits in those areas, assuming without any real explanation of her reasons, that Student's lack of achievement must be due to inadequate services provided by the District. In addition, the evaluator gave no indication of how much more Student could be expected to achieve in terms of developing reading writing and math skills with additional intensive instruction. The evaluator stated that there can still be discrepancies between ability and achievement for a student with an intellectual disability (N.T. p. 58) but stops short of predicting how successfully such deficits can be overcome with any type or level of instruction. Student in

this case received a significant amount of instruction in reading, writing and math in a special education setting during the [two 12th grade] school years, and although still has difficulty in all skill areas, Student did score at a proficient level in writing on the PSSA test at the end of 11th grade. (FF 10)

3. Educational Services—[Career] Program, Reading, Math

a. Vo-Tech [Career] Program

In addition to relying upon the opinions of her expert witness, Parent asserts that her denial of FAPE claims are supported by Student's lack of educational progress. Parent contends, in essence, that Student's work product produced over two years in the vo-tech [career] program was a sham. There is, however, no support for such a claim unless the independent evaluator's conclusions concerning Student's complete inability to function successfully were wholly accepted and all testimony and documentary evidence produced by the District entirely disregarded. As already discussed, the flaws in the independent evaluation with respect to Student's adaptive skills render the expert witness's opinions unreliable.

In addition, Student's own testimony supported the testimony of the [career] instructor and the vo-tech special education with respect to Student's progress in that program. *See* FF 17, (N.T. pp. 515—518, 531, 532, 590—592); FF 22 (N.T. pp. 524—529, 589). The record supports the conclusion that Student understated the level of support needed to produce the portfolio of work compiled over two years in the [career] program (of which Student is justifiably proud) and understated the level of difficulty Student still experienced in completing projects. (FF 17, 20) There is, however, no reasonable basis for concluding that Student was pushed along without developing any real knowledge or ability in the [career] field. Student's presentation of graduation project involving a [redacted], including a power point, as to which there is no

dispute, is sufficient to defeat the contention that Student made little or no progress in the [career] program. *See* FF 23. In addition, Student received a monetary award at the conclusion of the program and the [career] instructor offered to serve as an employment reference for Student. (FF 25, 34) It is not reasonable to conclude that the District staff spent an inordinate amount of time constructing an elaborate ruse to demonstrate progress where none actually occurred.

b. Reading, Math Instruction

Student did not progress beyond approximately a 6th grade level in reading and math by the time Student graduated, despite an additional year of intensive instruction. (FF 12, 14, 16) Parent contends that the evidence that Student reached a plateau at the middle school level is sufficient to support a conclusion of no meaningful progress. Despite Student's demonstrated ability to work hard and desire to succeed, Student's cognitive potential represented by IQ scores remained in the borderline to low average range from the time of the District's initial evaluation through the latest independent evaluation. (FF 4, 48, 55h) The record supports the conclusion that the District provided Student with intensive, research-based reading and math instruction during the entire period for which Parent seeks compensatory education. (FF 12, 13 16) In light of that combination of facts, the only reasonable conclusion is that Student reached the highest level Student is capable of achieving. There is no reasonable basis for concluding that more or different kinds of instruction in the past would have changed the outcome.

4. Transition

The record simply does not support Parent's contention that the District's transition services were inadequate. Student was provided with annual, coordinated services, including assessments and opportunities to develop employment skills. (FF 28—38) In addition, Student

was prepared to seek employment after graduation. (FF 43) It is difficult to understand what more Parent could reasonably have expected of the District. As noted above, the District is not responsible for assuring a successful outcome in terms of assuring that Student would obtain employment or entry into a program of postsecondary education/training. The District was required only to provide Student with the tools to seek further education and employment, and the District amply met that responsibility in this case.

5. Miscellaneous Claims

a. Assistive Technology

Although Parent identified a claim for the District's failure to provide Student with assistive technology, that claim appeared to be based upon the District's failure to provide Student with a reading device for the [career] program and use of a calculator. Student resisted using the reading device supplied by Parent and the math instructor testified that Student had use of a calculator. (FF 16, 18) In addition, Parent provided no evidence that Student could not make appropriate progress without the reading device, and, as stated, Student made appropriate progress. Parent likewise had no evidence beyond her belief that Student did not have access to a calculator as the math instructor testified. Parent has not, therefore established a claim for denial of FAPE based upon a lack of appropriate assistive technology to support Student.

b. Testing

Parent asserts that Student was improperly excluded from participation in assessments, specifically, the NOCTI. The District admitted that Student should have taken it. (FF 26) Parent did not, however, establish how that procedural violation interfered with Student's substantive right to FAPE or denied Student any educational benefit. In accordance with 34 C.F.R. §300.513, therefore, Parent's exclusion from testing claim does not constitute a

substantive violation that can properly support a decision that the District denied Student FAPE on that basis.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that Parent's claims in this matter are **DENIED**.

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

May 21, 2011