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Pennsylvania

## Special Education Hearing Officer

### DECISION

ODR No. 13224-1213 AS

Child's Name: A.D.

Date of Birth: [redacted]

Dates of Hearing: 12/20/12, 1/9/13, 1/25/13,  
1/30/13, 2/1/13, 2/5/13,  
2/8/13, 2/22/13, 2/27/13

### CLOSED HEARING

#### Parties to the Hearing:

Parents  
Parent

School District  
Colonial  
230 Flourtown Road  
Plymouth Meeting, PA 19462-1252

Date Record Closed:

Date of Decision:

Hearing Officer:

#### Representative:

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March 12, 2013

April 2, 2013

Anne L. Carroll, Esq.

## **INTRODUCTION AND PROCEDURAL HISTORY**

Student was enrolled in the Colonial School District (District) from 2<sup>nd</sup> grade through the end of 6<sup>th</sup> grade and received special education services throughout that period. Student was first identified as IDEA eligible due to specific learning disabilities after an evaluation conducted by the local Intermediate Unit while Student was attending a parochial school. Despite receiving learning support for reading, writing and math, Student's progress was slow, leading to anxiety and low self-esteem, as noted in the District's evaluation conducted when Student entered the District.

Parent became particularly concerned during 5<sup>th</sup> grade when Student appeared to be struggling more with academic demands and those concerns continued in 6<sup>th</sup> grade, despite Parent's agreement to place Student in a smaller special education class than originally scheduled. Student also received additional and more intensive reading instruction during 6<sup>th</sup> grade. Although Student's reading skills improved with increased instruction, because of scheduling issues Student spent most of the school day in the teacher's classroom, which was designed primarily to provide autistic support, with less exposure to the regular education curriculum than provided in Student's IEP.

Student was reevaluated by the District and received an IEE during the winter and spring of 2012. The reevaluations confirmed that Student's reading, writing and math skills remained well below same age peers.

At the beginning of 7<sup>th</sup> grade, Parent enrolled Student in a private school which provides intensive reading instruction based on Orton-Gillingham principles. When the parties were unable to reach an agreement for the District to fund the private school placement, Parent filed a due process complaint. Base upon the record compiled over 9 hearing sessions, and as explained

below, Student will receive two years of compensatory education, including ESY for two summers, and the District will be required to reimburse Parent for the private school tuition for the current school year, and until such time as the District convenes an IEP meeting and develops an IEP with Parent's full participation.

## **ISSUES**

1. Did the School District fail to provide Student with a free, appropriate public education (FAPE) during the 2010/2011 and 2011/2012 school years?
2. Is Student entitled to an award of compensatory education from November 5, 2010 through the end of the 2011/2012 school year, and for ESY services during the summers of 2011 and 2012, and if so, in what amount and what form? <sup>1</sup>
3. Did the School District fail to offer Student an appropriate educational placement, appropriate specially designed instruction and other appropriate special education services for the 2012/2013 school year?
4. Is Parent entitled to tuition reimbursement for the private school Student has been attending from the beginning of the current school year?
5. If compensatory education is awarded, may Parent use the monetary value of the compensatory education award to pay the costs of the private school for the current school year if tuition reimbursement is not awarded, or additional years of private school if tuition for the current school year is reimbursed?

## **FINDINGS OF FACT**

### **Background/Evaluations**

1. Student, a [preteen-aged child] is a resident of the District and eligible for special education services due to specific learning disabilities. (Stipulation, N.T. pp. 21—23); 34 C.F.R. §300.8(a)(1), (c)(10); 22 Pa. Code §14.102 (2)(ii).
2. Student has medical diagnoses of asthma and peptic ulcer, which sometimes affect school attendance. (N.T. pp. 80, 81; P-12 p. 1).
3. In kindergarten and 1<sup>st</sup> grade, Student attended parochial schools where significant difficulties in learning reading, writing and math emerged in 1<sup>st</sup> grade, leading to an

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<sup>1</sup> Parent acknowledged that the IDEA two year statute of limitations period applies to the claims in this case, limiting compensatory education to the period from November 5, 2010 through the beginning of the 2012/2013 school year, when Student began attending a private school.

evaluation by the local Intermediate Unit in the spring of the 1<sup>st</sup> grade school year. (N.T. pp. 79, 80; P-12)

4. The IU evaluation report noted Student's weak phonemic awareness and below grade level skills in sight word recognition, spelling and writing, as well as struggles with all basic math skills. Teacher observations of those weaknesses were confirmed by a standardized achievement test (WIAT-II-Wechsler Individual Achievement Test-Third Edition). Student's cognitive ability was measured in the just below average to low average range on the WISC-IV (FSIQ 87/GAI 90).<sup>2</sup> The evaluator also noted Student's difficulties with understanding the tasks required by the assessments even after instructions were repeated. Issues with focus, attention and anxiety were suggested by Parent and teacher rating scales. ( P-12)
5. When Parent notified the District of her intention to enroll Student for 2<sup>nd</sup> grade, the District conducted an evaluation during the preceding summer. Selected subtests of a different standardized achievement test, the Woodcock-Johnson Tests of Achievement-Third Edition (W-J III), placed Student's reading, writing and math skills in the low average range. The Burns and Roe Informal Reading Inventory (IRI) indicated that Student's instructional reading level was at the pre-primer stage. (N.T. pp 81, 1845—1847; P-13)
6. The District school psychologist also asked Parent and Student's 1<sup>st</sup> grade teacher to complete the BASC-2 rating scales (Behavior Assessment System for Children-Second Edition) to assess Student's emotional functioning. Parent and teacher ratings were in the clinically significant range with respect to internalizing problems based on both raters' clinically significant scores for somatization (physical symptoms, complaints) and anxiety. Parent's ratings were also in the clinically significant range for depression, while the teacher's ratings fell into the "At risk" range with respect to depression. The school psychologist suggested that the concerns in those areas noted by Parent and the teacher arose from Student's "intense academic difficulty" during 1<sup>st</sup> grade. (N.T. pp. 1846, 1874, 1875, 1964; P-13 p. 4).
7. Based upon review of the IU evaluation and the results of the additional testing, the District school psychologist recommended that Student be identified as IDEA eligible in the category of specific learning disabilities due to "well below average academic achievement in reading, writing and math." Recommendations to meet Student's needs revealed by the evaluation included increasing phonological awareness, letter-sound recognition and decoding skills, building sight vocabulary and reading fluency, increasing math calculation and problem-solving skills and close monitoring of Student's emotional state. (P-13 p. 12)

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<sup>2</sup> The WISC-IV full-scale IQ (FSIQ) is derived from a calculation based on the four component index scores, verbal comprehension (VCI), perceptual reasoning (PRI), working memory (WMI) and processing speed (PSI). When there are significant differences among the index scores, a General Ability Index (GAI) is sometimes calculated based on the VCI and PRI scores only. (N.T. p. 1952)

8. For Student's triennial evaluation, completed at the end of 4<sup>th</sup> grade, the District determined that no new standardized assessments were needed to confirm Student's continued IDEA eligibility. The reevaluation report (RR) consisted primarily of a narrative of observations by Student's special education teacher, with some reporting of curriculum-based assessments, relating Student's progress in reading, writing, math, social skills and self-advocacy. Although reported to be "always upbeat and happy," the benefit of time to speak with a teacher during a daily check-in due to a new, unspecified "situation at home." (P-14 pp. 3, 4)
9. Student was reported to have increased from a level 14 to 20 on the Rigby Reading Assessment during the 2009/2010 school year, which the RR characterized as "huge gains in reading." Grade equivalents of the Rigby levels were not reported, but Student was reported to be reading at a 2<sup>nd</sup> grade level. Student was also reported to be "looking for familiar letter patterns when decoding familiar words" and to sound out words, but still having trouble with medial vowel sounds. The RR did not describe the reading instruction Student received. (P-14 pp. 2, 5)
10. The 2010 RR also included a narrative report of the speech/language therapist's observations of Student's progress during twice monthly speech/language sessions. Student was reported to have met all speech/language goals except strengthening higher level expressive language skills, but was also reported to use "very sophisticated higher level language skills on a consistent basis." (N.T. pp; P-14 p. 3)
11. During the winter of 2012, when Student was in 6<sup>th</sup> grade, the District conducted another evaluation after also agreeing to fund an independent educational evaluation (IEE). On the WISC-IV administered by the District school psychologist, Student's FSIQ and GAI scores both dropped to 81, in the low average range. (N.T. pp. 1849, 2207, 2245, 2246; P-15 pp. 9, 10, P-16 p. 16)
12. To further assess Student's cognitive skills the school psychologist also administered the WJ-III Tests of Cognitive Abilities to assess auditory processing, visual-spatial thinking and long-term retrieval, areas not explicitly covered by the WISC-IV. (N.T. pp. 1954; P-15 pp. 10, 11)
13. Overall, the District's cognitive assessments revealed strengths in auditory processing and processing speed, based on scores in the average range, and significant weaknesses in working memory, long-term retrieval of information, perceptual reasoning and visual processing. ((N.T. p. 1954; P-15 pp. 10, 11, 17, P-16)
14. Academic achievement based on the standardized, norm-referenced WIAT-III placed Student's overall reading and writing skills in the below average range and math in the low range. (P-15 pp. 11—13)
15. Compared to the initial IU evaluation in 1<sup>st</sup> grade, all of Student's standard scores in comparable reading and math sub-tests decreased, indicating a widening gap between Student's academic skills and those of same-age peers. Listening comprehension and

Spelling/Written Expression remained within the same ranges in both evaluations. (N.T. p. 1859; P-12 p. 6, P-15 pp. 11—13, 17, 18)

16. Parent and Student's 6<sup>th</sup> grade teacher completed BASC-2 rating scales. Both ratings placed Student in the clinically significant range with respect to internalizing problems, based on clinically significant ratings for somatization and depression. Both Parent and teacher ratings were in the average range for anxiety. The teacher rating was in the clinically significant range for learning problems, but all other ratings were in the average range with respect to Student's functioning at school. (N.T. pp. 1874; P-15 pp. 13—15)
17. Student was also asked to complete a BASC-2 self-rating scale as part of the District's reevaluation. Although an internal validity scale indicated that the results should be interpreted with caution due to overly negative responses, Student's self-rating was in the clinically significant range for depression. Student's self-ratings also resulted in clinically significant scores in attitude toward school and teachers, school problems and attention problems. Student's scores were in the "At Risk" range for the internalizing problems and personal adjustment scales based on the ratings for locus of control, sense of inadequacy, relations with parents and self reliance. (N.T. pp. 1872, 1873, 1981, 1982; P-15 pp. 14, 15)
18. Results of curriculum-based assessments in reading conducted during 5<sup>th</sup> and 6<sup>th</sup> grades were also reported in the RR. On the Rigby assessment in the fall of 5<sup>th</sup> grade, Student was assessed at level 16 (late 1<sup>st</sup> grade reading level) and improved to level 22 in the spring (late 2<sup>nd</sup> grade). On a Burns and Roe IRI and Rigby Benchmark administered in February 2012, Student's reading comprehension was assessed at a 3<sup>rd</sup> grade instructional and independent level. AIMS Web assessments at the beginning of 6<sup>th</sup> grade and in February 2012 showed an increase from the 1<sup>st</sup> to 3<sup>rd</sup> grade level. (P-15 pp.3, 4)
19. Student's writing remained at the Below Basic level of proficiency on all District-wide assessments administered in 5<sup>th</sup> and 6<sup>th</sup> grades. Student scored 5 out of 20 points in the fall of 5<sup>th</sup> grade, 7 out of 20 points at mid-year and 6 out of 20 points on the spring assessment. In the fall of 6<sup>th</sup> grade, Student received 6 out of 20 points and 5 out of 20 in February 2012. (N.T. pp; P-15 p.4 )
20. In April and early May 2012, an independent neuro-psychologist conducted the IEE. Parent had requested using measures different from those selected by the District school psychologist. (N.T. pp 2210, 2211; P-15 pp. 10-16, P-16 p. 5)
21. The independent evaluator's assessments showed a general decrease in standard scores on norm-referenced assessments and a drop in percentile rankings from the 1<sup>st</sup> grade IU evaluation to the 6<sup>th</sup> grade evaluations in most measures. Student's score in reading comprehension was an exception, rising from the 10<sup>th</sup> percentile on the WIAT-II in 2007 to the 25<sup>th</sup> percentile on the Kaufman Test of Educational Achievement-Second Edition (KTEA-2), a mid 4<sup>th</sup> grade reading level. Student's performance on the Gray Oral Reading Test, 4<sup>th</sup> Edition (GORT-4) was also at a mid 4<sup>th</sup> grade level, demonstrating the ability to use context clues to compensate for deficits in decoding skills. The

- compensatory strategy demonstrates Student's ability to take in, use and apply information. (N.T. pp. 2213, 2296; P-16 p. 11, P-19)
22. Although the compensatory strategies Student uses to derive meaning from written material despite significant decoding difficulties have been fairly successful based on Student's higher reading comprehension scores, those strategies are likely to become less effective over time as textbooks, *e.g.*, begin using higher level words and require broader and more sophisticated background knowledge to benefit from context clues. (N.T. pp. 2279—2282)
  23. The independent evaluator found limited skill development in spelling and written expression, including difficulties with grammar, syntax and the mechanics of writing. She attributed Student's writing difficulties to severe phonological processing problems, which also affected overall reading achievement. (N.T. pp. 2216, 2219; P-16 pp. 11, 12)
  24. The independent evaluator tested phonological processing and language ability using the Comprehensive Test of Phonological Processing (CTOPP). Based on the results of that test and other measures administered as part of the IEE, as well as the connection between language and reading, the independent evaluator recommended a comprehensive speech/language evaluation to gain further insight into Student's learning disabilities and identify other interventions. (N.T. pp. 2217, 2273—2275; P-16 pp. 7, 8)
  25. Student's achievement in math also declined since the end of 1<sup>st</sup> grade and was at the 1<sup>st</sup> percentile on the assessments administered by both the District and the independent evaluator. (N.T. pp. 2218, 2219; P-16 pp.12)
  26. The assessments of emotional functioning and the conversation Student had with the neuro-psychologist resulted in a diagnosis of an adjustment disorder with depressive features. The independent evaluator concluded that the disorder arose primarily from school related concerns and a sense of hopelessness caused by Student's learning difficulties, noting that similar concerns were noted in the District's 2007 evaluation. (N.T. pp. 2230—2240, 2264—2266; P-16 pp. 12—14, 17)
  27. Overall, the IEE and the District's 2012 reevaluation reached consistent results with respect to measuring Student's cognitive skills and academic achievement based on standardized assessments. (N.T. pp. 1859, 1914, 1925, 1961, 1975, 2243, 2251—2256)
  28. The independent evaluator attributed the small decline in IQ scores between 2007 and 2012 to Student's reading disability that can affect acquiring background information and building knowledge, causing a widening gap between Student and same age peers. (N.T. pp. 2244—2248)
  29. The results of the District's 2007 and 2012 evaluations and the IEE results established that in order to remediate Student's significant reading deficits, Student needs a research-based reading program that includes direct, explicit, systematic, sequential, multi-sensory instruction in phonics, decoding, fluency, vocabulary and comprehension. The

Corrective Reading program would very likely meet the criteria recommended for Student's reading instruction. (N.T. pp. 1860, 1861, 1943, 1944, 1951, 1998, 2008, 2221—2226, 2269—2273; P-13 p. 12, P-15 p. 15, P-16)

District Placement—5<sup>th</sup> and 6<sup>th</sup> Grades/Parent Concerns

30. At the beginning of 5<sup>th</sup> grade, Student was placed in a learning support classroom for reading, writing and math pursuant to an IEP developed in at the end of 4<sup>th</sup> grade, in June 2010. (N.T. pp. 101, 527; P-6)
31. The IEP included two reading goals, for decoding and comprehension, two math computation goals, for addition and subtraction with re-grouping, and a goal for writing three sentences on a topic with correct spelling using a word wall. Specially designed instruction included a kinesthetic approach for math, repetition, multiple opportunities to practice new skills, use of manipulatives during instruction and tests. (P-6 pp. 11—14)
32. Student was instructed in reading using the District's general "Balanced Literacy" program. The components of Balanced Literacy are Guided Reading, Shared Reading, Word Study, Independent Reading and Writers Workshop. The 5<sup>th</sup> grade teacher testified that she supplemented Student's reading instruction with Corrective Reading provided two to three times weekly, but all information concerning Student's placement, levels and achievement in that program were included in a folder that could not be located after the end of 5<sup>th</sup> grade. The teacher could not recall the Corrective Reading level at which Student began or at which Student ended 5<sup>th</sup> grade. (N.T. pp. 327, 328, 528—534, 545)
33. The Corrective Reading program was selected by the teacher based on her observation of Student's needs and experience with other students who had similar needs. Corrective Reading was used as time permitted in order to assure that there was sufficient time to provide all components of the Balanced Literacy Program. Corrective Reading was not provided as prescribed by the publisher. The 5<sup>th</sup> grade teacher delivered reading instruction that she believed was best for Student. (N.T. pp. 538—544, 559, 562)
34. At the beginning of the 5<sup>th</sup> grade school year, the teacher administered the Rigby reading assessment which placed Student's reading level at 16, a drop from the level 20 which Student was reported to have achieved at the end of 4<sup>th</sup> grade. At the time the teacher prepared a report for Student's transition to middle school, the mid-year Rigby level was listed as 18. According to the 5<sup>th</sup> grade teacher, Student progressed from reading at a mid 1<sup>st</sup> grade level to a 2<sup>nd</sup> grade level during 5<sup>th</sup> grade. (N.T. p. 592; P-6 p. 4, P-9 p. 5P-14 p. 2, P-27)
35. Early in 5<sup>th</sup> grade, Parent expressed concerns about Student's difficulties, particularly with math instruction, homework and negative attitude toward school in general. Parent's concerns continued throughout the 5<sup>th</sup> grade school year. (N.T. pp. 109, 110, 112—116, 118—127, 564, 564; P-42, P-43, P-49, P-50, P-52, P-55, P-56, P-57, P-58)



36. Student's 5<sup>th</sup> grade teacher responded to Parent's concerns by stating her belief that Student was not making sufficient efforts to complete assignments and work independently. (N.T. pp. 564—566, 568, 588, 590; P-45, P-56, P-58)
37. The report prepared for Student's transition to middle school noted that Student received math and spelling in the life skills classroom. Early in 5<sup>th</sup> grade, Student was removed from the originally assigned special education classroom and returned to the 4<sup>th</sup> grade special education teacher due to difficulties with math instruction. That class included students with significant cognitive delays. At the end of 5<sup>th</sup> grade, Student was reported to be learning to add and subtract with re-grouping, but confusion was noted when Student was presented with mixed addition and subtraction problems. Because addition and subtraction skills had not yet been mastered, multiplication and division had not been introduced. (N.T. pp. 110, 111, 351, 553—555; P-9 p. 6, P-27, P-42)
38. At the end of 5<sup>th</sup> grade, the special education teachers who instructed Student collaborated to draft an initial IEP for 6<sup>th</sup> grade. The reading goals were identical to the reading goals in the 5<sup>th</sup> grade IEP. Progress reports indicated that Student was presented with reading materials at the 1.5 grade level until January 2011, when materials on a 2<sup>nd</sup> grade reading level were used. (N.T. pp. 592, 597, 608; P-6 p.11, P-7 pp.11, 12)
39. Although Student's reading level as measured by the Rigby assessment had decreased from a level 20 to a level 16 between the end of 4<sup>th</sup> grade and the beginning of 5<sup>th</sup> grade, and Student did not recover the end of 4<sup>th</sup> grade level by the time the transition report was prepared in mid-5<sup>th</sup> grade, the IEP team did not recommend ESY services for the summer of 2011 based upon the conclusion that Student did not meet any of the criteria for ESY services. (P-6 p. 4, P-7 pp. 4, 18, P-27)
40. At the end of 5<sup>th</sup> grade, Student's IEP team recommended that Student receive supplemental learning support for reading, language arts and math in 6<sup>th</sup> grade. Although differences were not explicitly described, learning support classes in the District do not provide the same program. The 5<sup>th</sup> grade teacher expected that Student's learning support classroom in 6<sup>th</sup> grade would include peers from the 5<sup>th</sup> grade learning support class. (N.T. pp. 613, 614; P-7 p. 20)
41. In August 2011, Parent met with Student's 6<sup>th</sup> grade school counselor, and with the 6<sup>th</sup> grade special education teacher who had participated in the IEP meeting at the end of 5<sup>th</sup> grade. The meeting had been arranged to discuss Parent's concerns about Student's ability to adjust to middle school and succeed in the learning support class. Parent accepted the District's suggestion that Student be placed with a teacher whose class was smaller than usual. Assignment to that teacher's class included adding instruction in the special education class for English and history instead of in the general education setting. (N.T. pp. 139—141, 856, 857, 860, 861, 2427, 2433—2437, 2535, 2544—2547; P-7 p. 2, P-28)
42. The special education teacher to whom Student was assigned for 6<sup>th</sup> grade did not teach the same social studies curriculum, Early American Studies, provided to most 6<sup>th</sup> grade

- students. The social studies curriculum Student received was described as functional and included exercises designed around “Survival Words” and “Grocery Words.” (N.T. pp. 1162—1165, 1186; P-128, P-129)
43. Although Student’s schedule specified English instruction during 3<sup>rd</sup> period each day, the teacher did not adhere strictly to the schedule but infused an English curriculum throughout reading instruction. (N.T. pp. 1325, 1326)
  44. The classes for which Student was assigned to the special education classroom in 6<sup>th</sup> grade were designated “Aut Supp Eng,” “Aut Supp History,” “Aut Supp Math,” “Aut Supp Read.” (P-33, P-34, P-35, P-36)
  45. Early in the 2011/2012 school year, Student’s reading and math goals were revised by the special education teacher with Parent’s agreement because Student was struggling with the math goals in the IEP. Student’s reading and math goals were revised again in January 2012. Student’s baseline for one of the goals was listed at the 75<sup>th</sup> percentile on a 1<sup>st</sup> grade level and the goal provided for Student to reach the 90<sup>th</sup> percentile at the 1<sup>st</sup> grade level on 3 consecutive weekly probes. (N.T. pp. 149, 150, 1210, 1211; P-8, P-9 pp. 12-14, P-61)
  46. Near the beginning of the 2011/2012 school year, the 6<sup>th</sup> grade teacher administered a Rigby assessment that placed Student at Level 20. The teacher noted that Student’s independent reading level was 1<sup>st</sup> grade and Student was instructional at the 2<sup>nd</sup> grade level. (N.T. pp. 1215—1217; S-49)
  47. During the fall of the 6<sup>th</sup> grade school year, Student’s special education teacher began providing a supplemental reading program, SIPP, that the teacher had used in the past with students who had similar decoding issues. The teacher selected that reading intervention based on her assessment of Student’s needs. The teacher began the program at the first level, ordinarily used with students at the earliest developmental reading levels, based on a placement test administered before instruction began. (N.T. pp. 1277—1286)
  48. The SIPP program provides for systematic, scripted instruction in reading skills intended to be taught to mastery. The teacher did not use the program completely as intended, moving to the next level based on her informal assessments of Student’s progress. (N.T. pp. 1289—1307)
  49. During the fall of 6<sup>th</sup> grade, Parent again expressed concerns about academic difficulties and other school problems Student was experiencing. (N.T. pp. 1147—1154, 157, 158; P-64, P-65, P-71)
  50. Early in November 2011, Parent consulted Student’s pediatrician concerning Student’s school-related problems. The pediatrician’s notes reflect his conclusion that Student’s physical symptoms were triggered by school-related anxiety. The pediatrician suggested

that Parent contact the District for a full psycho-educational evaluation. (N.T. pp. 158—162; P-21 p. 27, P-64)

51. Within a few days, Parent called the middle school supervisor of special education to discuss the pediatrician's recommendation. Parent's recollection of the conversation was that the special education supervisor told her that Student was in an appropriate setting. The pediatrician's records reflect that Parent called to report on the conversation and the special education supervisor's response that Student was in an appropriate setting and testing was not needed. (N.T. pp. 164—166; P-21 p. 28)
52. The District supervisor of special education recalled from the conversation that Parent believed Student had never been tested, which prompted an offer to send a copy of the 2007 evaluation report. She also recalled that she reminded Parent of the right to request a reevaluation, which Parent declined. (N.T. pp. 1021—1025; P-112)
53. Both Parent and the special education supervisor subsequently produced their contemporaneous notes of the telephone conversation. Parent's notes state, "They don't see the need to test...Not obligated to test. "07" Eval. WISC low average Low Average 87 IQ Visual Average." The last two lines of special education supervisor's notes state, "OK-no need for testing or meeting-I told parent-stay in touch." (P-130, S-72)
54. In March 2012, the District proposed a NOREP for a month-long ESY program during the summer of 2012, noting that Student would likely show regression in skills without a summer program. Parent declined the ESY services because the District did not specify a research-based reading program. (N.T. pp. 250, 251; S-42)

#### 2012/2013 IEP Proposal

55. The parties did not meet for an IEP meeting at any time prior to the beginning of the 2012/2013 school year, despite a number of dates proposed for a meeting during the summer. On September 7, 2012 the District sent Parent an IEP draft dated May 15, 2012. (N.T. pp.180, 185; P-10, P-82, P-83, P-84, P-85, P-86, P-88, P-113)
56. The proposed IEP recommended that Student receive no instruction in the general education classroom during 7<sup>th</sup> grade. The IEP does not specify whether Student would continue to receive all instruction from the same special education teacher as in 6<sup>th</sup> grade, or whether the content area instruction would be the same as or similar to the English, history and science provided to most 7<sup>th</sup> grade students in the District. (P-10 pp. 35, 36.)
57. The proposed IEP included 5 reading goals encompassing comprehension, decoding and fluency. The baselines for the reading goals in the proposed IEP at the 3<sup>rd</sup> grade level were derived from an IRI reading assessment. For the first time, the specially designed instruction listed in the IEP included a systematic, multi-sensory, research based reading program. (N.T. p. 1373; P-10 pp. 23, 24, 30)

58. The proposed IEP also included 6 math goals, including computing elapsed time, currency, place value. The proposed IEP also included 4 writing goals directed toward developing focus, content, adding details and improving organization. (P-10 pp. 27—29)

### Private School Placement

59. Student is currently enrolled in 7<sup>th</sup> grade in a private school designed to address the needs of students with language-based learning disabilities. (N.T. pp. 191, 192; P-96, P-116)
60. Reading instruction is based on the Orton-Gillingham principles of a phonics-based, multi-sensory, structured, systematic, sequential, diagnostic and prescriptive program incorporating five components identified by the National Reading Panel as critical to effective instruction. Reading activities emphasize phonemic awareness and include synthetic (parts of words building to the whole) and analytic (separating words into constituent parts) activities. (N.T. pp. 1587, 1591—1608, 1619; P-104, P-126)
61. Student currently receives 90 minutes of reading instruction two days/week, including 45 minutes of 1:1 instruction with one certified Orton-Gillingham instructor and 45 minutes of 1:1 or 1:2 instruction with a different teacher. Two days/week, Student receives 80 minutes of reading instruction in a small group setting (6 students), and 40 minutes of small group reading instruction on the 5<sup>th</sup> day. Student sometimes receives extra instruction from the regular reading teacher. (N.T. pp. 1581—1583)
62. Gaps in Student's decoding skills noted at the beginning of the school year resulted in increased time for reading instruction as well as slower-paced and more intensive instruction. Reading skills are assessed daily by means of notes documenting successes and errors. (N.T. pp. 1586—1590)
63. In addition to reading instruction, Student's classes include math, using the Saxon Math and Making Math Real curricula, science (cell biology and simple machines), social studies (focusing on geography), art, technology (computer applications), physical education/health, English (writing and literature) and vocabulary. All of Student's classes include between 6 and 11 other students. (N.T. pp. 1641, 1769, 1771—1773, 1781; P-103)
64. Student receives counseling services and participates in the school-wide S.T.E.P.S. curriculum, a program implemented by the school psychologist for building and strengthening emotional balance. (N.T. pp. 1643, 1644, 1796—1798; P-118)
65. Assessments of Student's reading skills in January 2013 with an alternate form of the KTEA-2 after several months of instruction with Orton-Gillingham methods showed considerable improvement in the letter and word recognition (4<sup>th</sup> to 18<sup>th</sup> percentile) and spelling (6<sup>th</sup> to 12<sup>th</sup> percentile) subtests. Nonsense word decoding and math computation, however, showed no improvement. (N.T. pp. 2285—2289; P-116 p. 2)

66. Student reported more positive feelings toward teachers, school and reading, as well as more confidence in his/her ability to learn and apply math and reading skills. The independent evaluator who observed Student in the District 6<sup>th</sup> grade classroom and in the current private school less than a year later reported an improved affect and no depressive symptoms. (N.T. pp. 2289—2294; P-116)

## **DISCUSSION AND CONCLUSIONS OF LAW**

### Legal Standards

Before considering the parties' contentions in light of the extensive record produced in this case, it is helpful to repeat the familiar but essential standards that provide the legal underpinnings for the decision.

### IDEA Requirements

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 (3<sup>rd</sup> Cir. 2009).

As noted by the court in *Damian J. v. School District of Philadelphia*, 2008 WL 191176 (E.D.Pa. Jan. 22, 2008) at \*1, FN.2,

The centerpiece for the implementation of FAPE is the IEP. *S.H. v. State-Operated Sch. Dist. of the City of Newark*, 336 F.3d 260, 264 (3d Cir.2003). The IEP consists of a detailed written statement developed for each child summarizing the child's abilities, how the disability affects performance, and measurable annual goals. *Id.* The IEP specifies the special education services and supplementary aids the school will provide the child, explaining how these will allow the child to progress. *Id.*

In the context of evaluating IDEA denial of FAPE claims, “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 (3<sup>rd</sup> Cir. 1999). In order for a school district to provide FAPE, an eligible 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 (3<sup>rd</sup> Cir. 1993). An eligible student is denied FAPE if his/her 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 (3<sup>rd</sup> Cir. 1996; *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F. 2d 171 (3<sup>rd</sup> Cir. 1988).

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 712, 718 (3<sup>rd</sup> Cir. 2010), 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.

#### 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* at 240.

In *Schaffer v. Weast*, 546 U.S. 49; 126 S. Ct. 528; 163 L. Ed. 2d 387 (2005), the Supreme Court held that in IDEA due process hearings, as in other civil cases, the party seeking relief bears the burden of persuasion, or more clearly, the risk of non-persuasion. Consequently, in this case, because Parent has challenged the appropriateness of the District's program/placement during the 2010/2011 and 2011/2012 school years, as well as the IEP the District's proposed for the current school year, Parent was required to establish that the District's IEPs were not reasonably calculated to assure that Student received, and would receive, a meaningful educational benefit.

The burden of proof analysis actually affects the outcome of a due process hearing, however, 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. *Ridley S.D. v. M.R.*, 680 F.3d 260 (3<sup>rd</sup> Cir. 2012). In this case, Parent produced far more than a preponderance of the evidence in support of her claims, so allocating the burden of persuasion did not affect the outcome.

## Tuition Reimbursement

In *Burlington School Committee v. Department of Education of Massachusetts*, 471 U.S. 359, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985), the United States Supreme Court established the principle that parents do not forfeit an eligible student's right to FAPE, to due process protections or to any other remedies provided by the federal statute and regulations by unilaterally changing the child's placement, although they certainly place themselves at financial risk if the due process procedures result in a determination that the school district offered FAPE or otherwise acted appropriately.

To determine whether Parent is entitled to payment from the District for a private placement, a three part test is applied based upon the *Burlington* decision and *Florence County School District v. Carter*, 510 U.S. 7, 114 S.Ct. 361, 126 L.Ed. 2d 284 (1993). The first step is to assess whether the program and placement offered by the School District was appropriate for the child, and only if that issue is resolved against the School District are the second and third steps considered, *i.e.*, is the program selected by Parent appropriate for the child and, if so, whether there are equitable considerations that counsel against reimbursement or affect the amount thereof.

As described by the Court of Appeals in the *Mary Courtney T* decision,

A parent's decision to unilaterally place a child in a private placement is proper if the placement "is appropriate, *i.e.*, it provides significant learning and confers meaningful benefit..." *DeFlaminis*, 480 F.3d at 276 (internal quotation marks and citation omitted). That said, the "parents of a disabled student need not seek out the perfect private placement in order to satisfy IDEA." *Ridgewood Bd. of Educ. v. N.E.*, 172 F.3d 238, 249 n. 8 (3d Cir.1999). In fact, the Supreme Court has ruled that a private school placement may be proper and confer meaningful benefit despite the private school's failure to provide an IEP or meet state educational standards. *Florence County Sch. Dist. Four v. Carter ex rel. Carter*, 510 U.S. 7, 14-15, 114 S.Ct. 361, 126 L.Ed.2d 284 (1993)

575 F.3d at 242.



Denial of FAPE/ 2010-2011 and 2011-2012 School Years

Lack of Meaningful Academic Progress

The record establishes that Student's significant learning disabilities were well documented from the time Student enrolled in the District at the beginning of 2<sup>nd</sup> grade. (FF 3, 4, 5, 6, 7) The same District school psychologist who evaluated Student at the time of enrollment in the District and in approximately the middle of 6<sup>th</sup> grade, initially recommended that Student's reading instruction be directed toward building phonological awareness and decoding skills. (FF 7) She also recommended math instruction to increase Student's math calculation and problem-solving skills. (FF 7) In addition, she recognized that Student's learning difficulties had emotional consequences for Student, documented by the BASC-2 rating scales completed by Parent and Student's 1<sup>st</sup> grade teacher, and recommended monitoring that situation. (FF 6, 7)

There is, however, no evidence that any of those recommendations were ever followed, and it is somewhat startling that the District could so tenaciously cling to its position that Student made meaningful progress, when the evaluations conducted in the winter and spring of 2012 documented a decrease in skills when compared to the 2007 evaluations. (FF 15, 21, 25)

Contrary to the District's arguments, the evidence in this case strongly supports two inferences: 1) That whatever type of reading instruction Student received between 2<sup>nd</sup> grade and 6<sup>th</sup> grade, it was not sufficiently intensive, systematic and explicit to yield meaningful progress, particularly with respect to phonics and decoding skills; 2) Had the District actually followed the school psychologists recommendations for effective reading instruction beginning in 2<sup>nd</sup> grade, Student's progress would likely have been far greater.

To conclude that Student made progress in reading by considering only the starting point (pre 2<sup>nd</sup> grade) and end point (end of 6<sup>th</sup> grade) requires ignoring the time spent during 5<sup>th</sup> and 6<sup>th</sup> grades when the teachers, in essence, traveled the same road several times. In the 2007 records review RR, the “huge gains” in reading described by Student’s 4<sup>th</sup> grade teacher amounted to an advance of two steps on the Rigby assessment from a level 14 (end of first grade on the District’s chart, S-65) to a level 20 (mid 2<sup>nd</sup> grade), but even that was lost by the fall of 5<sup>th</sup> grade, when Student scored two levels lower on the Rigby, back to the end of 1<sup>st</sup> grade. (FF 9, 18) By the end of 5<sup>th</sup> grade, Student’s Rigby score was a level 22, two steps higher than at the end of 4<sup>th</sup> grade, and had recovered to only a level 18 by the middle of 5<sup>th</sup> grade. (FF 34) At the beginning of 6<sup>th</sup> grade, Student’s reading level as measured on the Rigby assessment again fell back to level 20. (FF 39)

It is telling that Student appears to have made better progress in reading during 6<sup>th</sup> grade, with more intensive reading instruction, even with a reading program that was not delivered according the publisher’s protocol. (FF 18, 47, 48) Although Student’s 5<sup>th</sup> grade teacher testified that she provided the Corrective Reading program to supplement the District’s regular reading program, and it would likely have met the school psychologist’s recommendation for a systematic, research-based reading program, there is no supporting documentation that the program was delivered at all, or the amount of instruction actually provided. (FF 32, 33) The evidence does establish, however, that Student’s progress in reading was not steady and sustained during 5<sup>th</sup> grade.

Although there was a particular focus on reading instruction during the hearing, given the importance of reading as a fundamental, indeed, practically, irreplaceable academic skill, the

record also establishes that Student made, essentially no advances in math and writing in 5<sup>th</sup> and 6<sup>th</sup> grades. (FF 14, 19, 21, 23, 25)

#### Additional Issues

The District in this case exhibited a singularly cavalier attitude toward IDEA procedures, particularly the importance of the IEP and accurate educational placement. Student's IEPs during 5<sup>th</sup> and 6<sup>th</sup> grades included both minimal goals and minimal specially designed instruction. (P-5, P-6, P-7, P-8, P-9) Given Student's lack of meaningful academic progress, however, the IEP procedural inadequacies are almost beside the point.

Of greater concern is why the District found it unnecessary to address Student's lack of progress in reading in 5<sup>th</sup> and 6<sup>th</sup> grades. Several District witnesses suggested that the District has access to a number of research-based reading programs that might have provided the systematic, phonics-based reading instruction Student clearly needs. It is unclear why the District did not formally propose increasing and improving Student's reading instruction with a research-based program through the IEP process. Student's 5<sup>th</sup> and 6<sup>th</sup> grade teachers testified to virtually complete autonomy in selecting a supplemental reading program for Student, determining how to deliver it and how to monitor Student's progress in the supplemental reading instruction they chose. (FF 32, 33, 47, 48)

Even concerning was the District's unilateral change of both the type and level of special education placement Student received during 6<sup>th</sup> grade, as well as diminishing Student's exposure to the regular education curriculum. (FF 41, 42, 43, 44)

In response to Parent's concern that Student's difficulties in regular education content classes in 5<sup>th</sup> grade would increase in middle school, the District assigned Student to an autistic support class for 6<sup>th</sup> grade, but then tried to deny it at the hearing, contending that the District

has no middle school autistic support class. The District's position in that regard was not credible.

To explain why Student's 6<sup>th</sup> grade schedule listed "autistic support" rather than learning support as Student's special education placement (FF 44), the special education supervisor and the 6<sup>th</sup> grade teacher testified that it was both a matter of convenience and a computer technology issue. (N.T. pp. 869, 1188, 1189) The 6<sup>th</sup> grade teacher testified that the unidentified "techie guy" who programs the middle school computers is aware of her special training and expertise with respect to students with an ASD diagnosis and, therefore, decided that the class she teaches must be an autistic support class.

The teacher also had to explain why the e-mail signature she chose included the designation "Autistic Support Teacher." That was to signify that all of the students for whom she served as case manager were IDEA eligible due to ASD. (N.T. pp. 1509, 1510)

The only reasonable inference to be drawn from the District's elaborate attempts at subterfuge on this point is that the District itself did not believe that Student's assignment to the 6<sup>th</sup> grade special education classroom designed primarily to provide autistic support services was either procedurally or substantively appropriate. Pennsylvania special education regulations clearly provide that the type of special education support to which an eligible student is assigned is not to be based on disability category alone. *See* 22 Pa. Code §14.31(a)(1). Consequently, there would be no reason to avoid acknowledging that Student was assigned to an autistic support classroom if the District believed it was a substantively appropriate placement for Student.

It was a procedural violation not to convene Student's IEP team, at some point, to formally change Student's placement to either an autistic support class and to substantially

increase Student's time in a self-contained special education classroom without fully discussing it with the entire IEP team. A procedural violation, however, can be a denial of FAPE only if it "impeded the child's right to a FAPE; significantly impeded the parent's opportunity to participate...in decision-making...or caused a deprivation of educational benefit."

Here, it is impossible to infer that the District fully explained the recommended classroom to Parent in terms of the implications of the completely different social studies curriculum, as well as no exposure to the 6<sup>th</sup> grade English curriculum. The District did not even attempt to suggest that a detailed, explicit conversation about those matters occurred. Although Parent may well have agreed that Student would benefit from a functional curriculum, there is no evidence that the District explicitly told Parent that instead of receiving the regular education social studies curriculum, Early American Studies, Student's "social studies" would consist of a life skills curriculum. If that was an appropriate change based on Student's needs, and the District truly believed that Parent did or would support it, there was no reason not to convene the IEP team to formalize the change in placement. As it was, however, Student did not receive the placement and services specified in the IEP.

The District's actions, therefore, resulted in both a denial of educational benefit, in that Student did not have the full opportunity to participate in the regular education curriculum provided by the IEP that was in effect, and significantly impeded Parent's right to participate in the decision-making process concerning the provision of FAPE to Student.

The record in this case supports the inference that in order for Student to receive the more intensive reading instruction Student clearly needed, and that finally resulted in some sustained progress in reading, Student was deprived of the ability to participate in most aspects of the regular education curriculum provided to 6<sup>th</sup> graders in the District. Instead of

participating in social studies and English regular education environment, Student received intensive reading instruction in what was substantively a full time special education classroom.

The reduction of Student's access to the general education curriculum is a serious breach of the District's IDEA obligations to Student. The IDEA statute and regulations provide in several sections that IDEA eligible students must be provided with access, and the opportunity to participate and make progress in the general education curriculum. *See, e.g.*, 34 C.F.R. §300.39(b)(3)(ii) (Definition of specially designed instruction), §300.114(a)(2) (LRE requirement), §300.320(a)(2)(i)(A) (Definition of IEP/annual goals), §300.320(a)(4)(ii) (Definition of IEP/statement of special education and related services). There are, of course, circumstances, based on individual disability-related special education needs, which may require limitations to an eligible student's participation in the regular education curriculum. Here, however, the District significantly reduced Student's participation in the regular education curriculum in 6<sup>th</sup> grade in an attempt to make up for an earlier lack of appropriately intensive and generally effective reading instruction in 2<sup>nd</sup> through 5<sup>th</sup> grades.

The evidence in this case establishes that Student found regular education classes difficult and was self-conscious about limited reading skills. The appropriate response to those issues, however, was an increase in supportive services to allow Student to appropriately access the general education curriculum, not withdrawing all such access.

### ESY

As noted above, the record establishes that Student lost reading skills during the summer of 2011 and that it took several months for Student to recoup the lost skills. (FF 18, 34, 39). Student therefore met two of the criteria for ESY services in the Pennsylvania Special Education regulations. 22 Pa. Code §14.132(a)(2)(i), (ii)

The record, however, does not clearly establish that Student lost reading skills over the summer of 2012, and, in any event, the District offered an ESY program during the summer of 2012 that Parent declined. The record established that Student benefited from additional reading instruction even if it did not fully meet the standards for the type of research-based instruction Student needs. Parent, therefore, was not justified in rejecting the District's ESY offer for the summer of 2012.

#### Compensatory Education Award

Student's lack of progress in reading, writing and math during 5<sup>th</sup> grade and limited progress during 6<sup>th</sup> grade, as well as the District's failure to provide access to the regular education curriculum in 6<sup>th</sup> grade supports an award of full days of compensatory education for the portion of 2010/2011 school year within the IDEA two year limitations period and for the entire 2011/2012 school year. The record also supports an award of compensatory education for the District's failure to offer ESY services for the summer of 2011, but does not support a compensatory education award for the summer of 2012.

#### Unilateral Private School Placement

##### IEP Offer for 2012/2013

The District's IEP proposed for the current school year showed improvement over the IEPs in place for the preceding two school years, but the offer was not finalized in an IEP meeting in which Parent had the opportunity to participate. (FF 55) Parent, therefore, had no opportunity to participate in decision-making with respect to Student' educational placement for the current school year. By sending the proposed IEP to Parent with a NOREP after the IEP in effect for 6<sup>th</sup> grade expired and without convening an IEP team meeting, the District made the

IEP offer a “take it or leave it” proposition. Without the opportunity to ask questions and propose revisions, Parent was justified in leaving it.

In addition, the proposed IEP provides for no participation in regular education classes. (FF 56) Without the opportunity for a full discussion with respect to whether supplemental aids and services could enable Student to participate in one or more regular education classes, the IEP as it stands does not comply with LRE requirements, and, therefore, is inappropriate on that basis.

Finally, without an explanation of the reading instruction the District is proposing in either the IEP or in an IEP meeting, and given the District’s history of not delivering reading programs according to the publisher’s protocol, it is impossible to determine whether the District has offered appropriate and sufficiently intensive reading instruction reasonably likely to yield meaningful progress. Parent, therefore, has met the first prong of the *Burlington-Carter* analysis.

#### Appropriateness of the Private School

The evidence produced at the due process hearing amply establishes that the private school Parent selected provides the type of instruction Student needs and was recommended by both the private evaluator and the District’s school psychologist. (FF 29, 60, 61, 63, 64) Parent, therefore has also established the second step of the *Burlington-Carter* analysis.

In addition, because the private school placement is appropriate, Parent may use the compensatory education award to pay for additional services, including future tuition, if necessary, provided by the private school Student is currently attending.

#### Equities

Contrary to the District’s arguments, the record does not support denial or reduction of tuition for the current school year based on equitable considerations. Parent in this case brought



legitimate complaints and concerns to the District and was very cooperative. Exploring the option for private school, particularly under the circumstances presented by this case, where the District did not meet Student's needs for sufficient effective and appropriate instruction for many years and had not even offered an IEP by the beginning of the school year, provides no basis denying or reducing tuition.

The District's argument that Parent cannot afford private school without public funding is particularly puzzling as an equities argument, since an underlying basis for the Supreme Court decisions is the notion that parents with lesser financial means should not be precluded from obtaining effective and appropriate special education services for their eligible children on that basis.

## **CONCLUSION**

Parent in this case has provided more than enough evidence to support all claims with the exception of compensatory education for the summer of 2012. The order below, therefore, grants nearly all of the relief Parent requested

## **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. Pay the tuition for the 2012/2013 school year that Parent owes to [Redacted] School, the private school Student is attending.
2. Provide Student with compensatory education for:
  - a. Each day that school was in session and Student attended school from November 5, 2010 through the last day of the 2010/2011 school year;
  - b. Each day school was in session and Student attended school from the first to the last day of the 2011/2012 school year;
  - c. The summer of 2011, for the same number of hours the District offered ESY services for the summer of 2012.

It is **FURTHER ORDERED** that the School District's obligation to pay the private school tuition shall continue until such time as the District convenes an IEP meeting with a full opportunity for Parent's participation, and offers an appropriate IEP that includes a research-based reading program which offers the same kinds o components as the instruction based on Orton-Gillingham principles that Student is receiving this school year, as well as appropriate and sufficiently intensive math and writing instruction reasonable calculated to assure meaningful educational progress.

It is **FURTHER ORDERED** Student's Parent shall determine the specific type of compensatory education service, which may include any academic, counseling or other services reasonably designed to meet Student's identified needs, including additional payments to the **current** private school, which has been determined to be appropriate for Student, in the event the parties cannot reach an agreement concerning Student's educational placement in the future.

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

April 2, 2013